

By: Bettencourt, et al.

S.B. No. 28

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the approval of open-enrollment charter schools and the
3 applicability of certain state and local laws to open-enrollment
4 charter schools.

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

6 SECTION 1. Section 12.1058, Education Code, is amended by
7 amending Subsection (c) and adding Subsection (d) to read as
8 follows:

9 (c) Notwithstanding Subsection (a) or (b), an
10 open-enrollment charter school operated by a tax exempt entity as
11 described by Section 12.101(a)(3) is not considered to be a
12 political subdivision, local government, or local governmental
13 entity unless:

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

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

18 (d) Except as provided by Section 12.103(c), a
19 municipality, county, special purpose district, or political
20 subdivision shall consider an open-enrollment charter school a
21 school district for purposes of zoning, permitting, plat approvals,
22 fees or other assessments, construction or site development work,
23 code compliance, development, and any municipality, county,
24 special purpose district, or political subdivision approval in the

1 same manner and following the same timelines as if the charter
2 school were a school district or state-owned facility located in
3 that local government's jurisdiction.

4 SECTION 2. Subchapter D, Chapter 12, Education Code, is
5 amended by adding Section 12.1102 to read as follows:

6 Sec. 12.1102. APPEAL OF APPLICATION SELECTION
7 DETERMINATION. (a) This section applies only if the charter
8 application selection process includes:

9 (1) scoring criteria and procedures for use of the
10 criteria by an external application review panel selected by the
11 commissioner; and

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

14 (b) The State Board of Education shall adopt procedures for
15 the appeal of an application selection determination made based on
16 the submission of an application under a process described by
17 Subsection (a).

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

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

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

1 SECTION 3. Section 212.902, Local Government Code, is
2 amended to read as follows:

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

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

19 (c) If the municipality and the school district or
20 open-enrollment charter school do not reach an agreement on or
21 before the 120th day after the date on which the municipality
22 receives the district's or charter school's request for an
23 agreement, proposed agreements by the [~~school~~] district or charter
24 school and the municipality shall be submitted to an independent
25 arbitrator appointed by the presiding district judge whose
26 jurisdiction includes the [~~school~~] district or charter school. The
27 arbitrator shall, after a hearing at which both the [~~school~~]

1 district or charter school and the municipality make presentations
2 on their proposed agreements, prepare an agreement resolving any
3 differences between the proposals. The agreement prepared by the
4 arbitrator will be final and binding upon both the [~~school~~]
5 district or charter school and the municipality. The cost of the
6 arbitration proceeding shall be borne equally by the [~~school~~]
7 district or charter school and the municipality.

8 (d) A school district or open-enrollment charter school
9 that requests an agreement under this section, at the time the
10 district or charter school [~~it~~] makes the request, shall send a copy
11 of the request to the commissioner of education. At the end of the
12 120-day period, the requesting district or charter school shall
13 report to the commissioner the status or result of negotiations
14 with the municipality. A municipality may send a separate status
15 report to the commissioner. The district or charter school shall
16 send to the commissioner a copy of each agreement between the
17 district or charter school and a municipality under this section.

18 (e) In this section:

19 (1) [~~r~~] "Land [~~land~~] development standards" includes
20 impervious cover limitations, building setbacks, floor to area
21 ratios, building heights and coverage, water quality controls,
22 landscaping, development setbacks, compatibility standards,
23 traffic analyses including traffic impact analyses, vehicle
24 queuing, parking requirements, signage requirements, and driveway
25 cuts, if applicable.

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

1 Code.

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

10 SECTION 4. Chapter 250, Local Government Code, is amended
11 by adding Section 250.012 to read as follows:

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

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

16 (A) municipality;

17 (B) county; and

18 (C) special purpose district.

19 (2) "Open-enrollment charter school" means a school
20 granted a charter under Subchapter D or E, Chapter 12, Education
21 Code.

22 (b) A local governmental entity may not enact or enforce an
23 ordinance, order, regulation, resolution, rule, or policy or take
24 action that prohibits an open-enrollment charter school from
25 operating a public school campus, educational support facility, or
26 administrative office in the local governmental entity's
27 jurisdiction or on any specific property in the jurisdiction of the

1 local governmental entity.

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

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

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

12 SECTION 5. Section 395.022(b), Local Government Code, is
13 amended to read as follows:

14 (b) A school district and an open-enrollment charter school
15 are [~~is~~] not required to pay impact fees imposed under this chapter
16 unless the board of trustees of the district or the governing body
17 of the charter school consents to the payment of the fees by
18 entering a contract with the political subdivision that imposes the
19 fees. The contract may contain terms the board of trustees or
20 governing body considers advisable to provide for the payment of
21 the fees.

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

25 (b) The following may be exempt:

26 (1) this state;

27 (2) a county;

1 (3) a municipality; or

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

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

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

10 SECTION 7. Section 12.101(b-0), Education Code, is
11 repealed.

12 SECTION 8. As soon as practicable after the effective date
13 of this Act, the State Board of Education shall adopt procedures for
14 the appeal of an application selection determination as provided by
15 Section 12.1102, Education Code, as added by this Act.

16 SECTION 9. An exemption granted to a school district under
17 Section 552.053(b)(4), Local Government Code, as that section
18 existed before the effective date of this Act, automatically
19 extends to all open-enrollment charter schools located in the
20 municipality after the effective date of this Act unless the
21 municipality repeals the exemption before the effective date of
22 this Act.

23 SECTION 10. This Act takes effect immediately if it
24 receives a vote of two-thirds of all the members elected to each
25 house, as provided by Section 39, Article III, Texas Constitution.
26 If this Act does not receive the vote necessary for immediate
27 effect, this Act takes effect September 1, 2021.