

By: Eissler

H.B. No. 1588

A BILL TO BE ENTITLED

AN ACT

relating to the establishment, operation, and funding of 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, 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:

(1) a total of more than 275 [215] charters for an open-enrollment charter school; or

(2) more than 15 new charters in a state fiscal year.

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

1 under this section is included for purposes of the limits on the  
2 number of open-enrollment charter schools imposed by Section  
3 12.101(b).

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

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

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

18 (e) Each educator, including a person performing the duties  
19 of a superintendent, employed or under contract to serve on the  
20 instructional or administrative staff of an open-enrollment  
21 charter school described by Subsection (a) must hold the  
22 appropriate certificate, as determined in accordance with State  
23 Board for Educator Certification rule, to serve students with a  
24 disability of the same type as a disability of students enrolled in  
25 the school.

26 (f) The commissioner and the State Board for Educator  
27 Certification shall adopt rules as necessary to administer this

1 section.

2       SECTION 3. Section 12.106, Education Code, is amended by  
3 amending Subsection (c) and adding Subsections (d), (e), (f), and  
4 (g) to read as follows:

5       (c) The commissioner shall ~~[may]~~ adopt rules to provide and  
6 account for state funding of open-enrollment charter schools under  
7 this section. A rule adopted under this section may be similar to a  
8 provision of this code that is not similar to Section 12.104(b) if  
9 the commissioner determines that the rule is related to financing  
10 of open-enrollment charter schools and is necessary or prudent to  
11 provide or account for state funds.

12       (d) A charter holder is entitled to receive funding under  
13 this section for an open-enrollment charter school only if the  
14 charter holder:

15               (1) provides information for the Public Education  
16 Information Management System (PEIMS) as required by this chapter  
17 or by commissioner rule;

18               (2) submits to the commissioner appropriate fiscal and  
19 financial records as required by this chapter or by commissioner  
20 rule; and

21               (3) receives an unqualified opinion in the most recent  
22 independent auditor's report of the school's finances.

23       (e) The commissioner shall suspend the funding of a charter  
24 holder that fails to comply with a rule adopted under Subsection (c)  
25 until the commissioner determines that the charter holder:

26               (1) is in compliance or has cured any noncompliance;  
27 and

1           (2) has adopted adequate procedures to prevent future  
2 noncompliance.

3           (f) The rules the commissioner adopts under Subsection (c)  
4 must require the commissioner to provide written notice to a  
5 charter holder before the suspension of funding under Subsection  
6 (e). The written notice must:

7                 (1) notify the charter holder that the charter  
8 holder's funding may be suspended;

9                 (2) specify the reason for which the funding may be  
10 suspended, including an explanation of any noncompliance by the  
11 charter holder with a specified rule adopted under Subsection (c);

12                 (3) inform the charter holder that the charter holder  
13 has 30 calendar days after the date on which the charter holder  
14 receives the notice to demonstrate compliance or to cure any  
15 noncompliance before the charter holder's funding is suspended by  
16 the commissioner; and

17                 (4) contain any other information the commissioner  
18 determines necessary.

19           (g) The commissioner may not suspend the funding of a  
20 charter holder under this section until the period specified by  
21 Subsection (f) has expired.

22           SECTION 4. Section 12.111(a), Education Code, is amended to  
23 read as follows:

24           (a) Each charter granted under this subchapter must:

25                 (1) describe the educational program to be offered,  
26 which must include the required curriculum as provided by Section  
27 28.002;

1           (2) ~~[specify the period for which the charter or any~~  
2 ~~charter renewal is valid;~~

3           ~~[(3)]~~ provide that continuation ~~[or renewal]~~ of the  
4 charter is contingent on acceptable ~~[student]~~ performance as  
5 determined ~~[on assessment instruments adopted]~~ under ~~[Subchapter~~  
6 ~~B,]~~ Chapter 39~~, and on compliance with any accountability~~  
7 ~~provision specified by the charter, by a deadline or at intervals~~  
8 ~~specified by the charter];~~

9           (3) ~~[(4)]~~ establish the level of student performance  
10 ~~that is considered acceptable for purposes of Subdivision (3);~~

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

15          (4) ~~[(6)]~~ prohibit discrimination in admission policy  
16 on the basis of sex, national origin, ethnicity, religion,  
17 disability, academic, artistic, or athletic ability, or the  
18 district the child would otherwise attend in accordance with this  
19 code, although the charter may:

20               (A) provide for the exclusion of a student who  
21 has a documented history of a criminal offense, a juvenile court  
22 adjudication, or discipline problems under Subchapter A, Chapter  
23 37; and

24               (B) provide for an admission policy that requires  
25 a student to demonstrate artistic ability if the school specializes  
26 in performing arts;

27          (5) ~~[(7)]~~ specify the grade levels to be offered;

1           (6) [~~(8)~~] describe the governing structure of the  
2 program, including:

3                   (A) the officer positions designated;

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

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

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

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

12                  (F) whether the terms are to be staggered;

13           (7) [~~(9)~~] specify the powers or duties of the  
14 governing body of the school that the governing body may delegate to  
15 an officer;

16           (8) [~~(10)~~] specify the manner in which the school will  
17 distribute to parents information related to the qualifications of  
18 each professional employee of the program, including any  
19 professional or educational degree held by each employee, a  
20 statement of any certification under Subchapter B, Chapter 21, held  
21 by each employee, and any relevant experience of each employee;

22           (9) [~~(11)~~] describe the process by which the person  
23 providing the program will adopt an annual budget;

24           (10) [~~(12)~~] describe the manner in which an annual  
25 audit of the financial and programmatic operations of the program  
26 is to be conducted, including the manner in which the person  
27 providing the program will provide information necessary for the

1 school district in which the program is located to participate, as  
2 required by this code or by State Board of Education rule, in the  
3 Public Education Information Management System (PEIMS);

4           (11) [~~(13)~~] describe the facilities to be used;

5           (12) [~~(14)~~] describe the geographical area served by  
6 the program; and

7           (13) [~~(15)~~] specify any type of enrollment criteria to  
8 be used.

9           SECTION 5. Section 12.115, Education Code, is amended to  
10 read as follows:

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

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

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

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

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

25           (b) The action the commissioner takes under Subsection (a)  
26 shall be based on the best interest of the school's students, the  
27 severity of the violation, and any previous violation the school

1 has committed. Any action the commissioner takes under Chapter 39  
2 concerning an open-enrollment charter school shall be taken in  
3 accordance with that chapter.

4 SECTION 6. Section 12.116, Education Code, is amended to  
5 read as follows:

6 Sec. 12.116. PROCEDURE FOR MODIFICATION, PLACEMENT ON  
7 PROBATION, OR REVOCATION; CLOSURE UNDER CHAPTER 39 [~~, OR DENIAL OF~~  
8 ~~RENEWAL~~]. (a) The commissioner shall adopt a procedure to be used  
9 for modifying, placing on probation, or revoking[~~, or denying~~  
10 ~~renewal of~~] the charter of an open-enrollment charter school.

11 (a-1) The commissioner shall close an open-enrollment  
12 charter school under Chapter 39 if, after all information required  
13 for determining a performance rating under the financial  
14 accountability rating system under Subchapter D, Chapter 39, has  
15 been considered, the commissioner determines that the school is  
16 insolvent as defined by commissioner rule.

17 (b) The commissioner shall revoke the charter of an  
18 open-enrollment charter school without a hearing if each campus  
19 operated under the school's charter has been ordered closed under  
20 Chapter 39 [~~procedure adopted under Subsection (a) must provide an~~  
21 ~~opportunity for a hearing to the charter holder and to parents and~~  
22 ~~guardians of students in the school. A hearing under this~~  
23 ~~subsection must be held at the facility at which the program is~~  
24 ~~operated~~].

25 (b-1) Except as provided by Subsection (b) or Section  
26 39.104(d), the procedure adopted under Subsection (a) for denying,  
27 revoking, or modifying the charter of an open-enrollment charter



1 school must provide for a hearing on the issue to be held in the  
2 county in which the school is located.

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

7 SECTION 7. The heading to Section 12.1161, Education Code,  
8 is amended to read as follows:

9 Sec. 12.1161. EFFECT OF REVOCATION~~[, DENIAL OF RENEWAL,]~~ OR  
10 SURRENDER OF CHARTER.

11 SECTION 8. Section 12.1161(a), Education Code, is amended  
12 to read as follows:

13 (a) If ~~[Except as provided by Subsection (b), if]~~ the  
14 commissioner revokes ~~[or denies the renewal of]~~ a charter of an  
15 open-enrollment charter school, or if an open-enrollment charter  
16 school surrenders its charter, the school may not:

17 (1) continue to operate under this subchapter; or

18 (2) receive state funds under this subchapter.

19 SECTION 9. Section 12.1164(a), Education Code, is amended  
20 to read as follows:

21 (a) The commissioner must notify the Teacher Retirement  
22 System of Texas in writing of the revocation~~[, denial of renewal,]~~  
23 or surrender of a charter under this subchapter not later than the  
24 10th business day after the date of the event.

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

27 (a) The commissioner shall designate an impartial

1 organization with experience in evaluating school choice programs  
2 to conduct, under the supervision of the commissioner, an annual  
3 evaluation of open-enrollment charter schools.

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

6 (c) On request, the State Board of Education shall provide  
7 the information required by this section and Section 12.111(a)(6)  
8 ~~[12.111(8)]~~ to a member of the public. The board may charge a  
9 reasonable fee to cover the board's cost in providing the  
10 information.

11 SECTION 12. Section 39.104, Education Code, is amended by  
12 amending Subsection (d) and adding Subsection (e) to read as  
13 follows:

14 (d) If interventions or sanctions are imposed on an  
15 open-enrollment charter school under the procedures provided by  
16 this chapter, a charter school is not entitled to an additional  
17 hearing relating to the modification, placement on probation, or  
18 revocation~~[, or denial of renewal]~~ of a charter as provided by  
19 Subchapter D, Chapter 12.

20 (e) Notwithstanding any other provision of this subchapter,  
21 the commissioner shall order closure of an open-enrollment charter  
22 school campus that has been assigned an unacceptable performance  
23 rating under Subchapter C for three consecutive school years,  
24 except that the commissioner may waive that requirement if the  
25 commissioner determines that, on the basis of significant  
26 improvement in student performance over the preceding two school  
27 years, the campus is likely to be assigned an acceptable

1 performance rating under Subchapter C for the following school  
2 year.

3         SECTION 13. The following provisions of the Education Code  
4 are repealed:

5                 (1) Section 12.113(b); and

6                 (2) Section 12.1161(b).

7         SECTION 14. This Act applies beginning with the 2011-2012  
8 school year.

9         SECTION 15. This Act takes effect immediately if it  
10 receives a vote of two-thirds of all the members elected to each  
11 house, as provided by Section 39, Article III, Texas Constitution.  
12 If this Act does not receive the vote necessary for immediate  
13 effect, this Act takes effect September 1, 2011.