

By: Swanson

H.B. No. 3661

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain political communications, a prohibition on electioneering by school district and open-enrollment charter school officials and employees, and actions and other proceedings by a public school challenging the operations of the public school system; authorizing an administrative penalty; creating a criminal offense.

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

SECTION 1. Section 11.061, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) A person who the State Board for Educator Certification or the commissioner has determined to have violated Section 22B.003 may not serve as a member of the board of trustees of a school district for the period beginning on the date on which the determination was made and ending the day after the date on which the first trustee election occurring at least three years after the date on which the determination was made is held.

SECTION 2. Section 12.120, Education Code, is amended by adding Subsection (c) to read as follows:

(c) A person who the State Board for Educator Certification or the commissioner has determined to have violated Section 22B.003 may not serve as a member of the governing body of an open-enrollment charter school for the three-year period after the date on which the determination was made.

SECTION 3. Section 22.092, Education Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) The registry maintained under this section must list the following persons as not eligible to be employed by public schools:

(1) a person determined by the agency under Section 22.0832 as a person who would not be eligible for educator certification under Subchapter B, Chapter 21;

(2) a person determined by the agency to be not eligible for employment based on the person's criminal history record information review, as provided by Section 22.0833;

(3) a person who is not eligible for employment based on criminal history record information received by the agency under Section 21.058(b);

(4) a person whose certification or permit issued under Subchapter B, Chapter 21, is revoked by the State Board for Educator Certification on a finding that the person engaged in misconduct described by Section 21.006(b)(2)(A) or (A-1); ~~and~~

(5) subject to Subsection (c-1), a person who is determined by the State Board for Educator Certification to have engaged in electioneering under Section 22B.003;

(6) a person who is determined by the commissioner under Section 22.094 to have engaged in misconduct described by Section 22.093(c)(1)(A) or (B); and

(7) subject to Subsection (c-1), a person who is determined by the commissioner under Section 22B.005 or by another governmental body to have engaged in electioneering under Section

1 22B.003.

2 (c-1) The agency shall remove a person included in the  
3 registry under Subsection (c)(5) or (7) not later than:

4 (1) the third anniversary of the date on which the  
5 person was included in the registry under the applicable  
6 subdivision if the person was the superintendent or director of a  
7 school district, district of innovation, open-enrollment charter  
8 school, other charter entity, regional education service center, or  
9 shared services arrangement at the time the person was included in  
10 the registry; or

11 (2) the first anniversary of the date on which the  
12 person was included in the registry under the applicable  
13 subdivision if the person held a position other than a position  
14 described by Subdivision (1) of this subsection at the time the  
15 person was included in the registry.

16 SECTION 4. The heading to Subtitle D, Title 2, Education  
17 Code, is amended to read as follows:

18 SUBTITLE D. EDUCATORS AND SCHOOL OFFICIALS, [~~DISTRICT~~] EMPLOYEES,  
19 AND VOLUNTEERS

20 SECTION 5. Subtitle D, Title 2, Education Code, is amended  
21 by adding Chapter 22B to read as follows:

22 CHAPTER 22B. ELECTIONEERING PROHIBITED

23 Sec. 22B.001. DEFINITIONS. In this chapter:

24 (1) "Electioneering" includes:

25 (A) posting, using, or distributing political  
26 signs or literature;

27 (B) proposing, endorsing, or expressing support

for or opposition to a measure before a governmental body other than  
a school district; and

(C) engaging in conduct prohibited by:

(i) Section 255.003 or 255.0031, Election  
Code; or

(ii) Section 305.027 or 556.0055,  
Government Code.

(2) "Measure" includes:

(A) a question or proposal submitted in an  
election for an expression of the voters' will, including the  
circulation and submission of a petition to determine whether a  
question or proposal is required to be submitted in an election for  
an expression of the voters' will;

(B) a bill, resolution, order, or other proposal  
to adopt, enact, amend, or repeal a statute, ordinance, rule, or  
policy of general application; and

(C) a proposal to adopt, enact, amend, or repeal,  
or to grant a variance or other exception to, a zoning ordinance.

(3) "Other charter entity" has the meaning assigned by  
Section 21.006.

Sec. 22B.002. APPLICABILITY. This chapter applies only to:

(1) the board of trustees or a member of the board of  
trustees of a school district;

(2) the governing body or a member of the governing  
body of an open-enrollment charter school;

(3) an educator; and

(4) a school district or open-enrollment charter

1 school employee, agent, or contractor.

2 Sec. 22B.003. ELECTIONEERING PROHIBITED. (a)

3 Notwithstanding any other law, a person to whom this chapter  
4 applies may not use federal, state, or local money or other school  
5 resources to engage in electioneering, or assist another person in  
6 engaging in electioneering, for or against any candidate, measure,  
7 or political party.

8 (b) Except as otherwise provided by law, a person to whom  
9 this chapter applies may not use federal, state, or local money or  
10 other school resources to encourage or discourage participation in  
11 an election.

12 (c) The board of trustees of a school district and the  
13 governing body of an open-enrollment charter school shall adopt  
14 protocols and policies and take actions necessary to ensure  
15 compliance with this section.

16 (d) The State Board for Educator Certification shall adopt  
17 standards of conduct prohibiting an educator from engaging in  
18 conduct that violates this section.

19 Sec. 22B.004. REQUIRED REPORT OF ALLEGED ELECTIONEERING;  
20 PENALTIES. (a) The superintendent or director of a school  
21 district, district of innovation, open-enrollment charter school,  
22 other charter entity, regional education service center, or shared  
23 services arrangement shall report an alleged violation of Section  
24 22B.003, not later than the seventh day after the date the  
25 superintendent or director becomes aware of the alleged violation,  
26 to:

27 (1) the State Board for Educator Certification if the

1 alleged violation was committed by an educator; or

2 (2) the commissioner if the alleged violation was  
3 committed by a person other than an educator.

4 (b) The report required by Subsection (a) must be:

5 (1) in writing; and

6 (2) in a form prescribed by:

7 (A) the State Board for Educator Certification if  
8 an educator is the subject of the report; or

9 (B) the commissioner if a person other than an  
10 educator is the subject of the report.

11 (c) The principal of a school district, district of  
12 innovation, open-enrollment charter school, or other charter  
13 entity shall report an alleged violation of Section 22B.003, not  
14 later than the seventh day after the date the principal becomes  
15 aware of the alleged violation, to the superintendent or director  
16 of the district, school, or entity at which the principal is  
17 employed.

18 (d) A person required to report an alleged violation of  
19 Section 22B.003 under this section and who in good faith reports the  
20 alleged violation in accordance with this section is immune from  
21 civil or criminal liability that might otherwise be incurred or  
22 imposed.

23 (e) A person required to report an alleged violation of  
24 Section 22B.003 under this section commits an offense if the person  
25 fails to report the alleged violation by the date required under  
26 this section with the intent to conceal the alleged violation. An  
27 offense under this subsection is a state jail felony.

1       (f) If a person required to report an alleged violation of  
2 Section 22B.003 under this section fails to report the alleged  
3 violation in accordance with this section, the State Board for  
4 Educator Certification:

5           (1) shall determine whether to impose sanctions  
6 against the person, including an administrative penalty of not less  
7 than \$500 and not more than \$10,000; and

8           (2) if the board imposes an administrative penalty on  
9 the person, may not renew the person's educator certification until  
10 the penalty is paid.

11       (g) The commissioner may review the records of a school  
12 district, district of innovation, open-enrollment charter school,  
13 other charter entity, regional education service center, or shared  
14 services arrangement to ensure compliance with this section.

15       (h) The commissioner shall adopt rules as necessary to  
16 implement this section.

17       Sec. 22B.005. DETERMINATION OF ALLEGED ELECTIONEERING;  
18 INELIGIBILITY FOR EMPLOYMENT. (a) This section applies only to a  
19 person to whom this chapter applies who does not hold a  
20 certification or permit issued under Subchapter B, Chapter 21.

21       (b) Except as provided by Subsection (c), a person who is  
22 alleged to have violated Section 22B.003 is entitled to a hearing on  
23 the merits of the allegation under the procedures provided by  
24 Chapter 2001, Government Code.

25       (c) A person who is alleged to have violated Section 22B.003  
26 is not entitled to a hearing under this section if:

27           (1) a final decision has been entered under other law

1 finding the person to have engaged in conduct that constitutes  
2 electioneering; or

3 (2) another governmental body has jurisdiction over  
4 the alleged violation and the commissioner elects not to pursue  
5 enforcement under this section.

6 (d) On receiving a report under Section 22B.004, or pursuant  
7 to an investigation conducted under Section 39.003, of an alleged  
8 violation of Section 22B.003 by a person who is entitled to a  
9 hearing under this section, the commissioner shall promptly send to  
10 the person written notice that includes:

11 (1) a statement informing the person that the person  
12 must request, not later than the 10th day after the date the person  
13 receives the notice, a hearing on the merits of the allegation;

14 (2) a request that the person submit, not later than  
15 the 10th day after the date the person receives the notice, a  
16 written response to show cause why the commissioner should not  
17 pursue an investigation under this section; and

18 (3) a statement informing the person that if the  
19 person does not timely submit a written response to show cause as  
20 provided by Subdivision (2), the commissioner will instruct the  
21 agency to make available on the Internet portal described by  
22 Section 22.095 information indicating the person is under  
23 investigation for an alleged violation of Section 22B.003.

24 (e) If a person who is entitled to a hearing under this  
25 section does not request a hearing before the date required by  
26 Subsection (d)(1), the commissioner shall make a determination on  
27 whether the person violated Section 22B.003 based on the contents



of the report submitted under Section 22B.004 or the results of the investigation under Section 39.003, as applicable.

(f) If the commissioner determines under this section that a person violated Section 22B.003, the commissioner shall instruct the agency to add the person to the registry of persons not eligible for employment in public schools under Section 22.092.

(g) If the commissioner determines that a person did not violate Section 22B.003 and the agency made available on the Internet portal described by Section 22.095 information indicating the person was under investigation in accordance with Subsection (d)(3), the commissioner shall instruct the agency to immediately remove the information from the Internet portal.

(h) The commissioner shall adopt rules as necessary to implement this section.

Sec. 22B.006. EXCEPTION. Notwithstanding any other provision of this chapter, the State Board for Educator Certification or the commissioner may elect not to take action against a person determined to have violated Section 22B.003 if the person:

(1) was ordered to take the action by another person in a position of actual or apparent authority over the person; and

(2) could not reasonably have been expected to know the person's action constituted a violation of that section.

Sec. 22B.007. ADDITIONAL REMEDIAL ACTION. If the commissioner determines that an action taken by the board of trustees of a school district or the governing body of an open-enrollment charter school against a person determined to have

1 violated Section 22B.003 is not sufficient to deter future  
2 violations of that section, the commissioner may substitute a  
3 remedial action the commissioner determines appropriate.

4 Sec. 22B.008. AGENCY INVESTIGATIVE AUTHORITY. (a) The  
5 agency's authority to investigate an alleged violation of Section  
6 22B.003 is concurrent with the authority of any other person  
7 charged with investigating such a violation under this chapter.

8 (b) Another person's dismissal of an alleged violation of  
9 Section 22B.003 does not affect the agency's authority to  
10 investigate the alleged violation.

11 SECTION 6. Section 39.003(a), Education Code, is amended to  
12 read as follows:

13 (a) The commissioner may authorize special investigations  
14 to be conducted:

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

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

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

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

26 (5) when extraordinary numbers of student placements  
27 in disciplinary alternative education programs, other than

1 placements under Sections 37.006 and 37.007, are determined;

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

7 (7) when excessive numbers of students in special  
8 education programs under Subchapter A, Chapter 29, are assessed  
9 through assessment instruments developed or adopted under Section  
10 39.023(b);

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

16 (9) when a significant pattern of decreased academic  
17 performance has developed as a result of the promotion in the  
18 preceding two school years of students who did not perform  
19 satisfactorily as determined by the commissioner under Section  
20 39.0241(a) on assessment instruments administered under Section  
21 39.023(a), (c), or (l);

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

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

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

4           (13) when an excessive number of students is  
5 graduating with a particular endorsement under Section  
6 28.025(c-1);

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

14           (15) when 10 percent or more of the students  
15 graduating in a particular school year from a particular high  
16 school campus are awarded a diploma based on the determination of an  
17 individual graduation committee under Section 28.0258;

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

22           (17) in response to an alleged violation of Section  
23 22B.003; or

24           (18) as the commissioner otherwise determines  
25 necessary.

26       SECTION 7. Section 39A.001, Education Code, is amended to  
27 read as follows:

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

4               (1) a school district does not satisfy:

5                       (A) the accreditation criteria under Section  
6 39.052;

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

9                       (C) any financial accountability standard as  
10 determined by commissioner rule; ~~[or]~~

11               (2) the commissioner considers the action to be  
12 appropriate on the basis of a special investigation under Section  
13 39.003; or

14               (3) a school district initiates or maintains an action  
15 or proceeding against the state or an agency or officer of the  
16 state.

17       SECTION 8. Subchapter A, Chapter 39A, Education Code, is  
18 amended by adding Section 39A.008 to read as follows:

19       Sec. 39A.008. INTERVENTION RELATED TO SCHOOL DISTRICT OR  
20 OPEN-ENROLLMENT CHARTER SCHOOL ACTION OR PROCEEDING AGAINST STATE.

21       (a) This section applies to a school district or open-enrollment  
22 charter school subject to commissioner action under Section  
23 39A.001(3).

24       (b) The commissioner shall appoint a conservator to a school  
25 district or open-enrollment charter school to which this section  
26 applies.

27       (c) The conservator appointed under Subsection (b) shall

require the school district or open-enrollment charter school to demonstrate, by a deadline established by the conservator, that the district or school is in compliance with Sections 45.105(c-1) and 45.1051. If the conservator determines that the district or school is not in compliance with those sections, the conservator shall order the district or school to, as applicable:

(1) withdraw from the action or proceeding; or

(2) take the necessary actions to come into compliance with Section 45.1051.

(d) If a school district or open-enrollment charter school fails to comply with an order by the conservator by the deadline established by the conservator, the commissioner may:

(1) for a school district, appoint a board of managers to oversee the operations of the district; or

(2) for an open-enrollment charter school, order reconstitution of the school's governing board.

SECTION 9. Subchapter B, Chapter 44, Education Code, is amended by adding Section 44.048 to read as follows:

Sec. 44.048. PROHIBITED CONTRACTING. (a) In this section, "electioneering" has the meaning assigned by Section 22B.001.

(b) A school district or open-enrollment charter school may not contract with:

(1) a person for services that would constitute electioneering or services supportive of electioneering;

(2) a person who subcontracts with a person to provide services described by Subdivision (1); or

(3) a person who is included in or who will assign

1 duties under the contract or subcontract to a person who is included  
2 in the registry of persons not eligible for employment in public  
3 schools under Section 22.092 based on a determination that the  
4 person engaged in electioneering.

5 SECTION 10. Section 45.105(c-1), Education Code, is amended  
6 to read as follows:

7 (c-1) Notwithstanding any other law, federal, state, or  
8 local funding, including funding under Chapters 46, 48, and 49,  
9 [Funds described by Subsection (c)] may not be used to initiate or  
10 maintain any action or proceeding against the state or an agency or  
11 officer of the state, including an action or proceeding that  
12 includes a claim of ultra vires conduct ~~[arising out of a decision,~~  
13 ~~order, or determination that is final and unappealable under a~~  
14 ~~provision of this code]~~, except that funds may be used for an action  
15 or proceeding that is specifically authorized by a provision of  
16 this code or by Section 2001.038, Government Code ~~[a rule adopted~~  
17 ~~under this code and that results in a final and unappealable~~  
18 ~~decision, order, or determination]~~.

19 SECTION 11. Subchapter E, Chapter 45, Education Code, is  
20 amended by adding Section 45.1051 to read as follows:

21 Sec. 45.1051. LIMITATION ON ATTORNEY PAYMENTS FOR CERTAIN  
22 ACTIONS. (a) If a school district or open-enrollment charter  
23 school brings an action against the agency, the State Board of  
24 Education, or the State Board for Educator Certification or an  
25 agent or officer of those entities that alleges ultra vires conduct  
26 by the entity or an agent or officer of the entity, the district or  
27 school must deposit all payments relating to the action owed to the

district's or school's attorney in an escrow account. The district or school may use money deposited in the escrow account to pay the district's or school's attorney only:

(1) after:

(A) a final judgment is rendered; and

(B) all appeals are fully resolved; and

(2) if the district or school prevails in the action.

(b) A school district or open-enrollment charter school shall provide money deposited in an escrow account under this section that may not be paid to the district's or school's attorney under Subsection (a) after the rendering of a final judgment and the resolution of all appeals to the state for deposit in the foundation school fund.

(c) This section may not be interpreted to authorize an action not otherwise authorized by law.

SECTION 12. Section 251.001(16), Election Code, is amended to read as follows:

(16) "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; ~~or~~

(B) appears:

(i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written



1 communication; or

2 (ii) on an Internet website, including on  
3 any social media platform, or in any electronic communication; or

4 (C) is directed to an individual person or  
5 multiple persons through any form of communication.

6 SECTION 13. The heading to Section 255.003, Election Code,  
7 is amended to read as follows:

8 Sec. 255.003. UNLAWFUL USE OF PUBLIC RESOURCES [~~FUNDS~~] FOR  
9 POLITICAL ADVERTISING AND CERTAIN POLITICAL ACTIVITIES.

10 SECTION 14. Section 255.003, Election Code, is amended by  
11 adding Subsections (a-1) and (a-2) and amending Subsection (c) to  
12 read as follows:

13 (a-1) An officer, employee, or contractor of a school  
14 district or open-enrollment charter school may not use or authorize  
15 the use of public money or resources to:

16 (1) distribute a communication in any form advocating  
17 for or opposing any candidate, measure, or political party; or

18 (2) facilitate any activity by a student or other  
19 person for advocacy communications to an elected officer or  
20 employee of an elected officer for or against a matter for which the  
21 officer may vote or take an official action.

22 (a-2) For purposes of Subsection (a-1):

23 (1) the following qualifies as the use of public money  
24 or resources:

25 (A) the development or distribution, or  
26 arrangement for the development or distribution, of a communication  
27 described by Subsection (a-1)(1) that occurs during the working

1 hours of an officer, employee, or contractor or during any period of  
2 time in which the officer, employee, or contractor is compensated  
3 by the school district or open-enrollment charter school; or

4 (B) the provision of contact information by an  
5 officer, employee, or contractor of a school district or  
6 open-enrollment charter school to a political action committee or  
7 similar entity for the purpose of distributing a communication  
8 described by Subsection (a-1)(1);

9 (2) the use of a personal electronic device on school  
10 district or open-enrollment charter school property by an officer,  
11 employee, or contractor to access the Internet during the  
12 officer's, employee's, or contractor's personal time for the  
13 purpose of developing or distributing, or arranging for the  
14 development or distribution of, a communication described by  
15 Subsection (a-1)(1) does not qualify as the use of public funds or  
16 resources; and

17 (3) a person's presence on school district or  
18 open-enrollment charter school property while engaging in  
19 electioneering, as defined by Section 22B.001, Education Code,  
20 outside of work hours does not constitute the expenditure of public  
21 money.

22 (c) A person who violates Subsection (a), (a-1), or (b-1)  
23 commits an offense. An offense under this section is a Class A  
24 misdemeanor.

25 SECTION 15. Section [255.0031](#)(b), Election Code, is amended  
26 to read as follows:

27 (b) Subsection (a) does not apply to:

1           (1) the use of an internal mail system to distribute  
2 political advertising that is delivered to the premises of a state  
3 agency or political subdivision through the United States Postal  
4 Service if the officer or employee is unaware that the distributed  
5 materials contain political advertising; or

6           (2) the use of an internal mail system by a state  
7 agency or municipality to distribute political advertising that is  
8 the subject of or related to an investigation, hearing, or other  
9 official proceeding of the agency or municipality.

10         SECTION 16. Section 572.059, Government Code, is amended by  
11 adding Subsections (d) and (e) to read as follows:

12         (d) Subsections (c)(2) and (3) do not apply to a member of  
13 the governing body of a school district with respect to a  
14 legislative measure outside the district's authority.

15         (e) This section does not prohibit a person from providing  
16 information to a member of the legislature on request.

17         SECTION 17. The following provisions of the Education Code  
18 are repealed:

19           (1) Section 11.169; and

20           (2) Section 45.109(e).

21         SECTION 18. Section 44.048, Education Code, as added by  
22 this Act, applies only to a contract entered into or renewed on or  
23 after the effective date of this Act. A contract entered into or  
24 renewed before the effective date of this Act is governed by the law  
25 in effect on the date the contract was entered into or renewed, and  
26 the former law is continued in effect for that purpose.

27         SECTION 19. The changes in law made by this Act apply only

1 to conduct that occurs on or after the effective date of this Act.  
2 Conduct that occurs before the effective date of this Act is  
3 governed by the law in effect before the effective date of this Act,  
4 and that law is continued in effect for that purpose.

5 SECTION 20. This Act takes effect immediately if it  
6 receives a vote of two-thirds of all the members elected to each  
7 house, as provided by Section 39, Article III, Texas Constitution.  
8 If this Act does not receive the vote necessary for immediate  
9 effect, this Act takes effect September 1, 2025.