

A BILL TO BE ENTITLED

AN ACT

relating to the approval of open-enrollment charter schools and the applicability of certain state and local laws to open-enrollment charter schools.

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

SECTION 1. Section 12.101(b-0), Education Code, is amended to read as follows:

(b-0) The commissioner shall notify the State Board of Education of each charter the commissioner proposes to grant under this subchapter. Unless, before the 90th day after the date on which the board receives the notice from the commissioner, 9 [~~a majority of the~~] members of the board present and voting vote against the grant of that charter, the commissioner's proposal to grant the charter takes effect. The board may not deliberate or vote on any grant of a charter that is not proposed by the commissioner. For each charter the commissioner proposes to grant, the board is limited to consideration of the following:

(1) the staffing proposed under the charter for:

(A) special education programs under Subchapter A, Chapter 29; and

(B) bilingual education and special language programs under Subchapter B, Chapter 29;

(2) the alignment of proposed curriculum with the essential knowledge and skills adopted under Subchapter A, Chapter

1 28;

2 (3) any prior issues involving the applicant related
3 to open-enrollment charter school or campus operations, student
4 performance and academic accountability, or fiscal management that
5 led to the closure of an open-enrollment charter school, the
6 suspension of the authority of an open-enrollment charter school to
7 operate, or the revocation of a charter;

8 (4) any issues involving the applicant related to:

9 (A) a violation or potential violation of
10 applicable state or local conflict-of-interest requirements; or

11 (B) a violation or potential violation of Chapter
12 573, Government Code, involving prohibited nepotism between an
13 individual serving the eligible entity and:

14 (i) an individual proposed to serve on the
15 governing body of an open-enrollment charter school to be operated
16 under the charter; or

17 (ii) an individual proposed to serve at the
18 management company for an open-enrollment charter school to be
19 operated under the charter;

20 (5) any issues involving lack of transparency or
21 truthfulness in the application for the charter; and

22 (6) evidence that:

23 (A) the recruitment policies of the
24 open-enrollment charter school or campus encourage special
25 education students to apply and the admission and enrollment of
26 special education students at the school or campus is not limited;

27 (B) the proposed leadership of the

1 open-enrollment charter school or campus has a record of prior
2 performance that demonstrates improvement in school and campus
3 operations, academic and fiscal management, and student
4 performance;

5 (C) the proposed budget of the open-enrollment
6 charter school or campus includes sufficient funding to support the
7 academic programs, support services, and staffing included in the
8 application; and

9 (D) the fiduciary responsibilities and decisions
10 of the open-enrollment charter school or campus are executed by the
11 governing body of the charter school.

12 SECTION 2. Section 12.1058, Education Code, is amended by
13 amending Subsection (c) and adding Subsections (d), (d-1), (d-2),
14 and (d-3) to read as follows:

15 (c) Notwithstanding Subsection (a) or (b), an
16 open-enrollment charter school operated by a tax exempt entity as
17 described by Section 12.101(a)(3) is not considered to be a
18 political subdivision, local government, or local governmental
19 entity unless:

20 (1) a [the applicable] statute specifically states
21 that the statute applies to an open-enrollment charter school; or

22 (2) a provision in this chapter states that a specific
23 statute applies to an open-enrollment charter school.

24 (d) Except as provided by Section 12.103(c), a political
25 subdivision shall consider an open-enrollment charter school a
26 school district for purposes of zoning, project permitting,
27 platting and replatting processes, business licensing, franchises,

1 utility services, eminent domain, signage, subdivision regulation,
2 property development projects, the requirements for posting bonds
3 or securities, contract requirements, land development standards
4 as provided by Section 212.902, Local Government Code, tree and
5 vegetation regulations, regulations of architectural features of a
6 structure, construction of fences, landscaping, garbage disposal,
7 noise levels, fees or other assessments, and construction or site
8 development work. An open-enrollment charter school does not have
9 the power of eminent domain.

10 (d-1) A political subdivision may not take any action that
11 prohibits an open-enrollment charter school from operating a public
12 school campus, educational support facility, athletic facility, or
13 administrative office within the political subdivision's
14 jurisdiction or on any specific property located within the
15 jurisdiction of the political subdivision that it could not take
16 against a school district. A political subdivision shall grant
17 approval in the same manner and follow the same timelines as if the
18 charter school were a school district located in that political
19 subdivision's jurisdiction.

20 (d-2) This section applies to both owned and leased property
21 of the open-enrollment charter school under Section 12.128.

22 (d-3) Except as provided by this section, this section does
23 not affect the authority granted by state law to a political
24 subdivision to regulate an open-enrollment charter school
25 regarding health and safety ordinances.

26 SECTION 3. Subchapter D, Chapter 12, Education Code, is
27 amended by adding Section 12.1102 to read as follows:

1 Sec. 12.1102. APPEAL OF APPLICATION SELECTION
2 DETERMINATION. (a) This section applies only if the charter
3 application selection process includes:

4 (1) scoring criteria and procedures for use of the
5 criteria by an external application review panel selected by the
6 commissioner; and

7 (2) selection criteria that include the minimum score
8 necessary for an applicant to be eligible for selection.

9 (b) The State Board of Education shall adopt procedures for
10 the appeal of an application selection determination made based on
11 the submission of an application under a process described by
12 Subsection (a).

13 (c) The procedures adopted under this section must provide
14 for an applicant who scores within 10 percentage points of the
15 minimum score necessary for an applicant to be eligible for
16 selection to appeal to the State Board of Education a score
17 determined by the external application review panel.

18 (d) The determination of the State Board of Education in an
19 appeal under the procedures adopted under this section is final.

20 (e) If the charter applicant prevails in an appeal to the
21 State Board of Education, the commissioner shall consider the
22 applicant's application.

23 SECTION 4. Section 554.001(2), Government Code, is amended
24 to read as follows:

25 (2) "Local governmental entity" means:

26 (A) a political subdivision of the state,
27 including a[+]

- 1 [~~(A)~~] county, ~~[+]~~
- 2 [~~(B)~~] municipality, ~~[+]~~
- 3 [~~(C)~~ ~~public~~] school district, ~~[+]~~ or
- 4 [~~(D)~~] special-purpose district authority; or
- 5 (B) an open-enrollment charter school.

6 SECTION 5. Section 212.902, Local Government Code, is
 7 amended to read as follows:

8 Sec. 212.902. SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER
 9 SCHOOL LAND DEVELOPMENT STANDARDS. (a) This section applies to an
 10 agreement [~~agreements~~] between a school district or
 11 open-enrollment charter school [~~districts~~] and a [~~any~~]
 12 municipality which has annexed territory for limited purposes.

13 (b) On request by a school district or open-enrollment
 14 charter school, a municipality shall enter an agreement with the
 15 board of trustees of the school district or the governing body of
 16 the open-enrollment charter school to establish review fees, review
 17 periods, and land development standards ordinances and to provide
 18 alternative water pollution control methodologies for school
 19 buildings constructed by the school district or open-enrollment
 20 charter school. The agreement shall include a provision exempting
 21 the district or charter school from all land development ordinances
 22 in cases where the district or charter school is adding temporary
 23 classroom buildings on an existing school campus.

24 (c) If the municipality and the school district or
 25 open-enrollment charter school do not reach an agreement on or
 26 before the 120th day after the date on which the municipality
 27 receives the district's or charter school's request for an

1 agreement, proposed agreements by the [~~school~~] district or charter
2 school and the municipality shall be submitted to an independent
3 arbitrator appointed by the presiding district judge whose
4 jurisdiction includes the [~~school~~] district or charter school. The
5 arbitrator shall, after a hearing at which both the [~~school~~]
6 district or charter school and the municipality make presentations
7 on their proposed agreements, prepare an agreement resolving any
8 differences between the proposals. The agreement prepared by the
9 arbitrator will be final and binding upon both the [~~school~~]
10 district or charter school and the municipality. The cost of the
11 arbitration proceeding shall be borne equally by the [~~school~~]
12 district or charter school and the municipality.

13 (d) A school district or open-enrollment charter school
14 that requests an agreement under this section, at the time the
15 district or charter school [~~it~~] makes the request, shall send a copy
16 of the request to the commissioner of education. At the end of the
17 120-day period, the requesting district or charter school shall
18 report to the commissioner the status or result of negotiations
19 with the municipality. A municipality may send a separate status
20 report to the commissioner. The district or charter school shall
21 send to the commissioner a copy of each agreement between the
22 district or charter school and a municipality under this section.

23 (e) In this section:

24 (1) [~~7~~] "Land [~~land~~] development standards" includes
25 impervious cover limitations, building setbacks, floor to area
26 ratios, building heights and coverage, water quality controls,
27 landscaping, development setbacks, compatibility standards,

1 traffic analyses including traffic impact analyses, vehicle
2 queuing, parking requirements, signage requirements, and driveway
3 cuts, if applicable.

4 (2) "Open-enrollment charter school" means a school
5 granted a charter under Subchapter C, D, or E, Chapter 12, Education
6 Code.

7 (f) Nothing in this section shall be construed to limit the
8 applicability of or waive fees for fire, safety, health, or
9 building code ordinances of the municipality prior to or during
10 construction of school buildings, nor shall any agreement waive any
11 fee or modify any ordinance of a municipality for an
12 administration, service, or athletic facility proposed for
13 construction by a school district or open-enrollment charter
14 school.

15 SECTION 6. Chapter 250, Local Government Code, is amended
16 by adding Section 250.012 to read as follows:

17 Sec. 250.012. REGULATION OF OPEN-ENROLLMENT CHARTER
18 SCHOOLS. (a) In this section:

19 (1) "Local governmental entity" means a political
20 subdivision of the state, including a:

21 (A) municipality;

22 (B) county; and

23 (C) special purpose district.

24 (2) "Open-enrollment charter school" means a school
25 granted a charter under Subchapter D or E, Chapter 12, Education
26 Code.

27 (b) A local governmental entity may not enact or enforce an

1 ordinance, order, regulation, resolution, rule, or policy or take
2 action that prohibits an open-enrollment charter school from
3 operating a public school campus, educational support facility, or
4 administrative office in the local governmental entity's
5 jurisdiction or on any specific property in the jurisdiction of the
6 local governmental entity.

7 (c) The commissioner of education has exclusive
8 jurisdiction over the establishment and location of an
9 open-enrollment charter school campus as provided by Subchapter D,
10 Chapter 12, Education Code.

11 (d) This section applies to property purchased or leased
12 with state funds received by an open-enrollment charter school
13 under Section 12.128, Education Code.

14 (e) This section does not affect the authority granted by
15 state law to a local governmental entity to regulate an
16 open-enrollment charter school.

17 SECTION 7. Section 395.022(b), Local Government Code, is
18 amended to read as follows:

19 (b) A school district and an open-enrollment charter school
20 are [~~is~~] not required to pay impact fees imposed under this chapter
21 unless the board of trustees of the district or the governing body
22 of the charter school consents to the payment of the fees by
23 entering a contract with the political subdivision that imposes the
24 fees. The contract may contain terms the board of trustees or
25 governing body considers advisable to provide for the payment of
26 the fees. This section applies only to an open-enrollment charter
27 school campus constructed on land that:

1 (1) is owned by the charter holder or the charter
2 holder's parent nonprofit entity; and

3 (2) does not include any other uses.

4 SECTION 8. Section 552.053, Local Government Code, is
5 amended by amending Subsection (b) and adding Subsections (b-1) and
6 (b-2) to read as follows:

7 (b) The following may be exempt:

8 (1) this state;

9 (2) a county;

10 (3) a municipality; or

11 (4) [~~a~~] school districts and open-enrollment charter
12 schools [~~district~~].

13 (b-1) For purposes of an exemption granted under Subsection
14 (b)(4), the exemption must be granted to both school districts and
15 open-enrollment charter schools.

16 (b-2) For purposes of this section, "open-enrollment
17 charter school" means a school granted a charter under Subchapter D
18 or E, Chapter 12, Education Code.

19 SECTION 9. As soon as practicable after the effective date
20 of this Act, the State Board of Education shall adopt procedures for
21 the appeal of an application selection determination as provided by
22 Section 12.1102, Education Code, as added by this Act.

23 SECTION 10. An exemption granted to a school district under
24 Section 552.053(b)(4), Local Government Code, as that section
25 existed before the effective date of this Act, automatically
26 extends to all open-enrollment charter schools located in the
27 municipality after the effective date of this Act unless the

1 municipality repeals the exemption before the effective date of
2 this Act.

3 SECTION 11. This Act takes effect immediately if it
4 receives a vote of two-thirds of all the members elected to each
5 house, as provided by Section 39, Article III, Texas Constitution.
6 If this Act does not receive the vote necessary for immediate
7 effect, this Act takes effect September 1, 2021.