

BILL ANALYSIS

Senate Research Center

S.B. 669
By: West
Education
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Texas Education Code allows for several options when a campus is low performing, such as the reconstitution, repurposing, alternative management, or closure of the campus. These measures have been utilized in conjunction with campus improvement plans as well as campus intervention teams with varying results.

S.B. 669 adds another option through the creation of a Texas Opportunity School District (OSD) that allows for the transfer of campuses that are low-performing for two consecutive years from the jurisdiction of the local school district with placement in a statewide special purpose district staffed by experts in school turnaround if the commissioner of education chooses to. The superintendent of the OSD would be empowered with a range of tools to turn around the campus, including repurposing the school or contracting with an alternative management organization. The school would be returned to the jurisdiction of the local district once performance was on track.

As proposed, S.B. 669 amends current law relating to state interventions and sanctions against public school campuses with unacceptable performance and the establishment of the Texas Opportunity School District for educating students at certain low-performing campuses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 2 (Section 11.405, Education Code), SECTION 3 (Section 12.0523, Education Code), and SECTION 7 (Section 39.1071, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. SHORT TITLE. Provides that this Act may be cited as the Low Performing Campus Intervention Act.

SECTION 2. Amends Chapter 11, Education Code, by adding Subchapter I, as follows:

SUBCHAPTER I. TEXAS OPPORTUNITY SCHOOL DISTRICT

Sec. 11.401. TEXAS OPPORTUNITY SCHOOL DISTRICT ESTABLISHED. (a) Provides that the Texas Opportunity School District is hereby established as a school district under this code and an intermediate educational unit under 34 C.F.R. Section 222.50 for the purpose of educating students attending a campus removed from the jurisdiction of a school district under Section 39.1071.

(b) Defines "prior system" in this subchapter.

(c) Requires the commissioner of education (commissioner) to select the superintendent of the opportunity school district. Requires the superintendent to report to the commissioner under a written contract for services.

(d) Provides that the opportunity school district does not have authority to impose taxes but has authority to seek and expend federal funding and grant funding and

to otherwise seek, obtain, and expend funding with the same authority as an independent school district.

(e) Authorizes the opportunity school district to provide for the supervision, management, and operation of each campus placed under the district's jurisdiction and receive, control, and expend the local, state, and federal funding attributable to that campus, with all the same power and authority as the prior system, subject to the requirements of this subchapter and Section 39.1071, and with any other power or authority otherwise granted by law.

(f) Provides that the opportunity school district is entitled to the same level of services provided to other school districts by regional education service centers, and to participate in any state program available to school districts, including a purchasing program. Requires the commissioner, in addition, using funds appropriated for the regional education service centers, to direct that appropriate administrative facilities and support be made available to serve as the central administrative offices of the district.

(g) Prohibits the opportunity school district from contracting with a private entity for providing educational services to the students attending a campus transferred to the district, other than an eligible entity, as defined by Section 12.101 (Authorization), that holds a charter granted under Chapter 12 (Charters) and has:

(1) operated one or more open-enrollment charter schools in this state for three or more consecutive years;

(2) achieved a district rating of exemplary or recognized under Subchapter G (Distinction Designations), Chapter 39 (Public School System Accountability), or the equivalent under subsequent laws or rules regarding accountability ratings for three of the preceding five years;

(3) documented success in whole school interventions that increased the educational and performance levels of students in campuses that received unacceptable performance ratings under Section 39.054 (Methods and Standards for Evaluating Performance); and

(4) demonstrated success in educating populations of students similar to the populations of students enrolled at the campus transferred to the district.

(h) Authorizes the opportunity school district to employ such staff as the superintendent deems necessary.

Sec. 11.402. APPLICABILITY OF LAWS, RULES, AND ORDINANCES TO OPPORTUNITY SCHOOL DISTRICT. (a) Provides that, except as expressly provided by law, the opportunity school district is subject to federal and state laws and rules governing public schools and to municipal zoning ordinances governing public schools.

(b) Provides that, except as provided by Subsection (c) and as expressly provided by other law, the opportunity school district is subject to a provision of this title to the extent and in the manner that such provision applies to an open-enrollment charter school under Subchapter D (Open-Enrollment Charter School), Chapter 12.

(c) Requires a teacher employed by the opportunity school district to be certified under Subchapter B (Certification of Educators), Chapter 21 (Educators), and may only teach a subject in which the teacher is certified.

(d) Prohibits the performance of a campus under the jurisdiction of the opportunity school district from being used for purposes of determining the prior system's performance rating under Section 39.054.

(e) Provides that, with respect to the operation of the opportunity school district, any requirement in Chapter 551 (Open Meetings) or 552 (Public Information), Government Code, or another law that concerns open meetings or the availability of information that applies to a school district, the board of trustees of a school district, or public school students applies to the opportunity school district, the superintendent of the district, or students attending the district.

Sec. 11.403. IMMUNITY. Provides that the opportunity school district is immune from liability to the same extent as any other school district, and the district's employees and volunteers are immune from liability to the same extent as other school district employees and volunteers.

Sec. 11.404. MEMBERSHIP IN TEACHER RETIREMENT SYSTEM OF TEXAS BY OPPORTUNITY SCHOOL DISTRICT EMPLOYEES. (a) Requires an employee of the opportunity school district who qualifies for membership in the Teacher Retirement System of Texas to be covered under the system to the same extent a qualified employee of any other school district is covered.

(b) Provides that, for each employee of the opportunity school district covered under the system, the district is responsible for making any contribution that otherwise would be the legal responsibility of the district, and the state is responsible for making contributions to the same extent it would be legally responsible if the employee were that of another school district.

Sec. 11.405. FUNDING OF STUDENTS ENROLLED IN OPPORTUNITY SCHOOL DISTRICT. (a) Provides that the opportunity school district is entitled to receive for the education of students transferred to the district funding under Chapter 42 (Foundation School Program) equal to the amount of funding per student in weighted average daily attendance to which the prior system would be entitled under Chapter 42 if the prior system were a school district without a tier one local share for purposes of Section 42.253 (Distribution of Foundation School Fund).

(b) Provides that, in determining funding for the opportunity school district under Subsection (a), adjustments under Sections 42.102 (Cost of Education Adjustment), 42.103 (Small and Mid-Sized District Adjustment), 42.104 (Use of Small or Mid-Sized District Adjustment in Calculating Special Allotments), and 42.105 (Sparsity Adjustment) are based on the actual adjustment for the prior system. Provides that, in addition to the funding provided by Subsection (a), the opportunity school district is entitled to receive enrichment funding under Section 42.302 (Allotment) based on the actual amount for the prior system.

(c) Requires the commissioner, in determining funding for the opportunity school district under Subsection (a), to apply the same adjustment factor provided under Section 42.101 (Basic and Regular Program Allotments) to calculate the regular program allotment as for the prior system. Provides that this subsection expires September 1, 2017.

(d) Provides that the opportunity school district is entitled to funds that are available to other school districts from the Texas Education Agency (TEA) or the commissioner in the form of grants or other discretionary funding. Provides that the district is entitled to a pro rata share of all revenue to the prior system from TEA or the commissioner in the form of grants or other discretionary funding.

(e) Provides that the opportunity school district is entitled to share in the available school fund apportionment and other privileges in the same manner as the prior

system. Requires the district to report its student attendance and receive funding in the same manner as any other district.

(f) Provides that, for purposes of calculating the amount of the prior system's obligations and entitlements under Chapters 41 (Equalized Wealth Level) and 42, students transferred to the opportunity school district who would otherwise have attended the prior system are not counted in calculating the average daily attendance of the prior system.

(f-1) Provides that, for purposes of calculating the prior system's allotments under Chapter 46 (Assistance with Instructional Facilities and Payment of Existing Debt), students transferred to the opportunity school district who would otherwise have attended the prior system are counted in calculating the average daily attendance of the prior system.

(g) Requires the commissioner to adopt rules under this section.

Sec. 11.406. FACILITIES SUPPORT FOR STUDENTS ENROLLED IN OPPORTUNITY SCHOOL DISTRICT. Provides that the opportunity school district is entitled to use any school building and all facilities and property otherwise part of the campus and recognized as part of the facilities or assets of the campus before the campus was placed in the district. Provides that the district is entitled to access to such additional facilities as were typically available to the campus, its students, and faculty and staff before the campus was placed in the district. Prohibits such use from being restricted, except that the opportunity school district is responsible for and obligated to provide for routine maintenance and repair such that the facilities and property are maintained in as good an order as when the right of use was acquired by the district.

Sec. 11.407. OTHER SUPPORT FOR STUDENTS ENROLLED IN OPPORTUNITY SCHOOL DISTRICT. Authorizes the opportunity school district to require the prior system to provide school support or student support services for a campus transferred from the prior system's jurisdiction, including student transportation, school food service, or student assessment for special education eligibility that are compliant with all laws and regulations governing such services. Requires the opportunity school district to reimburse the actual cost of such services to the prior system. Requires the commissioner or the commissioner's designee, if a dispute arises between the opportunity school district and the prior system regarding the actual cost of services to be reimbursed, to determine the cost to be reimbursed.

Sec. 11.408. EXPENDITURES FOR SUPPORT OF STUDENTS ENROLLED IN OPPORTUNITY SCHOOL DISTRICT. Requires that funds received by the opportunity school district under Section 11.405 be used for the operation and administration of campuses transferred from prior systems to the district.

Sec. 11.409. OPPORTUNITY CHARTER SCHOOLS. (a) Authorizes the opportunity school district to design and grant campus charters under Section 12.0521(a)(1) (authorizing the board of trustees of a school district or the governing body of a home-rule school district, notwithstanding Section 12.052, in accordance with this subchapter and in the manner provided by this section, to grant a charter for a new district campus) to new campuses created by the district for the purpose of applying the district's experience and expertise in turning around persistently low-performing campuses. Requires the district to develop a statewide plan under this section to be submitted in the manner provided by Section 39.332 (Comprehensive Biennial Report).

(b) Provides that new charters under this section are eligible for funding under Section 11.405. Authorizes any administrative cost of charter-authorizing activities under this section to be paid from funds appropriated to TEA.

(c) Provides that an entity granted a charter under this section is not eligible for an additional charter under this section or an expansion amendment if it fails to

achieve and maintain an acceptable rating in its third year of operation at a campus.

SECTION 3. Amends Subchapter C, Chapter 12, Education Code, by adding Section 12.0523, as follows:

Sec. 12.0523. AUTHORIZATION FOR FAILING CAMPUS. (a) Authorizes the commissioner to grant a charter to an eligible entity as defined by Section 12.101(a) (authorizing the commissioner to grant a charter on the application of an eligible entity for an open-enrollment charter school to operate in a facility of a commercial or nonprofit entity, an eligible entity, or a school district, including a home-rule school district) in consultation with parents of students enrolled in the district and assigned to the attendance zone of the feeder pattern for the campus for the operation of a school campus with unacceptable performance under Chapter 39 for three consecutive school years if the commissioner determines that the campus has not instituted meaningful change as provided by Section 39.107(a) (requiring the commissioner to order the reconstitution of the campus after a campus has been identified as unacceptable for two consecutive school years).

(b) Provides that the name of the campus is authorized to be changed only on agreement by the holder of the charter under this section and the affected school district.

(c) Requires the commissioner to adopt rules necessary to implement this section.

SECTION 4. Amends Section 39.106(f), Education Code, as follows:

(f) Authorizes the commissioner, notwithstanding any other provision of this subchapter, if the commissioner determines that a campus for which an intervention is ordered under Subsection (a) (requiring the commissioner to assign a campus intervention team if a campus performance is below any standard under Section 39.054(e)) is not fully implementing the campus intervention team's recommendations or targeted improvement plan or updated plan, to order the reconstitution of the campus as provided by Section 39.107 (Reconstruction, Repurposing, Alternative Management, and Closure) or the removal of the campus to the opportunity school district established by Subchapter I (Texas Opportunity School District), Chapter 11 (School Districts).

SECTION 5. Amends the heading to Section 39.107, Education Code, to read as follows:

Sec. 39.107. RECONSTITUTION, REMOVAL, OR GRANT OF CHARTER;
REPURPOSING, ALTERNATIVE MANAGEMENT, AND CLOSURE.

SECTION 6. Amends Section 39.107, Education Code, by amending Subsections (a) and (a-1) and adding Subsections (a-2), (a-3), (a-4), (a-5), (a-6), and (k-1), as follows:

(a) Requires the commissioner, after a campus has been identified as unacceptable for two consecutive school years, to determine whether the district has instituted meaningful change, including reconstituting the staff or leadership at the campus. Authorizes the commissioner, if the commissioner determines that the campus has instituted meaningful change, to take action under Subsection (a-1) and reevaluate the campus under this subsection following the conclusion of the subsequent school year. Requires the commissioner, if the commissioner determines that the campus has not instituted meaningful change, to, based on the commissioner's determination of the best remedy for the campus:

(1) order the reconstitution of the campus under this section;

(2) order the removal of the campus to the opportunity school district as provided by Section 39.1071; or

(3) grant a charter to an eligible entity in the manner provided by Section 12.0523.

(a-1) Authorizes the commissioner, at the request of the board of trustees of the district, to annually for two consecutive years grant the district extraordinary powers to address performance deficiencies in accordance with the following limitations:

- (1) the commissioner may only grant powers specifically requested by the board;
- (2) the board must provide evidence that the power or powers requested will enable the district to overcome identified barriers to performance growth;
- (3) the commissioner may not grant a district powers or related waivers or exemptions not available to the opportunity school district; and
- (4) when the grant of an extraordinary power expires at the end of the first or second year in which it is operative, as determined by the commissioner, the campus will be removed to the opportunity school district if the commissioner determines that the campus has not achieved a performance growth level that enables the campus to achieve acceptable performance within four years.

(a-2) Requires the commissioner, in making a determination regarding action to be taken under this section, to seek and give considerable weight to recommendations from parents of students enrolled at the campus and members of the community who reside in the attendance zone of the campus.

(a-3) Creates this subsection from existing text. Requires a campus intervention team, in reconstituting a campus, with the involvement and advice of the school community partnership team, if applicable, to assist the campus in:

(1)-(4) Makes no changes.

(a-4) Requires the campus intervention team or a school community partnership team to develop information regarding campus performance and available options for improving campus performance that may be provided to interested parties on request.

(a-5) Authorizes the commissioner, notwithstanding Subsection (a), to refrain from taking action otherwise required under that subsection against a campus based on campus performance for the 2016-2017 school year and preceding school years. Prohibits the commissioner from ordering the reconstitution of the campus and authorizes the commissioner to only take other actions authorized by law, if the commissioner takes action. Provides that this subsection expires September 1, 2018.

(a-6) Authorizes the commissioner, in ordering the reconstitution of a campus or as an alternative to reconstitution, to order, if a school district requests the order, that:

- (1) except as expressly provided by other law, the reconstituted campus and its employees and students are subject to a provision of this title to the extent and in the same manner that such provision applies to an open-enrollment charter school and its employees and students under Subchapter D, Chapter 12; or
- (2) the reconstituted campus, by agreement between the school district and the opportunity school district, be transferred to or operated by the opportunity school district.

(k-1) Prohibits a managing entity from assuming management of a campus under this section if a member of the entity's management and leadership team provided any input to the commissioner regarding the commissioner's determination under Subsection (a).

SECTION 7. Amends Subchapter E, Chapter 39, Education Code, by adding Section 39.1071, as follows:

Sec. 39.1071. REMOVAL OF CAMPUS TO OPPORTUNITY SCHOOL DISTRICT. (a) Defines "prior system" in this section.

(b) Authorizes the commissioner, as provided by Section 39.107, to order the removal of the campus to the opportunity school district established by Subchapter I, Chapter 11, if action by the commissioner is required under Section 39.107.

(c) Authorizes the students assigned to attend the campus or the students who would have been eligible to attend the campus if the campus had remained in the prior system to choose to attend the campus under the jurisdiction of the opportunity school district or to exercise an option, made available by the prior system, to attend another campus remaining under the jurisdiction of the prior system.

(d) Authorizes only students who were eligible to attend a campus under the prior system or who would have been eligible to attend the campus if the campus had remained in the prior system to attend that campus at the opportunity school district. Provides that all such students are eligible to attend the campus notwithstanding any contrary provision of law.

(e) Requires that a campus subject to this section, effective on a date determined by the commissioner after consulting with the superintendent of the opportunity school district, be removed from the jurisdiction of the school district and transferred to the jurisdiction of the opportunity school district. Provides that, on that date, the school district or charter holder from which the campus was removed becomes the prior system.

(f) Requires that the removed campus be reorganized and reformed, as necessary, and operated by the opportunity school district.

(g) Requires that the superintendent of the opportunity school district decide which educators may be retained at that campus in the superintendent's sole discretion. Provides that, if the opportunity school district does not retain an educator, that educator may be assigned to another position by the prior system.

(h) Requires a certified teacher with regular and direct responsibility for providing classroom instruction to students who is employed at the removed campus by the prior system to be given priority consideration for employment in a comparable position by the opportunity school district's superintendent. Authorizes a person employed by the prior system at a removed campus to choose to remain in the employ of the prior system, and in that case, requires the prior system to retain and reassign the person consistent with the prior system's contractual obligations or policies regarding the retention and reassignment of employees.

(i) Requires that the prior system, for the purposes of any benefit or right requiring continuous service or based on years of service, grant a leave of absence to a person employed by the opportunity school district who was employed at a campus when the campus was removed under this section. Requires that the prior system consider the period during which the opportunity school district operates the campus to be service time with the prior system if the employee returns to the prior system's employment, but the prior system is not required to provide benefits during such leave.

(j) Requires that the benefits and privileges of any person employed in a campus by the opportunity school district who was not employed by the prior system at the time the campus was removed to the opportunity school district be those determined by the opportunity school district at the time of such employment in compliance with applicable law.

(k) Requires the opportunity school district to retain jurisdiction over any campus removed to the district until the commissioner, on the recommendation of the opportunity school district's superintendent, enters into an agreement with the prior system for return of the campus to the prior system.

(l) Requires the commissioner, when a campus in the opportunity school district achieves an acceptable level of performance under this chapter, to direct the opportunity school district to seek agreement for the return of the campus to the prior system. Requires that an agreement between the commissioner and the prior system for the return of the campus include:

(1) details for the operation of the campus by the prior system, including provisions for the continuation of the programs that have provided the basis for the academic opportunity by the students and any charter granted under Section 11.409;

(2) provisions for the employment status of all persons employed by the opportunity school district who were not employed by the prior system at the time the campus was removed to the opportunity school district; and

(3) provisions for the means and timetable for the campus's transition and return to the prior system.

(m) Requires the commissioner, if a campus has been operating under arrangements established by the opportunity school district for three years, or two years if the commissioner determines that the campus has not made meaningful progress during those two years, and the campus has failed during that period of three or two years, as applicable, to achieve an acceptable level of performance under this chapter, to:

(1) take the following action:

(A) direct the superintendent of the opportunity school district to organize a new campus of the opportunity school district for the purpose of educating the students attending the campus initially removed from the prior system under this section in the manner determined by the superintendent as most likely to bring the campus to an acceptable level of performance, which may be done by designing and granting a campus charter under Section 12.0521(a)(1), as provided by Section 11.409; or

(B) in accordance with a proposal for improving campus performance submitted by the prior system, return the campus to the prior system;

(2) if the campus remains in the jurisdiction of the opportunity school district, address the opportunity school district's failure to turn around the campus within three years in the next statewide plan under Section 11.409; and

(3) record these steps for annual reporting as required by Section 39.332.

(n) Provides that, for purposes of this subsection, "parent" has the meaning assigned by Section 12.051 (Definitions). Requires the commissioner, if the commissioner is presented, in the time and manner specified by commissioner rule, a written petition signed by the parents of a majority of the students enrolled at a campus to which Subsection (m) applies specifying an action described by Section 39.107(e)(1) (requiring the commissioner, if a campus is considered to have an unacceptable performance rating for three consecutive school years after

the campus is reconstituted under Subsection (a), subject to Subsection (e-1) or (e-2), to order repurposing of the campus under this section), (2) (requiring the commissioner, if a campus is considered to have an unacceptable performance rating for three consecutive school years after the campus is reconstituted under Subsection (a), subject to Subsection (e-1) or (e-2), alternative management of the campus under this section), or (3) (requiring the commissioner, if a campus is considered to have an unacceptable performance rating for three consecutive school years after the campus is reconstituted under Subsection (a), subject to Subsection (e-1) or (e-2), closure of the campus) that the parents request the commissioner, except as otherwise authorized by this section, to order the specific action requested. Provides that for purposes of this subsection, the signature of only one parent of a student is required.

(o) Authorizes the commissioner, if a campus governing body established by the opportunity school district presents to the commissioner, in the time and manner specified by commissioner rule, a written request that the commissioner order specific action described by Section 39.107(e)(1) or (2) other than the specific action requested in the parents' petition and a written explanation of the basis for the governing body's request, to order the action requested by the governing body.

(p) Authorizes the commissioner, if the commissioner determines that the basis for the unsatisfactory performance of a campus for two consecutive school years is limited to a specific condition that may be remedied with targeted technical assistance, to require the district to contract for the appropriate technical assistance instead of removal under this section.

(q) Requires the commissioner and the superintendent of the opportunity school district, on request, to provide information concerning the new operations and performance of a campus to the prior system.

(r) Prohibits the funding for a campus operated by the opportunity school district, notwithstanding any other provision of this code, from being not less than the funding of the other campuses in the prior system on a per student basis so that the opportunity school district receives at least the same funding the campus would otherwise have received, provided that the prior system receives the same amount per student in a given year.

(s) Authorizes a campus operated by the opportunity school district to change its name only on agreement of the prior system and the opportunity school district.

(t) Authorizes the commissioner to adopt rules necessary to implement this section.

SECTION 8. Amends Section 39.108, Education Code, as follows:

Sec. 39.108. ANNUAL REVIEW. (a) Creates this subsection from existing text. Requires the commissioner to review annually the performance of a district or campus subject to this subchapter to determine the appropriate actions to be implemented under this subchapter. Requires the commissioner to review at least annually the performance of a district for which the accreditation status or rating has been lowered due to insufficient student performance and may not raise the accreditation status or rating until the district has demonstrated improved student performance. Requires the commissioner, if the review reveals a lack of improvement, to increase the level of state intervention and sanction unless the commissioner finds good cause for maintaining the current status.

(b) Requires that the review required by Subsection (a) form the basis of the reporting required by Section 39.332(b)(24).

SECTION 9. Amends Section 39.332(b), Education Code, by adding Subdivision (24), to require that the report contain a listing and description of the status of each campus under the jurisdiction of the opportunity school district and a summary of the reforms implemented and progress of the campus.

SECTION 10. Provides that this Act applies beginning with the 2016-2017 school year.

SECTION 11. Effective date: upon passage or September 1, 2015.