

By: Patrick
(Harless)

S.B. No. 127

Substitute the following for S.B. No. 127:

By: Shelton

C.S.S.B. No. 127

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the establishment, operation, and funding of charter
3 schools.

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

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

7 Sec. 12.101. AUTHORIZATION FOR LICENSE.

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

11 (a) In accordance with this subchapter, the State Board of
12 Education may issue [~~grant~~] a license [~~charter~~] on the application
13 of an eligible entity for an open-enrollment charter school to
14 operate in a facility of a commercial or nonprofit entity, an
15 eligible entity, or a school district, including a home-rule school
16 district. In this subsection, "eligible entity" means:

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

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

21 (3) an organization that is exempt from taxation under
22 Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section
23 501(c)(3)); or

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

27 SECTION 3. Subchapter D, Chapter 12, Education Code, is

1 amended by adding Sections 12.1011 and 12.10111 to read as follows:

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

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

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

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

27 Sec. 12.10111. AUTHORIZATION FOR CHARTER. (a) The State

1 Board of Education shall grant a charter for an open-enrollment
2 charter school to a license holder under Section 12.101 if:

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

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

11 (3) the license holder satisfies standards of
12 financial solvency and financial accountability established by the
13 commissioner under Subchapter D, Chapter 39.

14 (b) Notwithstanding Section 12.101 and in accordance with
15 Section 12.110, the State Board of Education may grant a charter for
16 an open-enrollment charter school to an applicant for a charter
17 that:

18 (1) is an entity described by Section 12.101(a)(3)
19 that has operated one or more charter schools in another state and,
20 as determined by the commissioner in accordance with commissioner
21 rule, has achieved high performance under federal accountability
22 and other appropriate academic and financial criteria, including at
23 a minimum having achieved adequate yearly progress in accordance
24 with federal law for the preceding three school years; or

25 (2) is an entity that has operated one or more charter
26 schools established under Subchapter C, D, or E and, as determined
27 by the commissioner in accordance with commissioner rule, has

1 performed well under appropriate academic and financial criteria.

2 (c) A charter for an open-enrollment charter school granted
3 under Subsection (b)(1) is considered a license for purposes of the
4 limit on the number of licenses imposed by Section 12.101(b).

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
13 financial solvency and financial accountability established by
14 commissioner rule under Subchapter D, Chapter 39;

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 12.1056, Education Code, is amended to
7 read as follows:

8 Sec. 12.1056. IMMUNITY [~~FROM LIABILITY~~]. (a) In matters
9 related to operation of an open-enrollment charter school, an
10 open-enrollment charter school is immune [~~from liability~~] to the
11 same extent as a school district, and its employees and volunteers
12 are immune [~~from liability~~] to the same extent as school district
13 employees and volunteers. A member of the governing body of an
14 open-enrollment charter school or of a charter holder is immune
15 [~~from liability~~] to the same extent as a school district trustee.

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

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

25 (d) An open-enrollment charter school is a local
26 governmental entity as defined by Section 271.151, Local Government
27 Code, and is subject to liability on a contract as provided by

1 Subchapter I, Chapter 271, Local Government Code, and only in the
2 manner that liability is provided by that subchapter for a school
3 district.

4 SECTION 6. Subchapter D, Chapter 12, Education Code, is
5 amended by adding Section 12.1058 to read as follows:

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

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

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

14 (3) a political subdivision for purposes of Chapter
15 172, Local Government Code.

16 (b) An open-enrollment charter school may elect to extend
17 workers' compensation benefits to employees of the school through
18 any method available to a political subdivision under Chapter 504,
19 Labor Code, except that an open-enrollment charter school that
20 self-insures either individually or collectively under Chapter
21 504, Labor Code, may not provide workers' compensation medical
22 benefits to injured employees in the manner described by Section
23 504.053(b)(2), Labor Code. An open-enrollment charter school that
24 elects to extend workers' compensation benefits as permitted under
25 this section is considered to be a political subdivision for all
26 purposes under Chapter 504, Labor Code. An open-enrollment charter
27 school that self-insures either individually or collectively under

1 Chapter 504, Labor Code, is considered to be an insurance carrier
2 for purposes of Subtitle A, Title 5, Labor Code.

3 SECTION 7. Section 12.110, Education Code, is amended by
4 amending Subsections (a), (b), and (c) and adding Subsections (a-1)
5 and (e) to read as follows:

6 (a) The State Board of Education shall adopt:

7 (1) an application form and a procedure that must be
8 used to apply for a license [~~charter~~] for an open-enrollment
9 charter school; and

10 (2) criteria to use in selecting a program for which to
11 issue [~~grant~~] a license [~~charter~~].

12 (a-1) The State Board of Education shall adopt:

13 (1) an application form and a procedure that must be
14 used by an applicant described by Section 12.10111(b)(1) or (2) to
15 apply for a charter for an open-enrollment charter school; and

16 (2) criteria to use in selecting a program for which to
17 grant a charter.

18 (b) The application forms under Subsections (a) and (a-1)
19 [~~form~~] must provide for including the information required under
20 Section 12.111 [~~to be contained in a charter~~].

21 (c) As part of the application procedure, the board may
22 require a petition supporting a license or charter for a school
23 signed by a specified number of parents or guardians of school-age
24 children residing in the area in which a school is proposed or may
25 hold a public hearing to determine parental support for the school.

26 (e) The commissioner by rule may establish a fee for
27 applying for a license or charter for an open-enrollment charter

1 school. A fee established under this subsection must be sufficient
2 to cover the agency's administrative costs for the application
3 process, including the costs of investigating the applicant.

4 SECTION 8. Section 12.1101, Education Code, is amended to
5 read as follows:

6 Sec. 12.1101. NOTIFICATION OF LICENSE OR CHARTER
7 APPLICATION OR ESTABLISHMENT OF CAMPUS. The commissioner by rule
8 shall adopt a procedure for providing notice to the following
9 persons on receipt by the State Board of Education of an application
10 for a license or charter for an open-enrollment charter school
11 under Section 12.110 or on receipt by the board and the commissioner
12 of notice of the establishment of a campus as authorized under
13 Section 12.10111(d):

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

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

20 SECTION 9. Section 12.111, Education Code, is amended by
21 amending Subsections (a) and (b) and adding Subsections (a-1) and
22 (c) to read as follows:

23 (a) Except as provided by Subsection (a-1), each license
24 issued or [~~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,
2 consistent with Section 12.116(b-1), any charter renewal is valid;

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

9 (4) [~~establish the level of student performance that~~
10 ~~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 placed on
13 probation or revoked or on which an alternative to revoking the
14 charter, as described by Section 12.115(a-1), may be used [~~renewal~~
15 ~~of the charter may be denied~~];

16 (5) [~~(6)~~] prohibit discrimination in admission policy
17 on the basis of sex, national origin, ethnicity, religion,
18 disability, academic, artistic, or athletic ability, or the
19 district the child would otherwise attend in accordance with this
20 code, although the license or charter, as applicable, may:

21 (A) provide for the exclusion of a student who
22 has a documented history of a criminal offense, a juvenile court
23 adjudication, or discipline problems under Subchapter A, Chapter
24 37; and

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

- 1 (6) [~~(7)~~] specify the grade levels to be offered;
- 2 (7) [~~(8)~~] describe the governing structure of the
3 program, including:
- 4 (A) the officer positions designated;
- 5 (B) the manner in which officers are selected and
6 removed from office;
- 7 (C) the manner in which members of the governing
8 body of the school are selected and removed from office;
- 9 (D) the manner in which vacancies on that
10 governing body are filled;
- 11 (E) the term for which members of that governing
12 body serve; and
- 13 (F) whether the terms are to be staggered;
- 14 (8) [~~(9)~~] specify the powers or duties of the
15 governing body of the school that the governing body may delegate to
16 an officer;
- 17 (9) [~~(10)~~] specify the manner in which the school will
18 distribute to parents information related to the qualifications of
19 each professional employee of the program, including any
20 professional or educational degree held by each employee, a
21 statement of any certification under Subchapter B, Chapter 21, held
22 by each employee, and any relevant experience of each employee;
- 23 (10) [~~(11)~~] describe the process by which the person
24 providing the program will adopt an annual budget;
- 25 (11) [~~(12)~~] describe the manner in which an annual
26 audit of the financial and programmatic operations of the program
27 is to be conducted, including the manner in which the person

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

5 (12) [~~(13)~~] describe the facilities to be used;

6 (13) [~~(14)~~] describe the geographical area served by
7 the program; and

8 (14) [~~(15)~~] specify any type of enrollment criteria to
9 be used.

10 (a-1) A license issued under this subchapter is not required
11 to comply with Subsection (a)(2), (3), or (4).

12 (b) A license holder or charter holder [~~of an~~
13 ~~open-enrollment charter school~~] shall consider including in the
14 school's license or charter, as applicable, a requirement that the
15 school develop and administer personal graduation plans under
16 Section 28.0212.

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 10. 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 11. 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 used~~]
2 for modifying, placing on probation, revoking, or denying renewal
3 of the charter of an open-enrollment charter school or for using an
4 alternative to revocation as described by Section 12.115(a-1).

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

11 (a-1) The commissioner shall revoke the charter of an
12 open-enrollment charter school in accordance with the procedure
13 adopted under Subsection (a) if, after all information required for
14 determining a performance rating under Subchapter D, Chapter 39,
15 has been considered, the commissioner determines that the school is
16 insolvent. In determining whether the school is insolvent, the
17 commissioner shall consider whether the insolvency is a result of
18 recovery of overallocated state funds under Section 42.258(a).

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

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

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

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

9 SECTION 12. Subsection (a), Section 12.1164, Education
10 Code, is amended to read as follows:

11 (a) The commissioner must notify the Teacher Retirement
12 System of Texas in writing of the revocation~~[, denial of renewal,]~~
13 or surrender of a charter under this subchapter not later than the
14 10th business day after the date of the event.

15 SECTION 13. Section 12.117, Education Code, is amended by
16 adding Subsections (c) and (d) to read as follows:

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

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

23 (2) is seeking admission for the first grade or a lower
24 grade level.

25 (d) An open-enrollment charter school authorized by a
26 license issued or charter granted under this subchapter to a
27 municipality:

1 (1) is considered a work-site open-enrollment charter
2 school for purposes of federal regulations regarding admissions
3 policies that apply to open-enrollment charter schools receiving
4 federal funding; and

5 (2) notwithstanding Subsection (a), may admit
6 children of employees of the municipality to the school before
7 conducting a lottery to fill remaining available positions,
8 provided that the number of children admitted under this
9 subdivision constitutes only a small percentage, as may be further
10 specified by federal regulation, of the school's total enrollment.

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

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

17 SECTION 15. Subsection (c), Section 12.119, Education Code,
18 is amended to read as follows:

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

24 SECTION 16. Section 12.156, Education Code, is amended to
25 read as follows:

26 Sec. 12.156. APPLICABILITY OF CERTAIN PROVISIONS. (a)
27 Except as otherwise provided by this subchapter, Subchapter D

1 applies to a college or university charter school or junior college
2 charter school as though the college or university charter school
3 or junior college charter school, as applicable, were issued a
4 license or granted a charter under that subchapter.

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

8 SECTION 17. Subsection (b), Section 12.113, Education Code,
9 is repealed.

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

16 SECTION 19. Section 12.101, Education Code, as amended by
17 this Act, and Sections 12.1011 and 12.10111, Education Code, as
18 added by this Act, apply beginning with the 2012-2013 school year.

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