

TEXAS EDUCATION AGENCY

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OPINION COMMITTEE

Robert Scott
Commissioner

February 19, 2008

Honorable Greg Abbott
Texas Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

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FEB 25 2008

OPEN RECORDS DIVISION

FILE # ML-45571-08

I.D. # 45571

RQ-0683-GA

Re: Opinion Request Regarding HB 1287, 80th Legislative Session

Dear General Abbott,

I am writing to ask for your opinion regarding several questions involving HB1287, as enacted by the 80th regular session of the Texas Legislature¹. As you know, Section 28.011, Texas Education Code², enacted by that statute provides for elective high school courses dealing with the impact of the Hebrew Scriptures (Old Testament) and New Testament, or a combined course. That section sets out various content requirements for such courses and provides for teacher training³ and constitutional safeguards⁴. HB 1287 also added "religious literature, including the Hebrew Scriptures (Old Testament) and New Testament" to the state curriculum required by Section 28.002.

As introduced⁵, HB1287 required all school districts to offer a course meeting the requirements of Section 28.011; subsection (a) provided that a school district "shall offer" the course. Districts were also allowed to offer a different course from the one created in section 28.011, but were prohibited from spending state funds "in connection with a course that does not meet the requirements of this section"⁶. Subsection 28.011(c) also prohibited the State Board of Education from adopting essential knowledge and skills⁷ or a textbook for the course.

HB 1287 was amended in the House Public Education Committee and again during the House floor debate to read as finally enacted. For purposes of this request, four amendments appear particularly important:

¹ Acts 2007, 80th Leg, ch. 856.

² All section references herein are to the Texas Education Code

³ Section 21.459 of the Education Code was added by the same act and goes into greater detail regarding teacher training.

⁴ By letter dated November 9, 2007, I have previously transmitted to your office the existing curriculum by which school districts have taught courses covering the same topics pursuant to Section 28.011(e). The content of such a course is not relevant to the questions in this request.

⁵ Available at <http://www.capitol.state.tx.us/tlodocs/80R/billtext/doc/HB01287I.doc>.

⁶ Introduced version, at Section 28.011(k).

⁷ See, footnote 11 below.

1. Subsection 28.011(a) was amended to provide that districts "may" offer the described course;
2. Subsection (j) was added to replace the introduced bill's prohibition against spending state funds on a course covering the same content but not adopted under Section 28.011;
3. Subsection (h) was added to provide:
 - (h) If, for a particular semester, fewer than 15 students at a school district campus register to enroll in a course required by this section, the district is not required to offer the course at that campus for that semester.
4. Subsection (e) was adopted to recognize the ability of the State Board of Education to adopt essential knowledge and skills for the course, subject to approval by the Attorney General.

My questions are as follows:

1. Must all school districts and charter schools⁸ offer the course described in Section 28.011 each school year in grades 9 through 12?
2. If your answer to Question 1 is "no", must all school districts and charter schools offer the course described in Section 28.011 in grades 9 through 12 during any school year in which 15 students at a campus request the course?

The amendment to Section 28.011(a) appears to have changed the legislation from mandatory to permissive. However, subsection (h) could also be read as requiring a district to offer the course (or courses) if 15 students make that request. Alternatively, Subsection (h) could serve the purpose of clarifying the ability of a district to cancel a course if fewer than 15 students registered⁹.

Subsection (h) may have been based on a similar State Board of Education rule that requires districts, in some circumstances, to offer courses if requested by 10 students¹⁰. That rule provides in Subsection (b)(4) and (c):

(4) The school district must provide each student the opportunity to participate in all courses listed in subsection (b) (2) of this section. The district must provide students the opportunity each year to select courses in which they intend to participate from a list that includes all courses required to be offered in subsection (b) (2) of this section. If the school district will not offer the required courses every year, but intends to offer particular courses only every other year, it must notify all enrolled students of that fact. The school district must teach a course in which ten or more students indicate they will participate or that is required for a student to graduate. For a course in which fewer than ten students indicate they will participate, the district must either teach the course or employ options described in Subchapter C of this chapter (relating to Other Provisions) to provide the course and must maintain evidence that it is employing those options.

⁸ Charter schools operate under Subchapter D, Chapter 12, Texas Education Code. Charters are required to offer the state curriculum pursuant to the terms of their charter and Section 12.111(a)(1).

⁹ There is no tape of the committee hearing on April 19, 2007 at which the provisions of subsection (h) were adopted and subsection (a) amended. We understand that a committee substitute was being considered in that hearing that included subsection (h) when an amendment was made to change the "shall" in subsection (a) to "may".

¹⁰ 19 Tex. Admin. Code Section 74.3, available at <http://www.tea.state.tx.us/rules/tac/chapter074/ch074a.html>.

...

(c) Courses in the foundation and enrichment curriculum in Grades 6-12 must be provided in a manner that allows all grade promotion and high school graduation requirements to be met in a timely manner. Nothing in this chapter shall be construed to require a district to offer a specific course in the foundation and enrichment curriculum except as required by this subsection.

The agency has understood the adoption of subsection (c) of the rule to require a district to offer a course only to the extent necessary to meet high school graduation requirements.¹¹

The amendments to subsection (j) appear to preserve the ability of a school to offer a local course covering the same subject. A construction that requires the state course upon the request of 15 students could limit that local district discretion.

The amendment to Section 28.002(a) may also be relevant to a determination as to whether the course described in section 28.011 is required to be offered. That section provides that each school district "shall offer, as a required curriculum" a list of subjects to which "religious literature, including the Hebrew Scriptures (Old Testament) and New Testament" was added as subsection (a)(1)(H).¹²

The legislative debate may also inform the answers to my questions. I have attached a document addressed "To: Concerned Constituents" from the Chairman of the House Public Education Committee addressing questions about the bill. We are informed¹³ that this document was distributed on the House floor during the debate on HB1287, as well as provided to Senators prior to that chamber's consideration of the bill. Among other points, that document states that the bill will "[r]espect local control by giving school districts the right to decide whether and how often these courses will be taught".

Finally, decisions of the 80th Legislature regarding funding may be relevant to construing the legislative intent. Section 28.011(f) provides that "[a] course under this section may only be taught by a teacher who has successfully completed training under Section 21.459." Section 21.459 was also enacted as part of HB1287 and provides for the commissioner to develop and make available teacher training materials. Subsection 21.459(d) directs the commissioner to "use funds appropriated for the purpose to administer this section." No appropriation was made for purposes of Section 21.459.

¹¹ See, State Board of Education minutes, September 2004, at page 12, available at http://www.tea.state.tx.us/sboe/minutes_all/2004/september/sboe_091004.doc.

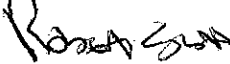
¹² The subjects identified in Section 28.002 are divided into "foundation" and "enrichment" curriculum, with the religious literature addition becoming part of the enrichment curriculum. The State Board of Education is charged in that section with identifying Texas Essential Knowledge and Skills ("TEKS") for each subject at appropriate grade levels. Beginning with high school level courses, the TEKS are subdivided into individual courses rather than subject/grade levels and certain courses or combinations of courses are required for high school graduation under Section 28.025. The State Board of Education by rule (See, 19 Tx. Admin. Code Sections 72.61 through 72.64) adopts three levels of high school graduation programs (minimum, recommended and advanced), subject to a statutory requirement of four courses in each of the foundation curriculum subjects for the recommended and advanced programs. The recommended high school graduation program (which is the default under Section 28.025(b)) does not require courses in career and technology or religious literature for graduation. Districts are required to offer subjects necessary for graduation, but not necessarily every school year.

¹³ Conversation with Representative Scott Hochberg, who offered most of the amendments to the bill as it was considered by the Public Education Committee and the House.

Due to that lack of funding and pursuant to Section 13.06 of the General Appropriations Act¹⁴, the agency is not developing that training.

Thank you for your consideration of this request. Should you need any additional information, please contact me or David Anderson, TEA General Counsel, at (512) 463-9720.

Sincerely,



Robert Scott
Commissioner of Education

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¹⁴ Available at http://www.lbb.state.tx.us/Bill_80/8_FSU/80-8_FSU_1007_Art9_thru_Art12_proc.pdf at page IX-54. The entire text of that section reads as follows:

Sec. 13.06. Contingency Rider. It is the intent of the Legislature that appropriations made in this Act be expended only for purposes and programs specifically funded in the Act, and contingency appropriations made for legislation adopted by the Eightieth Legislature be the sole source of funding for implementation of that legislation. No state agency or institution of higher education is required to reallocate or redistribute funds appropriated in this Act to provide funding for programs or legislation adopted by the Eightieth Legislature for which there is not specific appropriation or contingency provision identified in this Act.



CHAIRMAN ROB EISSLER
HOUSE DISTRICT 15

To: Concerned Constituents

Date: May 8, 2007

**From: Chairman Rob Eissler
House Public Education Committee**

Re: Explanation of Committee Amendments for HB 1287

This bill was heard by the Public Education Committee not once, as is customary, but an unprecedented three times - three different days and times. The Committee heard from Biblical scholars, Constitutional scholars and representatives from the Jewish, Catholic, Muslim and Protestant faiths.

Once the committee heard the testimony, several amendments were added to ensure the proposed course Bible was academically sound. The Bible course would be an elective course - an enrichment course - that would need to meet the same criteria as all other courses offered in our public schools.

The amendments do the following:

- Require that the course be taught by qualified teachers
- Ensure that the textbooks used for the course will be academically sound
- Ensure that school districts will have curriculum standards to follow;
- Protect the religious freedom of all students
- Provide for training in the First Amendment and issues of religious freedom for all teachers of these courses
- Respect local control by giving school districts the right to decide whether and how often these courses will be taught

After amending the bill the committee unanimously voted to recommend this version to the Full House.

The House does not have to be divided over the Bible or over religion, but can feel secure that the proposed Bible course will be taught with the same respect and to standards given to other courses taught in our public schools.