

Amend HB 3220 (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 12.101, Education Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) The State Board of Education, after thoroughly investigating and evaluating an applicant, may grant a charter for an open-enrollment charter school only to an applicant that meets any financial, governing, curriculum development and implementation, and operational standards adopted by the commissioner under this subchapter. The State Board of Education may not grant ~~[a total of]~~ more than 10 new ~~[215]~~ charters for an open-enrollment charter school each state fiscal year.

(b-1) A charter holder may establish one or more new open-enrollment charter school campuses under a charter without applying for authorization from the State Board of Education if:

(1) 90 percent or more of the open-enrollment charter school campuses operating under the charter have been rated as academically acceptable or higher under Subchapter D, Chapter 39, for the two preceding school years;

(2) either no campus operating under the charter has been rated as academically unacceptable for any two of the three preceding school years or such a campus has been closed;

(3) the charter holder satisfies generally accepted accounting standards of fiscal management;

(4) the charter holder provides written notice, in the time, manner, and form provided by commissioner rule, to the State Board of Education and the commissioner of the establishment of any campus under this subsection; and

(5) not later than the 90th day after the date the charter holder provides written notice under Subdivision (4), the commissioner does not provide written notice to the charter holder disapproving a new campus under this section.

SECTION 2. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1011 to read as follows:

Sec. 12.1011. AUTHORIZATION FOR GRANT OF CHARTERS FOR SCHOOLS PRIMARILY SERVING STUDENTS WITH DISABILITIES. (a) The

State Board of Education may grant under Section 12.101 a charter on the application of an eligible entity for an open-enrollment charter school intended primarily to serve students with disabilities, including students with autism. A charter granted under this section is not considered for purposes of the limit on the number of open-enrollment charter schools imposed by Section 12.101(b).

(b) For purposes of the applicability of state and federal law, including a law prescribing requirements concerning students with disabilities, an open-enrollment charter school described by Subsection (a) is considered the same as any other school for which a charter is granted under Section 12.101.

(c) To the fullest extent permitted under federal law, a parent of a student with a disability may choose to enroll the parent's child in an open-enrollment charter school described by Subsection (a) regardless of whether a disproportionate number of the school's students are students with disabilities.

(d) This section does not authorize an open-enrollment charter school to discriminate in admissions or in the services provided based on the presence, absence, or nature of an applicant's or student's disability.

SECTION 3. Section 12.104, Education Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) An open-enrollment charter school is subject to:

(1) a provision of this title establishing a criminal offense; and

(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) criminal history records under Subchapter C, Chapter 22;

(C) reading instruments and accelerated reading instruction programs under Section 28.006;

(D) satisfactory performance on assessment instruments and to accelerated instruction under Section 28.0211;

(E) high school graduation under Section 28.025;

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

(G) bilingual education under Subchapter B, Chapter 29;

(H) prekindergarten programs under Subchapter E, Chapter 29;

(I) extracurricular activities under Section 33.081;

(J) discipline management practices or behavior management techniques under Section 37.0021;

(K) health and safety under Chapter 38;

(L) public school accountability under Subchapters B, C, D, and G, Chapter 39, except as provided by Subsection (e);

(M) the requirement under Section 21.006 to report an educator's misconduct; and

(N) intensive programs of instruction under Section 28.0213.

(e) In computing dropout and completion rates for an open-enrollment charter school, the commissioner may:

(1) exclude students who are ordered by a court to attend a high school equivalency certificate program but who have not yet earned a high school equivalency certificate; and

(2) exclude students who were previously reported to the state as dropouts.

SECTION 4. Section 12.1056, Education Code, is amended to read as follows:

Sec. 12.1056. IMMUNITY FROM LIABILITY. (a) In matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune

from liability to the same extent as a school district trustee.

(b) An open-enrollment charter school is a governmental unit as defined by Section 101.001, Civil Practice and Remedies Code, and is subject to liability only as provided by Chapter 101, Civil Practice and Remedies Code, and only in the manner that liability is provided by that chapter for a school district.

(c) An open-enrollment charter school is a local government as defined by Section 102.001, Civil Practice and Remedies Code, and a payment on a tort claim must comply with Chapter 102, Civil Practice and Remedies Code.

SECTION 5. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1058 to read as follows:

Sec. 12.1058. APPLICABILITY OF OTHER LAWS. (a) An open-enrollment charter school is considered to be:

(1) a local government for purposes of Chapter 791, Government Code;

(2) a local government for purposes of Chapter 2259, Government Code, except that an open-enrollment charter school may not issue public securities as provided by Section 2259.031(b), Government Code; and

(3) a political subdivision for purposes of Chapter 172, Local Government Code.

(b) An open-enrollment charter school may elect to extend workers' compensation benefits to employees of the school through any method available to a political subdivision under Chapter 504, Labor Code. An open-enrollment charter school that elects to extend workers' compensation benefits as permitted under this section is considered to be a political subdivision for all purposes under Chapter 504, Labor Code.

SECTION 6. Section 12.1101, Education Code, is amended to read as follows:

Sec. 12.1101. NOTIFICATION OF CHARTER APPLICATION. The commissioner by rule shall adopt a procedure for providing notice to the following persons on receipt by the State Board of Education of an application for a charter for an open-enrollment charter school under Section 12.110 or on receipt by the board and the commissioner of notice of the establishment of a campus as

authorized under Section 12.101(b-1):

(1) the board of trustees of each school district from which the proposed open-enrollment charter school or campus is likely to draw students, as determined by the commissioner; and

(2) each member of the legislature that represents the geographic area to be served by the proposed school or campus, as determined by the commissioner.

SECTION 7. Section 12.111(a), Education Code, is amended to read as follows:

(a) Each charter granted under this subchapter must:

(1) describe the educational program to be offered, which must include the required curriculum as provided by Section 28.002;

(2) specify the period for which the charter or, consistent with Section 12.116(b-1), any charter renewal is valid;

(3) provide that continuation or renewal of the charter is contingent on the status of the charter as provided by Section 12.116(b-1) ~~[acceptable student performance on assessment instruments adopted under Subchapter B, Chapter 39, and on compliance with any accountability provision specified by the charter, by a deadline or at intervals specified by the charter]~~;

(4) ~~[establish the level of student performance that is considered acceptable for purposes of Subdivision (3),~~

~~[~~(5)~~]~~ specify any basis, in addition to a basis specified by this subchapter, on which the charter may be placed on probation or revoked ~~[or on which renewal of the charter may be denied]~~;

(5) ~~[~~(6)~~]~~ prohibit discrimination in admission policy on the basis of sex, national origin, ethnicity, religion, disability, academic, artistic, or athletic ability, or the district the child would otherwise attend in accordance with this code, although the charter may:

(A) provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or discipline problems under Subchapter A, Chapter 37; and

(B) provide for an admission policy that requires

a student to demonstrate artistic ability if the school specializes in performing arts;

(6) [~~(7)~~] specify the grade levels to be offered;

(7) [~~(8)~~] describe the governing structure of the program, including:

(A) the officer positions designated;

(B) the manner in which officers are selected and removed from office;

(C) the manner in which members of the governing body of the school are selected and removed from office;

(D) the manner in which vacancies on that governing body are filled;

(E) the term for which members of that governing body serve; and

(F) whether the terms are to be staggered;

(8) [~~(9)~~] specify the powers or duties of the governing body of the school that the governing body may delegate to an officer;

(9) [~~(10)~~] specify the manner in which the school will distribute to parents information related to the qualifications of each professional employee of the program, including any professional or educational degree held by each employee, a statement of any certification under Subchapter B, Chapter 21, held by each employee, and any relevant experience of each employee;

(10) [~~(11)~~] describe the process by which the person providing the program will adopt an annual budget;

(11) [~~(12)~~] describe the manner in which an annual audit of the financial and programmatic operations of the program is to be conducted, including the manner in which the person providing the program will provide information necessary for the school district in which the program is located to participate, as required by this code or by State Board of Education rule, in the Public Education Information Management System (PEIMS);

(12) [~~(13)~~] describe the facilities to be used;

(13) [~~(14)~~] describe the geographical area served by the program; and

(14) [~~(15)~~] specify any type of enrollment criteria to

be used.

SECTION 8. Section 12.115, Education Code, is amended to read as follows:

Sec. 12.115. BASIS FOR MODIFICATION, PLACEMENT ON PROBATION, OR REVOCATION[~~, OR DENIAL OF RENEWAL~~]. (a) The commissioner may modify, place on probation, or revoke[~~, or deny renewal of~~] the charter of an open-enrollment charter school if the commissioner determines that the charter holder:

(1) committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;

(2) failed to satisfy generally accepted accounting standards of fiscal management;

(3) failed to protect the health, safety, or welfare of the students enrolled at the school; or

(4) failed to comply with this subchapter or another applicable law or rule.

(b) The action the commissioner takes under Subsection (a) shall be based on:

(1) the best interest of the school's students;

(2) [✓] the severity of the violation[✓] and any previous violation the school has committed; and

(3) the accreditation status of the school under Section 39.072.

SECTION 9. Section 12.116, Education Code, is amended by adding Subsections (a-1) and (b-1) and amending Subsection (b) to read as follows:

(a-1) The commissioner shall revoke the charter of an open-enrollment charter school in accordance with the procedure adopted under Subsection (a) if, after all information required for determining a performance rating has been considered, the commissioner determines that the school is insolvent as a result of recovery of overallocated state funds under Section 42.258(a).

(b) The commissioner shall revoke the charter of an open-enrollment charter school without a hearing if each campus operated under the school's charter has been ordered closed under Section 39.1324(d), (e), or (f) [procedure adopted under Subsection

~~(a) must provide an opportunity for a hearing to the charter holder and to parents and guardians of students in the school. A hearing under this subsection must be held at the facility at which the program is operated].~~

(b-1) The procedure adopted under Subsection (a) for denying renewal of the charter of an open-enrollment charter school must provide that the charter automatically renews unless the school's charter is revoked under Subchapter G, Chapter 39, before the expiration of a charter term. The term for which a charter is renewed shall not be less than 10 years.

SECTION 10. Section 12.118(a), Education Code, is amended to read as follows:

(a) The commissioner shall designate an impartial organization with experience in evaluating school choice programs to conduct, under the supervision of the commissioner, an annual evaluation of open-enrollment charter schools.

SECTION 11. Section 12.119(c), Education Code, is amended to read as follows:

(c) On request, the State Board of Education shall provide the information required by this section and Section 12.111(a)(7) ~~[12.111(8)]~~ to a member of the public. The board may charge a reasonable fee to cover the board's cost in providing the information.

SECTION 12. Subchapter D, Chapter 12, Education Code, is amended by adding Sections 12.134 and 12.135 to read as follows:

Sec. 12.134. COLOCATION AGREEMENT BETWEEN SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL. (a) This section applies to a school district that:

(1) leases a district facility for the operation of an open-enrollment charter school to be colocated on a district campus; and

(2) enters into an agreement with the charter school as provided by Subsection (d).

(b) The board of trustees of a school district may elect to have data regarding the academic performance of students enrolled in the open-enrollment charter school combined with comparable data of the colocated district campus in determining the performance of



the campus and the district.

(c) The board of trustees of a school district that elects under Subsection (b) to have academic data combined shall annually file with the agency a copy of the lease and agreement described by Subsection (a).

(d) The agreement between the school district and the open-enrollment charter school:

(1) shall establish terms for sharing instructional or other specified resources, such as professional development;

(2) shall for each year specify factors for identifying a student who will be served by the charter school in the leased facilities, which may include:

(A) the student's attendance at a specified district campus or campuses;

(B) the student's need for specific academic services;

(C) the student's academic performance in previous school years; or

(D) other objective factors determined by the district and the charter school;

(3) may prohibit the charter school from enrolling students at the leased facilities other than those identified under factors designated in the agreement; and

(4) shall require the district and the charter school to adopt measures, as required by commissioner rule, such as using different numerical codes for reporting information through the Public Education Information Management System (PEIMS), so that data remains identifiable as that of the district or of the school, as applicable.

Sec. 12.135. EDUCATIONAL SERVICES AGREEMENT BETWEEN SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL. (a) Notwithstanding Chapter 41 or 42, and in addition to any other funds to which a school district may be entitled, if the board of trustees of the district enters into an agreement under this section with an open-enrollment charter school for the charter school to provide educational services to a student enrolled in school in the district, the district is entitled to receive the greater of the

following amounts:

(1) the amount the charter school would receive under Section 12.106 if the student were enrolled in the charter school;  
or

(2) the amount to which the district is entitled under Chapters 41 and 42 for the student.

(b) The board of trustees of a school district that enters into an agreement described by Subsection (a) with an open-enrollment charter school may elect to have the state and federal funds attributable to the students educated by the charter school paid directly to the charter school. A school district that makes such an election must make an annual declaration of the election to the agency in a manner determined by the commissioner. The district remains responsible for any overallocation or audit recovery of state or federal funds as determined by the commissioner.

SECTION 13. Sections 39.202 and 39.203, Education Code, are amended to read as follows:

Sec. 39.202. DEVELOPMENT AND IMPLEMENTATION. (a) The commissioner shall, in consultation with the comptroller, develop and implement a financial accountability rating system for school districts and open-enrollment charter schools in this state that:

(1) distinguishes among school districts and open-enrollment charter schools based on levels of financial performance; and

(2) includes procedures to:

(A) provide additional transparency to public education finance; and

(B) enable the commissioner and school district and open-enrollment charter school administrators to provide meaningful financial oversight and improvement.

(b) The system must include uniform indicators adopted by the commissioner by which to measure a district's or open-enrollment charter school's financial management performance.

Sec. 39.203. REPORTING. (a) The commissioner shall develop, as part of the system, a reporting procedure under which:

(1) each school district and open-enrollment charter

school is required to prepare and distribute an annual financial management report; and

(2) the public is provided an opportunity to comment on the report at a hearing.

(b) The annual financial management report must include:

(1) a description of the district's or school's financial management performance based on a comparison, provided by the agency, of the district's or school's performance on the indicators adopted under Section 39.202(b) to:

(A) state-established standards; and

(B) the district's or school's previous performance on the indicators; and

(2) any descriptive information required by the commissioner.

(c) The report may include:

(1) information concerning, if applicable, the district's or school's:

(A) financial allocations;

(B) tax collections;

(C) financial strength;

(D) operating cost management;

(E) personnel management;

(F) debt management;

(G) facility acquisition and construction management;

(H) cash management;

(I) budgetary planning;

(J) overall business management;

(K) compliance with rules; and

(L) data quality; and

(2) any other information the board of trustees determines to be necessary or useful.

(d) The board of trustees of each school district and the governing body of each open-enrollment charter school shall hold a public hearing on the report. The board shall give notice of the hearing to, as applicable, owners of real property in the district and to parents of district students or to owners of real property in

the district in which the open-enrollment charter school is located and to the parents of school students. In addition to other notice required by law, notice of the hearing must be provided:

(1) to a newspaper of general circulation in the district; and

(2) through electronic mail to media serving the district.

(e) After the hearing, the report shall be disseminated in the district or in the district in which the open-enrollment charter school is located in the manner prescribed by the commissioner.

SECTION 14. Section 12.113(b), Education Code, is repealed.

SECTION 15. This Act applies beginning with the 2009-2010 school year.

SECTION 16. This Act does not make an appropriation. This Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 81st Legislature.

SECTION 17. Except as provided by Section 16 of this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009, except as provided by Section 16 of this Act.