

**SUBJECT:** Specifying state authority to take over failing school districts

**COMMITTEE:** Public Education — committee substitute recommended

**VOTE:** 7 ayes — Dutton, Lozano, K. Bell, Buckley, Huberty, K. King,  
VanDeaver

6 nays — Allen, Allison, Bernal, M. González, Meza, Talarico

**WITNESSES:** For — Bob Harvey, Greater Houston Partnership; (*Registered, but did not testify*: Madison Yandell, Texas 2036)

Against — Ann Williams, Alief ISD and Texas Caucus of Black School Boards; David Thompson, Texas Urban Council; Texas School Alliance and Texas Association of School Administrators; (*Registered, but did not testify*: David Anderson, Arlington ISD Board of Trustees; Andrea Chevalier, Association of Texas Professional Educators; Julia Grizzard, Bexar County Education Coalition; Charles Luke, Coalition for Education Funding; Joyce Foreman, Dallas ISD; Jodi Duron, Elgin ISD; Grover Campbell, TASB; Dena Donaldson, Texas AFT; Barry Haenisch, Texas Association of Community Schools; Ana Ramon, Texas Legislative Education Equity Coalition; Carrie Griffith, Texas State Teachers Association)

On — Von Byer, Texas Education Agency; Jonathan Feinstein, The Education Trust in Texas; Ruth Torres; (*Registered, but did not testify*: Chloe Latham Sikes, Intercultural Development Research Association; Jeff Cottrill, Eric Marin, and Christopher Jones, Texas Education Agency)

**BACKGROUND:** Education Code sec. 39.102 requires the commissioner of education to undertake certain interventions and sanctions involving a school district that does not satisfy accreditation criteria, academic performance standards, or any financial accountability standard. Actions can include appointment of a conservator to oversee operations of the district, appointment of a board of managers to exercise the powers and duties of the board of trustees, or closure of the district and annexation to one or

more adjoining districts.

DIGEST:

CSHB 3270 would revise provisions relating to public school accountability and associated interventions and sanctions. It includes temporary provisions requiring state intervention for certain districts or campuses. The bill would make certain decisions by the commissioner of education concerning school districts final and unappealable.

**Intervention for certain districts or campuses.** CSHB 3270 would add temporary provisions for intervention by the commissioner of education for certain districts or campuses.

As soon as practicable after the effective date of the bill, the commissioner would have to determine the number of consecutive school years of unacceptable performance ratings for each school district, open-enrollment charter school, and district or school campus since the most recent acceptable rating had been assigned. The commissioner would have to order the appointment of a board of managers for each campus that was determined to have been assigned an unacceptable performance rating for more than five school years.

Statutory exemptions related to a district campus operated under a contract with certain partner charter holders, a designated math innovation zone, or an accelerated campus excellence turnaround plan would apply to the requirement for appointment of a board of managers.

The requirement for a board of managers could not be construed to:

- provide a school district or charter school additional remedies or appellate or other review for previous interventions, sanctions, or performance ratings ordered or assigned; or
- prohibit the commissioner from taking any action or ordering any intervention or sanction otherwise authorized by law.

The bill's requirements for intervention for certain districts or campuses would expire September 1, 2027.

**Commissioner's authority.** The bill would establish that the commissioner's power to delegate ministerial and executive functions to Texas Education Agency (TEA) staff and to employ division heads and any other employees and clerks to perform TEA duties are valid delegations of authority, notwithstanding any other law.

**Special investigations.** CSHB 3270 would replace Education Code references to special accreditation investigations with revised provisions for special investigations. The education commissioner could conduct special investigations to determine if an academic program offered by a school district was providing students the quality education to which they are entitled under federal Title 1 and state law, including:

- the proportion of students in each demographic group participating in the program;
- whether an excessive number of students were participating in a particular program or were being exempted from state requirements; or
- whether all students had equitable access to the program, including advanced learning options.

The bill would revise certain statutory provisions related to investigations that would be allowed regarding a district's accounting practices and fiscal management, certain educational programs for particular student populations, and whether an improper use of public funds had occurred.

The bill would expand the commissioner's authority for special investigations on certain previously established grounds as follows:

- for an investigation in response to an allegation of inaccurate reported data, by removing the condition that the investigation must be in response to a complaint to TEA and by authorizing an investigation of allegedly inaccurate data reported to TEA in any manner, including a material misrepresentation made in the course of a special investigation; and

- for an investigation in response to a district's failure to produce applicable evidence or an applicable investigation report at the request of TEA, by extending the qualifying requested material from evidence or a report relating to an educator under investigation by the State Board for Educator Certification to evidence or a report on any subject.

The bill would remove certain statistical patterns or anomalies relating to standardized testing and student outcomes from the specified grounds for a special investigation.

*Confidential witnesses.* During a special investigation, TEA would be authorized to classify the identity of a witness as confidential if TEA determined it was necessary to protect the welfare of the witness.

*Board policies.* The bill would specify that if TEA found in a special investigation involving an alleged conflict between district board members or between a board and district administration that the board had observed a lawfully adopted policy, TEA would be prohibited from substituting its judgment for that of the board only if the adopted policy did not otherwise violate a law or rule.

*Deferred actions.* At any time before issuing a report with TEA's final findings, the commissioner could defer taking an action until:

- a person who is a third party, selected by the commissioner, had reviewed programs or other subjects of a special investigation and submitted a report identifying problems and proposing solutions;
- a district completed a corrective action plan developed by the commissioner; or
- the completion of both the third-party review and corrective action plan.

The commissioner could decline to take the deferred action.

*Informal review.* An informal review under the bill's special investigation

provisions would not be a contested case and a determination or decision made by TEA would be final and unappealable.

*Final order.* If an order, decision, or determination was described as final and unappealable, no interlocutory or intermediate order, decision, or determination made or reached before the final order, decision, or determination could be appealed.

**Accountability interventions and sanctions.** CSHB 3270 would change the period of consecutive unacceptable campus performance ratings after which the commissioner must intervene by closing the campus or appointing a board of managers to the district from three consecutive school years after the campus was ordered to submit a campus turnaround plan to five consecutive school years.

Based on the results of a special investigation, the commissioner would be authorized to take any action under state accountability interventions and sanctions regardless of any requirements applicable to the action provided by state law.

The commissioner could authorize the modification of an approved campus turnaround plan if the commissioner determined that, due to a change in circumstances that occurred after the commissioner approved the plan, a modification was necessary to achieve the plan's objectives.

*Conservator or management team.* A conservator or management team could exercise the statutory powers and duties defined by the commissioner regardless of whether the conservator or management team was appointed to oversee the operations of a school district in its entirety or the operations of a certain campus within the district.

CSHB 3270 would require a conservator appointed by the commissioner for certain district-level oversight purposes involving the implementation of an updated targeted improvement plan to be appointed to that role unless and until either of the following conditions were met:

- each campus in the district for which a campus turnaround plan had been ordered received an acceptable performance rating for the school year; or
- the commissioner determined a conservator was not necessary.

**Campus and district performance ratings.** CSHB 3270 would authorize the commissioner, in the context of a regular performance evaluation for accountability purposes, to assign a district or campus an overall performance rating of "Not Rated" if the commissioner determined that a rating of A, B, C, D, or F would be inappropriate for any of the following reasons:

- the district or campus was located in a declared disaster area, and due to the disaster its performance indicators were difficult to measure or evaluate and would not accurately reflect its quality of learning and achievement;
- the district or campus had experienced breaches or other failures in data integrity to the extent that accurate analysis of data regarding performance indicators was not possible;
- the number of students enrolled in the district or campus was insufficient to accurately evaluate its performance; or
- for other reasons outside the control of the district or campus, the performance indicators would not accurately reflect its quality of learning and achievement.

An overall performance rating of "Not Rated" would not be included in calculating consecutive school years or considered a break in consecutive school years for purposes of accountability interventions and sanctions.

*Unacceptable ratings.* The bill would require the number of consecutive school years of unacceptable performance ratings for each district and campus, if applicable, be made publicly available not later than August 15 of each year in addition to the annual performance rates. A district or charter school could challenge a TEA determination of consecutive school years of unacceptable ratings.

**Fiscal management.** The bill would prohibit the use of state funds not designated for a specific purpose or local school funds to initiate or maintain any action or proceeding against the state or against an agency or officer of the state arising out of a decision that was final and unappealable. It would prohibit the use of a district's Tier 2 entitlement under the Foundation School Program for such a purpose or for another purpose prohibited by the Education Code.

The bill would expand the conduct that constituted the class C misdemeanor offense of failure to comply with school budget requirements to include a district trustee's vote to approve any expenditure of school funds in violation of a provision of the Education Code for a purpose for which those funds may not be spent.

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, 2021.

**SUPPORTERS  
SAY:**

CSHB 3270 would clarify existing statutes to allow the education commissioner to address the problem of chronically failing schools. It is unacceptable that certain campuses have not provided their students with an adequate education that prepares them for success in life. State intervention is needed to remedy this situation, and CSHB 3270 would clarify the tools the commissioner and Texas Education Agency (TEA) have to take action. It would address legislative intent for such state interventions by specifically requiring the commissioner to order the appointment of a board of managers to oversee a school that had been academically unacceptable for more than five years.

While some criticize CSHB 3270 for allowing anonymous testimony during a special investigation, it is important to protect teachers and other school employees who might come forward during an investigation. Concern about making commissioner decisions final and not appealable could be addressed in further discussions on the bill.

The "Not Rated" designation for schools has been necessary for several

years due to disruptions caused by natural disasters but should not be used to delay improvements to the system for state intervention in failing schools.

CRITICS  
SAY:

CSHB 3270 would increase state control of locally governed school districts and give the education commissioner significant new authority to override local voters by taking over an elected school board. In one case, the state proposed taking over a B-rated school district because of the underperformance of one high school. The state should have oversight of failing schools but CSHB 3270 would not provide an appropriate balance between local communities and an appointed state official in Austin. The bill states that the commissioner's power is "final and unappealable," meaning school districts would have no recourse to challenge the legality of the commissioner's decision to take over an elected school board. Other changes to TEA's investigatory process, including a provision to allow anonymous testimony, could deprive school districts of meaningful due process.

The bill appears to address a particular situation involving one low-performing school in a B-rated district. During several years in which the state did not rate some schools due to a hurricane and all schools due to the COVID-19 pandemic, campuses that had been previously identified as needing improvement lost opportunities to improve their ratings. It would be better to wait until the accountability system has stabilized before enacting major changes.