SUBJECT: Revising education research centers' oversight and operating agreements

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Branch, Patrick, Clardy, Darby, Howard, Murphy, Raney

0 nays

2 absent — Alonzo, Martinez

WITNESSES: For — Susan Dawson, E3 Alliance - P16 Council of Central Texas; (*Registered, but did not testify:* Nelson Salinas, Texas Association of Business)

Against — None

On — (*Registered, but did not testify:* Celeste Alexander, University of Texas at Austin; Susan Brown, Texas Higher Education Coordinating Board)

BACKGROUND: Education Code, sec. 1.005 creates education research centers (ERCs), which gather data on students and other participants in programs administered by the Texas Education Agency (TEA), the Texas Higher Education Coordinating Board, and the Texas Workforce Commission (TWC). These centers exist at Texas institutions of higher learning. The data gathered are open to professional researchers who conduct longitudinal studies on the Texas education system and its outcomes.

ERCs operate under an agreement between the commissioner of education, the coordinating board, and the governing body of the higher education institution that hosts it. The commissioner of education and the coordinating board provide direct, joint supervision of ERCs and their research efforts. The commissioner of education and the coordinating board may require an ERC to conduct research projects considered particularly important to the state. ERCs are funded through gifts, grants, and fees charged for the use of a center's research, resources, or facilities. Currently, there are two ERCs, one at UT-Austin and one at UT-Dallas.

The Family Educational Rights and Privacy Act (FERPA) is established

under 20 U.S.C. §1232g; 34 CFR Part 99. FERPA protects the privacy of student education records. It applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA rules apply to ERC use of student data.

DIGEST:

CSHB 2103 would make several changes to the oversight and operations of ERCs.

Establishment and operation of ERCs. The coordinating board would be required to establish not more than three ERCs. The bill would allow a consortium of higher education institutions to form an ERC. The coordinating board would solicit requests for proposals from appropriate institutions to establish ERCs and would evaluate those proposals based on criteria adopted by the coordinating board.

ERCs would be operated under an agreement between the coordinating board and the governing body of each participating institution. The agreement would provide for the operation of the ERC for a 10-year period, as long as it met contractual and legal requirements for its operation.

The bill would remove the commissioner of education from the direct oversight of ERCs and would remove the commissioner's power to require ERCs to perform particular studies. Any cooperating agency could request that an ERC conduct a study if the agency provided sufficient funds to finance it.

ERC use of shared student data. In conducting studies, an ERC could use student data and educator data, including FERPA protected, confidential data, that the center collected from any of the following: TEA, the coordinating board, TWC, or any other agency or institution of higher education, school district, a provider of services to these institutions, or any entity explicitly named in an approved ERC research project.

ERCs would comply with applicable state and federal law on confidentiality of student information. ERCs would provide researchers access to student data only through secure methods and would require researchers to sign confidentiality agreements. Finally, ERCs would conduct regular security audits and report the results to the coordinating board and an ERC research advisory board established by the bill to review ERC studies or evaluation proposals.

CSHB 2103 would require cooperating agencies to execute agreements for the sharing of data for the purpose of facilitating the studies or evaluations at ERCs. Under these agreements, each cooperating agency would share appropriate data collected by the agency for the preceding 20 years. A cooperating agency would update this information at least annually.

The bill would remove certain notification requirements to the governor, the Legislative Budget Board, and the educational institution hosting the ERC that particular study was being undertaken.

Student data storage. The coordinating board would store the data shared with it by cooperating agencies in a repository called the "P-20/Workforce Data Repository." The board would store other data in the repository, including data from college admission tests and the National Student Clearinghouse. It would use appropriate data matching and confidentiality procedures as approved by the cooperating agencies.

Data sharing agreements with other states. The coordinating board could enter into data sharing agreements with local agencies or organizations that provide educational services or with other relevant organizations of another state. The coordinating board would give priority to those states that sent the most college students to Texas or that received the most college students from here. These agreements would be reviewed by the U.S. Department of Education.

ERC research advisory board. The bill would establish an ERC research advisory board to review ERC studies or evaluation proposals to ensure appropriate data use. Each study or evaluation conducted by an ERC would have to be approved in advance by majority vote of the advisory board. ERCs could submit proposals from another educational institution, a graduate student, a P-16 Council, or another researcher proposing research to benefit education in Texas. In determining whether to approve a proposed study, the advisory board would have to:

- consider the potential of the research to benefit education in Texas;
- require each ERC director or designee to review and approve the proposed research design and methods; and
- consider the extent to which the data required to complete the proposed study or evaluation was not readily available from other data sources.

The advisory board would be chaired and maintained by the commissioner of higher education. Its membership would include:

- a representative of the coordinating board, designated by the commissioner of higher education;
- a representative of TEA, designated by the education commissioner;
- a representative of TWC, designated by the workforce commissioner;
- the director of each ERC or the director's designee; and
- a representative of preschool, elementary, or secondary education.

The board would meet at least quarterly. It would not be subject to the Open Meetings Act or Open Records Act.

Other provisions. CSHB 2103 would change the funding method for ERCs from "fees" to "charges" that would be imposed for the use of a center's research, resources, or facilities.

The bill would define "cooperating agencies" to mean TEA, the coordinating board, and TWC.

CSHB 2103 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, 2013.

SUPPORTERS SAY:

CSHB 2103 would reform the operations and governance of education research centers (ERCs) to increase their output and their compliance with FERPA laws and best practices. By allowing researchers to conduct longitudinal studies of student outcomes, ERCs help policy makers create new approaches or tweak existing ones to ensure the Texas education system is meeting Texas' workforce needs.

CSHB 2103 would centralize oversight of ERCs with the Texas Higher Education Coordinating Board to better ensure the completion of approved projects and the protection of data. Current law, which jointly vests ERC project oversight with the coordinating board and TEA, has proven unworkable. By removing the TEA from project oversight and approval, CSHB 2103 would streamline decision making, which would help improve FERPA compliance.

By creating the coordinating board-led advisory board and requiring it to meet at least quarterly, the bill would ensure proposed research projects were vetted in a timely manner. Further, by vesting decision-making power in an advisory board made up of the stakeholders, the bill would free the research process from the infighting and inertia that could occur under the joint leadership of TEA and the coordinating board.

CSHB 2103 would place a strong emphasis on data security. It would require that all data sharing took place under agreements requiring compliance with all applicable state and federal privacy statutes. Further, the bill would require ERCs to conduct periodic audits to ensure data security, the results of which would be shared with the coordinating board and the advisory board.

CSHB 2103 would improve the quality of student data research studies by allowing ERCs to use supplemental data, which are relevant data on student outcomes that the state may not already have. For instance, TEA currently does not track which pre-kindergarten programs, if any, a child attends, but these data are available and easily integrated into an ERC database. Under the bill, researchers would be able to use these data to measure the effectiveness of various pre-K programs.

The bill would not endanger the U.S. Department of Education's approval of these programs because it would not undermine the state's control over confidential student data. Federal approval is largely based on a program's ability to comply with FERPA regulations. When ERCs were first established, federal evaluators praised the oversight, tracking, and controls that were implemented by state agencies to ensure the confidentiality of student data. CSHB 2103 would only strengthen the confidentiality of these data. In fact the Department of Education's Privacy Technical Assistance Center has vetted the bill and approved its privacy protections for student data.

CSHB 2103 would not endanger student privacy by allowing Texas institutions to directly share data with institutions in other states. The key to FERPA compliance is control and security of student data. CSHB 2103 would ensure this through the operating and data sharing agreements that the bill would require cooperating agencies and the ERCs to make before any data were ever shared.

The bill would not threaten the ability of state agencies that provide data to charge ERCs for data production and packaging. While the bill would remove the term "fees" and replace it with "charges," the purpose would be to help institutions of higher education avoid rules that control the setting of fees. State agencies still would be able to receive reimbursement under the terms of their operating agreements.

CSHB 2103 would properly exempt the proposed advisory board from the open records and open meetings requirements because the board deals with matters concerning federally protected confidential student data. The duty to protect the sanctity of the data rises to the point where it would be appropriate to exempt the proposed board from these important acts.

OPPONENTS SAY:

CSHB 2103 would try to fix a system that already works. The bill's major change, removing TEA from joint oversight with the coordinating board over the ERCs, would imperil TEA's ability to monitor and safeguard its own student data. When the U.S. Department of Education granted Texas permission to create ERCs, it praised the joint oversight because it helped ensure direct oversight of student data by TEA and the coordinating board. Removing TEA might endanger federal approval of the program. The bill also could threaten the ability of state agencies that provide data to charge ERCs for their handling and packaging.

Even if there has been a history of trouble between TEA and the coordinating board, there is a new commissioner of education and new department heads who oversee ERC data and programs. They should be allowed additional time to work with the coordinating board under existing statutes that already enjoy federal approval.

The bill should not exempt the proposed advisory board from open records and open meetings requirements. The principles of accountability safeguarded by these laws are so important that agencies rarely should be exempted from them. Even if the advisory board were considering matters involving confidential student data, it should be doing so only after those data had been stripped of identifying information, such as names, birthdays, and Social Security numbers, which would preclude any need for the board to be exempt from these state laws.

NOTES:

The committee substitute differs from the bill as filed mainly in that it includes specific criteria the advisory board would be required to use when evaluating potential studies.