By:  Bettencourt, et al. S.B. No. 1365

(Huberty, Dutton, King of Hemphill, Murphy, Oliverson)

A BILL TO BE ENTITLED

AN ACT

relating to public school organization, accountability, and fiscal management.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. STATE AND LOCAL ORGANIZATION AND GOVERNANCE

SECTION 1.01.  Section 7.055, Education Code, is amended by adding Subsection (d) to read as follows:

(d)  Notwithstanding any other law, the commissioner's power to delegate ministerial and executive functions under Subsection (b)(5) is a valid delegation of authority.

SECTION 1.02.  Section 11.151(b), Education Code, is amended to read as follows:

(b)  Except as provided by Sections 39A.201 and 39A.202, the [~~The~~] trustees as a body corporate have the exclusive power and duty to govern and oversee the management of the public schools of the district. All powers and duties not specifically delegated by statute to the agency or to the State Board of Education are reserved for the trustees, and the agency may not substitute its judgment for the lawful exercise of those powers and duties by the trustees.

SECTION 1.03.  Section 11.1511(a), Education Code, is amended to read as follows:

(a)  In addition to powers and duties under Section 11.151 or other law, the board of trustees of an independent school district has the powers and duties provided by Subsection (b), except as otherwise provided by Sections 39A.201 and 39A.202.

ARTICLE 2. PUBLIC SCHOOL SYSTEM ACCOUNTABILITY

SECTION 2.01.  Chapter 5, Education Code, is amended by adding Section 5.003 to read as follows:

Sec. 5.003.  FINAL AND UNAPPEALABLE. In this title, if an order, decision, or determination is described as final and unappealable, an interlocutory or intermediate order, decision, or determination made or reached before the final order, decision, or determination may be appealed only if specifically authorized by this code or a rule adopted under this code.

SECTION 2.02.  Sections 12.1141(b) and (d), Education Code, are amended to read as follows:

(b)  At the end of the term of a charter for an open-enrollment charter school, if a charter holder submits to the commissioner a petition for expedited renewal of the charter, the charter automatically renews unless, not later than the 30th day after the date the charter holder submits the petition, the commissioner provides written notice to the charter holder that expedited renewal of the charter is denied. The commissioner may not deny expedited renewal of a charter if:

(1)  the charter holder has been assigned the highest or second highest performance rating under Subchapter C, Chapter 39, for the three preceding school years;

(2)  the charter holder has been assigned a financial performance accountability rating under Subchapter D, Chapter 39, indicating financial performance that is satisfactory or better for the three preceding school years; and

(3)  no campus operating under the charter has been assigned an unacceptable [~~the lowest~~] performance rating under Subchapter C, Chapter 39, for the three preceding school years or such a campus has been closed.

(d)  At the end of the term of a charter for an open-enrollment charter school, if a charter holder submits to the commissioner a petition for renewal of the charter, the commissioner may not renew the charter and shall allow the charter to expire if:

(1)  the charter holder has been assigned an unacceptable [~~the lowest~~] performance rating under Subchapter C, Chapter 39, for any three of the five preceding school years;

(2)  the charter holder has been assigned a financial accountability performance rating under Subchapter D, Chapter 39, indicating financial performance that is lower than satisfactory for any three of the five preceding school years;

(3)  the charter holder has been assigned any combination of the ratings described by Subdivision (1) or (2) for any three of the five preceding school years; or

(4)  any campus operating under the charter has been assigned an unacceptable [~~the lowest~~] performance rating under Subchapter C, Chapter 39, for the three preceding school years and such a campus has not been closed.

SECTION 2.03.  Sections 39.057 and 39.058, Education Code, are transferred to Subchapter A, Chapter 39, Education Code, redesignated as Sections 39.003 and 39.004, Education Code, and amended to read as follows:

Sec. 39.003 [~~39.057~~].  SPECIAL [~~ACCREDITATION~~] INVESTIGATIONS. (a)  The commissioner may authorize special [~~accreditation~~] investigations to be conducted:

(1)  when excessive numbers of absences of students eligible to be tested on state assessment instruments are determined;

(2)  when excessive numbers of allowable exemptions from the required state assessment instruments are determined;

(3)  in response to complaints submitted to the agency with respect to alleged violations of civil rights or other requirements imposed on the state by federal law or court order;

(4)  in response to established compliance reviews of the district's financial accounting practices and state and federal program requirements;

(5)  when extraordinary numbers of student placements in disciplinary alternative education programs, other than placements under Sections 37.006 and 37.007, are determined;

(6)  in response to an allegation involving a conflict between members of the board of trustees or between the board and the district administration if it appears that the conflict involves a violation of a role or duty of the board members or the administration clearly defined by this code;

(7)  when excessive numbers of students in special education programs under Subchapter A, Chapter 29, are assessed through assessment instruments developed or adopted under Section 39.023(b);

(8)  in response to an allegation regarding or an analysis using a statistical method result indicating a possible violation of an assessment instrument security procedure established under Section 39.0301, including for the purpose of investigating or auditing a school district under that section;

(9)  when a significant pattern of decreased academic performance has developed as a result of the promotion in the preceding two school years of students who did not perform satisfactorily as determined by the commissioner under Section 39.0241(a) on assessment instruments administered under Section 39.023(a), (c), or (l);

(10)  when excessive numbers of students eligible to enroll fail to complete an Algebra II course or any other advanced course as determined by the commissioner;

(11)  when resource allocation practices as evaluated under Section 39.0821 indicate a potential for significant improvement in resource allocation;

(12)  when a disproportionate number of students of a particular demographic group is graduating with a particular endorsement under Section 28.025(c-1);

(13)  when an excessive number of students is graduating with a particular endorsement under Section 28.025(c-1);

(14)  in response to a complaint submitted to the agency with respect to alleged inaccurate data that is reported through the Public Education Information Management System (PEIMS) or through other reports required by state or federal law or rule or court order and that is used by the agency to make a determination relating to public school accountability, including accreditation, under this chapter;

(15)  when a school district for any reason fails to produce, at the request of the agency, evidence or an investigation report relating to an educator who is under investigation by the State Board for Educator Certification; or

(16)  as the commissioner otherwise determines necessary.

(b)  If the agency's findings in an investigation under Subsection (a)(6) indicate that the board of trustees has observed a lawfully adopted policy that does not otherwise violate a law or rule, the agency may not substitute its judgment for that of the board.

(c)  The commissioner may authorize special [~~accreditation~~] investigations to be conducted in response to repeated complaints submitted to the agency concerning imposition of excessive paperwork requirements on classroom teachers.

(d)  Based on the results of a special [~~accreditation~~] investigation, the commissioner may:

(1)  take any [~~appropriate~~] action under Chapter 39A, regardless of any requirements applicable to the action that are provided by that chapter;

(2)  lower the school district's accreditation status or a district's or campus's accountability rating; or

(3)  take action under both Subdivisions (1) and (2).

(e)  At any time before issuing a report with the agency's final findings, the commissioner may defer taking an action under Subsection (d) until:

(1)  a person who is a third party, selected by the commissioner, has reviewed programs or other subjects of an investigation under this section and submitted a report identifying problems and proposing solutions;

(2)  a district completes a corrective action plan developed by the commissioner; or

(3)  the completion of actions under both Subdivisions (1) and (2).

(f)  Based on the results of an action taken under Subsection (e), the commissioner may decline to take the deferred action under Subsection (d).

(g)  Section 39A.301 applies to an action taken under Subsection (d)(1) in the same manner as that section applies to an action taken under Chapter 39A [~~Regardless of whether the commissioner lowers the school district's accreditation status or a district's or campus's performance rating under Subsection (d), the commissioner may take action under Section 39A.002 or 39A.051 if the commissioner determines that the action is necessary to improve any area of a district's or campus's performance, including the district's financial accounting practices~~].

Sec. 39.004 [~~39.058~~].  CONDUCT OF SPECIAL [~~ACCREDITATION~~] INVESTIGATIONS. (a) The agency shall adopt written procedures for conducting special [~~accreditation~~] investigations [~~under this subchapter~~], including procedures that allow the agency to obtain information from district employees in a manner that prevents a district or campus from screening the information. The agency shall make the procedures available on the agency Internet website. Agency staff must be trained in the procedures and must follow the procedures in conducting the special [~~accreditation~~] investigation.

(a-1)  If the agency determines that it is necessary to protect the welfare of the witness, the agency may classify the identity of a witness as confidential and not subject to disclosure to the district or under Chapter 552, Government Code.

(b)  After completing a special [~~accreditation~~] investigation, the agency shall present preliminary findings to any person or entity the agency finds has violated a law, rule, or policy. Before issuing a report with its final findings, the agency must provide a person or entity the agency finds has violated a law, rule, or policy an opportunity for an informal review by the commissioner or the commissioner's designee [~~a designated hearing examiner~~].

(c)  An informal review under this section is not a contested case for purposes of Chapter 2001, Government Code.

SECTION 2.04.  Section 39.054, Education Code, is amended by amending Subsections (a), (a-3), and (b-1) and adding Subsections (a-4) and (a-5) to read as follows:

(a)  Except as provided by Subsection (a-4), the [~~The~~] commissioner shall adopt rules to evaluate school district and campus performance and assign each district and campus an overall performance rating of A, B, C, D, or F. In addition to the overall performance rating, the commissioner shall assign each district and campus a separate domain performance rating of A, B, C, D, or F for each domain under Section 39.053(c). An overall or domain performance rating of A reflects exemplary performance. An overall or domain performance rating of B reflects recognized performance. An overall or domain performance rating of C reflects acceptable performance. An overall or domain performance rating of D reflects performance that needs improvement. An overall or domain performance rating of F reflects unacceptable performance. A district may not receive an overall or domain performance rating of A if the district includes any campus with a corresponding overall or domain performance rating of D or F. If a school district has been approved under Section 39.0544 to assign campus performance ratings and the commissioner has not assigned a campus an overall performance rating of D or F, the commissioner shall assign the campus an overall performance rating based on the school district assigned performance rating under Section 39.0544. A reference in law to an acceptable rating or acceptable performance includes an overall or domain performance rating of A, B, C, or D, except as provided by Section 39.0543, or performance that is exemplary, recognized, or acceptable performance or performance that needs improvement, except as provided by Section 39.0543. A reference in law to an unacceptable performance rating includes an overall or domain performance rating of F and, as provided by Section 39.0543, D or performance that needs improvement.

(a-3)  Not later than August 15 of each year, the following information [~~performance ratings of each district and campus~~] shall be made publicly available as provided by rules adopted under this section:

(1)  the performance ratings of each school district and campus; and

(2)  if applicable, the number of consecutive school years of unacceptable performance ratings for each district and campus.

(a-4)  Notwithstanding any other law, the commissioner may assign a school district or campus an overall performance rating of "Not Rated" if the commissioner determines that the assignment of a performance rating of A, B, C, D, or F would be inappropriate because:

(1)  the district or campus is located in an area that is subject to a declaration of a state of disaster under Chapter 418, Government Code, and due to the disaster, performance indicators for the district or campus are difficult to measure or evaluate and would not accurately reflect quality of learning and achievement for the district or campus;

(2)  the district or campus has experienced breaches or other failures in data integrity to the extent that accurate analysis of data regarding performance indicators is not possible;

(3)  the number of students enrolled in the district or campus is insufficient to accurately evaluate the performance of the district or campus; or

(4)  for other reasons outside the control of the district or campus, the performance indicators would not accurately reflect quality of learning and achievement for the district or campus.

(a-5)  Notwithstanding any other law, an overall performance rating of "Not Rated" is not included in calculating consecutive school years of unacceptable performance ratings and is not considered a break in consecutive school years of unacceptable performance ratings for purposes of any provision of this code.

(b-1)  Consideration of the effectiveness of district programs under Section 39.052(b)(2)(B) or (C):

(1)  must:

(A)  be based on data collected through the Public Education Information Management System (PEIMS) for purposes of accountability under this chapter; and

(B)  include the results of assessments required under Section 39.023; and

(2)  may be based on the results of a special [~~accreditation~~] investigation conducted under Section 39.003 [~~39.057~~].

SECTION 2.05.  Subchapter C, Chapter 39, Education Code, is amended by adding Section 39.0543 to read as follows:

Sec. 39.0543.  NEEDS IMPROVEMENT OR UNACCEPTABLE PERFORMANCE RATING. (a) A reference in law to an acceptable performance or acceptable performance rating for a school district, open-enrollment charter school, district campus, or charter school campus includes an overall performance rating of D if, since previously receiving an overall performance rating of C or higher, the district, charter school, district campus, or charter school campus:

(1)  has not previously received more than one overall performance rating of D; or

(2)  has not received an overall performance rating of F.

(a-1)  For the purposes of this section, an overall performance rating issued in a previous school year for a school district, open-enrollment charter school, district campus, or charter school campus of:

(1)  met standard, academically acceptable, recognized, exemplary, A, B, or C is considered to be a performance rating of C or higher; and

(2)  improvement required, academically unacceptable, or F is considered to be a rating of F.

(a-2)  Subsection (a-1) and this subsection expire September 1, 2027.

(b)  A reference in law to an unacceptable performance or unacceptable performance rating includes a performance rating of D if the rating does not satisfy Subsection (a).

SECTION 2.06.  Subchapter C, Chapter 39, Education Code, is amended by adding Section 39.0545 to read as follows:

Sec. 39.0545.  ALTERNATIVE METHODS AND STANDARDS FOR EVALUATING PERFORMANCE FOR 2020-2021 SCHOOL YEAR. (a)  This section applies to a campus:

(1)  that meets the participation requirements for all students in all subject areas for the annual measurement of achievement under Section 1111, Every Student Succeeds Act (20 U.S.C. Section 6311(c)(4)(E));

(2)  to which the most recent performance rating assigned, other than a "Not Rated" rating, is a D, F, or performance that needs improvement; and

(3)  is not subject to the appointment of a board of managers under Section 39A.117(b).

(b)  Notwithstanding any other law, the commissioner shall adopt rules to develop and implement alternative methods and standards for evaluating the performance for the 2020-2021 school year of a campus to which this section applies. The rules adopted under this section must evaluate a campus under the domains of indicators of achievement listed in Sections 39.053(c)(1) and (2).

(c)  The commissioner shall review a campus to which this section applies under the alternative methods and standards adopted under Subsection (b) on the request of the school district in which the campus is located made by the deadline established by commissioner rule.

(d)  An acceptable performance rating assigned under the alternative methods and standards adopted by the commissioner under Subsection (b) is considered a break in consecutive school years of unacceptable performance ratings under this code.

(e)  This section does not apply to an intervention ordered on the basis of consecutive school years of unacceptable performance ratings accrued before the effective date of this section.

(f)  This section expires September 1, 2027.

SECTION 2.07.  Sections 39.151(a), (b), and (e), Education Code, are amended to read as follows:

(a)  The commissioner by rule shall provide a process for a school district or open-enrollment charter school to challenge an agency decision made under this chapter relating to an academic or financial accountability rating that affects the district or school, including a determination of consecutive school years of unacceptable performance ratings.

(b)  The rules under Subsection (a) must provide for the commissioner to appoint a committee to make recommendations to the commissioner on a challenge made to an agency decision relating to an academic performance rating or determination, including a determination of consecutive school years of unacceptable performance ratings, or financial accountability rating. The commissioner may not appoint an agency employee as a member of the committee.

(e)  A school district or open-enrollment charter school may not challenge an agency decision relating to an academic or financial accountability rating under this chapter, including a decision relating to a determination of consecutive school years of unacceptable performance ratings, in another proceeding if the district or school has had an opportunity to challenge the decision under this section.

SECTION 2.08.  Section 39A.003, Education Code, is amended by adding Subsection (d) to read as follows:

(d)  A conservator or management team may exercise the powers and duties defined by the commissioner under Subsection (a) or described by Subsection (c) regardless of whether the conservator or management team was appointed to oversee the operations of a school district in its entirety or the operations of a certain campus within the district.

SECTION 2.09.  Sections 39A.006(a) and (b), Education Code, are amended to read as follows:

(a)  This section applies:

(1)  regardless of whether a school district has satisfied the accreditation criteria; and

(2)  to a conservator or management team appointed under any provision of this title, regardless of the scope or any changes to the scope of the conservator's or team's oversight.

(b)  If for two consecutive school years, including the current school year, a school district has had a conservator or management team assigned to the district or a district campus for any reason under this title, the commissioner may appoint a board of managers to exercise the powers and duties of the board of trustees of the district.

SECTION 2.10.  Section 39A.061(b), Education Code, is amended to read as follows:

(b)  The commissioner may authorize a targeted improvement plan, [~~or~~] an updated targeted improvement plan, or a local improvement plan to supersede the provisions of and satisfy the requirements of developing, reviewing, and revising a campus improvement plan under Subchapter F, Chapter 11.

SECTION 2.11.  Subchapter B, Chapter 39A, Education Code, is amended by adding Section 39A.065 to read as follows:

Sec. 39A.065.  LOCAL IMPROVEMENT PLAN. (a) A school district, open-enrollment charter school, district campus, or charter school campus that is assigned a rating of D that qualifies under Section 39.0543(a) shall develop and implement a local improvement plan.

(b)  A local improvement plan must be presented to the board of trustees of the school district or governing board of the open-enrollment charter school.

(c)  The commissioner shall adopt rules to establish requirements for a local improvement plan components and training. The commissioner may not require a school district or open-enrollment charter school to submit the local improvement plan to the agency.

SECTION 2.12.  Section 39A.102, Education Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b)  Subject to Subsection (b-1), the [~~The~~] commissioner may appoint a monitor, conservator, management team, or board of managers to the school district to ensure and oversee district-level support to low-performing campuses and the implementation of the updated targeted improvement plan.

(b-1)  The commissioner shall appoint a conservator to a school district under Subsection (b) unless and until:

(1)  each campus in the district for which a campus turnaround plan has been ordered under Section 39A.101 receives an acceptable performance rating for the school year; or

(2)  the commissioner determines a conservator is not necessary.

SECTION 2.13.  The heading to Section 39A.110, Education Code, is amended to read as follows:

Sec. 39A.110.  MODIFICATION OF [~~CHANGE IN~~] CAMPUS TURNAROUND PLAN [~~PERFORMANCE RATING~~].

SECTION 2.14.  Section 39A.110, Education Code, is amended by adding Subsection (c) to read as follows:

(c)  The commissioner may authorize modification of an approved campus turnaround plan if the commissioner determines that due to a change in circumstances occurring after the plan's approval under Section 39A.107, a modification of the plan is necessary to achieve the plan's objectives.

SECTION 2.15.  Section 39A.111, Education Code, is amended to read as follows:

Sec. 39A.111.  CONTINUED UNACCEPTABLE PERFORMANCE RATING. If a campus is considered to have an unacceptable performance rating for five [~~three~~] consecutive school years [~~after the campus is ordered to submit a campus turnaround plan under Section 39A.101~~], the commissioner, subject to Section 39A.112, shall order:

(1)  appointment of a board of managers to govern the school district as provided by Section 39A.202; or

(2)  closure of the campus.

SECTION 2.16.  Subchapter C, Chapter 39A, Education Code, is amended by adding Sections 39A.117 and 39A.118 to read as follows:

Sec. 39A.117.  INTERVENTION FOR CERTAIN DISTRICTS OR CAMPUSES. (a)  For purposes of this section:

(1)  an acceptable performance rating includes:

(A)  a rating of met standard, academically acceptable, recognized, exemplary, A, B, or C; or

(B)  a rating of D that meets the requirements of Section 39.0543(a);

(2)  an unacceptable performance rating includes:

(A)  a rating of improvement required, academically unacceptable, or F; or

(B)  a rating of D that meets the requirements of Section 39.0543(b); and

(3)  a rating of "Not Rated" is not considered an acceptable or unacceptable performance rating and may not be considered a break in consecutive years of unacceptable performance.

(b)  As soon as practicable after the effective date of S.B. 1365, Acts of the 87th Legislature, Regular Session, 2021, or similar legislation, the commissioner shall:

(1)  determine the number of school years of unacceptable performance ratings occurring after the 2012-2013 school year for each school district, open-enrollment charter school, district campus, or charter school campus by determining the number of unacceptable performance ratings assigned to each district, charter school, district campus, or charter school campus since the most recent acceptable performance rating was assigned to the district, charter school, district campus, or charter school campus;

(2)  use the number of school years of unacceptable performance ratings as the base number of consecutive years of unacceptable performance for which the performance rating in the 2021-2022 school year will be added; and

(3)  order the appointment of a board of managers under Section 39A.111 to the school district or charter school for each campus that is determined under Subdivision (1) to have been assigned an unacceptable performance rating for five or more school years.

(c)  Exemptions from interventions authorized under Sections 11.174 and 28.020 and Section 5, Chapter 919 (H.B. 4205), Acts of the 86th Legislature, Regular Session, 2019, apply to an intervention ordered under this section and the commissioner shall make necessary modifications to an intervention ordered under this section in accordance with those provisions of law.

(d)  This section may not be construed to:

(1)  provide a school district or open-enrollment charter school additional remedies or appellate or other review for previous interventions, sanctions, or performance ratings ordered or assigned; or

(2)  prohibit the commissioner from taking any action or ordering any intervention or sanction otherwise authorized by law.

(e)  To the extent of conflict with any other transition provision affecting this section, this transition provision prevails.

(f)  This section expires September 1, 2027.

Sec. 39A.118.  INTERVENTION IF ASSIGNED CERTAIN PERFORMANCE NEEDS IMPROVEMENT RATING. (a) Until another performance rating is issued, the agency may not implement the intervention or sanctions as provided by Subsection (b) for a school district, open-enrollment charter school, district campus, or charter school campus, if the performance rating initiating the action under Subsection (b) is based on the first or second overall performance rating of D, since previously receiving a rating of C or higher.

(b)  The following interventions are subject to a pause under Subsection (a):

(1)  revocation of a charter under Section 12.115(c);

(2)  annexation under Section 13.054;

(3)  change in accreditation status under rules adopted for accreditation under Section 39.052; and

(4)  interventions or sanctions under Section 39A.101(a), 39A.107(a) or (c), or 39A.111.

(c)  The performance rating identified under Subsection (a):

(1)  may not be included in calculating consecutive school years of an unacceptable performance rating; and

(2)  is not considered a break in consecutive school years of an unacceptable performance rating.

(d)  Interventions or sanctions implemented prior to the intervention pause under Subsection (a) shall continue during the school year for which actions under Subsection (b) are paused.

(e)  This section does not apply to a commissioner action based on performance or reasons not listed as interventions under Subsection (b).

SECTION 2.17.  Section 39A.201(a), Education Code, is amended to read as follows:

(a)  Notwithstanding Section 11.151(b) or 11.1511(a) or any other provision of this code, a [~~A~~] board of managers may exercise all of the powers and duties assigned to a board of trustees of a school district by law, rule, or regulation.

SECTION 2.18.  Section 39A.202(a), Education Code, is amended to read as follows:

(a)  Notwithstanding Section 11.151(b) or 11.1511(a) or any other provision of this code, if [~~If~~] the commissioner appoints a board of managers to govern a school district:

(1)  the powers of the board of trustees of the district are suspended for the period of the appointment; and

(2)  the commissioner shall appoint a district superintendent.

SECTION 2.19.  Section 39A.301, Education Code, is amended to read as follows:

Sec. 39A.301.  REVIEW OF SANCTIONS BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a)  A school district or open-enrollment charter school must appeal under this section if the district or school [~~that~~] intends to challenge a decision by the commissioner under Section 39.003 or this chapter to:

(1)  close the district or a district campus or the charter school;

(2)  [~~or to~~] pursue alternative management of a district campus or the charter school; or

(3)  appoint a board of managers to the district or school under Section 39A.202 [~~must appeal the decision under this section~~].

(b)  A challenge under this section to a decision by the commissioner described by Subsection (a) is subject to review by the State Office of Administrative Hearings. Notwithstanding [~~under this section is under the substantial evidence rule as provided by Subchapter G,~~] Chapter 2001, Government Code:

(1)  the[~~. The~~] commissioner shall adopt procedural rules for a challenge under this section;

(2)  [~~.~~

[~~(c)  Notwithstanding other law:~~

[~~(1)~~] the State Office of Administrative Hearings shall conduct an expedited review of a challenge under this section;

(3)  the administrative law judge shall uphold a decision by the commissioner described by Subsection (a) unless the judge finds the decision is arbitrary and capricious or clearly erroneous;

(4)  in reviewing any discretionary decisions made by the commissioner, the administrative law judge may not substitute the judge's judgment for that of the commissioner;

(5) [~~(2)~~]  the administrative law judge shall issue a final order not later than the 30th day after the date on which the hearing is finally closed;

(6) [~~(3)~~]  the decision of the administrative law judge is final and may not be appealed; and

(7) [~~(4)~~]  the decision of the administrative law judge may set an effective date for an action under this section.

SECTION 2.20.  Section 39A.116, Education Code, is transferred to Subchapter Z, Chapter 39A, Education Code, redesignated as Section 39A.906, Education Code, and amended to read as follows:

Sec. 39A.906 [~~39A.116~~].  COMMISSIONER AUTHORITY. A decision by the commissioner under Chapter 39 or this chapter [~~subchapter~~] is final and may not be appealed, except as provided by Section 39A.301.

SECTION 2.21.  Section 39A.0545, Education Code, is repealed.

SECTION 2.22.  (a)  Sections 39.003 and 39.004, Education Code, as redesignated and amended by this Act, apply to a special investigation authorized or initiated before, on, or after the effective date of this Act.

(b)  Section 39A.006, Education Code, as amended by this Act, applies to a conservator or management team assigned to a school district before, on, or after the effective date of this Act.

SECTION 2.23.  If this Act takes effect later than August 15, 2021, the Texas Education Agency shall publish the consecutive school years of unacceptable performance ratings as required by Section 39.054(a-3), Education Code, as amended by this Act, for each school district and campus as soon as practicable after the effective date of this Act.

SECTION 2.24.  As soon as practicable after the effective date of this Act, the commissioner of education shall adopt rules to develop and implement alternative methods and standards for evaluating the performance of a campus for the 2020-2021 school year as required by Section 39.0545, Education Code, as added by this Act.

ARTICLE 3. PUBLIC SCHOOL FISCAL MANAGEMENT

SECTION 3.01.  Section 44.052(c), Education Code, is amended to read as follows:

(c)  A trustee of a school district who votes to approve any expenditure of school funds in violation of a provision of this code, for a purpose for which those funds may not be spent, or in excess of the item or items appropriated in the adopted budget or a supplementary or amended budget commits an offense. An offense under this subsection is a Class C misdemeanor.

SECTION 3.02.  Section 45.105, Education Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c)  Local school funds from district taxes, tuition fees of students not entitled to a free education, other local sources, and state funds not designated for a specific purpose may be used for the purposes listed for state and county available funds and for purchasing appliances and supplies, paying insurance premiums, paying janitors and other employees, buying school sites, buying, building, repairing, and renting school buildings, including acquiring school buildings and sites by leasing through annual payments with an ultimate option to purchase, and, except as provided by Subsection (c-1), for other purposes necessary in the conduct of the public schools determined by the board of trustees. The accounts and vouchers for county districts must be approved by the county superintendent. If the state available school fund in any municipality or district is sufficient to maintain the schools in any year for at least eight months and leave a surplus, the surplus may be spent for the purposes listed in this subsection.

(c-1)  Funds described by Subsection (c) may not be used to initiate or maintain any action or proceeding against the state or an agency or officer of the state arising out of a decision, order, or determination that is final and unappealable under a provision of this code, except that funds may be used for an action or proceeding that is specifically authorized by a provision of this code or a rule adopted under this code and that results in a final and unappealable decision, order, or determination.

SECTION 3.03.  Section 48.201, Education Code, is amended to read as follows:

Sec. 48.201.  PURPOSE. The purpose of the tier two component of the Foundation School Program is to provide each school district with the opportunity to provide the basic program and to supplement that program at a level of its own choice. An allotment under this subchapter may be used for any legal purpose other than:

(1)  capital outlay or debt service; or

(2)  a purpose prohibited by Section 45.105(c-1) or another provision of this code.

SECTION 3.04.  Section 39A.203, Education Code, is repealed.

SECTION 3.05.  Section 44.052(c), Education Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01.  Section 7.028(a), Education Code, is amended to read as follows:

(a)  Except as provided by Section 21.006(k), 22.093(l), 22.096, 28.006, 29.001(5), 29.010(a), 38.003, or 39.003 [~~39.057~~], the agency may monitor compliance with requirements applicable to a process or program provided by a school district, campus, program, or school granted charters under Chapter 12, including the process described by Subchapter F, Chapter 11, or a program described by Subchapter B, C, D, E, F, H, or I, Chapter 29, or Subchapter A, Chapter 37, only as necessary to ensure:

(1)  compliance with federal law and regulations;

(2)  financial accountability, including compliance with grant requirements;

(3)  data integrity for purposes of:

(A)  the Public Education Information Management System (PEIMS); and

(B)  accountability under Chapters 39 and 39A; and

(4)  qualification for funding under Chapter 48.

SECTION 4.02.  Section 12.013(b), Education Code, is amended to read as follows:

(b)  A home-rule school district is subject to:

(1)  a provision of this title establishing a criminal offense;

(2)  a provision of this title relating to limitations on liability; and

(3)  a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A)  the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B)  educator certification under Chapter 21 and educator rights under Sections 21.407, 21.408, and 22.001;

(C)  criminal history records under Subchapter C, Chapter 22;

(D)  student admissions under Section 25.001;

(E)  school attendance under Sections 25.085, 25.086, and 25.087;

(F)  inter-district or inter-county transfers of students under Subchapter B, Chapter 25;

(G)  elementary class size limits under Section 25.112, in the case of any campus in the district that fails to satisfy any standard under Section 39.054(e);

(H)  high school graduation under Section 28.025;

(I)  special education programs under Subchapter A, Chapter 29;

(J)  bilingual education under Subchapter B, Chapter 29;

(K)  prekindergarten programs under Subchapter E, Chapter 29;

(L)  safety provisions relating to the transportation of students under Sections 34.002, 34.003, 34.004, and 34.008;

(M)  computation and distribution of state aid under Chapters 31, 43, and 48;

(N)  extracurricular activities under Section 33.081;

(O)  health and safety under Chapter 38;

(P)  public school accountability and special investigations under Subchapters A, B, C, D, and J, Chapter 39, and Chapter 39A;

(Q)  options for local revenue levels in excess of entitlement under Chapter 49;

(R)  a bond or other obligation or tax rate under Chapters 43, 45, and 48; and

(S)  purchasing under Chapter 44.

SECTION 4.03.  Section 12.056(b), Education Code, is amended to read as follows:

(b)  A campus or program for which a charter is granted under this subchapter is subject to:

(1)  a provision of this title establishing a criminal offense; and

(2)  a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A)  the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B)  criminal history records under Subchapter C, Chapter 22;

(C)  high school graduation under Section 28.025;

(D)  special education programs under Subchapter A, Chapter 29;

(E)  bilingual education under Subchapter B, Chapter 29;

(F)  prekindergarten programs under Subchapter E, Chapter 29;

(G)  extracurricular activities under Section 33.081;

(H)  health and safety under Chapter 38;

(I)  public school accountability and special investigations under Subchapters A, B, C, D, F, and J, Chapter 39, and Chapter 39A; and

(J)  the duty to discharge or refuse to hire certain employees or applicants for employment under Section 12.1059.

SECTION 4.04.  Section 12.104(b), Education Code, as amended by Chapters 262 (H.B. 1597), 464 (S.B. 11), 467 (H.B. 4170), and 943 (H.B. 3), Acts of the 86th Legislature, Regular Session, 2019, is reenacted and amended to read as follows:

(b)  An open-enrollment charter school is subject to:

(1)  a provision of this title establishing a criminal offense;

(2)  the provisions in Chapter 554, Government Code; and

(3)  a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A)  the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B)  criminal history records under Subchapter C, Chapter 22;

(C)  reading instruments and accelerated reading instruction programs under Section 28.006;

(D)  accelerated instruction under Section 28.0211;

(E)  high school graduation requirements under Section 28.025;

(F)  special education programs under Subchapter A, Chapter 29;

(G)  bilingual education under Subchapter B, Chapter 29;

(H)  prekindergarten programs under Subchapter E or E-1, Chapter 29;

(I)  extracurricular activities under Section 33.081;

(J)  discipline management practices or behavior management techniques under Section 37.0021;

(K)  health and safety under Chapter 38;

(L)  public school accountability and special investigations under Subchapters A, B, C, D, F, G, and J, Chapter 39, and Chapter 39A;

(M)  the requirement under Section 21.006 to report an educator's misconduct;

(N)  intensive programs of instruction under Section 28.0213;

(O)  the right of a school employee to report a crime, as provided by Section 37.148;

(P)  bullying prevention policies and procedures under Section 37.0832;

(Q)  the right of a school under Section 37.0052 to place a student who has engaged in certain bullying behavior in a disciplinary alternative education program or to expel the student;

(R)  the right under Section 37.0151 to report to local law enforcement certain conduct constituting assault or harassment;

(S)  a parent's right to information regarding the provision of assistance for learning difficulties to the parent's child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d);

(T)  establishment of residency under Section 25.001;

(U) [~~(T)~~]  school safety requirements under Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.115, 37.207, and 37.2071;

(V) [~~(T)~~]  the early childhood literacy and mathematics proficiency plans under Section 11.185; and

(W) [~~(U)~~]  the college, career, and military readiness plans under Section 11.186.

SECTION 4.05.  Section 12.1162(a), Education Code, is amended to read as follows:

(a)  The commissioner shall take any of the actions described by Subsection (b) or by Section 39A.001, 39A.002, 39A.004, 39A.005, or 39A.007, to the extent the commissioner determines necessary, if an open-enrollment charter school, as determined by a report issued under Section 39.004(b) [~~39.058(b)~~]:

(1)  commits a material violation of the school's charter;

(2)  fails to satisfy generally accepted accounting standards of fiscal management; or

(3)  fails to comply with this subchapter or another applicable rule or law.

SECTION 4.06.  Section 39.0302(a), Education Code, is amended to read as follows:

(a)  During an agency investigation or audit of a school district under Section 39.0301(e) or (f), a special [~~an accreditation~~] investigation under Section 39.003(a)(8) [~~39.057(a)(8)~~] or (14), a compliance review under Section 21.006(k), 22.093(l), or 22.096, or an investigation by the State Board for Educator Certification of an educator for an alleged violation of an assessment instrument security procedure established under Section 39.0301(a), the commissioner may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is located in this state.

SECTION 4.07.  Section 39.056(h), Education Code, is amended to read as follows:

(h)  The commissioner may at any time convert a monitoring review to a special [~~accreditation~~] investigation under Section 39.003 [~~39.057~~], provided the commissioner promptly notifies the school district of the conversion.

SECTION 4.08.  Section 39A.001, Education Code, is amended to read as follows:

Sec. 39A.001.  GROUNDS FOR COMMISSIONER ACTION. The commissioner shall take any of the actions authorized by this subchapter to the extent the commissioner determines necessary if:

(1)  a school district does not satisfy:

(A)  the accreditation criteria under Section 39.052;

(B)  the academic performance standards under Section 39.053 or 39.054; or

(C)  any financial accountability standard as determined by commissioner rule; or

(2)  the commissioner considers the action to be appropriate on the basis of a special [~~accreditation~~] investigation under Section 39.003 [~~39.057~~].

SECTION 4.09.  Sections 39A.256(a) and (b), Education Code, are amended to read as follows:

(a)  A board of managers appointed for an open-enrollment charter school [~~or a campus of an open-enrollment charter school~~] under this chapter or Chapter 12 has the powers and duties prescribed by Section 39A.201(b), if applicable, and Sections 39A.201(a), 39A.202, [~~39A.203,~~] and 39A.206(b).

(b)  Except as otherwise provided by this subsection, the board of managers for an open-enrollment charter school [~~or a campus of an open-enrollment charter school~~] may not serve for a period that exceeds the period authorized by law for a board of managers appointed for a school district. A board of managers appointed to wind up the affairs of a former open-enrollment charter school or campus serves until dissolved by the commissioner.

SECTION 4.10.  To the extent of any conflict, this article prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.