

# Legal and Legislative Update

IMCAT Annual Conference

December 6-9, 2012

**Mark Tilley**

Senior Attorney  
TASB Legal Services



## Overview

- SB 313 (vetoed)
- HB 1474
- HB 23
- HB 1295
- KP-0043



## Senate Bill 313

Seliger (R) – Amarillo

Aycock (R) – Killeen

10 - 0 Senate committee on Education

10 - 0 House committee on Public Education



BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 28, Education Code, is amended by adding Section 28.0025 to read as follows:

Sec. 28.0025. REVIEW AND MODIFICATION OF ESSENTIAL KNOWLEDGE AND SKILLS. (a) The State Board of Education shall:

(1) conduct a review of the essential knowledge and skills of each foundation curriculum subject under Section 28.002(a)(1) that were most recently revised by the board with an effective date before September 1, 2012; and

(2) modify the essential knowledge and skills of each foundation curriculum subject reviewed under Subdivision (1) to narrow the content and scope of standards and skills for the subject at each grade level in accordance with this section.



## Review and modify TEKS

State Board of Education shall consider **the time:**

- (A) a teacher would require to provide comprehensive instruction on a particular standard or skill; and
- (B) a typical student would require to master a particular standard or skill;



## Review and modify TEKS

Whether each TEKS skill of a subject can be comprehensively taught within the number of school days required, not including the number of days required for testing



## Review and modify TEKS

- Until the review and modification is complete, the SBOE may not add to or modify the content and scope of standards and skills for any subject in the foundation curriculum.
- Expired September 1, 2018.



-----Original Message-----

From: [REDACTED]  
 To: undisclosed-recipients;;  
 Sent: Mon, Jun 1, 2015 2:19 pm  
 Subject: EMERGENCY ALERT: SB 313 TO MESS WITH TEXAS SCHOOL CHILDREN

Monday, June 1, is the last day of the Texas Legislative session. We are being asked to call Governor Abbott's office and urge him to VETO SB #313 which is presently on his desk to sign. Contact information for Governor Abbot is located below.

### Contact information for Gov. Greg Abbott

<https://gov.texas.gov/contact/>

### Background information:

Texas Sen. Seliger/Rep. Aycocock's SB 313 would "mess with Texas school children" by assaulting the underpinnings of our Texas public schools. These legislators ignored the concerns of Texas citizens and ruthlessly passed SB 313 last night at a time when most Texans thought the work of the legislature was finished.

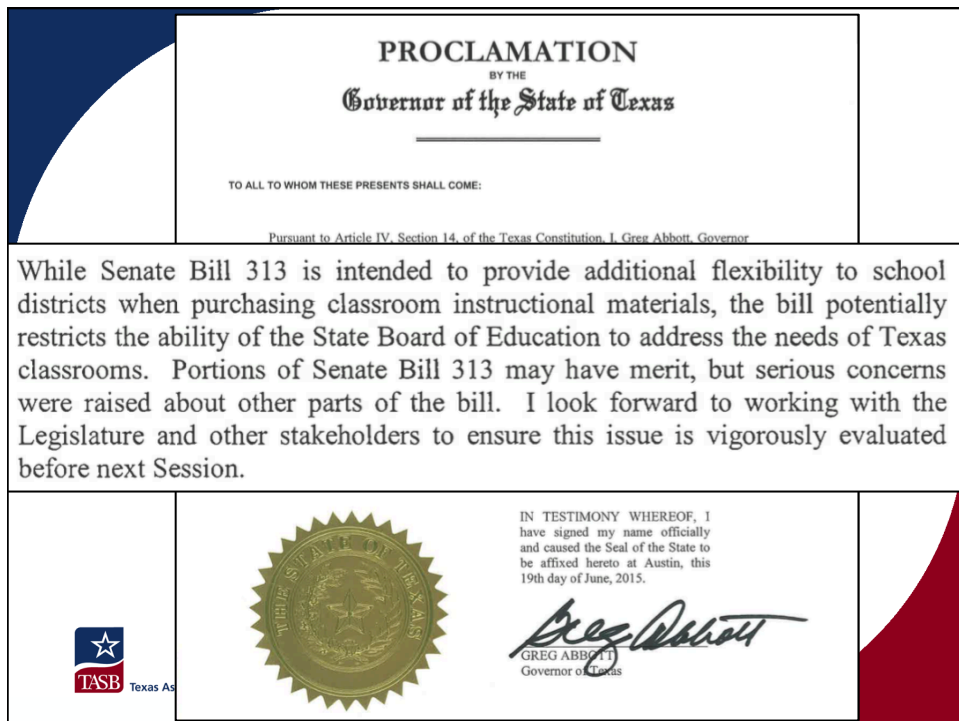
SB 313 now lies on Gov. Greg Abbott's desk for his signature. If we want to rescue our Texas public school children, the time is right now!

If we care about the future of our children and of our state, we must contact Gov. Greg Abbott NOW. We do not know when he might decide on SB 313.

### TO HELP YOU PREPARE YOUR COMMENTS

The one thing that is protecting our Texas public school children from completely being taken over by the Common Core Standards Initiative (CCSI) is our Texas curriculum standards (TEKS).





## House Bill 1474

### Instructional Materials Allotment

A school district is entitled to an ~~[annual]~~ allotment each biennium from the state instructional materials fund for each student enrolled in the district on a date during the last year of the preceding biennium ~~[school year]~~ specified by the commissioner.



## House Bill 1474

The commissioner shall maintain an instructional materials account for each school district. In the first year of each biennium ~~[Each school year]~~, the commissioner shall deposit in the account for each district the amount of the district's instructional materials allotment.



## House Bill 1474

The commissioner shall, as early as practicable during each biennium [~~fiscal year~~], notify each school district of the estimated amount to which the district will be entitled during the next fiscal biennium [~~year~~].



## House Bill 23 Ch. 176 Disclosures

Expansion  
of COI  
disclosures:  
**Effective  
9-1-15**

- Local Government Officer
- Gifts
- Family Relationship



## Local Government Officer

Board Trustees

Superintendent

ADDED: Agent of the district


- Includes any employee who **exercises discretion** in the **planning, recommending, selecting, or contracting** of a vendor (mandatory)



Texas Association of School Boards

## Income and Gift Disclosures

**LGO must file disclosure if:**

- A. LGO or family member receives income from vendor >\$2,500.
- B. Vendor has given LGO or a family member gifts with an aggregate value of more than **\$250 \$100.**
-  C. Vendor has a family relationship with LGO.



Texas Association of School Boards



## Gifts

"Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.

But no disclosure for food accepted as a guest.



## Family Relationships

A person related to another person ***within the third degree by consanguinity or the second degree by affinity***, as those terms are defined by nepotism laws.

Family relationship disclosures apply regardless of monetary benefit from vendor.



<b>LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT</b>		<b>FORM CIS</b>
<small>(Instructions for completing and filing this form are provided on the next page.)</small>		
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.	<b>OFFICE USE ONLY</b>	
<b>1</b> Name of Local Government Officer	Date Received	
<b>2</b> Office Held		
<small>Form provided by Texas Ethics Commission      www.ethics.state.tx.us      Revised 11/30/2015</small>		
<b>4</b> Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.		
<b>5</b> List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100 during the 12-month period described by Section 176.003(a)(2)(B).		
Date Gift Accepted _____ Description of Gift _____		
Date Gift Accepted _____ Description of Gift _____		
Date Gift Accepted _____ Description of Gift _____		
<small>(attach additional forms as necessary)</small>		

<b>CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity</b>		<b>FORM CIQ</b>
<small>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</small>		
<small>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</small>		
<small>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</small>		
<small>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</small>		
<b>1</b> Name of vendor who has a business relationship with local governmental entity.	<b>OFFICE USE ONLY</b>	
<b>2</b> <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)	Date Received	
<b>3</b> Name of local government officer about whom the information is being disclosed.		
_____ <small>Name of Officer</small>		
<b>4</b> Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.		
A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?		
<input type="checkbox"/> Yes <input type="checkbox"/> No		

## **House Bill 1295 Business Entity Disclosure of Interested Party**

For contracts entered into on or after January 1, 2016, that:

- (1) have a value of at least \$1 million; **or**
- (2) require an action or vote by the governing body before the contract may be signed



## **Interested Party**

**Interested party** means a person:

- (1) who has a controlling interest in the contracting business entity, **or**
- (2) who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.



## Process for Disclosure

- Business entity submits the disclosure to the district at the time of the signed contract submission.
- The district may not enter into the contract without the submission.
- Not later than 30 days after receipt of the disclosure, the district submits a copy to the Texas Ethics Commission, which will adopt the form and rules by December 1, 2015.




CERTIFICATE OF INTERESTED PARTIES		FORM 1295	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		<b>OFFICE USE ONLY</b>	
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.			
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.			
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.			
4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

**RQ-0026-KP**

**RECEIVED**  
JUN 08 2015  
OPINION COMMITTEE

State Board of Education  
1701 North Congress Avenue  
Austin, Texas 78701-1494  
(512) 463-9007

FILE # ML-47743-15  
I.D. # 47743



Barbara Cargill  
Chair  
The Woodlands, District 8

Thomas Ratliff  
Vice Chair  
Mt. Pleasant, District 9

Ruben Cortez, Jr.  
Secretary  
Brewersville, District 2

Lawrence A. Allen, Jr.  
Fresno, District 4

Donna Bahorich  
Houston, District 6

Erika Beltran

RQ-0026-KP

June 8, 2015

The Honorable Ken Paxton  
Texas Attorney General  
Attn: Jennie Hoelscher, Chair, Opinion Committee  
P.O. Box 12548  
Austin, TX 78711

**Re:** The authority of the State Board of Education to promulgate rules governing the process used by school districts and charters regarding instructional materials

**Dear General Paxton:**

I write to seek your guidance related to the authority of the State Board of Education (the Board) to promulgate rules governing the process used by school districts and charters (collectively referred to as "public schools" hereafter) regarding the adoption and use of instructional materials.<sup>1</sup> These instructional materials may be used by the public schools to certify to the Board and Commissioner of Education that the public school has instructional materials that cover all elements of the Texas Essential Knowledge and Skills (TEKS) for the required curriculum. TEX. EDUC. CODE

**May the SBOE by rule require public schools to:**

- Follow a process in the local adoption of instructional materials that allows for public input and participation during the local review and adoption process?
- Adopt procedures ensuring prior local approval of changes in content made by a publisher to instructional materials that are not purchased from the Board's approved list?



## May the SBOE by rule require public schools to:

- Specify which TEKS are covered by each locally adopted instructional material and make this information publically available? Further, may the Board impose a requirement on public schools to identify which passage(s) in each of those instructional materials cover(s) which specific elements of the TEKS?



Texas Association of School Boards

## May the SBOE by rule require public schools to:

- Develop conflicts of interest policies and require public schools and publishers to keep contact registers between school officials and publishers?
- Adopt only instructional materials that provide an end-of-section review exercise, an end-of-chapter activity, a unit test, or its electronic equivalent, documenting TEKS coverage in the student version when purchasing instructional materials that are not on the Board's approved list?



Texas Association of School Boards

## May the SBOE by rule require public schools to:

- Ensure that all locally-adopted instructional materials that are not on the Board's approved list comply with the requirement to foster teaching the free enterprise system? In the alternative, does the law impose a mandate on public schools to ensure that locally-adopted instructional materials meet that requirement?



TASB Texas Association of School Boards

## KP-0043



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 4, 2015

The Honorable Donna Bahorich  
Chair, State Board of Education  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Opinion No. KP-0043

Re: Authority of the State Board of Education to promulgate rules governing the process used by school districts and charter schools in selecting instructional materials (RQ-0026-KP)

Dear Ms. Bahorich:

Your predecessor asked seven questions related to the authority of the State Board of Education ("SBOE") to promulgate rules regulating the process by which school districts and

## **“No.”**

To answer this general question, a review of the statutes explaining SBOE’s and the school districts’ respective authority is helpful. The Legislature has provided that SBOE “may perform only those duties relating to school districts or regional education service centers assigned to [SBOE] by the constitution of this state or by this subchapter or another provision of this code.” TEX. EDUC. CODE § 7.102(a). “The school districts and charter schools created in accordance with the laws of this state have the primary responsibility for implementing the state’s system of public education and ensuring student performance in accordance with this code.” *Id.* § 11.002. “The trustees of [an independent school district] have the exclusive power and duty to govern and oversee the management of the public schools of the district.” *Id.* § 11.151(b). “All powers and duties not specifically delegated by statute to [the Texas Education Agency or SBOE] are reserved for the trustees, and the agency may not substitute its judgment for the lawful exercise of those powers and duties by the trustees.” *Id.*



**Thank you.  
Questions?**

**(800) 580-5345  
legal@tasb.org**

**Mark Tilley**  
Senior Attorney  
TASB Legal Services

