

- SUBJECT:** Continuing State Board for Educator Certification, shifting duties to TEA
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 5 ayes — Grusendorf, Branch, Dawson, Eissler, Griggs
2 nays — Oliveira, Hochberg
2 absent — Dutton, Madden
- SENATE VOTE:** On final passage, April 9 — voice vote (Nelson recorded nay)
- WITNESSES:** For — (*On original bill:*) Philip Cheatham, Texas Association of School Boards; Harley Eckhart, Texas Elementary Principals and Supervisors Association; Margaret Leifeste, Texas Educational Diagnosticians Association

Against — (*On original bill:*) Melanie Jephson, Consortium of State Organizations for Teacher Education; Alejandra A. Martin, Texas Association of School Personnel Administrators; (*On committee substitute:*) Holly Eaton, Texas Classroom Teachers Association; Lauren Whelan, Association of Texas Professional Educators; Ted Melina Raab, Texas Federation of Teachers; Marjorie Wall, Texas State Teachers Association

On — (*On original bill:*) Ted Melina Raab, Texas Federation of Teachers; Ken Levine and Erica Wissolik, Sunset Commission; David Anderson, Texas Education Agency; Bill Franz, State Board for Educator Certification
- BACKGROUND:** The State Board for Educator Certification (SBEC) was created in 1995 when the 74th Legislature rewrote the Education Code in SB 1 by Ratliff. Prior to that, the Texas Education Agency (TEA) was responsible for regulation and oversight of educator certification. In 1997, SBEC became administratively independent of TEA.

The purpose for establishing SBEC, stated in Education Code, sec. 21.031, is to recognize public educators as professionals and to grant educators the authority to govern the standards of their profession.

Education Code, ch. 21, subch. B sets forth guidelines for the certification of educators in Texas and provides statutory authority for SBEC, which holds the following primary responsibilities:

- testing and certification of educators,
- accreditation of educator preparation programs;
- enforcing professional standards of conduct;
- developing and implementing strategies for recruitment and retention of educators; and
- promoting continuous professional development of educators.

SBEC is a 15-member board with 12 voting members appointed by the governor with the advice and consent of the Senate, and three non-voting members — an employee of TEA appointed by the commissioner of education, an employee of the Texas Higher Education Coordinating Board (THECB) appointed by the commissioner of higher education, and a dean of a Texas college of education appointed by the governor. The board meets quarterly and at other times of the year at the call of the presiding officer.

SBEC must submit all proposed rules to the State Board of Education (SBOE), which has a 90-day review period to veto a proposed rule. If a rule is not rejected by a two-thirds vote, it is deemed approved. The SBOE cannot modify a proposed rule.

SBEC's budget in fiscal 2002-03 was about \$40 million. In 2002, SBEC processed about 105,000 sets of educator credentials. The board employs an executive director who has the authority to hire staff members. The number of full-time equivalents (FTEs) slated for SBEC in the coming biennium is 73, of which 14 recently were approved by the CSHB 1 conference committee to be converted from contract positions into FTEs in order to save the state money.

The federal No Child Left Behind Act of 2001 (NCLB) requires schools that receive federal funds under Title I, Part A to have a "highly qualified" teacher in every classroom by the 2005-06 school year. NCLB defines a highly qualified teacher as an educator who is licensed by the state, holds at least a bachelor's degree, and demonstrates subject area competence.

DIGEST: CSSB 265 would transfer exclusive rulemaking authority to the commissioner of education over educator certification and other areas, and continue a smaller SBEC board with limited authority over disciplinary and ethical standards for educators until 2015. The SBOE's authority to reject rules would be repealed, as would certification requirements for superintendents.

TEA duties. TEA agency staff would assume responsibility for the following duties formerly assigned to SBEC:

- administering all duties related to teacher testing and certification, including issuing certificates to out-of-state or foreign teachers, and to bilingual education or special language program teachers;
- working with centers for professional development of teachers at institutions of higher education;
- working with the THECB to develop a comprehensive teacher recruitment and retention plan to meet the teacher supply needs;
- administering the Master Reading Teacher Certification program, the Master Mathematics Teacher Certification program, and the Master Technology Teacher Certification program;
- managing the Troops to Teachers program and the Teach for Texas (Careers to Classrooms) Pilot;
- accessing criminal history records required of certification applicants and, when needed, to issue, deny, suspend or cancel any certificate issued by TEA;
- taking reports from school districts about certified educators or applicants with criminal histories; and
- accepting reports of Department of Public Safety (DPS) investigations of child abuse or neglect.

Commissioner rulemaking authority. The commissioner of education would assume exclusive rulemaking authority over the following:

- all areas relating to educator certification and the fees required to support the administration of that function;
- accountability and sanctions for educator preparation programs;
- prescribing comprehensive exams for each class of certificate;
- alternative certification programs;

- certification requirements related to academic degrees, minimum number of semester credit internship hours, and options for field experience;
- requirements for additional certification to teach at a different grade level or in a different subject area; and
- determining what constituted a certified teacher teaching outside of his or her area of expertise for the purposes of parental notification.

Repeals. CSSB 265 would repeal the following sections:

- statutory purpose for SBEC;
- authority of the board to hire an executive director and staff;
- the SBOE's authority to approve SBEC rules;
- SBEC's rulemaking authority over training requirements a person must meet to obtain a certificate, enter an internship, or enter an induction-year program, and the authority to specify minimum academic qualifications for a certificate;
- qualifications for certification as a superintendent or principal; and
- SBEC's authority to establish a Teach for Texas Pilot Program.

The bill would authorize the transfer of authority from SBEC to TEA and would ensure the validity of all contracts, liabilities, certificates, rules, proceedings, investigations, decisions, or actions taken in connection with SBEC. A certificate issued by SBEC prior to September 1, 2003, would be considered a certificate issued by TEA. All board policies procedures, and decisions would be transferred to TEA and would remain in effect until superseded by a rule or other action of the agency.

Board composition. SBEC would be composed of nine rather than 15 members, all appointed by the governor with the advice and consent of the Senate. Four members would be public school teachers, four would be school administrators, and one would be a citizen who had not been employed by a public school district or by an educator preparation program in an institution of higher education.

Citizen board members. Positions on SBEC filled by citizen members whose terms expire in 2005 would be abolished September 1, 2003. The two remaining positions on SBEC filled by citizen members whose terms expire in

2007 would draw lots to see which position would be abolished September 1, 2003.

SBEC duties and rulemaking authority. The board would have to approve an operating budget and request appropriations, appoint members of advisory committees, share information about the board, develop policies for the board and its staff, and file annual reports with the Legislature on the use of all funds. The board would retain authority to adopt rules providing for:

- disciplinary proceedings, including the suspension or revocation of an educator certificate;
- adoption, amendment and enforcement of an educator's code of ethics;
- continuing education requirements for educators; and
- certification of persons performing appraisals of teachers.

Shared authority. SBEC would share with TEA the development of educator preparation integrated coursework guidelines. SBEC could enter into agreed sanctions when cancelling a teaching certificate, but disciplinary action could be taken by the board or the commissioner if an educator was found guilty of defrauding the Teacher Retirement System.

Certification of superintendents. CSSB 265 would allow a district to employ a non-certified superintendent if the person had significant experience as a chief executive of a business or as an administrator of a large organization, including a military or nonprofit organization, and if the person held an advanced degree and complied with all requirements adopted by the commissioner for first-time superintendents.

Counselors. Certification requirements for school counselors no longer would be set by board rule, but instead would be set forth in statute. The position on the board filled by a public school counselor would be abolished September 1, 2003.

Standard sunset provisions. The bill would add standard sunset provisions governing board membership, conflicts of interest, and training and removal of board members. These provisions would not affect the entitlement of a person currently serving as a board member to continue to serve for the

remainder of his or her term, and would apply only to persons appointed to the board on or after September 1, 2003.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 265 would save the state money by moving SBEC back to TEA. Keeping SBEC and TEA separate creates duplicative costs to state government which could be eliminated by merging the two. Administrative efficiencies could be achieved in the areas of purchasing and human resources, as well as for certain indirect costs. The Legislative Budget Board (LBB) estimates annual general revenue savings of \$139,00 based on a Sunset Advisory Commission analysis. Adjusting the estimate to include benefit savings from eliminating three FTEs, the true annual savings would be closer to \$179,000. However, an earlier LBB estimate for HB 2110 by Rangel, which would have abolished SBEC and transferred all its functions back to TEA, projected \$1.5 million in annual savings to the state.

CSSB 265 rightly would vest rulemaking authority for certification in the commissioner of education, thus putting supports in place to ensure that all Texas schools had a highly-qualified teacher in every classroom by 2005-06. This would reinforce the goals of SB 1108 by Shapiro, placed on the House Major State Calendar on May 22, which would grant the commissioner rulemaking authority to establish a statewide standard for certifying school districts that were preparing, training, and recruiting high quality teachers in a manner consistent with the federal NCLB act. These bills would work together to align state policy with federal standards, thus ensuring that the state could meet all federal deadlines and secure NCLB funding. The commissioner already has the power to approve school district teaching permits and to grant waivers that allow a certified teacher to teach outside his or her area of certification. The granting of commissioner authority in this area simply would be a logical extension of those powers, and could lead to greater consistency in rulemaking.

CSSB 265 would streamline the rulemaking process by removing oversight authority from the SBOE. In the past, SBOE veto power on SBEC rules has delayed rule implementation from six months to a year. It also has allowed interest groups to delay actions on issues where SBEC and SBOE disagreed, thus creating a situation where special interests have played one board against

the other. SBOE is an elected, and thus political, board that does not require the representation of teachers on the board as does the SBEC board.

CSSB 265 would separate entry into the teaching profession from the disciplinary process, thus creating a structure that is parallel to the one established for other professions. For example, lawyers have two separate organizations to manage the standards of the legal profession. The Board of Law Examiners (BLE) creates and administers the state bar exam and recommends qualified candidates for licensing, while the State Bar of Texas handles disciplinary proceedings and continuing education. Rulemaking for policing and oversight of certified education professionals should be concentrated in a single appointed board of teachers and administrators. This would enhance and focus SBEC's enforcement powers and ensure that educators who violated the ethical standards of the profession would be sanctioned and barred from it.

CSSB 265 would give school districts greater flexibility in recruiting and hiring superintendents and other education professionals. By waiving mandatory certification requirements for superintendents, school districts could hire individuals with extensive executive or military experience to manage the affairs of the school district. School districts are multi-million dollar businesses that need to be run professionally by chief executives who know how to manage limited resources and large numbers of personnel efficiently. In times of fiscal constraint, CSSB 265 would create a positive incentive for school districts to hire executives with advanced academic degrees and solid business experience.

CSSB 265 would not include fingerprint-based national background checks for new certification candidates. Fingerprinting and national background checks would have imposed a \$42 increase in fees on prospective teachers at a time when schools and some legislators would like to reduce the barriers to hiring qualified teachers. Further, teachers should not have to bear the cost of background checks. As in other professions, they should be an employer responsibility borne as part of the due-diligence process for hiring.

**OPPONENTS
SAY:**

CSSB 265 would diminish the autonomy and professionalism of educators in Texas by punishing an agency that has done a tremendous job in raising standards for the profession. The stated purpose for establishing SBEC was to

recognize public educators as professionals and to grant educators the authority to govern the standards of their profession. One reason that educator certification was taken away from TEA in 1995 was that the agency could not handle the job, leading to a massive backlog of certificates and disciplinary complaints going unaddressed. Even though SBEC struggled for its first five or six years as a separate entity, the current executive director has done an exceptional job of turning it around. The Sunset Advisory Commission recommended that SBEC be continued in its current form, and that no substantial benefits would result from transferring its functions to another agency.

SBEC has taken on many new responsibilities since 1995 that have greatly enhanced the teaching profession. It oversaw the creation of more rigorous certification exams, ensuring that new teachers are highly qualified. It changed the credentialing process to consolidate dozens of narrow, specific certificates, resulting in broadly certified teachers who are more marketable. It established a new educator preparation accountability system that led to higher standards for accreditation of teacher preparation programs. All of these changes have given more flexibility to districts while raising standards for teachers.

SBEC is meeting or exceeding all of its performance measures. It recruited and certified 17,500 new teachers last year out of educator preparation programs, 3,000 more than the average number of teachers recruited in previous years. In little more than a year, SBEC reduced the credentialing backlog from more than 13,000 certificates to only 2,000. It reduced the amount of time it takes to issue a certificate from 87 days to less than 10 days for in-state credentials and less than 20 days for out-of-state credentials.

SBEC has reduced the disciplinary case backlog from more than 1,800 cases — some of which were more than 10 years old — to maintaining a docket of 550 to 650 current cases. Before SBEC, only 2 to 4 percent of educators were disciplined as a result of an ethics or disciplinary complaint. Today 25 percent of teachers brought before the board for disciplinary infractions receive punishments ranging from reprimands, to suspensions, to revocation of their certificates.

SBEC should remain an autonomous entity to capitalize on and maintain these efficiency gains. The same savings projected in LBB's fiscal note could be achieved without moving SBEC back to TEA by executing a memorandum of understanding with TEA to share certain purchasing and human resources costs.

This bill would create unnecessary disruptions in an autonomous, well-functioning organization by imposing major changes to save a small amount of money. The House Government Reform committee rejected a similar proposal in HB 2110 by Rangel, concluding that the savings would not justify wholesale change. Such a disruption would create credentialing and disciplinary backlogs, which in turn could lead to qualified teachers being unable to teach because they were waiting for their credentials. Worse, bad teachers would remain in the classroom or be passed from district to district because of unresolved disciplinary cases.

CSSB 265 would weaken, not strengthen, educator representation in setting standards for entry into the profession. The transfer of all rulemaking authority over certification to the commissioner would not create a structure parallel to that used by the legal profession. The nine-member BLE is composed entirely of lawyers with at least 10 years of experience, and its rules are adopted by the Supreme Court. Giving authority over educator certification to a political appointee of the governor would take power over standards for entry into teaching away from those who are most interested in keeping them high — teachers, counselors, and other certified education professionals.

This bill would repeal a statutory provision that requires teachers to complete a educator preparation training program prior to becoming certified. The BLE does not allow potential lawyers even to take the bar exam, let alone practice law, without first having attended law school. Repealing preparatory requirements, removing higher education representation on the board, and giving the commissioner exclusive rulemaking authority over teacher certification could lead to lowered standards that would compromise children's education in public schools. An appointed commissioner could be motivated by politics to produce more teachers at any cost in order to qualify for more federal money through NCLB. A lowering of standards for the profession already is in the works through such legislation as HB 318 by

Grusendorf, which would allow individuals with bachelor's degrees to qualify for certification without taking any educator preparation courses whatsoever. Keeping standards high and maintaining an autonomous certification process go hand in hand.

CSSB 265 essentially would gut the powers of the board, taking away all of SBEC's rulemaking authority and responsibilities except in the area of discipline, ethics, and continuing education. This would be justified by an erroneous comparison of "the new SBEC" to the State Bar. While the State Bar does handle disciplinary proceedings and continuing education, it also functions like a professional association in that all lawyers licensed to practice law in Texas (nearly 70,000) are members. Most of its board members are elected by lawyers from the 15 State Bar districts, but three are elected by the statewide membership. By contrast, only four of SBEC's nine board members would be certified teachers, and another four would be administrators. There are 280,000 certified teachers in Texas and 20,000 administrators. If the State Bar is to be the model for SBEC, then membership on the SBEC board should be directly proportional to the profession it represents.

CSSB 265 would not protect a deliberate and thoughtful rulemaking process that values stakeholder input. SBEC has worked hard on behalf of its constituencies, inviting all players to the table to work through the consequences of various rule changes. A dean of a college of education, a THECB staffer, a counselor, and several public members currently are on the board, and all of these positions would be taken away by CSSB 265. The new rulemaking process would depend on the values of one elected official who would not be required to invite constituents or citizens to comment or participate, thus compromising the integrity of the process.

**OTHER
OPPONENTS
SAY:**

CSSB 265 should have included fingerprinting and national background checks for new teachers, as recommended by the Sunset Advisory Commission and included in the engrossed Senate version of the bill. Enhanced ability to access criminal histories of applicants is crucial to protecting students, particularly as the number of out-of-state applicants for Texas certification continues to increase. The new program would be self-supporting through additional fee revenue, so there would be no extra cost to the state. Classroom safety should be a paramount concern, and lawmakers should reinstate this important provision to the bill.

NOTES:

The bill as engrossed by the Senate differs from the House committee version in that it would have continued the board for 12 years and made the following changes:

- removed the State Board of Education's (SBOE) oversight authority over SBEC's proposed rules;
- reduced the number of voting board members from 12 to 11, in order to meet requirements for an odd number of voting members;
- required SBEC to collect fingerprints and conduct national criminal history background checks for each applicant for a teaching certificate, and for each applicant or holder of a teaching permit or provisional certificate;
- required SBEC to adopt rules setting fees to cover the costs for fingerprinting and national criminal history background checks;
- transferred responsibility for issuing school district teaching permits and certification waivers from the commissioner to SBEC;
- required the board to adopt rules to provide for the investigation of disciplinary violations;
- added educational diagnosticians to the statutory list of educators required to hold an SBEC-issued certificate to be employed in public schools;
- required SBEC to adopt rules governing certification of educational diagnosticians; and
- included provisions regarding equal opportunity employment, state employee incentive information, public testimony, negotiated rulemaking and alternative dispute resolution, technology policy, and acceptance of gifts, grants, and donations.

HB 2110 by Rangel, which would abolish SBEC and transfer its powers and duties to TEA and the commissioner of education, was left pending in the House Government Reform committee on April 7.

SB 1108 by Shapiro, which would grant the commissioner rulemaking authority to establish a statewide standard for certifying school districts that were preparing, training, and recruiting high-quality teachers in a manner consistent with NCLB, was placed on the House Major State Calendar on May 22 and postponed until today.

HB 318 by Grusendorf, which would allow for the certification of any individual with a bachelor's degree who passed the teacher certification exam, was reported favorably as substituted by the Senate Education Committee on May 23.