



Texas Association of Community Schools

1011 San Jacinto Blvd., Ste 204, Austin, Texas 78701-2431
512/440-8227 • Fax: 512/442-6705 • WEB: www.tacsnet.org

Barry Haenisch, Executive Director



March 31, 2017

TACS LEGISLATIVE UPDATE

We are a couple of weeks past the halfway mark of the session and there is palpable pressure to move legislation forward in order to give it a chance of passing. The 85th legislative session will end on May 29th. We hope that date arrives before too many bad bills are passed.

Earlier this week, The Texas Senate passed its budget bill, which further forces the costs of education (K-12 and higher ed) onto the backs of taxpayers. Senator Nelson heads the Senate Finance Committee that wrote the budget bill. SB 1 strips \$1.8 billion in state funds for education but uses local property taxes and other revenue to make up the difference. To quote Senator Nelson, "Under our formula, the local share of education funding fills up the bucket first, as local property tax collections go up, the state share goes down. But in the aggregate, funding for education is going up every year." This ignores the logical expectation that funding would increase to meet the needs of the additional 80,000 students entering Texas public schools each year. SB 1 was sent over to the House where the House Appropriations Committee substituted it with the House version of the budget, which will be heard in the House next Thursday, April 6th.

Also on Tuesday, Representative Huberty's school finance bill (HB 21) passed out of committee and would increase the state share of funding for public education to the tune of \$1.8 billion. He has worked closely with the House Appropriations committee to ensure this expenditure is provided for in the House budget.

At the time of this writing, the Senate is deep in discussion of SB 3, the voucher bill. The Senate Education Committee began meeting at 9am on Thursday, and had only gotten part way through testimony on the first bill when they broke for the floor session that could go on for a long time as they debate vouchers. In the interest of getting you this legislative update, we will give you a full update on the Senate Education Committee hearing and the Senate voucher debate in another missive.

House Public Education Subcommittee on Educator Quality

Monday afternoon, Representative Ken King convened the subcommittee on educator quality to hear several bills. Four bills addressed improper relationships between students and teachers, and two others focused on teacher preparation.

Inappropriate Student-Teacher Relationships

Both Representative Jason Isaac and Representative Tony Dale introduced bills designed to stop the practice termed "passing the trash." I've avoided using that term, but it is important to note that is what these bills are being called. By giving TEA additional authority and creating criminal penalties for superintendents and principals who do not report alleged inappropriate relationships between school employees and students, the legislature is aiming to crack down on what is perceived as a growing problem. It is important not to create a "witch hunt" (that TEA seems to want) while ridding the education system of bad actors that aim to harm our students. Everyone supports the latter, but bills must clearly delineate requirements for superintendents and principals given the harsh penalties for failing to meet

reporting requirements. Some bills go farther than others in creating a “do not hire” registry, and there is bipartisan concern (not from all, but many) that innocent people are not sacrificed in the fervor to purge the system of evil.

HB 1403 (Jason Isaac) Representative Isaac explained that this bill aims to stop teachers who have been accused of inappropriate relationships with students from resigning quietly and moving on to another district. His bill requires superintendents to notify the state of any such allegations involving certified or non-certified employees in public or private schools.

HB 1799 (Tony Dale) This bill is similar to Rep. Isaac’s (and the others listed here) but goes farther in creating a “do not hire” registry. The committee discussed concerns about teachers getting due process before being placed on such a list, and whether teachers who had undergone “deferred adjudication” should be similarly penalized if there was no finding of guilt. All of these bills criminalize a failure to report such allegations and give more power to the State Board of Educator Certification (SBEC). Lonnie Hollingsworth, General Counsel of Texas Classroom Teachers Association (TCTA) testified “on” the bill regarding his concern over the potential lack of due process given those accused. Doug Phillips, Director of Investigations at TEA, who has been a driving force behind these bills, acknowledged that the civil law requirement for putting someone on the sex offender list has a lower threshold than criminal law. Public Ed advocates supported the bills’ purpose of stopping inappropriate relationships, but want to be sure adopted language is very clear about what is expected in terms of reporting.

HB 3769 (Ken King) and SB 7 (Bettencourt) Rep. King explained that HB 3769 is the same as Senator Bettencourt’s SB 7 in its original form. Senate Bill 7 was voted out of the Senate with a 31-0 vote and Rep. King chose to hear these two bills at once.

SB 7:

- a. Expands TEA investigative authority from intra-district to inter-district.
- b. Includes certified and non-certified staff in public and private schools.
- c. Expands reporting requirements to include principals in addition to superintendents and creates criminal penalties for failing to report
- d. Includes training requirements for teachers and superintendents to include information about inappropriate relationships and reporting requirements.
- e. Automatically revokes teaching certificates for offenders who get deferred adjudication for educator misconduct for any offense that would require him/her to register as a sex offender.
- f. Revokes the certification of an educator/administrator who supports someone’s application for employment elsewhere if he/she knew of that person’s misconduct.
- g. TEA is authorized to conduct special investigations when a district fails to produce evidence or report an investigation.

Several amendments to SB 7 were adopted on the Senate floor.

- a. Material on inappropriate relationships must be added to educator prep courses. (Bettencourt)
- b. Requires involvement of school board trustees in the process (L. Taylor)
- c. If found guilty of a felony through an inappropriate relationship, the educator’s pension will be revoked. (Van Taylor)
- d. If a conviction is overturned, the lost pension will be reinstated. (West)
- e. Clarifies how to notify local administration about an incident and deletes the vague language “should have known” for when an administrator needs to report. (West)
- f. If complaint is found groundless, the record is confidential. (Huffines)

Following a discussion of the good and bad amendments, including testimony from Colby Nichols of Powell & Leon about the potential loss of attorney-client privilege under this bill, Representative King said that he has no sympathy for abusers, but doesn’t want to create collateral damage. He committed to making it a better bill before they take a vote on it. The bills were left pending in committee.

HB 2209 (Mary Gonzales) This bill requires educator certification programs and continuing education to

train teachers in “universal design for learning,” which would expose all teachers (not just special ed teachers) to methods of teaching kids with disabilities, GT, and other learning differences. Given the successful inclusion programs in Texas public schools, Rep. Gonzales and many parents would like for all teachers to have the skills to benefit both special needs and non-special needs students. Several parents of students with special needs testified for the bill, and associations varied in support or opposition. Janna Lilly from the Texas Council of Administrators of Special Education (TCASE) testified against the bill but expressed interest in supporting it if new language is inserted into the committee substitute that would give discretion to the educator or the district to decide whether to provide the additional staff development. TCASE supports the inclusion of this training in higher education and certification requirements. Rep. Gonzales’s office is working on a committee substitute that would incorporate these requested changes.

HB 1918 (Ryan Guillen) This bill would provide grants for professional development training for public education teachers who are teaching new subjects for which they are not certified. Rep. Guillen expressed his hope that this would improve teacher retention and quality of instruction. There is a high fiscal note and no appropriations rider, so its likelihood of passage may be low.

House Public Education Committee

Chairman Huberty convened the meeting Tuesday, March 28th at 8am. Perhaps the early hour prompted his decision to wear a salmon-red jacket. There was no nodding off with him sitting brightly at the helm of the dais. He had another ambitious agenda of 20 bills, including HB 21, his school finance bill, which was voted out of committee! The bulk of the bills addressed charters, charter funding, and facilities funding.

Charter funding and other charter bills

The bills in this category took one of two approaches. Some would increase charter funding and others would reduce it. Charter advocates resoundingly supported increased funding for charters and advocates for traditional public schools supported bills that would hold charters to similar funding patterns as districts where they operate.

HB 1039 (Gonzales) This bill would give charters the same per student funding that traditional public schools get in that same district. Currently they get the state average, which is often higher than the district average where charters are located. This bill would put \$150 million back into traditional ISDs.

HB 1023 (Simmons) This bill would give the commissioner of education authority to grant more than one charter for an open enrollment charter school if the new charter has a “distinct” purpose or student population. Currently, if an open-enrollment charter has a charter to operate, it can’t also get another charter for a specific different purpose. Legislators expressed concern that this would be used to move kids (whose test scores might put the charter at risk of being closed) to another campus to avoid including them in their accountability rating. Public schools are responsible for all kids in a district and several committee members (especially Vice Chair Bernal) were leery of how this legislation could be used by charters to skirt the accountability system.

HB 171 (Dutton) The bill as originally filed would enable the commissioner of education to adopt rules and procedures for identifying underutilized school district facilities to facilitate their lease or purchase by open-enrollment charter schools. Representative Dutton said that he has a committee substitute, which would give ISDs the power to decide whether their facilities were underutilized, rather than giving that power to the commissioner. Quite a few public education associations and school districts testified against the original bill and reserved judgment on the committee substitute until they can see it. David Dunn, Executive Director of the Texas Charter School Association, strongly supported the original bill.

HB 2337 (Dutton) This bill would provide charters with facilities funding. The original fiscal note was \$195.3 million in fiscal year 2018 and \$215.6 million in fiscal year 2019. Naturally this generated quite a bit of support from charters and opposition from public education advocates concerned about already limited funds. A committee substitute would reduce the fiscal note such that it would fit into the \$100

million allocated for building new charter facilities in the proposed house budget. This bill generated a lengthy debate between Ted Malina-Raab of Texas AFT and Representative Dutton about why traditional public schools and charters compete. I found Ted's arguments about how traditional public schools are really the open enrollment campuses that take any and all kids at any time, and can't put them on a waiting list even if there are more kids in the room than there are desks, chairs, or other resources. It was a compelling (yet lengthy) philosophical discussion!

HB 467 (Murphy) This bill would allow for increased access for charter schools to the permanent school fund bond guarantee. It would reduce the cost of borrowing for charter schools that qualify. Supporters of the bill suggested that charters deserve the same facilities funding as traditional public schools. Opponents expressed concern given that charters already have a funding advantage.

HB 1269 (Villalba) This bill would create two new Foundation School Program funding sources for charter schools and would cap individual charter school FSP entitlement. The committee substitute limits facilities funding to high performing charters. Ann Smisko, Deputy Director of Policy and Programs for Raise Your Hand Texas testified that most charter schools operate in big cities where the charters are getting the state average ADA which is higher than those district's ADA, so charters are getting an unfair advantage while they claim to be funded at a lower rate than traditional public schools.

HB 480 (Burkett) This bill would authorize the education commissioner to grant open-enrollment charters specifically for the provision of half-day pre-K programs. The fiscal note of \$40 million per biennium was discussed and TEA explained that they would expect a large influx of students in addition to currently existing private pre-K programs applying to become charters to receive state funding.

HB 1560 (Guillen) This bill would remove an obsolete reference to open-enrollment charters and SBOE in the education code.

HB 2649 (Capriglione) This bill would close the loophole that allows charters to lack the transparency required of ISDs regarding open meetings. Charters would have to host school board meetings in the city where the school is located.

HB 852 (Parker) This bill would remove the limit on the number of students the Goodwill Excel Center can educate. This charter program, based in Austin, was created as a pilot to serve adults who have aged out of the public education system (up to age 50) in getting a high school diploma and moving them into the world of work. Passionate testimony from formerly homeless, imprisoned, at-risk single mothers attested to the success of the program for the 205 students it has graduated to date. Two young women who had been transformed by the program testified and received hearty applause for their brave and powerful testimony.

General Funding bills

HB 2051 (Huberty) Increases the New Instructional Allotment Fund (NIFA) from \$250 to \$1000 per ADA. Representative Huberty introduced a committee substitute that would allow these funds to be used for remodeling in addition to new facilities building. Charters could also access these funds for remodeling an existing structure. There is no fiscal note as only 30% of NIFA funds were spent last biennium and this money is in the house budget. Fast growth schools strongly support this bill.

HB 1081 (Aravalo) This bill would not increase the ADA cap on NIFA funds, but would expand them to be used on renovating buildings in addition to new buildings. Charter schools testified in favor of this bill but Monty Exter of the Association of Texas Professional Educators (ATPE) testified "on" the bill because of the lack of specificity of the language on leased buildings.

HB 481 (King) Prohibits TEA from taking back money from a district that had been allocated more than 7 years before, if it was the result of a change in statute.

HB 1059 (Murphy) This bill would authorize the commissioner of education to create a procedure for re-attaching property to a district that had been previously detached. Detachment of property for taxation purposes occurs when a district opts not to pay recapture when they enter Chapter 41 status. However, that transfer of property is permanent according to current law. If a district is later at a lower wealth rate that would move them back into Chapter 42 status, there is no way to return the property and its tax revenue to the original district. Houston ISD supports the bill, although it is hoping the May 6th vote reverses the previous vote that sent them into this predicament. With revised and reduced recapture figures, HISD would prefer recapture to permanently losing tax revenue to other districts. Houston witnesses strongly support this bill, but some others testified that the receiving district is subject to the whim of the other district and that this could provide for ongoing instability for districts that receive and then lose portions of their tax base.

HB 2340 (Huberty) This bill would require ISDs to keep 90 days of expenditures in their fund balance. Huberty noted that ISDs statewide have \$20 billion in fund balances. Several witnesses, including Barry Haenisch, Executive Director of TACS, testified that districts have unique needs that drive how much money they keep in their fund balance. He gave the example of one district that will pay more out in recapture than it will take in from taxes next year. This would require more than a 100% fund balance! Witnesses explained that the fund balance is a changing account used to pay expenses and the amount in it will vary depending on when you look at it. There was a common request for local control on this issue.

Other bills

HB 1669 (Tracy King) Removes parent grievances about extracurricular activities from the TEA complaint process. He explained that that process is designed for academic issues, and athletics and cheerleading issues are to be heard at the district level. In addition, if a case is found "frivolous," the district's legal fees can be shifted to the parent.

HB 2611 (VanDeaver) Gives school districts additional options that are already available to cities and counties for selling district property. The bill would allow the district to hire a broker and get the highest value for the property.

HB 3722 (King) This bill would give additional funding for school districts that annex unacceptable school districts that have been closed by the commissioner for unacceptable academic performance. This bill would help Texas City ISD (a Chapter 41 district), which absorbed LaMarque ISD after it was closed by the commissioner of education.

All of the bills were left pending.

During this meeting, the following 8 bills were voted out of committee.

HB 21 (Huberty) Representative Huberty explained the latest version of his school finance bill and listed its many benefits:

- a. Simplifies and updates funding for transportation (rolls into formula \$125 per student)
- b. Adds a weight for dyslexic students of .1 for a max of 5% of students
- c. Expands CTE weight to include technology and grade 8
- d. Increases the bilingual weight from .1 to .11
- e. Rolls the high school allotment into the basic allotment
- f. Rolls professional development into the basic allotment
- g. Creates a 2-year hardship grant program for districts that lose money from ASATR and changes from HB 21. The formula for distribution of grants is visible in the bill.

All of the committee members voted in support of the bill except for Morgan Meyer, who said that he had to vote against HB 21 since it does not increase funding for Highland Park.

HB 1291 (Geren) This bill requires SBOE and school districts to ensure that the curriculum emphasizes the principles underlying the creation of the United States. Rep. Bohac introduced a committee substitute that removes the requirement that multiple viewpoints be provided in order to decrease the fiscal note.

HB 657 (Bernal) This bill moves the requirement for convening an ARD committee to no later than 5 days after the first time a special ed student fails a STAAR exam. This allows the committee to decide whether the student needs to continue to retake the exam.

HB 1469 (Bailes) This bill allows specific charters in Walker County to employ teachers without a baccalaureate degree to teach noncore academic courses if they have demonstrated subject matter expertise.

HB 2263 (Gooden) This bill would alter monitoring responsibilities for campus intervention teams when a school is no longer IR.

HB 789 (Meyer) This bill allows Highland Park ISD to raise the cut score for credit by exam from 80% to 90%.

HB 1731 (King) This bill excludes students who leave a residential facility and do not enroll in an ISD from counting as dropouts for the ISD.

HB 3075 (Huberty) This bill excludes students detained at a county detention facility from being counted as dropouts for purposes of accountability. (Extends this public school exemption to charter schools.)

Representative Huberty gave a preview of next Tuesday's hearing. He described the bills to be heard next Tuesday, April 4th as a smorgasbord of special ed and health and safety bills.

*****Update: Late Thursday afternoon, the Senate voted 18-13 to pass a revised and amended SB 3. Thanks to Republican Senators Seliger, Nichols, and Huffman for joining all Democratic Senators (except for Eddie Lucio) for voting "no" on this bad legislation. We will give you details on the version of SB 3 that passed next week. SB 3 will now move on to the House. *****

I apologize for the length of this and previous legislative updates. Let's blame Representative Huberty for hearing so many bills at each hearing! Thanks for your interest and continued support for the 5.3 million students in Texas public schools.

Regards,

Laura Yeager
TACS Governmental Relations