By:  Bettencourt S.B. No. 1365

(In the Senate - Filed March 10, 2021; March 18, 2021, read first time and referred to Committee on Education; April 26, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 7, Nays 2, two present not voting; April 26, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Taylor            X

Lucio                                X

Bettencourt          X

Hall                 X

Hughes               X

Menéndez                 X

Paxton               X

Perry                X

Powell                   X

Schwertner           X

West                                 X

COMMITTEE SUBSTITUTE FOR S.B. No. 1365 By:  Bettencourt

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 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)  to determine if an academic program offered by a school district is providing students the quality education to which students are entitled under Title 1 and this title, including an investigation regarding:

(A)  the proportion of students in each demographic group participating in the program;

(B)  whether an excessive number of students are participating in a particular program or are being exempted from state requirements; or

(C)  whether all students have equitable access to the program, including advanced learning options [~~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;

(3)  regarding a [~~(4) in response to established compliance reviews of the~~] district's financial accounting practices and fiscal management;

(4)  to determine whether a district is complying with 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)  regarding educational [~~when excessive numbers of students in special education~~] programs provided 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;

(10)  regarding [~~(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:

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

(B)  [~~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; or

(C)  to the agency, including a material misrepresentation made in the course of a special investigation under this section;

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

(12)  regarding whether an improper use of public funds has occurred; or

(13) [~~(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 2.03.  Section 39.054, Education Code, is amended by amending Subsections (a) 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 or performance that is exemplary, recognized, or acceptable performance or performance that needs improvement.

(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 school are difficult to measure or evaluate and would not accurately reflect quality of learning and achievement for the district or campus; or

(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.

(a-5)  Notwithstanding any other law, an overall performance rating of "Not Rated" is not included in calculating consecutive school years and is not considered a break in consecutive school years for purposes of Chapter 39A.

(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 2.04.  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 2.05.  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 2.06.  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 2.07.  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 2.08.  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 2.09.  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 2.10.  Subchapter C, Chapter 39A, Education Code, is amended by adding Section 39A.117 to read as follows:

Sec. 39A.117.  APPOINTMENT OF CONSERVATOR AND BOARD OF MANAGERS FOR CERTAIN DISTRICTS OR SCHOOLS. (a) This section applies to a school district or open-enrollment charter school for which a board of managers has not assumed control of the district or school and includes a campus that:

(1)  has not received an acceptable performance rating since the 2010-2011 school year;

(2)  has received more than five unacceptable performance ratings since the 2010-2011 school year; and

(3)  has not been closed by the commissioner.

(b)  Notwithstanding any other law, the commissioner shall appoint:

(1)  a conservator to oversee the operations of a school district or open-enrollment charter school described by Subsection (a); and

(2)  a board of managers to exercise the powers and duties of the board of trustees or governing body of a district or school described by Subsection (a).

(c)  On the effective date of the appointment made under Subsection (b)(1), the board of trustees or governing body of a school district or open-enrollment charter school described by Subsection (a) may no longer exercise the powers and duties of the board or body under Chapter 11 or 12.

(d)  Once appointed under Subsection (b), the conservator and board of managers shall be subject to the provisions of this chapter.

(e)  This section expires September 1, 2024.

SECTION 2.11.  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 2.12.  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 2.13.  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 2.14.  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 2.15.  (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 39.054, Education Code, as amended by this Act, applies to an overall performance rating of "Not Rated" assigned before, on, or after the effective date of this Act.

(c)  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.

(d)  Section 39A.111, Education Code, as amended by this Act, applies to a school campus that has been assigned an unacceptable performance rating before, on, or after the effective date of this Act.

(e)  Section 39A.906, Education Code, as redesignated and amended by this Act, applies to a decision made by the commissioner of education before, on, or after the effective date of 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 12.1162(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 4.03.  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 (10) [~~(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 4.04.  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 4.05.  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 4.06.  Section 39A.256(a), Education Code, is 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).

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.

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