

By: Bettencourt

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, no interlocutory or intermediate order, decision, or  
9 determination made or reached before the final order, decision, or  
10 determination may be appealed.

11 SECTION 2.02. Sections 39.057 and 39.058, Education Code,  
12 are transferred to Subchapter A, Chapter 39, Education Code,  
13 redesignated as Sections 39.003 and 39.004, Education Code, and  
14 amended to read as follows:

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

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

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

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

27 (C) whether all students have equitable access to

1 the program, including advanced learning options [~~when excessive~~  
2 ~~numbers of absences of students eligible to be tested on state~~  
3 ~~assessment instruments are determined~~];

4 (2) [~~when excessive numbers of allowable exemptions~~  
5 ~~from the required state assessment instruments are determined,~~

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

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

12 (4) to determine whether a district is complying with  
13 state and federal [~~program~~] requirements;

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

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

22 (7) [~~when excessive numbers of students in~~] regarding  
23 educational [~~special education~~] programs provided under  
24 [~~Subchapter A,~~] Chapter 29[~~, are assessed through assessment~~  
25 ~~instruments developed or adopted under Section 39.023(b)~~];

26 (8) in response to an allegation regarding or an  
27 analysis using a statistical method result indicating a possible

1 violation of an assessment instrument security procedure  
2 established under Section 39.0301, including for the purpose of  
3 investigating or auditing a school district under that section;

4 (9) ~~[when a significant pattern of decreased academic~~  
5 ~~performance has developed as a result of the promotion in the~~  
6 ~~preceding two school years of students who did not perform~~  
7 ~~satisfactorily as determined by the commissioner under Section~~  
8 ~~39.0241(a) on assessment instruments administered under Section~~  
9 ~~39.023(a), (c), or (1)];~~

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

13 ~~[(11)]~~ when resource allocation practices as  
14 evaluated under Section 39.0821 indicate a potential for  
15 significant improvement in resource allocation;

16 (10) regarding ~~[(12) when a disproportionate number of~~  
17 ~~students of a particular demographic group is graduating with a~~  
18 ~~particular endorsement under Section 28.025(c-1)];~~

19 ~~[(13) when an excessive number of students is~~  
20 ~~graduating with a particular endorsement under Section~~  
21 ~~28.025(c-1)];~~

22 ~~[(14) in response to a complaint submitted to the~~  
23 ~~agency with respect to] alleged inaccurate data ~~[that is]~~ reported;~~

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

26 (B) ~~[or]~~ through other reports required by state  
27 or federal law or rule or court order and that is used by the agency

1 to make a determination relating to public school accountability,  
2 including accreditation, under this chapter; or

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

6 (11) [~~(15)~~] when a school district for any reason  
7 fails to produce, at the request of the agency, evidence or an  
8 investigation report, including an investigation report relating  
9 to an educator who is under investigation by the State Board for  
10 Educator Certification;

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

13 (13) [~~(16)~~] as the commissioner otherwise determines  
14 necessary.

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

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

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

26 (1) take any [~~appropriate~~] action under Chapter 39A,  
27 regardless of any requirements applicable to the action that are

1 provided by that chapter;

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

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

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

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

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

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

16 (f) Based on the results of an action taken under Subsection  
17 (e), the commissioner may decline to take the deferred action under  
18 Subsection (d) [Regardless of whether the commissioner lowers the  
19 school district's accreditation status or a district's or campus's  
20 performance rating under Subsection (d), the commissioner may take  
21 action under Section 39A.002 or 39A.051 if the commissioner  
22 determines that the action is necessary to improve any area of a  
23 district's or campus's performance, including the district's  
24 financial accounting practices].

25 Sec. 39.004 [39.058]. CONDUCT OF SPECIAL [ACCREDITATION]  
26 INVESTIGATIONS. (a) The agency shall adopt written procedures for  
27 conducting special [accreditation] investigations [under this

1 ~~subchapter~~], including procedures that allow the agency to obtain  
2 information from district employees in a manner that prevents a  
3 district or campus from screening the information. The agency  
4 shall make the procedures available on the agency Internet website.  
5 Agency staff must be trained in the procedures and must follow the  
6 procedures in conducting the special ~~[accreditation]~~  
7 investigation.

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

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

20 (c) An informal review under this section is not a contested  
21 case for purposes of Chapter 2001, Government Code, and a  
22 determination or decision made by the agency under this section is  
23 final and unappealable.

24 SECTION 2.03. Section 39.054, Education Code, is amended by  
25 amending Subsections (a) and (b-1) and adding Subsections (a-4) and  
26 (a-5) to read as follows:

27 (a) Except as provided by Subsection (a-4), the ~~[The]~~

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

25 (a-4) Notwithstanding any other law, the commissioner may  
26 assign a school district or campus an overall performance rating of  
27 "Not Rated" if the commissioner determines that the assignment of a



1 performance rating of A, B, C, D, or F would be inappropriate  
2 because:

3 (1) the district or campus is located in an area that  
4 is subject to a declaration of a state of disaster under Chapter  
5 418, Government Code, and due to the disaster, performance  
6 indicators for the district or school are difficult to measure or  
7 evaluate and would not accurately reflect quality of learning and  
8 achievement for the district or campus; or

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

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

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

18 (1) must:

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

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

24 (2) may be based on the results of a special  
25 ~~[accreditation]~~ investigation conducted under Section 39.003  
26 ~~[39.057]~~.

27 SECTION 2.04. Sections 39A.006(a) and (b), Education Code,

1 are amended to read as follows:

2 (a) This section applies:

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

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

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

14 SECTION 2.05. Section 39A.102, Education Code, is amended  
15 by amending Subsection (b) and adding Subsection (b-1) to read as  
16 follows:

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

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

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

27 (2) the commissioner determines a conservator is not

1 necessary.

2 SECTION 2.06. The heading to Section 39A.110, Education  
3 Code, is amended to read as follows:

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

6 SECTION 2.07. Section 39A.110, Education Code, is amended  
7 by adding Subsection (c) to read as follows:

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

13 SECTION 2.08. Section 39A.111, Education Code, is amended  
14 to read as follows:

15 Sec. 39A.111. CONTINUED UNACCEPTABLE PERFORMANCE RATING.  
16 If a campus is considered to have an unacceptable performance  
17 rating for five [~~three~~] consecutive school years [~~after the campus~~  
18 ~~is ordered to submit a campus turnaround plan under Section~~  
19 ~~39A.101~~], the commissioner, subject to Section 39A.112, shall  
20 order:

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

23 (2) closure of the campus.

24 SECTION 2.09. 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 2.10. 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 2.11. Section 39A.116, Education Code, is  
13 transferred to Subchapter Z, Chapter 39A, Education Code,  
14 redesignated as Section 39A.906, Education Code, and amended to  
15 read as follows:

16 Sec. 39A.906 [~~39A.116~~]. COMMISSIONER AUTHORITY. A  
17 decision by the commissioner under Chapter 39 or this chapter  
18 [~~subchapter~~] is final and may not be appealed.

19 SECTION 2.12. (a) This section applies to a school district  
20 or open-enrollment charter school for which a board of managers has  
21 not been appointed under Section 39A.006, Education Code, and  
22 includes a campus that:

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

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

27 (3) has not been closed by the commissioner of

1 education.

2 (b) Notwithstanding any other law, as soon as practicable  
3 after the effective date of this Act, the commissioner of education  
4 shall appoint:

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

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

11 (c) On the effective date of the appointment made under  
12 Subsection (b)(1) of this section, the board of trustees or  
13 governing body of a school district or open-enrollment charter  
14 school described by Subsection (a) of this section may no longer  
15 exercise the power and duties of the board or body under Chapter 11  
16 or 12, Education Code.

17 (d) Once appointed under Subsection (b) of this section, the  
18 conservator and board of managers shall be subject to the  
19 provisions of Chapter 39A, Education Code.

20 SECTION 2.13. (a) Sections 39.003 and 39.004, Education  
21 Code, as redesignated and amended by this Act, apply to a special  
22 investigation authorized or initiated before, on, or after the  
23 effective date of this Act.

24 (b) Section 39.054, Education Code, as amended by this Act,  
25 applies to an overall performance rating of "Not Rated" assigned  
26 before, on, or after the effective date of this Act.

27 (c) Section 39A.006, Education Code, as amended by this Act,

1 applies to a conservator or management team assigned to a school  
2 district before, on, or after the effective date of this Act.

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

7 (e) Section 39A.906, Education Code, as redesignated and  
8 amended by this Act, applies to a decision made by the commissioner  
9 of education before, on, or after the effective date of this Act.

10 ARTICLE 3. PUBLIC SCHOOL FISCAL MANAGEMENT

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

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

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

22 (c) Local school funds from district taxes, tuition fees of  
23 students not entitled to a free education, other local sources, and  
24 state funds not designated for a specific purpose may be used for  
25 the purposes listed for state and county available funds and for  
26 purchasing appliances and supplies, paying insurance premiums,  
27 paying janitors and other employees, buying school sites, buying,

1 building, repairing, and renting school buildings, including  
2 acquiring school buildings and sites by leasing through annual  
3 payments with an ultimate option to purchase, and, except as  
4 provided by Subsection (c-1), for other purposes necessary in the  
5 conduct of the public schools determined by the board of trustees.  
6 The accounts and vouchers for county districts must be approved by  
7 the county superintendent. If the state available school fund in  
8 any municipality or district is sufficient to maintain the schools  
9 in any year for at least eight months and leave a surplus, the  
10 surplus may be spent for the purposes listed in this subsection.

11 (c-1) Funds described by Subsection (c) may not be used to  
12 initiate or maintain any action or proceeding against the state or  
13 an agency or officer of the state arising out of a decision or  
14 determination that is final and unappealable under a provision of  
15 this code.

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

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

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

26 SECTION 3.04. Section 44.052(c), Education Code, as amended  
27 by this Act, applies only to an offense committed on or after the

1 effective date of this Act. An offense committed before the  
2 effective date of this Act is governed by the law in effect when the  
3 offense was committed, and the former law is continued in effect for  
4 that purpose. For purposes of this section, an offense was  
5 committed before the effective date of this Act if any element of  
6 the offense occurred before that date.

7 ARTICLE 4. CONFORMING AMENDMENTS

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

10 (a) Except as provided by Section 21.006(k), 22.093(1),  
11 22.096, 28.006, 29.001(5), 29.010(a), 38.003, or 39.003 [~~39.057~~],  
12 the agency may monitor compliance with requirements applicable to a  
13 process or program provided by a school district, campus, program,  
14 or school granted charters under Chapter 12, including the process  
15 described by Subchapter F, Chapter 11, or a program described by  
16 Subchapter B, C, D, E, F, H, or I, Chapter 29, or Subchapter A,  
17 Chapter 37, only as necessary to ensure:

- 18 (1) compliance with federal law and regulations;  
19 (2) financial accountability, including compliance  
20 with grant requirements;  
21 (3) data integrity for purposes of:  
22 (A) the Public Education Information Management  
23 System (PEIMS); and  
24 (B) accountability under Chapters 39 and 39A; and  
25 (4) qualification for funding under Chapter 48.

26 SECTION 4.02. 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 4.03. 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 (10) [~~(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 4.04. 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 4.05. 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 ARTICLE 5. APPLICABILITY; EFFECTIVE DATE

20 SECTION 5.01. This Act applies beginning with the 2021-2022  
21 school year.

22 SECTION 5.02. This Act takes effect immediately if it  
23 receives a vote of two-thirds of all the members elected to each  
24 house, as provided by Section 39, Article III, Texas Constitution.  
25 If this Act does not receive the vote necessary for immediate  
26 effect, this Act takes effect September 1, 2021.