

By: Patrick

S.B. No. 127

A BILL TO BE ENTITLED

AN ACT

relating to the establishment, operation, and funding of charter schools; providing administrative penalties.

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

SECTION 1. The heading to Section 12.101, Education Code, is amended to read as follow:

Sec. 12.101. AUTHORIZATION FOR LICENSE.

SECTION 2. Section 12.101, Education Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (e) and (f) to read as follows:

(a) In accordance with this subchapter, the State Board of Education may issue [~~grant~~] a license [~~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. In this subsection, "eligible entity" means:

(1) an institution of higher education as defined under Section 61.003;

(2) a private or independent institution of higher education as defined under Section 61.003;

(3) an organization that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or

(4) a governmental entity.

1 (b) The State Board of Education, after thoroughly
2 investigating and evaluating an applicant, may issue [~~grant~~] a
3 license [~~charter~~] for an open-enrollment charter school only to an
4 applicant that meets any financial, governing, curriculum
5 development and implementation, and operational standards adopted
6 by the commissioner under this subchapter. In a state fiscal year,
7 the [~~The~~] State Board of Education may not issue [~~grant a total of~~]
8 more than 10 new licenses [~~215 charters~~] for an open-enrollment
9 charter school plus a number of licenses equal to any number of
10 charters for an open-enrollment charter school revoked or
11 surrendered during the preceding state fiscal year.

12 (d) An educator employed by a school district before the
13 effective date of a license [~~charter~~] for an open-enrollment
14 charter school operated at a school district facility may not be
15 transferred to or employed by the open-enrollment charter school
16 over the educator's objection.

17 (e) A license holder is subject to any law applicable to a
18 charter holder.

19 (f) The commissioner shall adopt rules for applying for a
20 license, notification of a license application, the form and
21 content of a license, the basis and a procedure for modification or
22 revocation of license, and any other rules necessary for the
23 issuance and administration of licenses under this subchapter. A
24 rule adopted under this subsection must, to the greatest extent
25 practicable, be consistent with a provision of this subchapter or a
26 rule adopted under this subchapter for the same purpose as
27 applicable to a charter.

1 SECTION 3. Subchapter D, Chapter 12, Education Code, is
2 amended by adding Sections 12.1011 and 12.10111 to read as follows:

3 Sec. 12.1011. AUTHORIZATION FOR ISSUANCE OF LICENSES FOR
4 SCHOOLS PRIMARILY SERVING STUDENTS WITH DISABILITIES. (a) The
5 State Board of Education may issue under Section 12.101 a license on
6 the application of an eligible entity for an open-enrollment
7 charter school intended primarily to serve students with
8 disabilities, including students with autism. The State Board of
9 Education may not issue more than two new licenses for an
10 open-enrollment charter school under this section each state fiscal
11 year. A license issued under this section is not considered for
12 purposes of the limit on the number of open-enrollment charter
13 schools imposed by Section 12.101(b).

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

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

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

1 Sec. 12.10111. AUTHORIZATION FOR CHARTER. (a) The State
2 Board of Education may grant a charter for an open-enrollment
3 charter school to a license holder under Section 12.101 if:

4 (1) the open-enrollment charter school for which the
5 license has been issued has been assigned an acceptable performance
6 rating as provided by Subchapter C, Chapter 39, for any two of the
7 preceding three school years;

8 (2) no campus operating under the license has been
9 assigned an unacceptable performance rating as provided by
10 Subchapter C, Chapter 39, for any two of the three preceding school
11 years or such a campus has been closed; and

12 (3) the license holder satisfies generally accepted
13 accounting standards of fiscal management.

14 (b) For purposes of Subsection (a), a license holder is
15 considered to have failed to satisfy generally accepted accounting
16 standards of fiscal management if, after consideration of all
17 information required for determining whether those standards have
18 been satisfied, the commissioner, in accordance with commissioner
19 rule, determines that:

20 (1) the open-enrollment charter school for which the
21 license has been issued is insolvent as a result of the recovery of
22 over-allocated state funds under Section 42.258(a); or

23 (2) there is a material weakness in the school's annual
24 financial audit.

25 (c) Notwithstanding Section 12.101, the State Board of
26 Education may grant a charter for an open-enrollment charter school
27 to an applicant for a charter that has operated one or more charter

1 schools in another state and, as determined by the commissioner in
2 accordance with commissioner rule, has performed well under federal
3 accountability and other appropriate academic and financial
4 criteria.

5 (d) A charter holder may establish one or more new
6 open-enrollment charter school campuses under a charter without
7 applying for authorization if:

8 (1) each open-enrollment charter school campus
9 operating under the charter has been assigned an acceptable
10 performance rating as provided by Subchapter C, Chapter 39, for the
11 two preceding school years;

12 (2) the charter holder satisfies standards of fiscal
13 solvency and financial accountability established by commissioner
14 rule;

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

19 (4) not later than the 90th day after the date the
20 charter holder provides written notice under Subdivision (3), the
21 commissioner does not provide written notice to the charter holder
22 disapproving a new campus under this section.

23 (e) For purposes of Subsection (d), an open-enrollment
24 charter school campus rated as academically acceptable or higher
25 under Subchapter D, Chapter 39, as that subchapter existed January
26 1, 2009, for the 2009-2010 or 2010-2011 school year is considered to
27 have been assigned an acceptable performance rating for the

1 applicable school year. This subsection expires January 1, 2015.

2 SECTION 4. Section 12.1012, Education Code, is amended by
3 adding Subdivision (7) to read as follows:

4 (7) "License holder" means the entity to which a
5 license is granted under this subchapter.

6 SECTION 5. Section 12.110, Education Code, is amended by
7 adding Subsection (e) to read as follows:

8 (e) The commissioner by rule may establish a fee for
9 applying for a license or charter for an open-enrollment charter
10 school. A fee established under this subsection must be sufficient
11 to cover the agency's administrative costs for the application
12 process, including the costs of investigating the applicant.

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

15 Sec. 12.1101. NOTIFICATION OF CHARTER APPLICATION OR
16 ESTABLISHMENT OF CAMPUS. The commissioner by rule shall adopt a
17 procedure for providing notice to the following persons on receipt
18 by the State Board of Education of an application for a charter for
19 an open-enrollment charter school under Section 12.110 or on
20 receipt by the board and the commissioner of notice of the
21 establishment of a campus as authorized under Section 12.10111(d):

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

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

1 SECTION 7. Section 12.111, Education Code, is amended by
2 amending Subsection (a) and adding Subsection (c) to read as
3 follows:

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

5 (1) describe the educational program to be offered,
6 which must include the required curriculum as provided by Section
7 28.002;

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

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

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

18 [~~(5)~~] specify any basis, in addition to a basis
19 specified by this subchapter, on which the charter may be placed on
20 probation or revoked or on which an alternative to revoking the
21 charter, as described by Section 12.115(a-1), may be used [~~renewal~~
22 ~~of the charter may be denied~~];

23 (5) [~~(6)~~] prohibit discrimination in admission policy
24 on the basis of sex, national origin, ethnicity, religion,
25 disability, academic, artistic, or athletic ability, or the
26 district the child would otherwise attend in accordance with this
27 code, although the charter may:

1 (A) provide for the exclusion of a student who
2 has a documented history of a criminal offense, a juvenile court
3 adjudication, or discipline problems under Subchapter A, Chapter
4 37; and

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

8 (6) [~~(7)~~] specify the grade levels to be offered;

9 (7) [~~(8)~~] describe the governing structure of the
10 program, including:

11 (A) the officer positions designated;

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

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

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

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

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

21 (8) [~~(9)~~] specify the powers or duties of the
22 governing body of the school that the governing body may delegate to
23 an officer;

24 (9) [~~(10)~~] specify the manner in which the school will
25 distribute to parents information related to the qualifications of
26 each professional employee of the program, including any
27 professional or educational degree held by each employee, a

1 statement of any certification under Subchapter B, Chapter 21, held
2 by each employee, and any relevant experience of each employee;

3 (10) [~~(11)~~] describe the process by which the person
4 providing the program will adopt an annual budget;

5 (11) [~~(12)~~] describe the manner in which an annual
6 audit of the financial and programmatic operations of the program
7 is to be conducted, including the manner in which the person
8 providing the program will provide information necessary for the
9 school district in which the program is located to participate, as
10 required by this code or by State Board of Education rule, in the
11 Public Education Information Management System (PEIMS);

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

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

15 (14) [~~(15)~~] specify any type of enrollment criteria to
16 be used.

17 (c) The enrollment of a student with a disability, including
18 autism, is not considered for purposes of any maximum student
19 enrollment described by the charter.

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

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

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

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

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

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

10 (a-1) Based on a determination described by Subsection (a)
11 concerning the charter holder, as an alternative to revoking the
12 charter of an open-enrollment charter school, the commissioner may:

13 (1) reconstitute the governing body of the charter
14 holder; or

15 (2) assign operations of a school campus to a
16 different charter holder.

17 (b) The action the commissioner takes under Subsection (a)
18 or (a-1) shall be based on:

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

20 (2) [7] the severity of the violation[7] and any
21 previous violation the school has committed; and

22 (3) the accreditation status of the school under
23 Subchapter C, Chapter 39.

24 SECTION 9. Section 12.116, Education Code, is amended to
25 read as follows:

26 Sec. 12.116. PROCEDURE FOR MODIFICATION, PLACEMENT ON
27 PROBATION, REVOCATION, ALTERNATIVE TO REVOCATION, OR DENIAL OF

1 RENEWAL. (a) The commissioner shall adopt a procedure [~~to be~~
2 ~~used~~] for modifying, placing on probation, revoking, or denying
3 renewal of the charter of an open-enrollment charter school or for
4 using an alternative to revocation as described by Section
5 12.115(a-1).

6 [~~(b)~~] The procedure [~~adopted under Subsection (a)~~] must,
7 except as provided by Subsection (b), provide an opportunity for a
8 hearing to the charter holder and to parents and guardians of
9 students enrolled in the school. A hearing under this subsection
10 must be held in the county in which the school is located [~~at the~~
11 ~~facility at which the program is operated~~].

12 (a-1) The commissioner shall revoke the charter of an
13 open-enrollment charter school in accordance with the procedure
14 adopted under Subsection (a) if, after all information required for
15 determining a performance rating has been considered, the
16 commissioner determines that the school is insolvent. In
17 determining whether the school is insolvent, the commissioner shall
18 consider whether the insolvency is a result of recovery of
19 overallocated state funds under Section 42.258(a).

20 (b) The commissioner shall revoke the charter of an
21 open-enrollment charter school without a hearing if each campus
22 operated under the school's charter has been ordered closed under
23 Section 39.107.

24 (b-1) The procedure adopted under Subsection (a) for
25 denying renewal of the charter of an open-enrollment charter school
26 must provide that the charter automatically renews unless the
27 school's charter is revoked under Subchapter E, Chapter 39, before

1 the expiration of a charter term. In addition, the procedure must
2 require the commissioner and the charter holder to act in a timely
3 manner, according to the procedure, to initiate revocation or
4 renewal of the charter, as applicable. The term for which a charter
5 is renewed shall not be less than 10 years.

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

10 SECTION 10. Section 12.1161, Education Code, is amended to
11 read as follows:

12 Sec. 12.1161. EFFECT OF REVOCATION~~[, DENIAL OF RENEWAL,]~~ OR
13 SURRENDER OF CHARTER. If [~~(a) Except as provided by Subsection~~
14 ~~(b), if]~~ the commissioner revokes the [~~or denies the renewal of a]~~
15 charter of an open-enrollment charter school, or if an
16 open-enrollment charter school surrenders its charter, the school
17 may not:

- 18 (1) continue to operate under this subchapter; or
- 19 (2) receive state funds under this subchapter.

20 [~~(b) An open-enrollment charter school may continue to~~
21 ~~operate and receive state funds under this subchapter for the~~
22 ~~remainder of a school year if the commissioner denies renewal of the~~
23 ~~school's charter before the completion of that school year.]~~

24 SECTION 11. Subsection (a), Section 12.1164, Education
25 Code, is amended to read as follows:

26 (a) The commissioner must notify the Teacher Retirement
27 System of Texas in writing of the revocation~~[, denial of renewal,]~~

1 or surrender of a charter under this subchapter not later than the
2 10th business day after the date of the event.

3 SECTION 12. Section 12.117, Education Code, is amended by
4 adding Subsection (c) to read as follows:

5 (c) An open-enrollment charter school for which a license is
6 issued on or after September 1, 2011, may not admit a student unless
7 the student:

8 (1) was enrolled in a public school in this state
9 during the school year preceding the school year for which the
10 student is seeking admission to the charter school; or

11 (2) is seeking admission for the first grade or a lower
12 grade level.

13 SECTION 13. Subsection (a), Section 12.118, Education Code,
14 is amended to read as follows:

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

19 SECTION 14. Subsection (c), Section 12.119, Education Code,
20 is amended to read as follows:

21 (c) On request, the State Board of Education shall provide
22 the information required by this section and Section 12.111(a)(7)
23 [~~12.111(8)~~] to a member of the public. The board may charge a
24 reasonable fee to cover the board's cost in providing the
25 information.

26 SECTION 15. Subchapter D, Chapter 12, Education Code, is
27 amended by adding Section 12.136 to read as follows:

1 Sec. 12.136. ADMINISTRATIVE PENALTY. (a) The
2 commissioner may impose a reasonable administrative penalty
3 against a person who knowingly violates this subchapter or a rule
4 adopted under this subchapter.

5 (b) The commissioner shall provide for a hearing to be held
6 to determine whether a penalty is to be imposed and, if so, the
7 amount of the penalty. The commissioner shall base the amount of
8 the penalty on:

9 (1) the seriousness of the violation;

10 (2) any history of a previous violation;

11 (3) the amount necessary to deter a future violation;

12 (4) any effort to correct the violation;

13 (5) the cost to the agency to address the violation,
14 including providing a remedy in response to the violation; and

15 (6) any other matter justice requires.

16 (c) A hearing under Subsection (b) shall be held in
17 accordance with commissioner rule.

18 (d) A penalty collected under this section may be used by
19 the agency in paying costs of administering this subchapter.

20 SECTION 16. Section 12.156, Education Code, is amended to
21 read as follows:

22 Sec. 12.156. APPLICABILITY OF CERTAIN PROVISIONS.

23 (a) Except as otherwise provided by this subchapter, Subchapter D
24 applies to a college or university charter school or junior college
25 charter school as though the college or university charter school
26 or junior college charter school, as applicable, were issued a
27 license or granted a charter under that subchapter.

1 (b) A license issued or charter granted under this
2 subchapter is not considered for purposes of the limit on the number
3 of open-enrollment charter schools imposed by Section 12.101(b).

4 SECTION 17. Subsection (b), Section 12.113, Education Code,
5 is repealed.

6 SECTION 18. The amendment of Subchapter D, Chapter 12,
7 Education Code, by this Act, does not affect the status of a charter
8 granted under Subchapter D, Chapter 12, Education Code, before the
9 effective date of this Act and the implementation of licensing
10 under Subchapter D, Chapter 12, Education Code, in accordance with
11 this Act.

12 SECTION 19. Sections 2 and 3 of this Act apply beginning
13 with the 2012-2013 school year. The remainder of the bill shall
14 apply as soon as this Act takes effect.

15 SECTION 20. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2011.