**Representative** **Desk**

| Pre-Filed Amendment Floor Report - Sunday, May 23, 2021 | | |
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| **Author** | **Analysis** | **Recommendation** |
| **SB 1365 Pre-Filed Amendment - Sunday, May 23, 2021**<br>Author: Bettencourt<br>Sponsor: Huberty \| Dutton \| King, Ken \| Murphy \| Oliverson | | |
| **Huberty**<br>871394 | The original SB 1365 stemmed from a court ruling by the Third District Court of Appeals that stopped the commissioner from taking over the Houston Independent School District based on one school campus performance rating. After many shareholders voiced serious concerns about the numerous provisions of SB 1365, consideration of the bill was postponed as it underwent significant revisions, but this amendment, being offered as a complete floor substitute, still fails to address the root problems of the bill.<br><br>**Expanding the Power of an Appointed Commissioner**<br>One of the major concerns with SB 1365 that the substitute does not adequately address is the expansion of the education commissioner's power to take over a local school district and remove the locally elected school board and replace it with an appointed board. The amendment authorizes the commissioner to conduct a "special investigation" for any reason he deems appropriate and based on the finding of the investigation the commissioner would determine the ruling and the course of action to be taken towards the school district or campus. SB 1365 codified that the commissioner's ruling was final and could not be appealed. This provision, coupled with its lack of transparency in allowing the commissioner to launch an investigation without providing specific legal reasons for his action and lack of recourse for local school districts, would create an egregious imbalance of power between an appointed state official and locally elected governance. Instead of enacting sound policy, the bill is an apparent attempt to circumvent the court ruling<br><br>The floor substitute attempts to address the aforementioned concern by amending the bill with a due process framework for districts threatened by state takeover that is not currently outlined in the code. However, it is insufficient. The amendment instructs an investigation agency appointed by the commissioner to send a report of preliminary findings to the board of trustees of a school district under investigation. The school board has 30 days to accept or respond to the report. The investigation agency must consider the board's response before issuing their final report. Before the commissioner determines to order sanctions or interventions, a school board can request an informal hearing, for this purpose the informal hearing is not a contested case. Upon the final report in which the investigation agency recommends a sanction - which could be the appointment of a board of managers, alternative management, or closure of a school - a school board would have 15 days after | **Unfavorable**<br>Evaluated by:<br>Phuong Nguyen<br>(832)302-9940<br>Phuong@TexasLSG.org |

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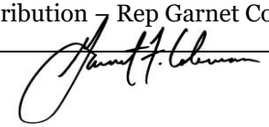

receiving the report to request a hearing that could be contested. Although this provision gives the school districts some semblance of due process, the amendment limits the scope of court review. It restricts courts from reversing or revoking a decision issued by the commissioner based on a procedural error made during the investigation by the commissioner or any person appointed by the commissioner unless the court determined the error or irregularity is likely to cause an erroneous decision by the commissioner, which is an almost impossible standard to meet.

In addition, the substitute allows the commissioner to **"order any intervention or sanctions described by Chapter 39 A without regard to any academic, financial, accreditation, or other conditions required by that chapter to initiate the intervention or sanction have been met."** The extremely broad language of this provision is so broad that it could effectively give the commissioner power to act with little regard to the limited due process framework outlined in the bill.

**Raising the High Stakes of the Test-Driven A-F Rating System**

Another concern with SB 1365 involves changes made to raise the high stakes of standardized testing in the public school accountability system. Under SB 1365, a district or campus that receives two "D" ratings needs improvement ratings would equal an "F" unacceptable rating and require sanctions. The substitute extends the rule to allow three "Ds" to be the equivalent of an "F" rating. For the 2021-2022 pandemic school year, schools can only get an A-C rating with lower performance campuses given a "not rated" for the year. The substitute allows a reset for campuses considered failing if they received a C or higher in the 2021-2022 school year.

Although these are positive steps related to problems posed by the pandemic, it does not address the underlying problem. Codifying the commissioner's 2021-2022 rule into law does nothing to address the flawed logic of doubling down on a stigmatizing A-F system based on high stakes testing. While the pause is much needed following an uncertain and traumatic pandemic year, there are still concerns that campuses will not show improvement on a standardized test even after school resumes post-COVID-19. The reset in this provision does nothing to help campuses that are struggling the most to catch up in succeeding years, when students could use more evidence-based practices such as community schools, Social-Emotional Learning, and directing more resources to our most vulnerable populations instead of punitive state takeover threats.

Although this substitute offers some "around the edges" improvements over the previous version of SB 1365, it fails to address the core issues at the heart of a punitive bill driven by a flawed accountability system driven by high stakes standardized testing. Other concerns with the substitute include the length of the conservatorship when a school is sanctioned, and in the process of a hearing, the limitations of what evidence the courts can review. For example, the length of conservatorship is established by a provision that allows the conservatorship to remain until the commissioner determines that the conservatorship is no longer needed, which is effectively no statutory limit at all. The substitute also prohibits the courts from gathering new evidence and restricts the testimony and evidence reviewed to those submitted and reviewed during the informal hearing, evidence from reports, and responses reviewed by the commissioner. A critical part of due process is allowing the courts to review evidence not considered by the commissioner.

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