

SUBJECT: Waiving certain requirements for exemplary-rated public school districts

COMMITTEE: Public Education — favorable, with amendment

VOTE: 8 ayes — Grusendorf, Oliveira, Dawson, Dutton, Eissler, Griggs, Hochberg, Madden
0 nays
1 absent — Branch

WITNESSES: For — Kathy Golson, Texas Association of School Boards; Brad Shields, Eanes ISD; David Thompson, Texas Association of School Administrators

Against — Harley Eckhart, Texas Elementary Principals and Supervisors Association; Lindsay Gustafson, Texas Classroom Teachers Association; Ted Melina Raab, Texas Federation of Teachers; Marjorie Wahl, Texas State Teachers Association; JoHannah Whitsett, Association of Texas Professional Educators

BACKGROUND: Education Code, ch. 11, subch. A sets forth general provisions for boards of trustees of independent school districts. Sec. 12.104(b) sets forth rules and regulations to which open-enrollment charter schools are subject, including:

- the Public Education Information Management System (PEIMS);
- criminal history records;
- reading instruments and accelerated reading instruction programs under rules set forth for reading diagnosis;
- satisfactory performance on assessment instruments and accelerated instruction (social promotion);
- high school graduation;
- special education and bilingual education;
- prekindergarten;
- no pass, no play rules for extracurricular activities;
- discipline and behavior management practices with regard to the use of confinement, restraint, seclusion, and time-out;
- health and safety rules under Education Code, ch. 38;

- public school accountability and testing requirements; and
- accreditation status and sanctions.

Sec. 39.182(a) specifies information that the Texas Education Agency (TEA) must include in a comprehensive annual report to the governor and the Legislature by December 1 each year. Sec. 39.183 specifies information that TEA must include in a regional and district-level report to the governor and the Legislature every two years. Both reports must include a summary of the effects of deregulation on campuses and districts, including exemptions and waivers granted under Education Code, secs. 7.056 and 39.112.

Sec. 7.056 allows independent school districts to apply to the commissioner of education for exemptions and waivers from certain state rules and regulations. Upon submission of a school board's request for an exemption or waiver, the commissioner must decide within 30 days or the application is deemed approved. A waiver may not exceed three years and may be revoked if the commissioner finds that district or campus achievement levels have declined. A school district may not receive a waiver from a list of basic requirements that essentially parallels the list of prohibited exemptions for open-enrollment charter schools, except that school districts also may not be exempt from curriculum requirements, purchasing requirements, elementary class-size limits, at-risk programs, and educator rights and benefits.

Sec. 39.112 sets forth "excellence" exemptions that the commissioner can grant to school campuses or districts that are rated exemplary. Prohibited exemptions parallel those set forth in Education Code, sec. 7.056. The school district must submit to the commissioner a written plan showing steps that will be taken to ensure that an exemption from elementary class-size limits will not harm the academic achievement of students on the school campus. The commissioner must review achievement levels annually. Exemptions remain in effect until the commissioner determines that achievement levels at the campus have declined.

DIGEST:

HB 973, as amended, would exempt exemplary-rated school districts or campuses from all state rules and regulations other than those that apply to open-enrollment charter schools, beginning with the 2003-04 school year. The exemption from any particular rule would be subject to the commissioner's approval, based on the educational interest of the students. A request for

approval that was not denied by the commissioner within 30 days would be deemed approved.

The bill would repeal Education Code, sec. 39.112, regarding “excellence” exemptions for exemplary-rated districts and campuses.

The comprehensive annual report and the biennial regional and district-level report submitted by TEA to the governor and the Legislature would have to include a summary of the effects of deregulation on campuses and districts.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 973, as amended, would grant exemplary-rated schools in Texas the same regulatory flexibility granted to open-enrollment charter schools, removing unnecessary barriers to educational innovation in Texas’ best schools. The poorest performing charter school has more flexibility from regulation than the highest performing public school. Exemplary schools have earned the right to be trusted to make local decisions and to maintain their commitment to excellence in ways that best fit with local circumstances.

HB 973 would lift the burden of paperwork from exemplary school districts that wished to petition the commissioner for waivers. Under current law, an exemplary school district must submit a separate written plan to the commissioner for each proposed “excellence” exemption. This bill would reduce administrative hurdles by allowing the commissioner to grant a blanket waiver from regulations to exemplary districts, while still maintaining the commissioner’s authority to disapprove particular exemptions for certain districts or schools.

State mandates comprise a major element in any school district’s budget, consuming a large amount of administrative and financial resources. Since the enactment of SB 1 in 1995, more than 60 unfunded or partially-funded mandates have been added to state law, not counting agency rules that often result from legislation. Mandates put a strain on already overextended school district budgets, partly explaining why local property taxes have risen so dramatically in recent years. Many state mandates are unnecessary because

they would be implemented at the local level whether the state required districts to do so or not.

HB 973 would show support for and trust in the common-sense judgment of local school boards and parents and would give them the flexibility to respond to local needs. School districts need to be free from state regulatory burdens that stifle reform. Unencumbered by the grinding pace of state bureaucracy, an exemplary-rated district or campus could respond better to parents and thus effect change quickly and according to varying needs of students. Responsible, involved parents are a major reason for the success of exemplary schools, and this bill would recognize and reward parental responsibility by allowing local school boards to respond to their needs rather than to state imposed regulations.

The bill would not eliminate certain programs at the local level but would restore local control. For example, by removing state regulatory requirements for prekindergarten or after school programs, the bill would not direct exemplary districts to stop offering them but merely would grant exemplary districts the flexibility they need to try new and innovative approaches. “One-size-fits-all” policies no longer work for exemplary school districts, each of which could do better by tailoring policies and programs to suit its own unique characteristics.

HB 973 would empower exemplary school districts to design and implement compensation programs that provide competitive professional salaries based on local needs and priorities. Because state mandates such as the minimum teacher salary schedules are not being supported by increased state funding in the appropriations process, legislators should give exemplary-rated districts opportunities to work within the resources they have. By eliminating teacher certification requirements, HB 973 would give exemplary-rated districts more choices and would restore discretion, judgment, and common sense to the teacher hiring process.

HB 973 is not about charter schools, and it would not make charter schools a benchmark for the public schools. Public schools are a different animal altogether from charter schools, the major difference being that public schools have elected school boards that are accountable to the public for results. This

bill would grant public schools flexibility and the option to innovate, but in no way would it require public schools to emulate charter schools.

HB 973 would not lower accountability standards for exemplary-rated school districts, because the commissioner could revoke a waiver if the district did not continue to meet high standards. A successful accountability system requires consistent application to all schools without regard to size, location, or demographics, and exemplary-rated districts would receive no exemptions from accountability. TEA could see the district's report card, hold the school board accountable, and take action accordingly. Thus, exemplary-rated districts that continued performing above par could keep their waivers, and exemplary-rated districts that performed below par could not.

**OPPONENTS
SAY:**

HB 973 would wipe out state education standards in districts where waivers were adopted, allowing local districts to ignore important state laws. Exemplary-rated districts could abandon statewide policies that have proven beneficial for Texas students, teachers, and school employees. Many state requirements, such as the 22:1 student-teacher ratio for kindergarten through fourth grade, have helped students greatly and should not be abandoned in any school district.

The state would take a great risk in placing decisions about educational policy solely in the hands of local officials with inadequate oversight. Local school board members sometime lack expertise in education or budgetary matters, seek election to school boards as a stepping stone to other elected offices, and may not have students' best interests at heart. A school district's only possible motivation for increasing class sizes or using uncertified educators would be to save money. Best practices have been established through decades of experience and codified into state education law. Best practices are what make school districts exemplary. It would be counterintuitive to relieve school boards from the responsibility of meeting best practices.

Public education should be of uniform high quality statewide, and the open-enrollment charter school experiment proves that innovation does not necessarily result in high performance. Student performance has declined steadily at charter schools over the past three years, while performance at traditional schools has risen. Charter schools make up 40 percent of all schools on the lowest rung of the accountability system, even though they

comprise only 3 percent of all public schools in Texas. Charter schools have less qualified, less experienced teachers than traditional public schools; half are uncertified and 11 percent have no degree at all. Charter schools also have a higher teacher turnover rate. Relaxed standards and deregulation do not lead to higher student achievement or better teachers but to the exact opposite. Open-enrollment charter schools are the last benchmark the state should use for its public schools.

HB 973 would go too far in expanding the list of rules from which school districts would be exempt, and the accountability system would not provide enough of a fail-safe. The basic problem with using the accountability system to check the school board is that it takes too long to determine that things are not working. The Texas Assessment of Knowledge and Skills (TAKS) test provides only an annual evaluation of student progress. While TAKS is an annual event, learning is a daily event. Even though the commissioner could revoke the waiver if a school's ranking dropped, it could take too long to turn things around in a bad situation. If a child does poorly in school for one or two years, statistics show that the child is more likely to drop out.

The state can relax regulation but should not relax standards. Proponents of deregulating the schools often say that schools should be run more like businesses. If schools were deregulated and run more like businesses, would Texans really want the results to be judged solely on "shareholder values" — that is, rankings in the accountability system? Successful, profitable businesses use good management techniques, best practices, and ethics to guide their way, and businesses such as Enron or WorldCom that have relaxed standards and allowed the ends to justify the means have paid dearly for it. The Legislature went through the Education Code with a fine-tooth comb in 1995. All the standards left in the code are there for a good reason, and many are there not only to protect employees, but also to protect school children, the ultimate end users of the state's education product.

**OTHER
OPPONENTS
SAY:**

HB 973 is unnecessary. The state already has a waiver process for exempting schools and districts from state regulations. This bill would not add value to that system but would reduce current protections for teachers and students under the law. Under HB 973, the commissioner could grant blanket waivers to exemplary school districts rather than examining waiver requests one by

one and determining on an individual basis whether each waiver was appropriate. Current legal protections should remain in full effect.

According to TEA, court precedent holds that the “excellence” exemptions in current law do not exempt a district from the school finance system. However, HB 973 as written could be difficult to interpret legally, because charter schools are not subject to some provisions within the school finance system. For example, charter schools are not subject to wealth equalization provisions under Education Code, ch. 41. Although the bill’s fiscal note assumes no direct fiscal implications for the Foundation School Program, the potential exists for differing interpretations by school districts of the bill’s effects with respect to the school finance system.

NOTES:

The committee amendment would add a provision that would make the exemption from any particular rule subject to the commissioner’s approval, based on the educational interest of the students, and would specify that a request for approval that was not denied by the commissioner within 30 days would be deemed approved.

A similar bill, HB 859 by Madden, which would make it easier to establish home-rule school districts exempt from many state regulations, was scheduled for the House General State Calendar on May 5.