

1-1 By: Patrick S.B. No. 127  
1-2 (In the Senate - Filed November 8, 2010; January 31, 2011,  
1-3 read first time and referred to Committee on Education;  
1-4 April 11, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 2; April 11, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 127 By: Carona

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the establishment, operation, and funding of charter  
1-11 schools; providing administrative penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 12.101, Education Code, is amended by  
1-14 amending Subsection (b) and adding Subsections (b-1) and (b-2) to  
1-15 read as follows:

1-16 (b) The State Board of Education, after thoroughly  
1-17 investigating and evaluating an applicant, may grant a charter for  
1-18 an open-enrollment charter school only to an applicant that meets  
1-19 any financial, governing, curriculum development and  
1-20 implementation, and operational standards adopted by the  
1-21 commissioner under this subchapter. In a state fiscal year, the  
1-22 [The] State Board of Education may not grant [a total of] more than  
1-23 10 new [215] charters for an open-enrollment charter school plus a  
1-24 number of charters equal to any number of charters for an  
1-25 open-enrollment charter school revoked or surrendered during the  
1-26 preceding state fiscal year.

1-27 (b-1) A charter holder may establish one or more new  
1-28 open-enrollment charter school campuses under a charter without  
1-29 applying for authorization if:

1-30 (1) each open-enrollment charter school campus  
1-31 operating under the charter has been assigned an acceptable  
1-32 performance rating as provided by Subchapter C, Chapter 39, for the  
1-33 two preceding school years;

1-34 (2) the charter holder satisfies standards of fiscal  
1-35 solvency and financial accountability established by commissioner  
1-36 rule;

1-37 (3) the charter holder provides written notice, in the  
1-38 time, manner, and form provided by commissioner rule, to the State  
1-39 Board of Education and the commissioner of the establishment of any  
1-40 campus under this subsection; and

1-41 (4) not later than the 90th day after the date the  
1-42 charter holder provides written notice under Subdivision (3), the  
1-43 commissioner does not provide written notice to the charter holder  
1-44 disapproving a new campus under this section.

1-45 (b-2) For purposes of Subsection (b-1), an open-enrollment  
1-46 charter school campus rated as academically acceptable or higher  
1-47 under Subchapter D, Chapter 39, as that subchapter existed January  
1-48 1, 2009, for the 2009-2010 or 2010-2011 school year is considered to  
1-49 have been assigned an acceptable performance rating for the  
1-50 applicable school year. This subsection expires January 1, 2015.

1-51 SECTION 2. Subchapter D, Chapter 12, Education Code, is  
1-52 amended by adding Section 12.1011 to read as follows:

1-53 Sec. 12.1011. AUTHORIZATION FOR GRANT OF CHARTERS FOR  
1-54 SCHOOLS PRIMARILY SERVING STUDENTS WITH DISABILITIES. (a) The  
1-55 State Board of Education may grant under Section 12.101 a charter on  
1-56 the application of an eligible entity for an open-enrollment  
1-57 charter school intended primarily to serve students with  
1-58 disabilities, including students with autism. The State Board of  
1-59 Education may not grant more than two new charters for an  
1-60 open-enrollment charter school under this section each state fiscal  
1-61 year. A charter granted under this section is not considered for  
1-62 purposes of the limit on the number of open-enrollment charter  
1-63 schools imposed by Section 12.101(b).

2-1 (b) For purposes of the applicability of state and federal  
 2-2 law, including a law prescribing requirements concerning students  
 2-3 with disabilities, an open-enrollment charter school described by  
 2-4 Subsection (a) is considered the same as any other school for which  
 2-5 a charter is granted under Section 12.101.

2-6 (c) To the fullest extent permitted under federal law, a  
 2-7 parent of a student with a disability may choose to enroll the  
 2-8 parent's child in an open-enrollment charter school described by  
 2-9 Subsection (a) regardless of whether a disproportionate number of  
 2-10 the school's students are students with disabilities.

2-11 (d) This section does not authorize an open-enrollment  
 2-12 charter school to discriminate in admissions or in the services  
 2-13 provided based on the presence, absence, or nature of an  
 2-14 applicant's or student's disability.

2-15 SECTION 3. Section 12.110, Education Code, is amended by  
 2-16 adding Subsection (e) to read as follows:

2-17 (e) The commissioner by rule may establish a fee for  
 2-18 applying for a charter for an open-enrollment charter school. A fee  
 2-19 established under this subsection must be sufficient to cover the  
 2-20 agency's administrative costs for the application process,  
 2-21 including the costs of investigating the proposed charter holder.

2-22 SECTION 4. Section 12.1101, Education Code, is amended to  
 2-23 read as follows:

2-24 Sec. 12.1101. NOTIFICATION OF CHARTER APPLICATION OR  
 2-25 ESTABLISHMENT OF CAMPUS. The commissioner by rule shall adopt a  
 2-26 procedure for providing notice to the following persons on receipt  
 2-27 by the State Board of Education of an application for a charter for  
 2-28 an open-enrollment charter school under Section 12.110 or on  
 2-29 receipt by the board and the commissioner of notice of the  
 2-30 establishment of a campus as authorized under Section 12.101(b-1):

2-31 (1) the board of trustees of each school district from  
 2-32 which the proposed open-enrollment charter school or campus is  
 2-33 likely to draw students, as determined by the commissioner; and

2-34 (2) each member of the legislature that represents the  
 2-35 geographic area to be served by the proposed school or campus, as  
 2-36 determined by the commissioner.

2-37 SECTION 5. Section 12.111, Education Code, is amended by  
 2-38 amending Subsection (a) and adding Subsection (c) to read as  
 2-39 follows:

2-40 (a) Each charter granted under this subchapter must:

2-41 (1) describe the educational program to be offered,  
 2-42 which must include the required curriculum as provided by Section  
 2-43 28.002;

2-44 (2) specify the period for which the charter or,  
 2-45 consistent with Section 12.116(b-1), any charter renewal is valid;

2-46 (3) provide that continuation or renewal of the  
 2-47 charter is contingent on the status of the charter as provided by  
 2-48 Section 12.116(b-1) [~~acceptable student performance on assessment~~  
 2-49 ~~instruments adopted under Subchapter B, Chapter 39, and on~~  
 2-50 ~~compliance with any accountability provision specified by the~~  
 2-51 ~~charter, by a deadline or at intervals specified by the charter];~~

2-52 (4) [~~establish the level of student performance that~~  
 2-53 ~~is considered acceptable for purposes of Subdivision (3),~~

2-54 [~~5~~] specify any basis, in addition to a basis  
 2-55 specified by this subchapter, on which the charter may be placed on  
 2-56 probation or revoked or on which an alternative to revoking the  
 2-57 charter, as described by Section 12.115(a-1), may be used [~~renewal~~  
 2-58 ~~of the charter may be denied];~~

2-59 (5) [~~6~~] prohibit discrimination in admission policy  
 2-60 on the basis of sex, national origin, ethnicity, religion,  
 2-61 disability, academic, artistic, or athletic ability, or the  
 2-62 district the child would otherwise attend in accordance with this  
 2-63 code, although the charter may:

2-64 (A) provide for the exclusion of a student who  
 2-65 has a documented history of a criminal offense, a juvenile court  
 2-66 adjudication, or discipline problems under Subchapter A, Chapter  
 2-67 37; and

2-68 (B) provide for an admission policy that requires  
 2-69 a student to demonstrate artistic ability if the school specializes

3-1 in performing arts;

3-2 (6) [~~(7)~~] specify the grade levels to be offered;

3-3 (7) [~~(8)~~] describe the governing structure of the

3-4 program, including:

3-5 (A) the officer positions designated;

3-6 (B) the manner in which officers are selected and

3-7 removed from office;

3-8 (C) the manner in which members of the governing

3-9 body of the school are selected and removed from office;

3-10 (D) the manner in which vacancies on that

3-11 governing body are filled;

3-12 (E) the term for which members of that governing

3-13 body serve; and

3-14 (F) whether the terms are to be staggered;

3-15 (8) [~~(9)~~] specify the powers or duties of the

3-16 governing body of the school that the governing body may delegate to

3-17 an officer;

3-18 (9) [~~(10)~~] specify the manner in which the school will

3-19 distribute to parents information related to the qualifications of

3-20 each professional employee of the program, including any

3-21 professional or educational degree held by each employee, a

3-22 statement of any certification under Subchapter B, Chapter 21, held

3-23 by each employee, and any relevant experience of each employee;

3-24 (10) [~~(11)~~] describe the process by which the person

3-25 providing the program will adopt an annual budget;

3-26 (11) [~~(12)~~] describe the manner in which an annual

3-27 audit of the financial and programmatic operations of the program

3-28 is to be conducted, including the manner in which the person

3-29 providing the program will provide information necessary for the

3-30 school district in which the program is located to participate, as

3-31 required by this code or by State Board of Education rule, in the

3-32 Public Education Information Management System (PEIMS);

3-33 (12) [~~(13)~~] describe the facilities to be used;

3-34 (13) [~~(14)~~] describe the geographical area served by

3-35 the program; and

3-36 (14) [~~(15)~~] specify any type of enrollment criteria to

3-37 be used.

3-38 (c) The enrollment of a student with a disability, including

3-39 autism, is not considered for purposes of any maximum student

3-40 enrollment described by the charter.

3-41 SECTION 6. Section 12.115, Education Code, is amended to

3-42 read as follows:

3-43 Sec. 12.115. BASIS FOR MODIFICATION, PLACEMENT ON

3-44 PROBATION, OR REVOCATION; ALTERNATIVES TO REVOCATION [~~, OR DENIAL OF~~

3-45 ~~RENEWAL~~]. (a) The commissioner shall [~~may~~] modify, place on

3-46 probation, or revoke [~~, or deny renewal of~~] the charter of an

3-47 open-enrollment charter school if the commissioner determines that

3-48 the charter holder:

3-49 (1) committed a material violation of the charter,

3-50 including failure to satisfy accountability provisions prescribed

3-51 by the charter;

3-52 (2) failed to satisfy generally accepted accounting

3-53 standards of fiscal management;

3-54 (3) failed to protect the health, safety, or welfare

3-55 of the students enrolled at the school; or

3-56 (4) failed to comply with this subchapter or another

3-57 applicable law or rule.

3-58 (a-1) Based on a determination described by Subsection (a)

3-59 concerning the charter holder, as an alternative to revoking the

3-60 charter of an open-enrollment charter school, the commissioner may:

3-61 (1) reconstitute the governing body of the charter

3-62 holder; or

3-63 (2) assign operations of a school campus to a

3-64 different charter holder.

3-65 (b) The action the commissioner takes under Subsection (a)

3-66 or (a-1) shall be based on:

3-67 (1) the best interest of the school's students;

3-68 (2) [~~7~~] the severity of the violation [~~7~~] and any

3-69 previous violation the school has committed; and

4-1 (3) the accreditation status of the school under  
 4-2 Subchapter C, Chapter 39.

4-3 SECTION 7. Section 12.116, Education Code, is amended to  
 4-4 read as follows:

4-5 Sec. 12.116. PROCEDURE FOR MODIFICATION, PLACEMENT ON  
 4-6 PROBATION, REVOCATION, ALTERNATIVE TO REVOCATION, OR DENIAL OF  
 4-7 RENEWAL. (a) The commissioner shall adopt a procedure [~~to be~~  
 4-8 ~~used~~] for modifying, placing on probation, revoking, or denying  
 4-9 renewal of the charter of an open-enrollment charter school or for  
 4-10 using an alternative to revocation as described by Section  
 4-11 12.115(a-1).

4-12 [~~(b)~~] The procedure [~~adopted under Subsection (a)~~] must,  
 4-13 except as provided by Subsection (b), provide an opportunity for a  
 4-14 hearing to the charter holder and to parents and guardians of  
 4-15 students enrolled in the school. A hearing under this subsection  
 4-16 must be held in the county in which the school is located [~~at the~~  
 4-17 ~~facility at which the program is operated~~].

4-18 (a-1) The commissioner shall revoke the charter of an  
 4-19 open-enrollment charter school in accordance with the procedure  
 4-20 adopted under Subsection (a) if, after all information required for  
 4-21 determining a performance rating has been considered, the  
 4-22 commissioner determines that the school is insolvent. In  
 4-23 determining whether the school is insolvent, the commissioner shall  
 4-24 consider whether the insolvency is a result of recovery of  
 4-25 overallocated state funds under Section 42.258(a).

4-26 (b) The commissioner shall revoke the charter of an  
 4-27 open-enrollment charter school without a hearing if each campus  
 4-28 operated under the school's charter has been ordered closed under  
 4-29 Section 39.107.

4-30 (b-1) The procedure adopted under Subsection (a) for  
 4-31 denying renewal of the charter of an open-enrollment charter school  
 4-32 must provide that the charter automatically renews unless the  
 4-33 school's charter is revoked under Subchapter E, Chapter 39, before  
 4-34 the expiration of a charter term. In addition, the procedure must  
 4-35 require the commissioner and the charter holder to act in a timely  
 4-36 manner, according to the procedure, to initiate revocation or  
 4-37 renewal of the charter, as applicable. The term for which a charter  
 4-38 is renewed shall not be less than 10 years.

4-39 (c) Chapter 2001, Government Code, does not apply to a  
 4-40 hearing that is related to a modification, placement on probation,  
 4-41 revocation, alternative to revocation, or denial of renewal under  
 4-42 this subchapter.

4-43 SECTION 8. Section 12.1161, Education Code, is amended to  
 4-44 read as follows:

4-45 Sec. 12.1161. EFFECT OF REVOCATION[~~, DENIAL OF RENEWAL,~~] OR  
 4-46 SURRENDER OF CHARTER. If [~~(a) Except as provided by Subsection~~  
 4-47 ~~(b), if~~] the commissioner revokes the [~~or denies the renewal of a~~]  
 4-48 charter of an open-enrollment charter school, or if an  
 4-49 open-enrollment charter school surrenders its charter, the school  
 4-50 may not:

4-51 (1) continue to operate under this subchapter; or

4-52 (2) receive state funds under this subchapter.

4-53 [~~(b) An open-enrollment charter school may continue to~~  
 4-54 ~~operate and receive state funds under this subchapter for the~~  
 4-55 ~~remainder of a school year if the commissioner denies renewal of the~~  
 4-56 ~~school's charter before the completion of that school year.~~]

4-57 SECTION 9. Subsection (a), Section 12.1164, Education Code,  
 4-58 is amended to read as follows:

4-59 (a) The commissioner must notify the Teacher Retirement  
 4-60 System of Texas in writing of the revocation[~~, denial of renewal,~~]  
 4-61 or surrender of a charter under this subchapter not later than the  
 4-62 10th business day after the date of the event.

4-63 SECTION 10. Section 12.117, Education Code, is amended by  
 4-64 adding Subsection (c) to read as follows:

4-65 (c) An open-enrollment charter school for which a charter is  
 4-66 granted on or after September 1, 2011, may not admit a student  
 4-67 unless the student:

4-68 (1) was enrolled in a public school in this state  
 4-69 during the school year preceding the school year for which the

5-1 student is seeking admission to the charter school; or  
5-2 (2) is seeking admission for the first grade or a lower  
5-3 grade level.

5-4 SECTION 11. Subsection (a), Section 12.118, Education Code,  
5-5 is amended to read as follows:

5-6 (a) The commissioner shall designate an impartial  
5-7 organization with experience in evaluating school choice programs  
5-8 to conduct, under the supervision of the commissioner, an annual  
5-9 evaluation of open-enrollment charter schools.

5-10 SECTION 12. Subsection (c), Section 12.119, Education Code,  
5-11 is amended to read as follows:

5-12 (c) On request, the State Board of Education shall provide  
5-13 the information required by this section and Section 12.111(a)(7)  
5-14 [~~12.111(8)~~] to a member of the public. The board may charge a  
5-15 reasonable fee to cover the board's cost in providing the  
5-16 information.

5-17 SECTION 13. Subchapter D, Chapter 12, Education Code, is  
5-18 amended by adding Section 12.136 to read as follows:

5-19 Sec. 12.136. ADMINISTRATIVE PENALTY. (a) The  
5-20 commissioner may impose a reasonable administrative penalty  
5-21 against a person who knowingly violates this subchapter or a rule  
5-22 adopted under this subchapter.

5-23 (b) The commissioner shall provide for a hearing to be held  
5-24 to determine whether a penalty is to be imposed and, if so, the  
5-25 amount of the penalty. The commissioner shall base the amount of  
5-26 the penalty on:

- 5-27 (1) the seriousness of the violation;
- 5-28 (2) any history of a previous violation;
- 5-29 (3) the amount necessary to deter a future violation;
- 5-30 (4) any effort to correct the violation;
- 5-31 (5) the cost to the agency to address the violation,  
5-32 including providing a remedy in response to the violation; and
- 5-33 (6) any other matter justice requires.

5-34 (c) A hearing under Subsection (b) shall be held in  
5-35 accordance with commissioner rule.

5-36 (d) A penalty collected under this section may be used by  
5-37 the agency in paying costs of administering this subchapter.

5-38 SECTION 14. Subsection (b), Section 12.113, Education Code,  
5-39 is repealed.

5-40 SECTION 15. Sections 1 and 2 of this Act apply beginning  
5-41 with the 2012-2013 school year. The remainder of the bill shall  
5-42 apply as soon as this Act takes effect.

5-43 SECTION 16. This Act takes effect immediately if it  
5-44 receives a vote of two-thirds of all the members elected to each  
5-45 house, as provided by Section 39, Article III, Texas Constitution.  
5-46 If this Act does not receive the vote necessary for immediate  
5-47 effect, this Act takes effect September 1, 2011.

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