

- 2** History and current structure
- 2** SBOE under current law
- 3** Permanent School Fund controversy
- 6** Textbooks and the TEKS curriculum
- 8** TAAS testing
- 9** Election vs. appointment

State Board of Education: Controversy and Change

Recent controversies related to managing the Permanent School Fund (PSF), adopting textbooks, and developing a new assessment test to replace the Texas Assessment of Academic Skills have focused renewed attention on the State Board of Education (SBOE). Critics have put forward proposals for scaling back the board's authority, including changing the board from an elected to an appointed body. Board supporters say that an elected board accountable to the voters should set policy for the state public education system. This report examines the history and current structure of the SBOE, its constitutional and statutory authority, and recent controversies surrounding board actions.

The SBOE and the Texas Railroad Commission are the only two executive boards elected statewide in Texas, and only the SBOE is elected from single-member districts. The Texas Constitution empowers the board to set aside funds to provide free textbooks to school children and to manage the investment of the PSF. Created in the 1866 constitution, the SBOE has been reformulated many times. As the board's structure and composition have changed over the years, its powers have expanded and contracted, depending upon the prevailing political climate.

The board now has a limited mandate. The 1995 rewrite of the Education Code, enacted as SB 1 by Ratliff/Sadler, made comprehensive changes to the entire public education system, which included curtailing many powers the SBOE had wielded for years. The board's authority was reduced in such areas as appointment of the commissioner of education, textbook selection, and jurisdiction over teacher certification and other instructor matters. Even with its restricted authority, however, the board remains the focus of controversy.

The State Board of Education remains the focus of controversy even though the board's authority has been restricted by law in recent years.

History and current structure

The SBOE was created in 1866 to oversee Texas' public school system. The original board included the governor, the comptroller, and the elected superintendent of public instruction. During the Reconstruction era, the board was disbanded and the superintendent of public instruction received sole authority over public education. In 1876, the new constitution created a new SBOE that included the governor, the comptroller, and the secretary of state. The board operated in that form until 1928, when voters approved a proposal allowing the Legislature to specify the board's composition and method of selection. The Legislature increased the board to nine members appointed by the governor, subject to Senate confirmation. Members of that board served staggered six-year terms.

In 1949, the Legislature changed the SBOE to an elected body, with members elected from congressional districts. Lawmakers also abolished the elected office of superintendent of public instruction and created the office of commissioner of education to be selected by the board.

Because of congressional reapportionment, board membership increased from 21 in 1949 to 27 by 1984. That year, the Legislature enacted HB 72, replacing the elected SBOE with a 15-member appointed board to serve until January 1, 1989. HB 72 also created 15 districts from which SBOE members were selected and reduced the terms of board members to four years. The selection of SBOE members was divided into two steps. First, the newly created Legislative Education Board, a 10-member panel of elected officials from the Legislature, chose three nominees in each of the 15 districts. The governor then chose one nominee from each district as that district's appointee, who then had to be confirmed by the Senate. Under the original terms of the 1984 legislation, the board was scheduled to be elected from the 15 newly created districts in the 1988 general election, but in 1987, the Legislature proposed a referendum to let voters decide whether the board should remain an appointive body. By 52.4 percent, voters supported the decision to return to an elected board.

The current SBOE includes 15 members chosen from single-member districts throughout the state. The districts are subject to reapportionment after each decennial census. Board members serve staggered four-year terms. Vacancies are filled by gubernatorial appointment with Senate confirmation. The governor designates the chair of the board from among its members, and that person may serve up to

two consecutive two-year terms as chair. The board may designate a vice chair and secretary and may establish its own rules of procedure and internal structure. Board members are not paid for service on the board but do receive reimbursement for expenses due to service.

The Education Code prohibits elected officials or registered lobbyists from serving on the SBOE and prohibits persons selling bonds or those engaged in the textbook business from making political contributions to or taking part in the election of a board member. The Election Code governs all other matters pertaining to election of SBOE members. Persons or firms vying to manage assets of the PSF are not prohibited by statute from contributing to member campaigns. However, after allegations were raised in 1997 that several of the firms selected to manage part of the fund had contributed to campaigns, the board adopted internal rules that require board members to disclose any contact with or contributions from persons or firms seeking to do business with the board.

SBOE under current law

The Texas Constitution, Art. 7, sec. 8, requires the Legislature to provide by law for the SBOE. It allows the Legislature to determine the number of members on the board and whether members should be elected or appointed. Board members' terms may not exceed six years. Under Art. 7, sec. 5 and other applicable law, the board must set aside funds to provide free textbooks to all children attending public schools and must direct the investment of the PSF. The Constitution specifies that the board must use the so-called "prudent person" investment standard, that of "persons of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the circumstances then prevailing . . . for their own account in the management of their affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital."

The Texas Education Code (TEC), primarily in sec. 7.102, delineates the board's statutory powers and duties. Before the 1995 rewrite of the code, the board had broad authority to "take actions necessary to implement legislative policy for the public school system of the state." The board's current powers, however, are limited to those expressly assigned by the

Constitution or the code. SB 1 removed three primary powers of the SBOE:

1. The commissioner of education is now appointed directly by the governor for a term that coincides with that of the governor. Previously, the board recommended a nominee to the governor, who could either accept or reject that nominee. Some supporters of SB 1 argued that this change would make the commissioner more accountable to the state as a whole.

2. SB 1 moved direct authority over teacher certification and preparation to a newly created State Board for Educator Certification. The new board, supporters said, could pay additional attention to instructor issues separate and apart from other education issues.

3. SB 1 curtailed the board's power over textbook adoption. Previously, the board had had full authority to accept or reject textbooks on any basis. The 1995 law requires the board to accept textbooks so long as they meet the applicable physical specifications, contain material covering each element listed in the state curriculum for the applicable subject and grade level, and are free of factual errors (TEC, sec. 31.023). Supporters of this change said it provided greater local control for school districts to be able to choose which texts they would like to use, rather than having the state board mandate a more limited selection.

TEC, sec. 7.102 enumerates 34 distinct powers and duties of the board. To exercise any of those powers by rulemaking, the board must include in the preamble to any such rule a statement of its specific authority, a requirement added by the 74th Legislature in 1995. Some of the board's powers include:

- developing a long-range plan for education;
- establishing state curriculum and graduation requirements;
- establishing the acceptable performance on student assessment tests;
- granting open-enrollment charters to schools;
- developing criteria for identifying gifted and talented students;
- purchasing textbooks, as provided by law;
- developing a long-range plan for technology;
- adopting rules for extracurricular activities and approving, disapproving, or modifying rules and procedures of the University Interscholastic League; and
- directing the investment of the PSF.

SBOE Composition and Selection Through the Years

1866	SBOE created with 3 members: governor, comptroller, superintendent of public instruction
1867-1876	No SBOE
1876	3 members: governor, comptroller, secretary of state
1928	9 members appointed by governor
1949	21 members elected from congressional districts; elected superintendent of public instruction replaced by SBOE-appointed commissioner of education
1971	Increased to 24 members due to reapportionment
1981	Increased to 27 members due to reapportionment
1984	HB 72 establishes 15-member body; members appointed by governor for 1984-1988, elections to be held in 1988
1987	Voters approve statewide referendum to return to an elected board
1989	15-member elected board

Permanent School Fund controversy

The Constitution of 1845 first created a perpetual school fund and dedicated one-tenth of all state tax revenue to the fund. The Constitution of 1876, under which the state still operates, stipulated that the PSF would include certain lands and all proceeds from the sale of those lands. Later acts of the Legislature added more public-domain land to the fund. In all, the fund has been granted 46.5 million acres of land, including mineral

interests of 7.1 million acres, according to the State Auditor's Office. In 1954, the fund gained more land when the U.S. Congress gave Texas clear title to submerged coastal tidelands to a distance of 10.35 miles. Proceeds from the sale or mineral lease of those lands accrue to the PSF.

Today, the PSF is worth more than \$20 billion. Interest derived from the PSF, along with certain dedicated revenue such as one-quarter of motor fuel taxes, constitutes the Available School Fund (ASF). Money from the ASF is distributed annually to every school district on the basis of student enrollment, without regard to the district's wealth, size, or location or the characteristics of the student body. Of about \$1 billion in annual ASF payments, more than \$700 million comes from interest on the PSF. While a majority of the annual distribution is set aside for the state textbook fund and the technology allotment, the remainder of the fund goes directly to districts. In the 1998-99 school year, the ASF allotment to districts amounted to \$277 per student.

The PSF also serves to guarantee certain school district bonds. Texas voters approved a 1983 constitutional amendment authorizing this use of the fund. The PSF is available only to insure voter-approved, long-term bonds issued by accredited schools. Use of the fund to guarantee bonds saves districts the expense of obtaining private insurance.

Before 1995, the SBOE managed the PSF exclusively through staff hired by the Texas Education Agency (TEA). In 1995, the board decided to allow private portfolio managers to manage part of the PSF. The board authorized three firms to begin managing PSF assets on September 1, 1995, and increased the number of managing firms to 12 in 1997. Today, private firms manage roughly one-third, or \$7 billion, of the fund and receive nearly \$18 million annually for their services. In addition to the portfolio managers, the board also contracts with independent investment firms to provide advice on fund management and economic forecasting. Another firm is employed independently to evaluate the fund's long-term investment strategy and performance.

Controversy over the use of private portfolio managers began soon after the board's 1997 selection of managers. Board member David Bradley alleged that six of the nine firms awarded contracts had contributed to the reelection campaigns of some board members. Bradley and others also questioned the accuracy of presentations made

to the board about the firms' performance records and the experience of fund managers.

The allegations of improper contributions spurred the board to adopt a rule requiring disclosure of campaign contributions received from any person or firm that applies for a contract, grant, or charter from the board. Failure to disclose the contributions before a contract is awarded or during the pendency of the contract is grounds for canceling or revoking the contract, but the rules do not require such actions.

Investigations completed by both the State Auditor's Office and the Office of the Attorney General (OAG) in 1998 and 1999 found no evidence of fraud or wrongdoing by the private firms hired to manage PSF assets. The OAG found that the allegations of inflating past performance results arose from a misunderstanding of how the board's review consultant had recalculated those results. The allegations of lack of experience by certain firms arose, according to the OAG, because the board's consultant had examined the experience of the individual fund managers as well as the firms' experience. Other allegations concerning placement of PSF funds in unauthorized investments likewise had "obvious and innocent explanations," the OAG said.

The OAG determined that many of the allegations and the mistrust engendered by the selection process could have been avoided had the SBOE adopted and followed sound procedures for selecting the firms. The board had expressed interest in hiring firms with certain characteristics but had not adopted such factors formally, nor had the board or the PSF committee adopted a formal request for proposals for fund managers. The OAG recommended that the board make its evaluation criteria clear in the future so that judgment calls made by the selection consultant or the PSF staff would not be misconstrued.

Both the OAG's and state auditor's reports found that the use of private managers has been financially beneficial for the FSP. However, some board members have suggested that the way in which those managers were hired has led to distrust of the process by the board. They allege that TEA staff, together with a few board members, appeared to have decided which firms to hire even before the firms were presented to the full PSF committee or board. Rightly or wrongly, they say, that method caused some members to suspect some form of collusion to hire certain firms, particularly those that

contributed to the political campaigns of some board members. Also, they say, while the OAG found no actionable claim against the firms for discrepancies in their bids because agency staff knew of those discrepancies, that does not mean that the board was aware of those discrepancies or interpretations when it decided which firms to select. They say the lack of communication concerning the selection process reflects an overall lack of trust between the board and the agency, which, more than anything else, has led to repeated confrontations over the management of the PSF and other education matters.

SBOE critics have raised concerns about other recent actions regarding PSF management, including:

- the hiring of Chicago-based Everen Securities to evaluate the performance of private investment managers while the company's senior vice president, Russell Stein, was under investigation for fraud by the Securities and Exchange Commission. A federal judge later cleared Stein of the charges.
- the hiring of two separate financial institutions to oversee the fund, despite TEA financial staff's recommendation to hire only one institution and the staff's projection that the hiring of a second bank would cost an additional \$1.2 million.
- the removal of \$300 million in fund assets from the top-performing management firm, Davis, Hamilton, Jackson & Associates, in a move to balance risk in the fund. While SBOE members agreed that assets needed to be shifted from capital stocks to bonds, some members charged that the removal of funds from only that firm, the only managing firm with an ethnic minority partner, was racially motivated. Supporters of removing the assets from that firm suggested that PSF assets represented too large a share of all assets the firm managed.
- the refusal of the Chicago-based Richard & Tierney investment firm to accept a contract to review PSF investment strategies. The firm turned down a \$125,000 contract, citing the lack of a positive working relationship between the board and staff and the impermanent status of TEA staff overseeing the fund.

Some observers are troubled by the alleged involvement in several of these controversies of an unpaid investment consultant, Brian Borowski, a former

financial analyst for the Permanent University Fund (PUF). According to reports by the *Austin American-Statesman*, Borowski was instrumental in the hiring of Everen Securities, having arranged a meeting between Russell Stein and two board members at a baseball game. While this meeting technically did not violate the board's policy prohibiting firms seeking business with the board from contacting members, some saw the meeting as a potential conflict of interest.

According to reports, Borowski's advice also led to the hiring of two banks to oversee the PSF rather than one, over the objections of TEA staff. Also, Borowski allegedly was involved in a physical altercation with Alfred Jackson, a partner in Davis, Hamilton, Jackson & Associates, after the SBOE meeting in September 1999. At the next board meeting in November, the SBOE voted to remove \$300 million in PSF assets from that firm's management.

Supporters of Borowski's involvement in SBOE decisions, including board members Robert Offutt and David Bradley, chair and vice-chair, respectively, of the PSF committee, claim that he was instrumental in uncovering fraud at the PUF and is advising the PSF voluntarily. According to these members, having a professional investment advisor familiar with Texas' permanent endowment funds is invaluable in guiding the fund's management. Because board members have no funding to hire their own staff, they must rely on voluntary advisors. Some board members who have taken Borowski's advice suggest that he has become a "lightning rod" for criticism only because he has been so beneficial in providing independent advice on these financial decisions. A small number of board members, they say, have been used to running the board's investments without opposition because the rest of the board members lack financial expertise. Advice from independent advisors like Borowski, however, has enabled other members to become more involved in managing the PSF, they say.

Critics say that Borowski's involvement goes beyond advice to actually telling members how to vote on certain matters, including matters not related to PSF management. They suggest that if the board needs advice on PSF matters, that advice should come from paid staff, not from outside consultants. While TEA staff are not hired by the board, they are available to provide resources to the board, and it is up to board members to use those resources, they say.

Even before the recent questions about PSF management arose, some questioned the SBOE's decision in May 1998 to divest approximately \$47 million in Walt Disney Co. stock from the PSF. Critics said the board's action was motivated politically and meant to punish Disney for its stance on homosexuality. At the time, the ABC television network, a Disney subsidiary, broadcast *Ellen*, a situation comedy about and starring an openly homosexual woman, and Disney's corporate policy extended employee benefits to homosexual domestic partners. Others, however, have asserted that the board acted for more than simply political reasons and that the decision has proven to be correct financially, as Disney stock continues to trade well below the price at which the board sold it.

Some critics have raised concerns about the extent to which the board should oversee the use of private money managers. While private managers have been successful over the past few years, some on the board, according to reports, do not believe that private firms should manage any assets of the PSF. If the fund continues to use private managers, they say, the board should apply objective criteria when determining whether to add or remove assets from those managers to avoid concerns about singling out particular managers, as in the case of Davis, Hamilton, Jackson & Associates. Critics also have raised concerns about the use of paid TEA investment staff and what weight their recommendations should be given in fund matters. Other critics are concerned about the precedent set by the sale of the Disney stock. Regardless of how the sale has played out financially, they say, the board used the sale to inject its political views improperly into PSF management.

Supporters of the board's broad authority to manage the PSF say that the board is using the standard of a prudent investor, as required by the Constitution, and that the board's actions have created significant gains for the PSF and thus additional money for Texas schools. The problem, they say, is not PSF management but mistrust between the SBOE and TEA. The board receives no appropriation to hire staff or conduct its business but relies on TEA to provide resources. In other agency-board situations, that is not a problem because the agency is clearly under the direction of the board. However, in the case of the education system, TEA is led by an independently selected executive who has many powers separate and apart from those of the SBOE, including the management of staff hired to manage the PSF. This tension over the SBOE's authority to manage agency

staff has led, they say, to many recent conflicts. If the board had direct authority over PSF staff — or any authority at all — some of these conflicts might be alleviated, they suggest.

House Speaker Pete Laney has charged the House General Investigating Committee with investigating recent actions of the SBOE relating to its management of the PSF. Also, Lt. Gov. Rick Perry has charged the Senate Finance Committee with examining the policies and practices used to invest major state funds.

Textbooks and the TEKS curriculum

Before 1995, the Education Code gave the SBOE wide latitude to determine which textbooks were "most acceptable for use in the schools." Controversies occurred repeatedly when the board wielded such authority. Issues included the treatment of evolution, the content of books that discussed sex education, controversial stories in literature anthologies, the treatment of certain historical events, and the inclusion of certain words in dictionaries.

Because Texas uses a statewide adoption system for textbooks, the state is one of the nation's largest single purchasers of textbooks. California and Florida also use central adoption methods. As a result, these three states hold significant sway over the content of textbooks. Generally, it is uneconomical for publishers to create one version of a textbook for the "big three" states and other versions for other states. Therefore, the Texas, California, or Florida version of a book usually is the version published nationally.

The 1995 rewrite of the TEC removed many of the SBOE's powers regarding textbook adoption. Supporters of that change argued that it would allow local districts greater freedom to choose from among a wider array of acceptable texts.

The law requires the board to place textbooks on either a "conforming" or "nonconforming" list or else reject a book submitted for those lists. A book on the conforming list must meet physical specifications, meet each of the essential elements contained in the Texas Essential Knowledge and Skills (TEKS) curriculum for that grade and subject, and be free of factual errors. Books on the nonconforming list must meet physical specifications and be free of factual errors, but need only

meet at least half of the essential elements of the curriculum for the subject and grade level.

Districts may obtain books on either the conforming or nonconforming lists at state expense. They also may purchase books not on either list, but the state will pay for no more than 70 percent of the cost of such books. As a practical matter, however, districts generally obtain only books on the conforming list because those books will meet all of the curriculum objectives. In turn, those objectives comprise the basis of the Texas Assessment of Academic Skills (TAAS) given to all students in grades 3-8 and 10. Student performance on the TAAS is one of three key factors, along with the attendance rate and dropout rate, used in ranking schools and districts in the state accountability system.

Development of the state's school curriculum also has been a critical SBOE issue. The board adopted the current curriculum in 1997 after a three-year development process. Some considered the board's adoption process for the curriculum to be overly contentious. The public and the board raised many complaints about the draft originally presented to the board, and the curriculum standards were modified significantly over subsequent months. The board eventually adopted the curriculum, but not before being accused of stifling public discussion with procedural tactics. After the vote, several board members threatened to seek injunctions to block implementation of the curriculum, but they never did so. For additional background, see [Texas Redefines the Three 'Rs: The New Public School Curriculum](#), House Research Organization Focus Report No. 75-19, October 7, 1997.

Significant changes to the curriculum once it came before the board included increasing the emphasis on phonics-based reading instruction, especially in the early grades. Phonics-based instruction teaches reading and writing by breaking down words to their component sounds, in contrast to the "whole language" method of teaching, which encourages students to learn the meaning of words from contextual clues in the sentence or paragraph.

For a reading selection to be phonics-based, the words in that selection must be capable of being decoded phonetically. For example, words like *cat*, *run*, *spot*, and *good* are decodable phonetically because their component sounds form the same sounds as the word itself. However, words like *breathe*, *house*, or *great* are

not decodable phonetically because breaking those words down to their component parts does not result in the word sounding the same way it is spoken. Experts differ greatly on which approach or mixture of approaches is the best way to teach reading.

Recently, the debate over the level of phonics-based instruction required by the TEKS caused the SBOE to require several textbook publishers to add to or rewrite their first-grade reading textbooks to qualify them for the conforming list of books. Controversy arose over the interpretation of an element of the curriculum requiring that students must be able to "use letter-sound knowledge to read decodable texts (engaging and coherent texts in which most of the words are comprised of an accumulating sequence of letter-sound correspondences being taught)."

Publishers asked TEA staff to clarify what "most" meant, and the staff responded that 51 percent of the words in the text selections must be decodable. However, when the board reviewed the books more than a year later, the board, led by Vice-Chair Geraldine Miller, determined that the standard required that 80 percent of the words needed to be decodable. According to reports, textbook publishers have worked out agreements with the board to supplement their texts with additional passages to meet this standard, but it is still unclear whether the publishers or the state will pay the costs associated with complying with the standards, estimated at between \$1 million and \$5 million. It is also uncertain whether the publishers might pursue legal action related to the board's ruling.

Critics of the board suggest that this incident demonstrates that the board is attempting to judge the content of textbooks, even though content is not supposed to be one of the criteria for accepting or rejecting texts. While it might have been preferable to avoid this situation by asking the board to clarify the curriculum standards, implementing such a policy would force TEA operations to grind to a halt, they say. The SBOE meets only six times each year, and those meetings already have full agendas. To require TEA to seek board clarification on every single issue raised regarding the board's rules would be impossible, they say. Also, past experience has shown that TEA staff cannot speak with individual board members about such matters without being accused of leaving other members out of the information loop, they say. The only way to run an agency as large and complex as TEA is to give it

some autonomy and to allow the decisions made by staff in good faith to remain in effect and not be second-guessed months later by board members who are not involved with the agency's day-to-day operations, they say.

Supporters of the SBOE contend that the board merely was enforcing the clear standards of the curriculum. The party at fault, they say, is TEA, which attempted to define the curriculum standards without consulting with the board. A simple phone call to a few board members would have made it clear that 51 percent was an inadequate portion of decodable words, and the agency then could have asked the board at its next meeting to clarify the standard, they say. The emphasis on phonics in early years in the TEKS curriculum was a major issue in the adoption of the standards in 1997 because phonics can have a significant impact on improving reading ability, according to some experts. If the board had not required these changes, they say, students would have received books that did not prepare them adequately to learn to read at the appropriate level for their grade.

TAAS testing

TAAS, the state's primary student assessment test, also has sparked controversy at the state board level. Over the past few years, several board members have questioned the test's validity. In 1997, SBOE member Robert Offutt contended that the TAAS had driven classroom instruction, spawned a cottage industry of test preparation companies, "dumbed down" the curriculum, and usurped the authority of local school districts. Debate over the TAAS erupted in January 1997, when then-board member Donna Ballard and others called for replacing the TAAS with a national norm-referenced test (NRT) that would judge only student achievement and progress. An NRT would grade students' performance relative to that of a sample of students. According to Ballard, the importance of TAAS in the school accountability system had led to unhealthy competition, pressure on students, and fraudulent behavior. An NRT, on the other hand, would allow schools to teach the curriculum instead of the TAAS test and would provide a statistically accurate accounting of how Texas students are learning compared to their peers nationwide. A statistically valid test also would indicate true improvements in mastery of skills rather than of test-taking procedures, she said.

At that time, SBOE Chair Jack Christie, Education Commissioner Mike Moses, and other TAAS supporters pointed out that the TAAS-based accountability system had received national accolades. The TAAS, a criterion-referenced test (CRT), was based on the curriculum that the students should be learning in the classroom. The TAAS, they said, significantly had improved students' mastery of the Texas curriculum and was ensuring that all students had core academic capabilities in reading, writing, and mathematics. The Legislature specifically had required the adoption of a CRT like the TAAS that can be tailored to measure student achievements against the objectives of the Texas curriculum, they said. For more background, see *The TAAS Test: How Much Should It Count?*, House Research Organization Focus Report No. 75-25, September 29, 1998.

Controversy over the TAAS reemerged in early 1999. Outgoing Commissioner Moses announced plans to increase the difficulty of the TAAS. Also, he announced that TEA staff had been working on modifications to align the test better with the TEKS curriculum and to prepare for possible changes to the structure of the test proposed by lawmakers. The 76th Legislature enacted SB 103 by Bivins, expanding the subjects tested in some grade levels and adding ninth and eleventh grade exams. Moses' announcement drew criticism from some board members, who accused TEA of secretly creating a new statewide exam without involving the board in the development of the test.

Board member Richard Neill led the criticism, saying that TEA had been using taxpayer money for more than a year to develop an unauthorized new test. Supporters of Neill's position have said that this controversy is another example of the tension between the board and the agency. The board must rely on the agency to handle the details of creating and implementing any tests, but TEA, they say, has ignored input by the board. Because the board has no real control over the agency and lacks the political power to override agency actions, they say, TEA intentionally has left the board out of the management of education.

TEA officials and supporters responded that while the board is statutorily responsible for implementing a statewide assessment system, TEA is responsible for developing the actual CRT given to students. Because of the rapid pace of educational assessment and the lead time needed to create new testing instruments, TEA staff cannot afford to wait for the board to give direction on needed changes, they say. Statewide testing has been in

place since 1984, and throughout that time, TEA staff have worked diligently to make Texas' assessment program the nationally recognized accountability system it is today, say its supporters. Evidence of a lack of confidence in the board's ability to direct the assessment program can be found in the House-passed version of SB 103, which would have removed the board's statutory authority over many aspects of the assessment system. The final version of the bill, however, did not alter the board's authority.

Election vs. appointment

Almost all states have state boards of education. Wisconsin has no state board, and Minnesota disbanded its appointed board at the end of 1999. Generally, such boards are responsible for developing rules to implement education laws enacted by the state legislatures. Board authority over specific aspects of the educational system varies greatly from state to state, as do methods of selecting board members.

State education boards in 34 states are entirely appointed, usually by the governor, according to the National Association of State Boards of Education. In some of those states, other groups such as the legislature, local school boards, and even students may select some board members. Ten states have elected state boards. Of those, four states (Hawaii, Nebraska, Nevada, and Utah) use nonpartisan elections and six (Texas, Alabama, Colorado, Florida, Kansas, and Michigan) use partisan elections. Three boards (Louisiana, New Mexico, and Ohio) contain a mixture of appointed and elected members, and Washington's board is elected by local school board members.

Selection of the chief state school officer, equivalent to Texas' education commissioner, also varies. In 25 states, the chief school officer is appointed by the state education board. The governor is responsible for appointing the officer in 10 states, including Texas. The other 15 states elect the chief school officer, nine using partisan ballots and six using nonpartisan ballots.

The recent controversies surrounding the SBOE have caused some critics to call for a change in law to make the board an appointive body. Critics charge that many of the board's current problems are caused by partisan divisiveness and the strong minority bloc of socially conservative board members that have driven

some of the controversies in recent years. While some board supporters argue that conflict has arisen from the independence of TEA, critics suggest that the board is out of step with the rest of Texas government. TEA, they say, led by a gubernatorial appointee and given statutory and budgetary direction by the Legislature, has made great efforts to work with the governor and the Legislature to implement educational policy. The board, on the other hand, is not accountable to the Legislature nor to the governor and is often at odds with the policies being implemented, they say.

Critics argue that while the board is technically accountable to the voters, it really is accountable only to a small group of special interests that drive state board elections. SBOE districts are very large — roughly twice the size of a state senate district — and board members often have limited campaign resources to reach voters in that area. Thus, the average voter has no idea who his or her SBOE representative is or what that person stands for, they say. This situation, some claim, is ripe for abuse by special interests that can support a candidate through a primary election in hopes that the party label will carry the candidate in a particular district.

Supporters of an appointed board argue that if the board were appointed rather than elected, the members likely would have a greater sense of a common mission from the governor who appointed them and the legislators who confirmed them. At least, the appointment system would allow greater cooperation between the board and these elected officials, who often run on platforms linked to education issues. Making the board work with these officials, they contend, would diminish the rancor and hostility between the board and TEA because everyone involved would be working toward a common goal. Critics of the current board say that regardless of the issue before the board, the hostility between the board and TEA leads to controversies over educational policy.

Supporters of the current system say that regardless of what policymakers may feel about the current SBOE membership, the only way for voters to have any say about who serves on the board is for the board to remain an elected body. Once the board becomes appointive, it will lose its direct connection to the people. While some might not like certain members elected to the board, that is no justification for replacing the entire SBOE with an

(continued on page 11)

State Education Governance at a Glance

State	Method of selecting state board of education (SBOE)	Voting members on SBOE	Method of selecting chief state school officer
Alabama	8 by partisan election; governor serves as chair	9	Appointed by SBOE
Alaska	Appointed by governor	7	Appointed by SBOE
Arizona	Appointed by governor	9	Partisan election
Arkansas	Appointed by governor	12	Appointed by SBOE
California	Appointed by governor	11	Non-partisan election
Colorado	Partisan election	7	Appointed by SBOE
Connecticut	Appointed by governor	9	Appointed by SBOE
Delaware	Appointed by governor	7	Appointed by governor
Florida	Partisan election	7	Partisan election
Georgia	Appointed by governor	11	Partisan election
Hawaii	Non-partisan election	13	Appointed by SBOE
Idaho	Appointed by governor	8	Non-partisan election
Illinois	Appointed by governor	9	Appointed by SBOE
Indiana	Appointed by governor; elected superintendent serves as chair	11	Partisan election
Iowa	Appointed by governor	9	Appointed by governor
Kansas	Partisan election	10	Appointed by SBOE
Kentucky	Appointed by governor	11	Appointed by SBOE
Louisiana	8 elected, 3 appointed by governor	11	Appointed by SBOE
Maine	Appointed by governor	9	Appointed by governor
Maryland	Appointed by governor	12	Appointed by SBOE
Massachusetts	Appointed by governor	9	Appointed by SBOE
Michigan	Partisan election	8	Appointed by SBOE
Minnesota	None (9 appointed by governor until abolished 12/31/99)		Appointed by governor
Mississippi	5 appointed by governor, 4 appointed by legislature	9	Appointed by SBOE
Missouri	Appointed by governor	8	Appointed by SBOE
Montana	Appointed by governor	7	Partisan election
Nebraska	Non-partisan election	8	Appointed by SBOE
Nevada	Non-partisan election	11	Appointed by SBOE
New Hampshire	Appointed by governor	7	Appointed by SBOE
New Jersey	Appointed by governor	13	Appointed by governor
New Mexico	10 elected, 5 appointed by governor	15	Appointed by SBOE
New York	Appointed by legislature	16	Appointed by SBOE
North Carolina	Appointed by governor	11	Partisan election
North Dakota	Appointed by governor	7	Non-partisan election
Ohio	11 elected, 8 appointed by governor	19	Appointed by SBOE
Oklahoma	Appointed by governor	7	Partisan election
Oregon	Appointed by governor	7	Non-partisan election
Pennsylvania	Appointed by legislature	9	Appointed by governor
Rhode Island	Appointed by governor	11	Appointed by SBOE
South Carolina	Appointed by legislature	17	Partisan election
South Dakota	Appointed by governor	9	Appointed by governor
Tennessee	Appointed by governor	10	Appointed by governor
Texas	Partisan election	15	Appointed by governor
Utah	Non-partisan election	15	Appointed by SBOE
Vermont	Appointed by governor	7	Appointed by SBOE
Virginia	Appointed by governor	9	Appointed by governor
Washington	9 elected by local school boards, 1 elected by private schools, plus chief state school officer	11	Non-partisan election
West Virginia	Appointed by governor	9	Appointed by SBOE
Wisconsin	None		Non-partisan election
Wyoming	Appointed by governor	11	Partisan election

Source: [National Association of State Boards of Education](#), January 1999.

(continued from page 9)

appointive body, they argue. Anyone upset with board members can work to get others elected. Supporters of an elected board also point out that the last time this issue was raised, as recently as 1987, voters favored returning to an elected state board.

While the board may have spawned controversy in recent years, that is one of the few ways that the board has left to highlight issues important to education, its supporters say. Had the board not raised concerns over the lack of clear, definable standards in the first draft of the TEKS curriculum presented to the board, Texas children and school teachers might have been saddled with a meaningless curriculum incapable of being used as a guide to what is taught and learned in public school classrooms, they say. Had the board not raised the issue of the amount of phonics included in first-grade reading texts, Texas students would have been deprived of an important tool in the development of reading skills, they say.

Supporters of an elected board also contend that the wide range of viewpoints represented on the board, made

possible by electing board members, promotes better policy decisions. Rather than being a single-minded appointed body marching in lock-step with TEA, the governor, and the Legislature, the board provides a contrasting viewpoint, helping to represent many Texans not always represented in state government. Requiring policy decisions to be approved by this diverse body promotes better decision-making because more viewpoints must be taken into account on issues before the board, its supporters say.

Perhaps the best action the Legislature could take to prevent future controversies over SBOE actions, board supporters contend, would be to return the board to its rightful place as the sole decision-making body for educational policy in the state. The board now is hamstrung from providing clear direction, and at times, even the direction it can provide with its reduced authority is ignored by TEA staff, they say. No local school board would allow its administration to be as uncooperative as TEA has been with the SBOE, they say. Therefore, they say, the state educational system should be changed to allow the board to operate as more than simply the titular head of the system.

— *by John J. Goodson*

HOUSE RESEARCH ORGANIZATION



Steering Committee:

Henry Cuellar, *Chairman*
Peggy Hamric, *Vice Chairman*
Tom Craddick
Dianne White Delisi
Harold Dutton
Roberto Gutierrez
Bob Hunter
Carl Isett
Mike Krusee
Brian McCall
Elliott Naishtat
Joe Pickett
Bob Turner
Leticia Van de Putte
Steve Wolens

Capitol Extension
Room E2.180

P.O. Box 2910
Austin, Texas 78768-2910

(512) 463-0752
FAX (512) 463-1962

www.capitol.state.tx.us/hrofr/hrofr.htm

Staff:

Tom Whatley, *Director*; Greg Martin, *Editor*;
Rita Barr, *Office Manager*; Kellie Dworaczyk,
John J. Goodson, Patrick K. Graves, Hope Wells,
Kristie Zamrazil, *Analysts*