

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/30/09

Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 171 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.


Mario Gallegos

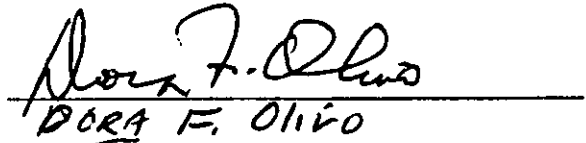
Steve Ogden

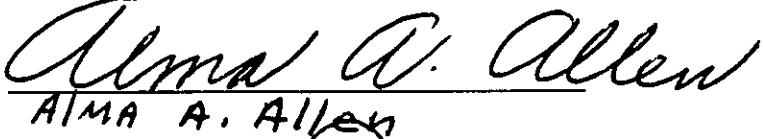

Florence Shapira


Kirk Watson

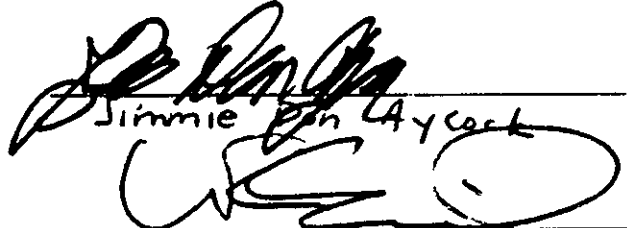
On the part of the Senate

Judith Zaffirini


DORA F. OLIVO


ALMA A. ALLEN


DIANE PATRICK


Jimmie Ben Aycock

On the part of the House


Rob Eissler

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

 H.B. No. 171

A BILL TO BE ENTITLED

AN ACT

1
2 relating to consideration of mitigating factors in determining
3 appropriate disciplinary action to be taken against a public school
4 student.

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

6 SECTION 1. Section 37.001(a), Education Code, is amended to
7 read as follows:

8 (a) The board of trustees of an independent school district
9 shall, with the advice of its district-level committee established
10 under Subchapter F, Chapter 11, adopt a student code of conduct for
11 the district. The student code of conduct must be posted and
12 prominently displayed at each school campus or made available for
13 review at the office of the campus principal. In addition to
14 establishing standards for student conduct, the student code of
15 conduct must:

16 (1) specify the circumstances, in accordance with this
17 subchapter, under which a student may be removed from a classroom,
18 campus, or disciplinary alternative education program;

19 (2) specify conditions that authorize or require a
20 principal or other appropriate administrator to transfer a student
21 to a disciplinary alternative education program;

22 (3) outline conditions under which a student may be
23 suspended as provided by Section 37.005 or expelled as provided by
24 Section 37.007;

1 (4) specify that ~~whether~~ consideration will be ~~is~~
2 given, as a factor in each ~~a~~ decision concerning ~~to order~~
3 suspension, removal to a disciplinary alternative education
4 program, ~~or~~ expulsion, or placement in a juvenile justice
5 alternative education program, regardless of whether the decision
6 concerns a mandatory or discretionary action, to:

7 (A) self-defense;

8 (B) intent or lack of intent at the time the
9 student engaged in the conduct;

10 (C) a student's disciplinary history; or

11 (D) a disability that substantially impairs the
12 student's capacity to appreciate the wrongfulness of the student's
13 conduct;

14 (5) provide guidelines for setting the length of a
15 term of:

16 (A) a removal under Section 37.006; and

17 (B) an expulsion under Section 37.007;

18 (6) address the notification of a student's parent or
19 guardian of a violation of the student code of conduct committed by
20 the student that results in suspension, removal to a disciplinary
21 alternative education program, or expulsion;

22 (7) prohibit bullying, harassment, and making hit
23 lists and ensure that district employees enforce those
24 prohibitions; and

25 (8) provide, as appropriate for students at each grade
26 level, methods, including options, for:

27 (A) managing students in the classroom and on

1 school grounds;

2 (B) disciplining students; and

3 (C) preventing and intervening in student
4 discipline problems, including bullying, harassment, and making
5 hit lists.

6 SECTION 2. This Act applies beginning with the 2009-2010
7 school year.

8 SECTION 3. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2009.

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 37.001(a), Education Code, is amended to read as follows:

(a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:

- (1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or disciplinary alternative education program;
- (2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;
- (3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;
- (4) specify that [whether] consideration will be [is] given, as a factor in each [a] decision concerning [to order] suspension, removal to a disciplinary alternative education program, or expulsion and placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action, to:

(A) self-defense;

SENATE VERSION

SECTION 1. Section 37.001(a), Education Code, is amended to read as follows:

(a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:

- (1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or disciplinary alternative education program;
- (2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;
- (3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;
- (4) specify that [whether] consideration will be [is] given, as a factor in each [a] decision concerning [to order] suspension, removal to a disciplinary alternative education program, [or] expulsion, or placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action, to:

(A) self-defense;

CONFERENCE

SECTION 1. Same as Senate version.

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

- (B) intent or lack of intent at the time the student engaged in the conduct;
- (C) a student's disciplinary history; or
- (D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;
- (5) provide guidelines for setting the length of a term of:
 - (A) a removal under Section 37.006; and
 - (B) an expulsion under Section 37.007;
- (6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion;
- (7) prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions; and
- (8) provide, as appropriate for students at each grade level, methods, including options, for:
 - (A) managing students in the classroom and on school grounds;
 - (B) disciplining students; and
 - (C) preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists.

~~No equivalent provision.~~

SENATE VERSION

- (B) intent or lack of intent at the time the student engaged in the conduct;
- (C) a student's disciplinary history; or
- (D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;
- (5) provide guidelines for setting the length of a term of:
 - (A) a removal under Section 37.006; and
 - (B) an expulsion under Section 37.007;
- (6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion;
- (7) prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions; and
- (8) provide, as appropriate for students at each grade level, methods, including options, for:
 - (A) managing students in the classroom and on school grounds;
 - (B) disciplining students; and
 - (C) preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists.

SECTION __. Subchapter A, Chapter 37, Education Code, is amended by adding Section 37.0181 to read as follows:

CONFERENCE

Same as House version.

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Sec. 37.0181. STAFF DEVELOPMENT REGARDING DISCIPLINARY PROCEDURES. (a) Each principal or other appropriate administrator who oversees student discipline shall, at least once every three years, attend staff development training regarding this subchapter that includes information relating to the distinction between a discipline management technique used at the principal's discretion under Section 37.002(a) and the discretionary authority of a teacher to remove a disruptive student under Section 37.002(b).

(b) Staff development training under this section may be provided in coordination with regional education service centers through the use of distance learning methods, such as telecommunications networks, and using available agency resources.

SECTION 2. Prospective clause.

Same as House version.

SECTION 2. Same as House version.

SECTION 3. Effective date.

Same as House version.

SECTION 3. Same as House version.

~~No equivalent provision.~~

SECTION __. Subchapter A, Chapter 29, Education Code, is amended by adding Sections 29.020 and 29.021 to read as follows:

Sec. 29.020. OPTIONAL DISPUTE RESOLUTION METHODS. (a) A school district shall make available and provide information to parents regarding optional dispute resolution methods that may be used when a dispute arises between the district and a parent of a student with a disability regarding:

Same as House version.

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

- (1) identification of the student as a student entitled to special education services;
- (2) evaluation or educational placement of the student;
- or
- (3) the provision of a free appropriate public education to the student.
- (b) A school district's optional dispute resolution methods:
 - (1) must include:
 - (A) requesting mediation through the agency in accordance with 20 U.S.C. Section 1415(e) and 34 C.F.R. Section 300.506;
 - (B) requesting independent individualized education program facilitation, as described by Section 29.021, if the district is included within the boundaries of a regional education service center participating in the pilot program implemented under that section; and
 - (C) filing a complaint with the agency in accordance with 34 C.F.R. Section 300.153; and
 - (2) may include:
 - (A) convening a meeting of a student's admission, review, and dismissal committee;
 - (B) meeting with a student's teachers;
 - (C) meeting with one or more of the following:
 - (i) a campus administrator;
 - (ii) the district special education director or the director of a shared services arrangement under Section 29.007 to which the district is a party;
 - (iii) the district superintendent; or

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

- (iv) the board of trustees of the district; and
(D) requesting individualized education program facilitation similar to the facilitation provided under the pilot program implemented under Section 29.021, except that facilitation may be provided by either an independent facilitator or a district employee serving as the facilitator.
- (c) The use of an optional dispute resolution method made available under this section and the availability of those methods may not in any manner be used to deny or delay the right to a special education due process hearing in accordance with federal law.
- (d) Notwithstanding Subsection (c), on the filing of a request for a special education due process hearing in accordance with federal law, the school district and the parent shall be provided with the opportunity to attempt to resolve the dispute between the district and the parent through the agency's mediation process, provided that both the school district and the parent agree to participate in the mediation.
- (e) If a school district and a parent participate in mediation under this section:
- (1) the fact that the mediation occurred is not admissible into evidence in any subsequent proceeding involving the subject matter of the mediation;
 - (2) the mediator may not be subpoenaed to testify regarding the subject matter of the mediation at any subsequent special education due process hearing or civil action arising under federal special education law; and

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(3) the school district and parent are not entitled to access to any records created by the mediator in connection with the mediation.

(f) Unless specifically provided otherwise by federal or other state law, the participation of an individualized education program facilitator in the development of a student's individualized education program does not violate confidentiality provisions under federal or state law.

(g) If a school district chooses to offer individualized education program facilitation under Subsection (b)(2)(D), the facilitation must be provided at no cost to a parent.

(h) The commissioner shall adopt rules necessary to implement this section.

Sec. 29.021. PILOT PROGRAM FOR INDEPENDENT INDIVIDUALIZED EDUCATION PROGRAM FACILITATION. (a) The agency shall develop an independent individualized education program facilitation process as a method of alternative dispute resolution.

(b) The agency shall implement the process developed under Subsection (a) on a pilot program basis within the boundaries of three regional education service centers selected by the commissioner for that purpose. Not more than 500 facilitations may be conducted under the pilot program.

(c) Notwithstanding Subsection (b), if the commissioner determines that adequate funding is available, the

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

commissioner may authorize:

(1) the expansion of the pilot program to additional areas; or

(2) a greater number of facilitations than the limit specified under that subsection.

(d) The commissioner shall select the participating regional education service centers based on criteria established by the commissioner. The selection criteria must include criteria relating to:

(1) the geographic location of a center;

(2) student enrollment within the boundaries of a center;

(3) the number of formal complaints regarding special education issues filed by persons within the boundaries of a center; and

(4) the number of mediations and special education due process hearings requested by persons within the boundaries of a center.

(e) The facilitation process may be used when a school district located within the boundaries of a participating regional education service center and the parents of a student with a disability agree on the value of involving an impartial facilitator in the procedures used to develop the student's individualized education program.

(f) The role of a facilitator under the facilitation process developed under this section is to assist in creating an atmosphere for fair communication and the successful development of a student's individualized education program.

(g) Each participating regional education service center

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

shall develop a network of impartial facilitators to be made available on request to school districts and parents that choose to use the facilitation process developed under this section. Facilitators must be provided at no cost to a school district or parent.

(h) The commissioner shall adopt rules necessary to implement this section.

(i) Not later than January 1, 2011, the agency shall submit a report to the legislature regarding the implementation and effectiveness of the pilot program. This subsection expires September 1, 2011.

~~No equivalent provision.~~

SECTION __. Sections 29.020 and 29.021 of this Act apply beginning with the 2009-2010 school year.

Same as House version.

~~No equivalent provision.~~

SECTION __. Sections 29.020 and 29.021 of this Act do not make an appropriation. A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision, unless funding is provided from another source such as federal funds.

Same as House version.

~~No equivalent provision.~~

SECTION __. Subchapter A, Chapter 37, Education Code, is amended by adding Section 37.0012 to read as follows:

Same as House version.

Sec. 37.0012. DESIGNATION OF CAMPUS DISCIPLINE OFFICER. (a) A person at each campus

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

must be designated to serve as the campus discipline officer. The person designated may be the principal of the campus or any other campus administrator selected by the principal.

(b) The campus discipline officer is primarily responsible for maintaining student discipline and the implementation of this subchapter.

(c) The specific duties of the campus discipline officer may be established by campus or district policy. Unless otherwise provided by campus or district policy:

(1) a duty imposed on a campus principal or other campus administrator under this subchapter shall be performed by the campus discipline officer; and

(2) a power granted to a campus principal or other campus administrator under this subchapter may be exercised by the campus discipline officer.

(d) The campus discipline officer shall promptly notify a student's parent or guardian as provided by this subsection if under this subchapter the student is placed into in-school or out-of-school suspension, placed in a disciplinary alternative education program, expelled, or placed in a juvenile justice alternative education program or is taken into custody by a law enforcement officer. A campus discipline officer must comply with this subsection by:

(1) promptly contacting the parent or guardian by telephone or in person; and

(2) making a good faith effort to provide written notice of the disciplinary action to the student, on the day the

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

action is taken, for delivery to the student's parent or guardian.

(e) If a parent or guardian entitled to notice under Subsection (d) has not been reached by telephone or in person by 5 p.m. of the first business day after the day the disciplinary action is taken, a campus discipline officer shall mail written notice of the action to the parent or guardian at the parent's or guardian's last known address.

(f) If a campus discipline officer is unable or not available to promptly provide notice under Subsection (d), the principal or other designee shall provide the notice.

(g) This section does not create any liability for or cause of action against a school district or a school district's officers or employees.

SECTION __. Section 37.002(a), Education Code, is amended to read as follows:

(a) A teacher may send a student to the campus discipline officer's ~~[principal's]~~ office to maintain effective discipline in the classroom. The campus discipline officer ~~[principal]~~ shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001 that can reasonably be expected to improve the student's behavior before returning the student to the classroom.

Same as House version.

~~No equivalent provision.~~

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

~~No equivalent provision.~~

SECTION __. Section 37.009(a), Education Code, is amended to read as follows:

Same as House version.

(a) Not later than the third class day after the day on which a student is removed from class by the teacher under Section 37.002(b) or (d) or by the school principal or other appropriate administrator under Section 37.001(a)(2) or 37.006, the campus discipline officer [~~prineipal~~] or other appropriate administrator shall schedule a conference among the campus discipline officer [~~prineipal~~] or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the campus discipline officer, after consideration of the factors under Section 37.001(a)(4), [~~prineipal~~] shall order the placement of the student for a period consistent with the student code of conduct. If school district policy allows a student to appeal to the board of trustees or the board's designee a decision of the campus discipline officer [~~prineipal~~] or other appropriate administrator, other than an expulsion under Section 37.007, the decision of the board or the board's designee is final and may not be

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

appealed. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that[
[(1)] the student is a threat to the safety of other students or to district employees[; or
[(2)] ~~extended placement is in the best interest of the student~~].

~~No equivalent provision~~

SECTION __. Subchapter A, Chapter 37, Education Code, is amended by adding Section 37.0015 to read as follows:

Same as House version.

Sec. 37.0015. RIGHT TO PROMPT NOTICE OF DISCIPLINARY ACTION. (a) A parent is entitled to prompt notice from a school district as provided by this section if under this subchapter the parent's child is placed into in-school or out-of-school suspension, placed in a disciplinary alternative education program, expelled, or placed in a juvenile justice alternative education program or is taken into custody by a law enforcement officer. A school district must comply with this subsection by:

- (1) promptly contacting the parent by telephone or in person; and
- (2) making a good faith effort to provide written notice of the disciplinary action to the student, on the day the action is taken, for delivery to the student's parent.

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(b) If a parent entitled to notice under Subsection (a) has not been reached by telephone or in person by 5 p.m. of the first business day after the day the disciplinary action is taken, a school district shall mail written notice of the action to the parent at the parent's last known address.

~~No equivalent provision.~~

SECTION __. Section 37.008, Education Code, is amended by adding Subsection (l-1) to read as follows:

Same as House version.

(l-1) A school district shall provide the parents of a student removed to a disciplinary alternative education program with written notice of the district's obligation under Subsection (l) to provide the student with an opportunity to complete coursework required for graduation. The notice must:

- (1) include information regarding all methods available for completing the coursework; and
- (2) state that the methods are available at no cost to the student.

~~No equivalent provision.~~

SECTION __. Section 37.009, Education Code, is amended by adding Subsection (a-1) to read as follows:

Same as House version.

(a-1) A school principal or other appropriate administrator shall prepare and maintain documentation regarding each conference held under Subsection (a). The documentation must:

- (1) indicate the date and time the conference was held;
- (2) identify:
 - (A) each person who attended the conference by name and profession; and

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(B) each person who failed to attend the conference after being requested to attend, including the reason for the failure to attend, if known; and
(3) state the outcome of the conference.

~~No equivalent provision.~~

SECTION __. Section 37.0091(a), Education Code, is amended to read as follows:

Same as House version.

(a) A noncustodial parent may request in writing that a school district or school, for the remainder of the school year in which the request is received, provide that parent with:

(1) a copy of any written notification relating to student misconduct under Section 37.006 or 37.007 that is generally provided by the district or school to a student's parent or guardian; and

(2) any notice required by Section 37.0015.

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

~~No equivalent provision~~

SECTION __. Sections 37.008(a) and (l), Education Code, are amended to read as follows:

(a) Each school district shall provide a disciplinary alternative education program that:

(1) is provided in a setting other than a student's regular classroom;

(2) is located on or off of a regular school campus;

(3) provides for the students who are assigned to the disciplinary alternative education program to be separated from students who are not assigned to the program;

(4) provides structured courses in [focuses on] English language arts, mathematics, science, history, and self-discipline that are equivalent in content and rigor to courses in those subjects as provided in the regular classroom setting;

(5) provides for students' educational and behavioral needs;

(6) provides supervision and counseling;

(7) employs only teachers who meet all certification requirements established under Subchapter B, Chapter 21; ~~and~~

(8) provides not less than the minimum amount of instructional time per day required by Section 25.082(a); and

(9) provides an established curriculum for each grade level that provides students an opportunity to achieve promotion to the next grade level or to graduate from high school on the same schedule as students in the

Same as House version.

House Bill 171
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

regular classroom setting.

(1) A school district is required to provide in the district's disciplinary alternative education program a course necessary to fulfill a student's high school graduation requirements [~~only as provided by this subsection~~]. A school district shall offer a student removed to a disciplinary alternative education program an opportunity to complete coursework before the beginning of the next school year. The school district may provide the student an opportunity to complete coursework through any method available, including a correspondence course, distance learning, or summer school. The district may not charge the student for a course provided under this subsection.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB171 by Olivo (relating to consideration of mitigating factors in determining appropriate disciplinary action to be taken against a public school student.), Conference Committee Report

The fiscal implications of the bill cannot be determined at this time

Local Government Impact

The fiscal implications of the bill cannot be determined at this time

Source Agencies:

LBB Staff: JOB, JSp