

By: Dutton

H.B. No. 2224

Substitute the following for H.B. No. 2224:

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C.S.H.B. No. 2224

A BILL TO BE ENTITLED

AN ACT

relating to open-enrollment charter schools.

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

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

(b) The State Board of Education may grant a charter for an open-enrollment charter school only to an applicant that meets reasonable ~~[any]~~ financial, governing, and operational standards adopted by the commissioner under this subchapter and approved by the board. The board ~~[State Board of Education]~~ may not grant a total of more than 215 charters for an open-enrollment charter school.

SECTION 2. Section 12.1012(6), Education Code, is amended to read as follows:

(6) "Officer of an open-enrollment charter school" means a member of the governing body [+

~~[(A) the principal, director, or other chief operating officer of an open-enrollment charter school,~~

~~[(B) an assistant principal or assistant director of an open-enrollment charter school, or~~

~~[(C) a person charged with managing the finances]~~
of an open-enrollment charter school who holds the position of presiding officer, president, vice president, or secretary or another similar position. The term does not include a principal, a

1 vice principal, or any other administrative support personnel.

2 SECTION 3. Section 12.1052, Education Code, is amended to
3 read as follows:

4 Sec. 12.1052. APPLICABILITY OF LAWS RELATING TO [~~LOCAL~~
5 ~~GOVERNMENT~~] RECORDS. (a) With respect only to the retention of
6 personnel records and records of a student enrolled in or formerly
7 enrolled in [~~operation of~~] an open-enrollment charter school, an
8 open-enrollment charter school is considered to be a local
9 government for purposes of Subtitle C, Title 6, Local Government
10 Code, and Subchapter J, Chapter 441, Government Code. A charter
11 holder or an open-enrollment charter school is required to retain
12 school records other than personnel records or records related to a
13 student enrolled or formerly enrolled at the school only as
14 provided by the Texas Non-Profit Corporation Act (Article 1396-1.01
15 et seq., Vernon's Texas Civil Statutes).

16 (b) Records retained under Subsection (a) [~~of an~~
17 ~~open-enrollment charter school and records of a charter holder that~~
18 ~~relate to an open-enrollment charter school]~~ are government records
19 for all purposes under state law.

20 (c) Any requirement in Subtitle C, Title 6, Local Government
21 Code, or Subchapter J, Chapter 441, Government Code, that applies
22 to a school district, the board of trustees of a school district, or
23 an officer or employee of a school district applies to an
24 open-enrollment charter school, the governing body of a charter
25 holder, the governing body of an open-enrollment charter school, or
26 an [~~officer or~~] employee of an open-enrollment charter school to
27 the extent that the requirement relates to student or personnel

1 records, except that the records required to be retained under
2 Subsection (a) by [~~of~~] an open-enrollment charter school that
3 ceases to operate shall be transferred in the manner prescribed by
4 Subsection (d).

5 (d) The records required to be retained under Subsection (a)
6 by [~~of~~] an open-enrollment charter school that ceases to operate
7 shall be transferred in the manner specified by the commissioner to
8 a custodian designated by the commissioner. The commissioner may
9 designate any appropriate entity to serve as custodian, including
10 the agency, a regional education service center, or a school
11 district. In designating a custodian, the commissioner shall
12 ensure that the transferred records, including student and
13 personnel records, are transferred to a custodian capable of:

- 14 (1) maintaining the records;
- 15 (2) making the records readily accessible to students,
16 parents, former school employees, and other persons entitled to
17 access; and
- 18 (3) complying with applicable state or federal law
19 restricting access to the records.

20 (e) If the charter holder of an open-enrollment charter
21 school that ceases to operate or an officer or employee of such a
22 school refuses to transfer school records required to be retained
23 under Subsection (a) in the manner specified by the commissioner
24 under Subsection (d), the commissioner may ask the attorney general
25 to petition a court for recovery of the records. If the court
26 grants the petition, the court shall award attorney's fees and
27 court costs to the state.

1 SECTION 4. Section 12.1054(a), Education Code, is amended
2 to read as follows:

3 (a) A member of the governing body of a charter holder or [~~7~~]
4 a member of the governing body of an open-enrollment charter school
5 [~~7, or an officer of an open-enrollment charter school~~] is
6 considered to be a local public official for purposes of Chapter
7 171, Local Government Code. For purposes of that chapter:

8 (1) a member of the governing body of a charter holder
9 or a member of the governing body [~~or officer~~] of an open-enrollment
10 charter school is considered to have a substantial interest in a
11 business entity if a person related to the member [~~or officer~~] in
12 the third degree by consanguinity or affinity, as determined under
13 Chapter 573, Government Code, has a substantial interest in the
14 business entity under Section 171.002, Local Government Code; and

15 (2) notwithstanding any provision of Subdivision (1)
16 [~~Section 12.1054(1)~~], an employee of an open-enrollment charter
17 school rated as academically acceptable or higher under Chapter 39
18 for at least two of the preceding three school years may serve as a
19 member of the governing body of the charter holder or [~~of~~] the
20 governing body of the school if the employees do not constitute a
21 quorum of the governing body or any committee of the governing body
22 and [~~7, however, 7~~] all members [~~shall~~] comply with the requirements of
23 Sections 171.003-171.007, Local Government Code.

24 SECTION 5. Section 12.1055(b), Education Code, is amended
25 to read as follows:

26 (b) Notwithstanding Subsection (a), if an open-enrollment
27 charter school is rated academically acceptable or higher under

1 Chapter 39 for at least two of the preceding three school years,
2 then Chapter 573, Government Code, does not apply to that school;
3 however, a member of the governing body of a charter holder or a
4 member of the governing body [~~or officer~~] of an open-enrollment
5 charter school shall comply with the requirements of Sections
6 171.003-171.007, Local Government Code, with respect to a personnel
7 matter concerning a person related to the member [~~or officer~~]
8 within the degree specified by Section 573.002, Government Code, as
9 if the personnel matter were a transaction with a business entity
10 subject to those sections, and persons defined under Sections
11 573.021-573.025, Government Code, shall not constitute a quorum of
12 the governing body or any committee of the governing body.

13 SECTION 6. Section 12.114, Education Code, is amended to
14 read as follows:

15 Sec. 12.114. REVISION. (a) Except as otherwise provided by
16 this section, a [A] revision of a charter of an open-enrollment
17 charter school may be made only with the approval of the
18 commissioner.

19 (b) The governing body of an open-enrollment charter school
20 may revise the school's charter without the approval of the
21 commissioner as necessary to comply with a change in law. The
22 governing body shall provide the commissioner written notice of the
23 revision not later than the 14th day after the date the revision is
24 approved by the governing body.

25 (c) A revision of a charter of an open-enrollment charter
26 school under Subsection (b) is final unless the commissioner
27 provides the governing body of the school written notice of the

1 commissioner's disapproval not later than the 30th day after the
2 date the commissioner receives notice of the revision. With any
3 notice of disapproval, the commissioner shall include a statement
4 of the reasons for disapproval.

5 SECTION 7. Section 12.116(c), Education Code, is amended to
6 read as follows:

7 (c) Chapter 2001, Government Code, applies [~~does not apply~~]
8 to a hearing that is related to a modification, placement on
9 probation, revocation, or denial of renewal under this subchapter.

10 SECTION 8. Section 12.117, Education Code, is amended by
11 amending Subsection (a) and adding Subsections (c) and (d) to read
12 as follows:

13 (a) For admission to an open-enrollment charter school, the
14 governing body of the school shall:

15 (1) require the applicant to complete and submit an
16 application not later than a reasonable deadline the school
17 establishes; and

18 (2) except as otherwise provided by Subsection (c), on
19 receipt of more acceptable applications for admission under this
20 section than available positions in the school:

21 (A) fill the available positions by lottery; or

22 (B) subject to Subsection (b), fill the available
23 positions in the order in which applications received before the
24 application deadline were received.

25 (c) An open-enrollment charter school may give preference
26 in admissions to the school if the preference is based on:

27 (1) reasonable academic, artistic, or other

1 eligibility standards, including gender, that are consistent with
2 the nonregulatory guidance provided by the United States Department
3 of Education for the public charter schools program authorized by
4 20 U.S.C. Sections 7221-7221j, as amended, and specified in the
5 school's charter application; or

6 (2) standards consistent with the school's mission and
7 purpose, as specified in the school's charter, and consistent with
8 admissions practices in public schools.

9 (d) In admitting students under this section, an
10 open-enrollment charter school may not discriminate on the basis of
11 a student's race, color, creed, religion, or national origin.

12 SECTION 9. Section 12.119(b), Education Code, is amended to
13 read as follows:

14 (b) Each year within the period and in a form prescribed by
15 the State Board of Education, each open-enrollment charter school
16 shall file with the board the following information:

17 (1) the name, address, and telephone number of each
18 [~~officer and~~] member of the governing body of the open-enrollment
19 charter school; and

20 (2) the amount of annual compensation the
21 open-enrollment charter school pays to each [~~officer and~~] member of
22 the governing body.

23 SECTION 10. Section 12.120(a), Education Code, is amended
24 to read as follows:

25 (a) A person may not serve as a member of the governing body
26 of a charter holder, as a member of the governing body of an
27 open-enrollment charter school, or as an [~~officer or~~] employee of

1 an open-enrollment charter school if the person:

2 (1) has been convicted of a felony [~~or a misdemeanor~~
3 ~~involving moral turpitude~~];

4 (2) has been convicted of an offense listed in Section
5 37.007(a);

6 (3) has been convicted of an offense listed in Article
7 62.01(5), Code of Criminal Procedure; or

8 (4) has a substantial interest in a management
9 company.

10 SECTION 11. Sections 12.122(a) and (b), Education Code, are
11 amended to read as follows:

12 (a) Notwithstanding the Texas Non-Profit Corporation Act
13 (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or other
14 law, [~~on request of the commissioner, the attorney general may~~
15 ~~bring suit against~~] a member of the governing body of an
16 open-enrollment charter school is liable for breach of a fiduciary
17 duty by the member, including misapplication of public funds, only
18 to the extent that a member of a school district board of trustees
19 would be liable for the breach.

20 (b) The attorney general may bring suit under Subsection (a)
21 only to the extent that the attorney general may bring suit against
22 a member of a school district board of trustees [~~for:~~

23 [~~(1) damages,~~

24 [~~(2) injunctive relief, or~~

25 [~~(3) any other equitable remedy determined to be~~
26 ~~appropriate by the court]~~.

27 SECTION 12. Sections 12.125 and 12.126, Education Code, are

1 amended to read as follows:

2 Sec. 12.125. CONTRACT FOR MANAGEMENT SERVICES. (a) Any
3 contract, including a contract renewal, between an open-enrollment
4 charter school and a management company proposing to provide
5 management services to the school must require the management
6 company to maintain all records related to the management services
7 separately from any other records of the management company.

8 (b) The commissioner may by rule adopt guidelines for a
9 contract under this section between an open-enrollment charter
10 school and a management company.

11 (c) A contract under this section between an
12 open-enrollment charter school and a management company does not
13 require approval of the commissioner.

14 Sec. 12.126. CERTAIN MANAGEMENT SERVICES CONTRACTS
15 PROHIBITED. The commissioner may require that the governing body of
16 an open-enrollment charter school consider denying the [~~prohibit,~~
17 ~~deny~~] renewal of, suspending [~~suspend~~], or revoking [~~revoke~~] a
18 contract between the [~~an open-enrollment charter~~] school and a
19 management company providing management services to the school if
20 the commissioner determines that the management company has:

21 (1) substantially failed to provide educational or
22 related services in compliance with the company's contractual or
23 other legal obligation to the [~~any open-enrollment charter~~] school
24 [~~in this state or to any other similar school in another state~~];

25 (2) substantially failed to protect the health,
26 safety, or welfare of the students enrolled at an open-enrollment
27 charter school served by the company; or

1 (3) [~~violated this subchapter or a rule adopted under~~
2 ~~this subchapter, or~~

3 [~~(4)~~] otherwise failed to comply with any material
4 contractual or other material legal obligation to provide services
5 to the school.

6 SECTION 13. Section 22.083(a), Education Code, is amended
7 to read as follows:

8 (a) A school district, private school, open-enrollment
9 charter school, regional education service center, or shared
10 services arrangement may obtain from any law enforcement or
11 criminal justice agency all criminal history record information
12 that relates to a person:

13 (1) whom the district, school, service center, or
14 shared services arrangement intends to employ in any capacity; or

15 (2) who has indicated, in writing, an intention to
16 serve as a volunteer with the district, school, service center, or
17 shared services arrangement.

18 SECTION 14. Sections 12.122(c) and 22.083(b), Education
19 Code, are repealed.

20 SECTION 15. This Act applies beginning with the 2003-2004
21 school year.

22 SECTION 16. This Act takes effect immediately if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary for immediate
26 effect, this Act takes effect September 1, 2003.