Summary of Select Legislation

87th Session (2\textsuperscript{nd} Called Session)

September 7, 2021
Limiting the Social Studies Curriculum (SB 3)

SB 3 (Hughes/Huberty/Toth) relating to civics training programs for certain public school social studies teachers and principals, parental access to certain learning management systems, and certain curriculum in public schools, including certain instructional requirements and prohibitions.¹

SB 3 revises requirements for civics and social studies curriculum and instruction. It prohibits for all grades and courses inculcation in certain concepts and prohibits the awarding of credit for certain student activities. The bill creates a civics training program for teachers and administrators. Provisions added by HB 3979 during the regular session are repealed.

The bill provides that the State Board of Education (SBOE) may not use such repeal of documents, speeches, historical figures, and other knowledge and skills from specific statutory reference in Section 28.002(h-2), Education Code, as added by H.B. 3979, Acts of the 87ᵗʰ Legislature, Regular Session, as a reason for the removal or non-inclusion of those documents, speeches, historical figures, or other knowledge and skills from the essential knowledge and skills for the social studies curriculum. [SECTION 9]

Social studies. The bill requires the SBOE to adopt essential knowledge and skills for the social studies curriculum for each grade level from kindergarten through grade 12 that develop each student's civic knowledge, including an understanding of:

- the fundamental moral, political, entrepreneurial, and intellectual foundations of the American experiment in self-government;
- the history, qualities, traditions, and features of civic engagement in the United States;
- the structure, function, and processes of government institutions at the federal, state, and local levels; and
- the founding documents of the United States.

The essential knowledge and skills would have to develop each student's ability to:

- analyze and determine the reliability of information sources;
- formulate and articulate reasoned positions;
- understand the manner in which local, state, and federal government works and operates through the use of simulations and models of governmental and democratic processes;
- actively listen and engage in civil discourse, including discourse with those with different viewpoints; and
participate as a citizen in a constitutional democracy by voting.

The essential knowledge and skills would have to develop each student's appreciation of:

- the importance and responsibility of participating in civic life;
- a commitment to the United States and its form of government, and
- a commitment to free speech and civil discourse.

The Texas Education Agency (TEA) would have to ensure that each district and charter school teaches civics education as part of the district’s social studies curriculum in a manner consistent with the bill's requirements. Nothing in the bill's curriculum requirements could be construed as limiting the teaching of or instruction in the essential knowledge and skills. [SECTION 3, Sec. 28.0021(h-7)(h-8)]

SBOE would have to review and revise, as needed, the essential knowledge and skills of the social studies curriculum not later than December 31, 2022. [SECTION 8]

**Instructional requirements, prohibitions.** SB 3 includes certain instructional requirements and prohibitions for any course or subject, including an innovative course, for a grade level from kindergarten through grade 12.

**Current events.** A teacher could not be compelled to discuss a particular current event or widely debated and currently controversial issue of public policy or social affairs. A teacher who chooses to discuss such a topic shall explore that topic objectively and in a manner free from political bias. [SECTION 5, Sec. 28.0022(a)(1) and (2)]

**Student activities.** A school district, charter school, or teacher could not require, make part of a course, or award a grade or course credit, including extra credit, for a student's:

- work for, affiliation with, or service learning in association with any organization engaged in lobbying for legislation at the federal, state, or local level if the student’s duties involve directly or indirectly attempting to influence social or public policy or the outcome of legislation;
- social policy advocacy or public policy advocacy;
- political activism, lobbying, or efforts to persuade members of the legislative or executive branch at the federal, state, or local level to take specific actions by direct communication; or
- participation in any internship, practicum, or similar activity involving social policy advocacy or public policy advocacy. [SECTION 5, Sec. 28.0022(a)(3)]

Those prohibitions would not apply to a student's participation in certain community charitable projects or an internship or practicum for which the student received course credit under a
career and technology education (CTE) program or the P-TECH program and that did not involve the student directly engaging in lobbying, social policy advocacy, or public policy advocacy. The prohibitions would not apply to a program that prepares the student for participation and leadership in this country’s democratic process at the federal, state, or local level through the simulation of a governmental process, including the development of public policy. [SECTION 5, Sec. 28.0022(b)(1), (2), and (3)]

**Instructional prohibitions.** A teacher, administrator, or other employee of a state agency, school district, or charter school may not require or make part of a course inculcation in the concept that:

- one race or sex is inherently superior to another race or sex;
- an individual, by virtue of the individual's race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- an individual should be discriminated against or receive adverse treatment solely or partly because of the individual's race or sex;
- an individual's moral character, standing, or worth is necessarily determined by the individual's race or sex;
- an individual, by virtue of the individual's race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;
- meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race to oppress members of another race;
- the advent of slavery in the territory that is now the United States constituted the true founding of the United States; or
- with respect to their relationship to American values, slavery and racism are anything other than deviations from, betrayals of, or failures to live up to the authentic founding principles of the United States, which include liberty and equality. [SECTION 5, Sec. 28.0022(a)(4)(A)]

A teacher, administrator, or other employee of a state agency, school district, or charter school could not teach, instruct, or train any administrator, teacher, or staff member of a state agency, school district, or charter school to adopt the listed concepts or require an understanding of the 1619 Project. [SECTION 5, Sec. 28.0022(a)(4)(B) and (C)]

A school district or charter school could not implement, interpret, or enforce any rule in a manner that would result in the punishment of a student for discussing the concepts addressed in the bill or have a chilling effect on student discussions involving those concepts. Nothing in the bill's provisions could be construed as limiting the teaching of or instruction in the essential knowledge and skills. [SECTION 5, Sec. 28.002(d) and (e)]
A teacher is not prohibited from directing a classroom activity that involves students communicating with an elected official so long as the district, school, or teacher does not influence the content of a student's communication. [SECTION 5, Sec. 28.002(g)]

**Private funding.** A state agency, school district, or charter school may not accept private funding for the purpose of developing a curriculum, purchasing or selecting curriculum materials, or providing teacher training or professional development related to the bill's instructional requirements and prohibitions. [SECTION 5, Sec. 28.002(c)]

**Instructional materials.** Each school district and charter school that used a learning management system or any online learning portal to assign, distribute, present, or make available instructional materials to students would have to provide login credentials to the system or portal to each student's parent. [SECTION 2, Sec. 26.006(e)]

**Civics training.** To facilitate the teaching of curriculum consistent with the bill’s requirements, the education commissioner would have to develop and make available civics training programs for teachers and administrators. The requirements of the civics training program would have to include training in:

- the essential knowledge and skills for the social studies curriculum related to the civic knowledge requirements of SB 3;
- guided classroom discussion of current events, as appropriate for the grade level and consistent with the bill's restrictions on prohibited concepts;
- classroom simulations and models of governmental and democratic processes consistent with the requirements and restrictions in the bill;
- media literacy, including instruction on verifying information and sources, identifying and responding to logical fallacies, and identifying propaganda, as appropriate for the grade level and consistent with the bill's restrictions; and
- strategies for incorporating civics instruction into subject areas other than social studies. [SECTION 1, Sec. 21.4555(a), (b)]

**Civics training advisory board.** The commissioner shall appoint a nine-member civics training program advisory board which must be comprised of current or former educators with 10 years or more of experience. [SECTION 1, Sec. 21.4556]

The education commissioner by rule shall establish the grade levels at which a teacher provided instruction to be eligible to participate in a civics training program. The program would have to be reviewed annually and approved by SBOE. Each school district and charter school would have to have at least one teacher and one principal or campus instructional leader who had attended a civics training program. TEA would have to provide assistance in complying with the
training requirement. A teacher could receive a stipend for the training. [SECTION 1, Sec. 21.4555(c), (e), and (f)].

The commissioner could delay implementation of the training requirements to a school year not later than the 2025-2026 school year if the revision of the essential knowledge and skills for the social studies curriculum or the availability of civics training programs did not occur in a manner that reasonably afforded public schools the ability to comply with the training by an earlier school year. [SECTION 1, Sec. 21.4555(g)]

Nothing in the training program requirements could be construed as limiting the teaching of or instruction in the essential knowledge and skills. [SECTION 5, Sec. 28.0022(e)]

The bill does not create a private cause of action against teachers, administrators, or other employees of a school district. Districts may take appropriate action involving the employment of any teacher, administrator, or other employee based on the individual’s compliance with state and federal laws and district policies. [SECTION 5, Sec. 28.0022(f)]

The bill would apply beginning with the 2022-2023 school year. It includes a severability clause stating that if any provision of the bill or its application to any person or circumstance were held invalid, the invalidity would not affect other provisions or applications that could be given effect without the invalid provision or application. [SECTION 10]

The bill would take effect on the first day that occurred after August 31, 2021, and is on or after the earliest date on which it could take effect, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect 91 days after the last day of the legislative session.

The bill passed the House by a vote of 84-41-1 (less than 2/3 of the House); and the Senate concurred in the House amendments by a vote of 18-13 (less than 2/3 of the Senate)

Instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking

SB 9 (Huffman/Dutton), known as the Christine Blubaugh Act, would add to the duties of a school district's local school health advisory council (SHAC) to include recommending appropriate grade levels and curriculum for instruction on child abuse, family violence, dating violence, and sex trafficking.

Instructional materials. A school district would have to make all curriculum materials used for instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking available to parents under existing statutory provisions that allow parents to review materials. If a district purchased copyrighted curriculum materials for use in the instruction, it would have to ensure that the purchase agreement provided a means by which a parent could
purchase a copy of the materials from the publisher at a price that did not exceed the price per unit paid by the district for the materials.

**School board duties.** A district's board of trustees would have to select the course materials and instruction relating to the prevention of child abuse, family violence, dating violence, and sex trafficking with the advice of its local SHAC. The board would have to adopt a policy establishing a process to adopt the curriculum materials that required:

- the board to adopt a resolution convening the SHAC for the purpose of making recommendations on the curriculum materials;
- the SHAC to hold at least two public meetings on the curriculum materials before adopting recommendations and provide the recommendations to the board at a public meeting of the board; and
- the board, after receipt of the SHAC recommendations, to take action on the adoption of the recommendations by a record vote at a public meeting.

Before adopting curriculum materials for the instruction, the board would have to ensure that the materials were based on the advice of the SHAC, suitable for the intended subject and grade level, do not conflict with the TEKS developed by the SBOE, and had been reviewed by academic experts in the intended subject and grade level. The board would have to determine the specific content of the instruction.

**Parental notice.** Before each school year, a district would have to provide written notice to a parent of each student of the board's decision on whether the district would provide the instruction. If instruction was to be provided, the notice would have to include a statement informing the parent of the requirements under state law regarding the instruction and a detailed description of the content of the instruction.

The notice would have to include a statement of the parent's right to:

- review or purchase a copy of the curriculum materials;
- remove the student from any part of the instruction without subjecting the student to any disciplinary action, academic penalty, or other sanction imposed by the district or the student's school; and
- use the statutory grievance procedure or appeals process for appeals of school board actions to the education commissioner.

The notice also would have to include a statement that any curriculum materials in the public domain used for the instruction had to be posted on the district's website address at which the curriculum materials were located, and information describing the opportunities for parental involvement in the development of the curriculum to be used in the instruction, including information on the local SHAC.
A district would have to obtain the written consent of a student's parent before providing the instruction. The written consent could not be included with any other notification or request for written consent provided to the parent and would have to be provided to the parent not later than the 14th day before the date on which the instruction began.

**Dating violence policy.** SB 9 would add to the requirements in the Education Code on a school district's dating violence policy. The policy would have to include a clear statement that dating violence was not tolerated at school and the reporting procedures and guidelines for students who were victims of dating violence. To the extent possible, a school district would have to make available to students age-appropriate educational materials that included information on the dangers of dating violence and resources to students seeking help.

Districts are required to develop procedures for immediately notifying parents of students who are alleged victims or perpetrators of dating violence.

The bill would apply beginning with the 2022-2023 school year. Requirements related to the purchase of copyrighted curriculum materials would apply only to a purchase agreement entered into, amended, or renewed on or after the bill's effective date.

The bill would take effect on the first day that occurred after August 31, 2021, and is on or after the earliest date on which it could take effect, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect 91 days after the last day of the legislative session.

*The bill passed the House 94-26-1; the Senate concurred by a vote of 31-0.*

**Virtual Education (SB 15)**

**SB 15** (Taylor/Keith Bell) relating to virtual and off-campus electronic instruction at a public school, the satisfaction of teacher certification requirements through an internship teaching certain virtual courses, and the allotment for certain special-purpose school districts under the Foundation School Program.

SB 15 would authorize a school district or open-enrollment charter school to establish a local remote learning program to offer virtual courses outside the state virtual school network established under Education Code ch. 30A. The bill would require students enrolled in such courses to be counted toward the schools' average daily attendance in the same manner as other students. The bill would apply beginning with the 2021-2022 school year and expire September 1, 2023.  

**Local remote learning program.** SB 15 would authorize a school district assigned an overall performance rating of C or higher for the preceding school year or the most recent school year

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1 Analysis adapted from the House Research Organization’s analysis of SB 15.
A rating was assigned to operate a temporary local remote learning program to offer virtual courses outside the state virtual school network to eligible students.

A district that operated a full-time local remote learning program would have to include at least one grade level in which a state exam is required, including each subject for which an exam is required, or a complete high school program, including each course for which an end-of-course exam is required. A program also would have to offer the option for a student's parent to select in-person instruction for the student.

A district could not enroll in the remote program more than 10 percent of students enrolled in the district during the 2021-2022 school year. Students receiving remote instruction because the student was medically fragile, placed in a virtual setting by an ARD committee, or receiving a 504 accommodation are exempt from counting toward the number allowed under the 10 percent limitation. The education commissioner could waive the enrollment cap on application by a district or in response to a public health emergency.

A virtual course offered under a remote learning program could be provided through synchronous instruction, asynchronous instruction, or a combination, and could be provided in combination with in-person instruction as appropriate to meet the needs of individual students.

**Student eligibility.** A student would be eligible to enroll in a virtual course if the student:

- was enrolled in a school district or charter school;
- had reasonable access to in-person services for the course at a district or school facility; and
- met any additional criteria, including minimum academic standards, established by the district in which the student was enrolled.

Except for VSN and higher education programs, students may not be included in the calculation of the district’s ADA who received a majority of instruction in the previous school year remotely and did not achieve satisfactory performance on each state assessment. If the student did not take a state assessment in the previous school year, then the student may demonstrate grade-level proficiency in the TEKS on a different assessment.

Students are not eligible to be counted towards ADA if the student has 10 or more unexcused absences in the program in a six-month period.

A district that offered a remote learning program would have to periodically assess the performance of students enrolled in the program's virtual courses. A district could return a student to in-person instruction if the student did not meet the criteria for enrollment and if there was a process to ensure that each student and parent had sufficient notice and opportunity to provide input before the student was removed from virtual courses.
Education Code ch. 30A provisions for the virtual school network would not apply to a virtual course offered under a local remote learning program. A student enrolled in a remote learning program would not be prohibited from enrolling in courses offered through the network.

**Attendance.** The bill would require a student enrolled in a virtual course offered under a local remote learning program to be counted toward the district's or charter school's average daily attendance in the same manner as other students. The commissioner would have to adopt rules providing for a method of taking attendance once each school day.

A district could adopt a policy to exempt students from state minimum attendance requirements for one or more courses offered under a remote learning program.

**Teachers.** A teacher could not provide instruction for a virtual course offered under a full-time local remote learning program unless the teacher had completed a professional development course on virtual instruction. A district could not:

- directly or indirectly coerce any teacher to agree to an assignment to the program; or
- require a teacher to provide both virtual instruction and in-person instruction for a course during the same class period.

**STAAR exams.** Schools would be required to administer STAAR exams to a student enrolled in a virtual course in the same manner in which the exams were administered to other students.

**Accountability.** SB 15 would require the commissioner to assign a local remote learning program separate overall and domain performance ratings as if the program were a campus of the district. Only students who spent at least half of their instructional time in virtual courses offered under the program would be considered enrolled in the program.

**Special education.** A district that offered virtual courses under a remote learning program for students receiving special education services would have to ensure the courses met the needs of a participating student in a manner consistent with state and federal laws governing education services for students with disabilities.

**Extracurricular activities.** A student enrolled in a virtual course offered under a local remote learning program could participate in an extracurricular activity sponsored or sanctioned by the district in which the student was enrolled or by the University Interscholastic League in the same manner as other students.

**Interlocal agreements.** SB 15 would allow a school district to contract with another district or charter school to allow a student enrolled in the sending district or school to enroll in virtual courses offered under the local remote learning program of the receiving district or school. A student enrolled in virtual courses under such an agreement would be considered enrolled in the sending district or school for purposes of average daily attendance and accountability.
**Foundation School Program.** SB 15 would add language to Education Code ch. 48 authorizing school districts to provide certain off-campus courses and instructional programs and to have those courses and programs be counted toward the district's or school's average daily attendance.

In temporary provisions that would expire September 1, 2023, a district or charter school that operated during the 2020-2021 school year a full-time virtual program outside the state virtual network could:

- continue to operate the virtual program on a full-time basis;
- apply the same enrollment and transfer criteria used during the 2020-2021 school year; and
- offer the program to students in any grade level or combination of grade levels from kindergarten through grade 12 as long as the program included at least one grade level for which a state exam was administered.

**Teacher certification.** SB 15 would allow rules proposed by the State Board for Educator Certification to allow a candidate to satisfy certification requirements through an internship that provided the candidate employment as a teacher for courses offered through a local remote learning program or the state virtual school network. The provision would expire September 1, 2023.

The bill would take effect immediately once the Governor signs the bill. It was sent to the Governor on September 1, 2021.

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1 Analysis adapted from the House Research Organization’s analysis of SB 3.
2 An appropriation to TEA of $14,625,000 was made in HB 5.
3 Analysis adapted from the House Research Organization’s analysis of SB 9.