

By: Bettencourt, Campbell  
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S.B. No. 1365

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

1 has the powers and duties provided by Subsection (b), except as  
2 otherwise provided by Sections 39A.201 and 39A.202.

3 ARTICLE 2. PUBLIC SCHOOL SYSTEM ACCOUNTABILITY

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

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

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

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

22 (1) the charter holder has been assigned the highest  
23 or second highest performance rating under Subchapter C, Chapter  
24 39, for the three preceding school years;

25 (2) the charter holder has been assigned a financial  
26 performance accountability rating under Subchapter D, Chapter 39,  
27 indicating financial performance that is satisfactory or better for

1 the three preceding school years; and

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

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

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

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

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

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

25 SECTION 2.03. Sections 39.057 and 39.058, Education Code,  
26 are transferred to Subchapter A, Chapter 39, Education Code,  
27 redesignated as Sections 39.003 and 39.004, Education Code, and

1 amended to read as follows:

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

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

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

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

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

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

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

24                   (7) when excessive numbers of students in special  
25 education programs under Subchapter A, Chapter 29, are assessed  
26 through assessment instruments developed or adopted under Section  
27 39.023(b);

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

6           (9) when a significant pattern of decreased academic  
7 performance has developed as a result of the promotion in the  
8 preceding two school years of students who did not perform  
9 satisfactorily as determined by the commissioner under Section  
10 39.0241(a) on assessment instruments administered under Section  
11 39.023(a), (c), or (l);

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

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

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

21           (13) when an excessive number of students is  
22 graduating with a particular endorsement under Section  
23 28.025(c-1);

24           (14) in response to a complaint submitted to the  
25 agency with respect to alleged inaccurate data that is reported  
26 through the Public Education Information Management System (PEIMS)  
27 or through other reports required by state or federal law or rule or

1 court order and that is used by the agency to make a determination  
2 relating to public school accountability, including accreditation,  
3 under this chapter;

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

8 (16) as the commissioner otherwise determines  
9 necessary.

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

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

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

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

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

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

27 (e) At any time before issuing a report with the agency's

1 final findings, the commissioner may defer taking an action under  
2 Subsection (d) until:

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

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

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

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

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

23 Sec. 39.004 [~~39.058~~]. CONDUCT OF SPECIAL [ACCREDITATION]  
24 INVESTIGATIONS. (a) The agency shall adopt written procedures for  
25 conducting special [accreditation] investigations [~~under this~~  
26 ~~subchapter~~], including procedures that allow the agency to obtain  
27 information from district employees in a manner that prevents a

1 district or campus from screening the information. The agency  
2 shall make the procedures available on the agency Internet website.  
3 Agency staff must be trained in the procedures and must follow the  
4 procedures in conducting the special [~~accreditation~~]  
5 investigation.

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

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

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

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

23 (a) Except as provided by Subsection (a-4), the [~~The~~]  
24 commissioner shall adopt rules to evaluate school district and  
25 campus performance and assign each district and campus an overall  
26 performance rating of A, B, C, D, or F. In addition to the overall  
27 performance rating, the commissioner shall assign each district and



1 campus a separate domain performance rating of A, B, C, D, or F for  
2 each domain under Section 39.053(c). An overall or domain  
3 performance rating of A reflects exemplary performance. An overall  
4 or domain performance rating of B reflects recognized performance.  
5 An overall or domain performance rating of C reflects acceptable  
6 performance. An overall or domain performance rating of D reflects  
7 performance that needs improvement. An overall or domain  
8 performance rating of F reflects unacceptable performance. A  
9 district may not receive an overall or domain performance rating of  
10 A if the district includes any campus with a corresponding overall  
11 or domain performance rating of D or F. If a school district has  
12 been approved under Section 39.0544 to assign campus performance  
13 ratings and the commissioner has not assigned a campus an overall  
14 performance rating of D or F, the commissioner shall assign the  
15 campus an overall performance rating based on the school district  
16 assigned performance rating under Section 39.0544. A reference in  
17 law to an acceptable rating or acceptable performance includes an  
18 overall or domain performance rating of A, B, C, or D, except as  
19 provided by Section 39.0543, or performance that is exemplary,  
20 recognized, or acceptable performance or performance that needs  
21 improvement, except as provided by Section 39.0543. A reference in  
22 law to an unacceptable performance rating includes an overall or  
23 domain performance rating of F and, as provided by Section 39.0543,  
24 D or performance that needs improvement.

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

1 section:

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

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

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

12 (1) the district or campus is located in an area that  
13 is subject to a declaration of a state of disaster under Chapter  
14 418, Government Code, and due to the disaster, performance  
15 indicators for the district or campus are difficult to measure or  
16 evaluate and would not accurately reflect quality of learning and  
17 achievement for the district or campus;

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

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

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

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

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

8            (1) must:

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

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

14            (2) may be based on the results of a special  
15 [~~accreditation~~] investigation conducted under Section 39.003  
16 [39.057].

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

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

27            (1) has not previously received more than one overall

1 performance rating of D; or

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

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

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

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

13 (a-2) Subsection (a-1) and this subsection expire September  
14 1, 2027.

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

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

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

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

27 (2) to which the most recent performance rating

1 assigned, other than a "Not Rated" rating, is a D, F, or performance  
2 that needs improvement; and

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

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

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

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

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

24 (f) This section expires September 1, 2027.

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

27 (a) The commissioner by rule shall provide a process for a

1 school district or open-enrollment charter school to challenge an  
2 agency decision made under this chapter relating to an academic or  
3 financial accountability rating that affects the district or  
4 school, including a determination of consecutive school years of  
5 unacceptable performance ratings.

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

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

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

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

1 campus within the district.

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

4 (a) This section applies:

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

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

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

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

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

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

25 Sec. 39A.065. LOCAL IMPROVEMENT PLAN. (a) A school  
26 district, open-enrollment charter school, district campus, or  
27 charter school campus that is assigned a rating of D that qualifies

1 under Section 39.0543(a) shall develop and implement a local  
2 improvement plan.

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

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

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

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

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

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

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

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



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

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

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

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

12          Sec. 39A.111. CONTINUED UNACCEPTABLE PERFORMANCE RATING.  
13 If a campus is considered to have an unacceptable performance  
14 rating for five [~~three~~] consecutive school years [~~after the campus~~  
15 ~~is ordered to submit a campus turnaround plan under Section~~  
16 ~~39A.101~~], the commissioner, subject to Section 39A.112, shall  
17 order:

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

20           (2) closure of the campus.

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

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

25           (1) an acceptable performance rating includes:

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

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

3           (2) an unacceptable performance rating includes:

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

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

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

12           (b) As soon as practicable after the effective date of S.B.  
13 1365, Acts of the 87th Legislature, Regular Session, 2021, or  
14 similar legislation, the commissioner shall:

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

24           (2) use the number of school years of unacceptable  
25 performance ratings as the base number of consecutive years of  
26 unacceptable performance for which the performance rating in the  
27 2021-2022 school year will be added; and

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

6           (c) Exemptions from interventions authorized under Sections  
7 11.174 and 28.020 and Section 5, Chapter 919 (H.B. 4205), Acts of  
8 the 86th Legislature, Regular Session, 2019, apply to an  
9 intervention ordered under this section and the commissioner shall  
10 make necessary modifications to an intervention ordered under this  
11 section in accordance with those provisions of law.

12           (d) This section may not be construed to:

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

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

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

23           (f) This section expires September 1, 2027.

24           Sec. 39A.118. INTERVENTION IF ASSIGNED CERTAIN PERFORMANCE  
25 NEEDS IMPROVEMENT RATING. (a) Until another performance rating is  
26 issued, the agency may not implement the intervention or sanctions  
27 as provided by Subsection (b) for a school district,

1 open-enrollment charter school, district campus, or charter school  
2 campus, if the performance rating initiating the action under  
3 Subsection (b) is based on the first or second overall performance  
4 rating of D, since previously receiving a rating of C or higher.

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

7 (1) revocation of a charter under Section 12.115(c);  
8 (2) annexation under Section 13.054;  
9 (3) change in accreditation status under rules adopted  
10 for accreditation under Section 39.052; and

11 (4) interventions or sanctions under Section  
12 39A.101(a), 39A.107(a) or (c), or 39A.111.

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

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

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

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

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

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

26 (a) Notwithstanding Section 11.151(b) or 11.1511(a) or any  
27 other provision of this code, a [A] board of managers may exercise

1 all of the powers and duties assigned to a board of trustees of a  
2 school district by law, rule, or regulation.

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

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

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

10 (2) the commissioner shall appoint a district  
11 superintendent.

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

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

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

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

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

26 (b) A challenge under this section to a decision by the  
27 commissioner described by Subsection (a) is subject to review by

1 the State Office of Administrative Hearings. Notwithstanding  
2 ~~[under this section is under the substantial evidence rule as~~  
3 ~~provided by Subchapter C,]~~ Chapter 2001, Government Code;

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

6 (2) [ ~~-~~

7 ~~[(c) Notwithstanding other law:~~

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

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

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

17 (5) [ ~~(2)~~ ] the administrative law judge shall issue a  
18 final order not later than the 30th day after the date on which the  
19 hearing is finally closed;

20 (6) [ ~~(3)~~ ] the decision of the administrative law judge  
21 is final and may not be appealed; and

22 (7) [ ~~(4)~~ ] the decision of the administrative law judge  
23 may set an effective date for an action under this section.

24 SECTION 2.20. Section 39A.116, Education Code, is  
25 transferred to Subchapter 2, Chapter 39A, Education Code,  
26 redesignated as Section 39A.906, Education Code, and amended to  
27 read as follows:

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

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

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

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

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

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

26                           ARTICLE 3. PUBLIC SCHOOL FISCAL MANAGEMENT

27           SECTION 3.01. Section 44.052(c), Education Code, is amended

1 to read as follows:

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

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

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

27 (c-1) Funds described by Subsection (c) may not be used to



1 initiate or maintain any action or proceeding against the state or  
2 an agency or officer of the state arising out of a decision, order,  
3 or determination that is final and unappealable under a provision  
4 of this code, except that funds may be used for an action or  
5 proceeding that is specifically authorized by a provision of this  
6 code or a rule adopted under this code and that results in a final  
7 and unappealable decision, order, or determination.

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

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

- 15 (1) capital outlay or debt service; or  
16 (2) a purpose prohibited by Section 45.105(c-1) or  
17 another provision of this code.

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

19 SECTION 3.05. Section 44.052(c), Education Code, as amended  
20 by this Act, applies only to an offense committed on or after the  
21 effective date of this Act. An offense committed before the  
22 effective date of this Act is governed by the law in effect when the  
23 offense was committed, and the former law is continued in effect for  
24 that purpose. For purposes of this section, an offense was  
25 committed before the effective date of this Act if any element of  
26 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(1), 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

1 applicable, imposed by this title or a rule adopted under this  
2 title, relating to:

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

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

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

10 (D) student admissions under Section 25.001;

11 (E) school attendance under Sections 25.085,  
12 25.086, and 25.087;

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

15 (G) elementary class size limits under Section  
16 25.112, in the case of any campus in the district that fails to  
17 satisfy any standard under Section 39.054(e);

18 (H) high school graduation under Section 28.025;

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

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

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

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

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

3 (N) extracurricular activities under Section  
4 33.081;

5 (O) health and safety under Chapter 38;

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

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

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

13 (S) purchasing under Chapter 44.

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

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

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

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

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

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

- 1 (C) high school graduation under Section 28.025;  
2 (D) special education programs under Subchapter  
3 A, Chapter 29;  
4 (E) bilingual education under Subchapter B,  
5 Chapter 29;  
6 (F) prekindergarten programs under Subchapter E,  
7 Chapter 29;  
8 (G) extracurricular activities under Section  
9 33.081;  
10 (H) health and safety under Chapter 38;  
11 (I) public school accountability and special  
12 investigations under Subchapters A, B, C, D, F, and J, Chapter 39,  
13 and Chapter 39A; and  
14 (J) the duty to discharge or refuse to hire  
15 certain employees or applicants for employment under Section  
16 12.1059.

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

- 21 (b) An open-enrollment charter school is subject to:  
22 (1) a provision of this title establishing a criminal  
23 offense;  
24 (2) the provisions in Chapter 554, Government Code;  
25 and  
26 (3) a prohibition, restriction, or requirement, as  
27 applicable, imposed by this title or a rule adopted under this

1 title, relating to:

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

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

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

9 (D) accelerated instruction under Section  
10 28.0211;

11 (E) high school graduation requirements under  
12 Section 28.025;

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

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

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

19 (I) extracurricular activities under Section  
20 33.081;

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

23 (K) health and safety under Chapter 38;

24 (L) public school accountability and special  
25 investigations under Subchapters A, B, C, D, F, G, and J, Chapter  
26 39, and Chapter 39A;

27 (M) the requirement under Section 21.006 to

1 report an educator's misconduct;

2 (N) intensive programs of instruction under  
3 Section 28.0213;

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

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

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

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

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

17 (T) establishment of residency under Section  
18 25.001;

19 (U) [~~(T)~~] school safety requirements under  
20 Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.115,  
21 37.207, and 37.2071;

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

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

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

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

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

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

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

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

14 (a) During an agency investigation or audit of a school  
15 district under Section 39.0301(e) or (f), a special [~~an~~  
16 ~~accreditation~~] investigation under Section 39.003(a)(8)  
17 [~~39.057(a)(8)~~] or (14), a compliance review under Section  
18 21.006(k), 22.093(1), or 22.096, or an investigation by the State  
19 Board for Educator Certification of an educator for an alleged  
20 violation of an assessment instrument security procedure  
21 established under Section 39.0301(a), the commissioner may issue a  
22 subpoena to compel the attendance of a relevant witness or the  
23 production, for inspection or copying, of relevant evidence that is  
24 located in this state.

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

27 (h) The commissioner may at any time convert a monitoring



1 review to a special [~~accreditation~~] investigation under Section  
2 39.003 [~~39.057~~], provided the commissioner promptly notifies the  
3 school district of the conversion.

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

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

9 (1) a school district does not satisfy:

10 (A) the accreditation criteria under Section  
11 39.052;

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

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

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

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

21 (a) A board of managers appointed for an open-enrollment  
22 charter school [~~or a campus of an open-enrollment charter school~~]  
23 under this chapter or Chapter 12 has the powers and duties  
24 prescribed by Section 39A.201(b), if applicable, and Sections  
25 39A.201(a), 39A.202, [~~39A.203~~] and 39A.206(b).

26 (b) Except as otherwise provided by this subsection, the  
27 board of managers for an open-enrollment charter school [~~or a~~

1 ~~campus of an open-enrollment charter school]~~ may not serve for a  
2 period that exceeds the period authorized by law for a board of  
3 managers appointed for a school district. A board of managers  
4 appointed to wind up the affairs of a former open-enrollment  
5 charter school or campus serves until dissolved by the  
6 commissioner.

7 SECTION 4.10. To the extent of any conflict, this article  
8 prevails over another Act of the 87th Legislature, Regular Session,  
9 2021, relating to nonsubstantive additions to and corrections in  
10 enacted codes.

11 ARTICLE 5. EFFECTIVE DATE

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