BILL ANALYSIS

C.S.S.B. 127
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Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the law governing charter schools in Texas is in need of certain revisions with regard to the establishment, operation, and funding of such schools. C.S.S.B. 127 seeks to provide for such revisions.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTIONS 2, 3, 7, and 8 of this bill.

ANALYSIS

C.S.S.B. 127 amends the Education Code to authorize the State Board of Education to issue a license, rather than grant a charter, on the application of an eligible entity for an open-enrollment charter school to operate in a facility of a commercial or nonprofit entity, an eligible entity, or a school district, including a home-rule school district. The bill makes the board's authority to issue such a license conditional on a thorough investigation and evaluation of an applicant and adds to the standards an applicant must meet to be eligible for a license any curriculum development and implementation standards adopted by the commissioner of education. The bill replaces the cap on the total number of charters for a charter school the board is authorized to grant with a limit of not more than 10 new licenses for a charter school each state fiscal year, plus a number of licenses equal to any number of charters for a charter school revoked or surrendered during the preceding state fiscal year.

C.S.S.B. 127 subjects a license holder to any law applicable to a charter holder and requires the commissioner to adopt rules for the form of a license, the basis and a procedure for modification or revocation of a license, and any other rules necessary for the issuance and administration of licenses for charter schools. The bill requires that an adopted rule, to the greatest extent practicable, be consistent with a statutory provision or an adopted rule for the same purpose as applicable to a charter.

C.S.S.B. 127 authorizes the board to issue a license on the application of an eligible entity for a charter school intended primarily to serve students with disabilities, including students with autism. The bill prohibits the board from issuing more than two new licenses for such a charter school each state fiscal year, specifies that a license so issued is not considered for purposes of the limit on the number of charter school licenses the board is authorized to issue, and establishes that, for purposes of the applicability of state and federal law, including a law prescribing requirements concerning students with disabilities, such a charter school is considered the same as any other school for which a license or charter is issued. The bill authorizes a parent of a student with a disability, to the fullest extent permitted under federal law, to choose to enroll the parent's child in a charter school intended to primarily serve students with disabilities regardless of whether a disproportionate number of the school's students are students with disabilities. The bill establishes that these provisions do not authorize a 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.

C.S.S.B. 127 requires the board to grant a charter for a charter school to a license holder if the charter school for which the license has been issued has been assigned an acceptable performance rating for any two of the preceding three school years; no campus operating under the license has been assigned an unacceptable performance rating for any two of the three preceding school years or such a campus has been closed; and the license holder satisfies standards of financial solvency and financial accountability established by the commissioner. The bill authorizes the board to grant a charter to an applicant that is an organization that is exempt from taxation under the federal Internal Revenue Code of 1986 that has operated one or more charter schools in another state and, as determined by the commissioner in accordance with commissioner rule, has achieved high performance under federal accountability and other appropriate academic and financial criteria or that is an entity that has operated one or more campus or campus program charters, open-enrollment charter schools, or college or university or junior college charter schools and, as determined by the commissioner in accordance with commissioner rule, has performed well under appropriate academic and financial criteria. The bill specifies that a charter for an open-enrollment charter school granted to an organization that is exempt from taxation under the federal Internal Revenue Code of 1986 is considered a license for purposes of the limit on the number of charter school licenses the board is authorized to issue.

C.S.S.B. 127 authorizes a charter holder to establish one or more new charter school campuses under a charter without applying for authorization if each charter school campus operating under the charter has been assigned an acceptable performance rating for the two preceding school years; the charter holder satisfies standards of financial solvency and financial accountability established by commissioner rule; the charter holder provides written notice, in the time, manner, and form provided by commissioner rule, to the board and the commissioner of the establishment of any new campus under these provisions; and, not later than the 90th day after the date the charter holder provides written notice, the commissioner does not provide written notice to the charter holder disapproving a new campus. The bill adds a temporary provision, set to expire January 1, 2015, to specify that, for purposes of the establishment of new charter school campuses under a charter without applying for authorization, a charter school campus rated as academically acceptable or higher under certain statutory provisions relating to public school system accountability, as those provisions existed January 1, 2009, for the 2009-2010 or 2010-2011 school year is considered to have been assigned an acceptable performance rating for the applicable school year. The bill makes its provisions relating to the authorization for charter school licenses, for the issuance of licenses for charter schools primarily serving students with disabilities, and for charters for charter schools applicable beginning with the 2012-2013 school year.

C.S.S.B. 127 establishes that an open-enrollment charter school is a governmental unit as defined by the Texas Tort Claims Act and is subject to liability only as provided by that act and only in the manner that liability is provided by that act for a school district. The bill establishes that an open-enrollment charter school is a local government as defined by statutory provisions relating to tort claims payments by local governments and requires that a payment on a tort claim comply with those provisions. The bill establishes that an open-enrollment charter school is a local governmental entity as defined by statutory provisions relating to the adjudication of claims arising under written contracts with local governmental entities and is subject to liability on a contract only in the manner that liability is provided by those provisions for a school district.

C.S.S.B. 127 establishes that an open-enrollment charter school is considered to be a local government for purposes of the Interlocal Cooperation Act; a local government for purposes of statutory provisions relating to self-insurance by governmental units, except that a charter school is prohibited from issuing public securities for the establishment of a self-insurance fund; and a political subdivision for purposes of the Texas Political Subdivision Employees Uniform Group Benefits Act. The bill authorizes an open-enrollment charter school to elect to extend workers'

compensation benefits to employees of the school through any method available to a political subdivision under state law, but prohibits an open-enrollment charter school that self-insures either individually or collectively under statutory provisions relating to workers' compensation insurance coverage for employees of political subdivisions from providing workers' compensation medical benefits to injured employees by directly contracting with health care providers or by contracting through a health benefits pool established under the Texas Political Subdivision Employees Uniform Group Benefits Act. The bill establishes that an open-enrollment charter school that elects to extend such benefits is considered to be a political subdivision for all purposes under statutory provisions relating to workers' compensation insurance coverage for employees of political subdivisions. The bill establishes that an open-enrollment charter school that self-insures either individually or collectively under statutory provisions relating to workers' compensation insurance coverage for employees of political subdivisions is considered to be an insurance carrier for purposes of the Texas Workers' Compensation Act.

C.S.S.B. 127 requires the board to adopt an application form and a procedure that must be used by an applicant that has operated one or more charter schools in another state or that has operated one or more campus or campus program charters, open-enrollment charter schools, or college or university or junior college charter schools to apply for a charter for an open-enrollment charter school and to adopt criteria to use in selecting a program for which to grant a charter. The bill authorizes the commissioner by rule to establish a fee for applying for a license or charter for a charter school and requires such a fee to be sufficient to cover the Texas Education Agency's administrative costs for the application process, including the costs of investigating the applicant. The bill requires the commissioner by rule to adopt a procedure for providing notice to certain persons on receipt by the board and the commissioner of notice of the establishment of a charter school campus without application for authorization.

C.S.S.B. 127 requires, rather than authorizes, the commissioner to modify, place on probation, or revoke the charter of a charter school if the commissioner determines that the charter holder committed a material violation of the charter; failed to satisfy generally accepted accounting standards of fiscal management; failed to protect the health, safety, or welfare of the students enrolled at the school; or failed to comply with provisions relating to a charter school or another applicable law or rule. The bill removes provisions authorizing the commissioner to deny the renewal of a charter following such a determination. The bill authorizes the commissioner, based on such a determination, to reconstitute the governing body of the charter holder or assign operations of a school campus to a different charter holder as an alternative to revoking the charter. The bill requires a commissioner's actions with regard to a charter school to be based on the accreditation status of the school, in addition to the other criteria already specified in statute.

C.S.S.B. 127 requires the commissioner to adopt a procedure for using an alternative to revocation as set out by the bill. The bill changes the location of a hearing required to be provided to a charter holder and to parents and guardians of students enrolled in the school, under the procedure for modifying, placing on probation, revoking, or denying a renewal of the charter or for using an alternative to revocation, to the county in which the school is located, rather than at the facility at which the program is operated. The bill requires the commissioner to revoke the charter of a charter school in accordance with the commissioner's procedure if, after all information required for determining a performance rating has been considered, the commissioner determines that the school is insolvent. The bill requires the commissioner, in making such a determination, to consider whether the insolvency is a result of recovery of overallocated state funds.

C.S.S.B. 127 requires the commissioner to revoke the charter of a charter school without a hearing if each campus operated under the school's charter has been ordered closed under statutory provisions relating to the reconstitution, repurposing, alternative management, and closure of a public school campus. The bill requires the commissioner-adopted procedure for denying the renewal of the charter of a charter school to provide that the charter automatically

renews unless the school's charter is revoked under statutory provisions relating to public school accreditation interventions and sanctions before the expiration of a charter term and to require the commissioner and the charter holder to act in a timely manner, according to the procedure, to initiate revocation or renewal of the charter, as applicable. The bill sets the minimum term for which a charter is renewed at 10 years and specifies that the Administrative Procedure Act does not apply to a hearing that is related to an alternative to revocation with regard to charter schools.

C.S.S.B. 127 requires each charter granted for a charter school to provide that continuation or renewal of the charter is contingent on the status of the charter as it relates to revocation or renewal, rather than acceptable student performance on certain state-administered tests and on compliance with any accountability provision specified by the charter. The bill requires each charter to specify any basis on which an alternative to revoking the charter may be used, rather than specifying any basis on which renewal of the charter may be denied. The bill exempts a license issued for an open-enrollment charter school from being required to comply with the requirement that the license specify the period for which the charter or any charter renewal is valid, to provide that continuation or renewal of the charter is contingent on the status of the charter, and to specify any basis on which the charter may be placed on probation or revoked or on which an alternative to revoking the charter may be used. The bill specifies that the enrollment of a student with a disability, including autism, is not considered for purposes of any maximum student enrollment described by the charter.

C.S.S.B. 127 prohibits a charter school for which a license is issued on or after September 1, 2011, from admitting a student unless the student was enrolled in a Texas public school during the school year preceding the school year for which the student is seeking admission to the charter school or is seeking admission for the first grade or a lower grade level. The bill establishes that a charter school authorized by a license issued or a charter granted to a municipality is considered a work-site charter school for purposes of federal regulations regarding admissions policies that apply to charter schools receiving federal funding and may admit children of employees of the municipality to the school before conducting a lottery to fill remaining available positions, provided that the number of children so admitted constitutes only a small percentage, as may be further specified by federal regulations, of the school's total enrollment. The bill requires the annual evaluation of charter schools conducted by an impartial organization with experience in evaluating school choice programs to be conducted under the supervision of the commissioner. The bill defines "license holder" and makes conforming and nonsubstantive changes.

C.S.S.B. 127 specifies that the bill's amendment of statutory provisions relating to charter schools does not affect the status of a charter granted before the bill's effective date and the implementation of licensing.

C.S.S.B. 127 repeals Section 12.113(b), Education Code, establishing that the grant of a charter for a charter school does not create an entitlement to a renewal of a charter on the same terms as it was originally issued.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 127 omits provisions included in the original requiring the commissioner of education to adopt rules for applying for an open-enrollment charter school license, notification of a license application, and the content of such a license.

C.S.S.B. 127 differs from the original by requiring the State Board of Education to grant a charter for a charter school to a license holder if certain conditions are met, whereas the original

authorizes the board to grant a charter if certain conditions are met. The substitute differs from the original with regard to one such condition by specifying that the license holder satisfies standards of financial solvency and financial accountability established by the commissioner, whereas the original specifies that the license holder satisfies generally accepted accounting standards of fiscal management. The substitute omits a provision included in the original specifying the conditions under which a license holder is considered to have failed to satisfy generally accepted accounting standards of fiscal management.

C.S.S.B. 127 differs from the original by specifying that a license applicant that has operated one or more charter schools in another state to which the board is authorized to grant a charter is an organization that is exempt from taxation under the federal Internal Revenue Code of 1986, whereas the original contains no such specification. The substitute differs from the original by authorizing the board to grant a charter if such an applicant has achieved high performance under federal accountability and other appropriate academic and financial criteria, whereas the original authorizes the board to grant a charter to an applicant that has operated one or more charter schools in another state and has performed well under those criteria. The substitute differs from the original by specifying that such criteria includes at a minimum having achieved adequate yearly progress in accordance with federal law for the preceding three years, whereas the original contains no such specification.

C.S.S.B. 127 contains a provision not included in the original authorizing the board to grant a charter for an open-enrollment charter school to an applicant for a charter that is an entity that has operated one or more campus or campus program charters, open-enrollment charter schools, or college or university or junior college charter schools and, as determined by the commissioner in accordance with commissioner rule, has performed well under appropriate academic and financial criteria.

C.S.S.B. 127 contains a provision not included in the original specifying that a charter for an open-enrollment charter school granted to an organization that is exempt from taxation under the federal Internal Revenue Code of 1986 is considered a license for purposes of the limit on the number of charter school licenses the board is authorized to issue.

C.S.S.B. 127 contains provisions not included in the original relating to the liability, including liability on a contract, of an open-enrollment charter school and to tort claim payments by an open-enrollment charter school. The substitute contains provisions not included in the original relating to the applicability of certain specified laws to an open-enrollment charter school.

C.S.S.B. 127 contains a provision not included in the original requiring the board to adopt an application form and a procedure that must be used by an applicant that has operated one or more charter schools in another state or that has operated one or more campus or campus program charters, open-enrollment charter schools, or college or university or junior college charter schools to apply for an open-enrollment charter school and requiring the board to adopt criteria to use in selecting a program for which to grant a charter.

C.S.S.B. 127 contains a provision not included in the original exempting a license issued for an open-enrollment charter school from being required to comply with certain content requirements.

C.S.S.B. 127 contains provisions not included in the original establishing that an open-enrollment charter school authorized by a license issued or a charter granted to a municipality is considered a work-site charter school for purposes of federal regulations regarding admissions policies that apply to charter schools receiving federal funding and may admit children of employees of the municipality to the school before conducting a lottery to fill remaining available positions, provided that the number of children so admitted constitutes only a small percentage, as may be further specified by federal regulations, of the school's total enrollment.

C.S.S.B. 127 omits provisions included in the original relating to the authority of the

commissioner to impose an administrative penalty against a person who knowingly violates provisions relating to charter schools or a rule adopted under such provisions. The substitute omits a provision included in the original making the original's provisions applicable as soon as the bill takes effect, except as otherwise provided.

C.S.S.B. 127 differs from the original in nonsubstantive ways reflective of certain bill drafting conventions and by making clarifying and conforming changes.