

BILL ANALYSIS

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S.B. 265
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DIGEST AND PURPOSE

Currently, the State Board for Educator Certification (SBEC) oversees the preparation and regulation of public school educators. SBEC ensures the quality of educators when they enter the profession, enforces professional standards of conduct, promotes professional development, and assists in creating strategies to recruit and retain educators. As proposed, S.B. 265 contains the recommendations of the Sunset Commission to continue SBEC as a separate agency. This bill also expands the authority of the State Board of Education (SBOE) to accept or reject portions of SBEC-proposed rules and provides for interested parties to have input into the development of SBEC rules. This bill provides for fingerprinting of applicants; for national and state criminal history background check; to be paid for by an applicant; and the development of a written nondiscrimination policy. S.B. 265 continues SBEC as a separate agency for 12 years.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the State Board for Educator Certification is modified in SECTION 6 (Section 21.041, Education Code) and rulemaking authority is expressly granted to the State Board for Educator Certification in SECTION 13 (Section 21.060, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 7.056(a), Education Code, to include the subsection as providing an exception to a school district's or campus's authorization to apply for a requirement, restriction, or prohibition waiver. Includes that a waiver of a requirement related to educator certification under Chapter 21B is governed by Section 21.059 (Waiver of Certification Requirement).

SECTION 2. Amends Section 21.003(a), Education Code, to provide that a person may not be employed as an educational diagnostician without the appropriate certification or permit.

SECTION 3. Amends Chapter 21B, Education Code, by adding Sections 21.0331, 21.0332, and 21.0341, as follows:

Sec. 21.0331. INELIGIBILITY TO SERVE ON BOARD; INELIGIBILITY FOR CERTAIN POSITIONS. (a) Defines "Texas trade association."

(b) Prohibits a person from serving as a member of the State Board for Educator Certification (SBEC) or as general counsel if that person is required to register as a lobbyist because of activities for compensation on behalf of a profession related to the operation of the board.

(c) Prohibits a person from serving as a member of SBEC or a board employee employed in a position that is exempt from the overtime provisions of the federal Fair Labor Standards Act if that person meets certain criteria.

Sec. 21.0332. TRAINING PROGRAM FOR MEMBERS OF BOARD. (a) Prohibits a

qualified SBEC appointee from voting, deliberating, or being counted as a member in attendance at a meeting of SBEC until completing a training program that complies with this section.

(b) Requires the training program to provide the person with certain information.

(c) Provides that an SBEC appointee is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending the training program, regardless of whether the attendance occurs before or after the person qualifies for office.

Sec. 21.0341. REMOVAL FROM BOARD. (a) Sets forth criteria for grounds for removal from SBEC.

(b) Provides that a board member appointed under Section 21.033(a)(1) (State Board for Educator Certification) who retires during the member's term is entitled to finish the term.

(c) Provides that the validity of a board action is not affected by the fact that the action was taken when a ground for removal of a board member existed.

(d) Requires the executive director to inform the presiding officer, who in turn is required to inform the governor and the attorney general, if the executive director knows that a potential ground for removal exists. Requires the executive director to notify the next highest officer of the board, who in turn is required to inform the governor and the attorney general, if the potential ground for removal involves the presiding officer.

SECTION 4. Amends Sections 21.035 and 21.036, Education Code, as follows:

Sec. 21.035. APPLICATION OF SUNSET ACT. Redesignates SBEC's sunset date from 2003 to 2015.

Sec. 21.036. OFFICERS. (a) Creates this subsection from existing text. Requires the governor to appoint, rather than SBEC to elect, a member to serve as presiding officer of the board. Deletes text referring to the length of the presiding officer's term. Includes that the presiding officer serves at the pleasure of the governor, and is entitled to vote on all matters before the board.

(b) Creates this subsection from existing text.

SECTION 5. Amends Chapter 21B, Education Code, by adding Sections 21.0391, 21.0392, and 21.0401, as follows:

Sec. 21.0391. EQUAL OPPORTUNITY EMPLOYMENT. (a) Requires the executive director, or the executive director's designee, to prepare and maintain a written policy statement that implements an equal employment opportunity program to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) Sets forth the required content of the statement.

(c) Provides that the policy statement must be filed with the governor's office, updated annually, and reviewed by the Commission on Human Rights.

Sec. 21.0392. STATE EMPLOYEE INCENTIVE INFORMATION. Requires the executive director, or the executive director's designee, to provide to SBEC employees information and training on the benefits and methods for participating in the state employee incentive program under Chapter 2108B, Government Code (State Employee Incentive Program).

Sec. 21.0401. COLLECTION OF FINGERPRINTS REQUIRED. Requires SBEC to obtain a complete set of fingerprints from certain persons.

SECTION 6. Amends Sections 21.041(b) and (c), Education Code, as follows:

(b) Includes rules that provide for the investigation of complaints of disciplinary violations in the rules SBEC is required to propose. Redesignates Subdivisions (8) - (10) as Subdivisions (9) - (11). Makes a nonsubstantive change.

(c) Requires SBEC to propose rules regarding adopting fees to issue and maintain each educator certificate, including a provisional certificate, adequate to cover the cost of administering this subchapter, including the cost of obtaining fingerprints or conducting a national criminal background on certain persons.

SECTION 7. Amends Chapter 21B, Education Code, by adding Sections 21.0411-21.0414, as follows:

Sec. 21.0411. DEVELOPMENT OF PROPOSED RULES. (a) Provides that this section applies to SBEC's process of developing proposed rules for the State Board of Education's (SBOE) consideration under Section 21.042 (Approval of Rules) before they are published in the Texas Register and before SBEC or SBOE complies with rulemaking requirements in Chapter 2001, Government Code (Administrative Procedure). Provides that this section does not affect any duty to comply with the rulemaking requirements of that law.

(b) Requires SBEC to establish an appropriate checklist of methods to solicit the advice and opinions, early in the rule development process, of the people most impacted by a proposed rule, and a method to identify those people. Sets forth some authorized content of the checklist.

(c) Prohibits a rule proposed by SBEC and adopted by the SBOE from being challenged on the grounds that SBEC did not comply with this section.

(d) Provides that this section does not apply to the proposal of an emergency rule to be adopted in accordance with Section 2001.034, Government Code (Emergency Rulemaking).

Sec. 21.0412. PUBLIC TESTIMONY. Requires SBEC to develop and implement policies to provide the public a reasonable opportunity to speak before the SBEC on any issue under SBEC's jurisdiction.

Sec. 21.0413. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires SBEC to develop and implement a policy to encourage the use of certain rulemaking and alternative dispute resolution procedures.

(b) Requires the alternative dispute resolution procedures to conform, to the extent possible, to the State Office of Administrative Hearings guidelines.

(c) Requires SBEC to designate a trained person to perform certain duties related to alternative dispute resolution.

Sec. 21.0414. TECHNOLOGY POLICY. Requires SBEC to develop and implement a policy requiring the executive director and board employees to investigate and propose appropriate technological solutions to increase the board's efficiency. Sets forth requirements regarding the solutions.

SECTION 8. Amends Section 21.042, Education Code, as follows:

Sec. 21.042. APPROVAL OF RULES. (a) Creates this subsection from existing text.

(b) Authorizes the SBOE to accept or reject a portion of a proposed rule or reject a propose rule in its entirety by at least a two-thirds vote of members present. Deletes redundant text.

(c) Creates this subsection from existing text.

(d) Prohibits SBOE from modifying a rule proposed by SBEC, unless it modifies a portion of the rule by at least a two-thirds vote of members present.

SECTION 9. Amends Chapter 21B, Education Code, by adding Section 21.0421, as follows:

Sec. 21.0421. ACCEPTANCE OF GIFTS, GRANTS, AND DONATIONS. (a) Authorizes SBEC to solicit and accept gifts, grants and donations for the purposes of this chapter.

(b) Requires SBEC to report certain information regarding gifts, grants, and donations to the lieutenant governor and speaker of the house of representatives not later than December 31 of each year.

SECTION 10. Amends Chapter 21B, Education Code, by adding Sections 21.0484 and 21.0521, as follows:

Sec. 21.0484. EXAMINATION RESULTS. (a) Requires SBEC to notify a person of his or her examination results not later than the 30th day after taking the certification exam under this chapter.

(b) Sets forth the procedural requirements if the examination is graded by a testing service.

(c) Authorizes SBEC to requires a testing service to notify a person of his or her results.

(d) Requires SBEC to furnish an examination performance analysis, upon written request, to a person who failed the exam.

Sec. 21.0521. PROVISIONAL CERTIFICATE. (a) Authorizes SBEC to issue a provisional certificate, after a satisfactory review of an applicant's educator credentials, to an applicant currently certified or licensed in good standing as an educator in another jurisdiction, including a foreign country, that has substantially equivalent requirements to this chapter but who has not passed an exam determined by SBEC to be similar to and at least as rigorous the exam prescribed under Section 21.048 (Certification Examinations).

(b) Provides that a provisional certificate is valid for 12 months from the effective date.

(c) Requires SBEC to issue a standard certificate to the provisional certificate holder if the person is eligible for certification under Section 21.052 (Certification of Educators From Outside the State).

SECTION 11. Amends Sections 21.055(c) and (d), Education Code, include a requirement that a school district provide to SBEC, rather than the commissioner of education or the commissioner's designee, with an employee's fingerprints. Makes conforming changes.

SECTION 12. Amends Section 21.057(d), Education Code, to redefine "inappropriately certified or uncertified teacher."

SECTION 13. Amends Chapter 21B, Education Code, by adding Sections 21.058-21.062, as follows:

Sec. 21.058 COMPLAINTS. (a) Requires SBEC to maintain a file on each written complaint filed with the board.

(b) Sets forth the required contents of the file.

(c) Requires SBEC to provide a copy of its complaint investigation and resolution policies and procedures to the person filing the complaint and to each person who is the subject of the complaint.

(d) Requires SBEC to notify the complainant and each subject of the complaint the status of the investigation at least quarterly until final disposition of the complaint, unless the notice would jeopardize an undercover investigation.

Sec. 21.059. WAIVER OF CERTIFICATION REQUIREMENT. Authorizes a school district to apply to SBEC for a waiver of a requirement under this subchapter that prohibits a teacher from teaching outside the teacher's area of certification.

Sec. 21.060. EXPIRATION OF CERTIFICATES. Authorizes SBEC to adopt, by rule, a system for certificates to expire on various dates during the year. Requires SBEC to prorate the fees for the year in which the expiration date is changed. Provides that the total renewal fee is payable on renewal of the certificate on the new expiration date.

Sec. 21.061. CERTIFICATE RENEWAL. (a) Authorizes a person otherwise eligible to renew a certificate to renew an unexpired certificate by paying the required fee to SBEC before the expiration date. Prohibits a person whose certificate has expired from engaging in activities requiring a certificate, until it is renewed.

(b) Authorizes a person to renew a certificate that has been expired for 90 days or less by paying one-and-one-half the normal renewal fee.

(c) Authorizes a person to renew a certificate that has been expired for more than 90 days but less than one year by paying twice the normal renewal fee.

(d) Prohibits a person from renewing a certificate that has been expired for more than one year. Authorizes the person to obtain a new certificate by complying with all requirements and procedures for obtaining an original certificate.

(e) Authorizes a person previously certified in this state, who moved to another state, and currently holds a certificate and has been in practice in another state for two years preceding the application, to obtain a new certificate without an examination. Requires the person to pay twice the normal renewal fee for the certificate.

(f) Requires SBEC to notify the person in writing of the impending certificate expiration at the person's last known address not later than the 30th day before the expiration date.

Sec. 21.062. REVOCATION, MODIFICATION, OR SUSPENSION OF CERTIFICATE. (a) Requires SBEC to revoke, suspend, or refuse to renew a certificate or reprimand a certificate holder for a violation of this subchapter or a rule of the board.

(b) Authorizes SBEC to place on probation a person whose certificate has been suspended. Sets forth SBEC's requirements of a person whose certificate suspension is probated.

SECTION 14. Amends Section 22.082, Education Code, to require SBEC to obtain both state and national criminal history record information relating to an applicant for or holder of a permit, as well as a certificate. Requires SBEC to require an applicant to pay the costs of obtaining that criminal history information.

SECTION 15. Amends Section 411.090, Government Code, as follows:

Sec. 411.090. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION AND FINGERPRINTS: STATE BOARD FOR EDUCATOR CERTIFICATION. (a) Makes a conforming and a nonsubstantive change.

(b) Deletes text referring to the destruction of criminal history record information. Makes a nonsubstantive change.

(c) Authorizes SBEC to keep on file with the Department of Public Safety (DPS) all fingerprints obtained under Section 21.0401, Education Code (Rules; Fees). Requires DPS to notify SBEC of the arrest of any educator who has fingerprints on file with DPS.

(d) Provides that "educator" has the meaning assigned by Section 5.001, Education Code (Definitions).

SECTION 16. Requires the executive director of SBEC, or the designee thereof, to prepare the written policy statement required by Section 21.0391, Education Code (Equal Opportunity Employment), of this Act, not later than January 1, 2004.

SECTION 17. (a) Requires SBEC to propose rules to govern certification of diagnosticians not later than January 1, 2004. Makes application of Section 21.003(a), Education Code (providing that a person may not be employed as an educational diagnostician without the appropriate certification or permit), of this Act, prospective to September 1, 2004.

(b) Makes application of Sections 21.0331 (Ineligibility to Serve on Board; Ineligibility for Certain Positions) and 21.0332 (Training Program for Members of Board) of this Act prospective to September 1, 2003.

(c) Makes application of Section 21.0484 (Examination Results) of this Act prospective.

(d) Makes application of Section 21.058 (Complaints) of this Act prospective.

(e) Makes application Section 21.061 (Certificate Renewal) of this Act prospective.

SECTION 18. Effective date: September 1, 2003.