

## **BILL ANALYSIS**

Senate Research Center

S.B. 2  
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Education  
7/16/2013  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 1995, the 74th Legislature passed legislation to allow public charter schools to operate in Texas. Since then, public charter schools have served an increasing number of students across the state. Current law caps the number of open-enrollment charter schools at 215. The cap effectively deters many innovative educators and groups from developing or starting a charter school in Texas because the cap is perpetually close to being reached. Existing charter schools have struggled with a variety of outdated laws and policies that prevent the expansion of effective charters. Because charter schools do not have a local tax base, most charter schools struggle to find suitable facilities for a school. In addition, many poor performing existing charters have been able to remain open because of ineffective laws governing public charters.

S.B. 2 is a comprehensive bill to overhaul the laws relating to authorizing, governing, and establishing charter schools in Texas.

S.B. 2 amends current law relating to certain charter schools.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of education in SECTION 3 (Section 12.0522, Education Code), SECTION 9 (Section 12.101, Education Code), SECTION 10 (Section 12.1011, Education Code), SECTION 12 (Section 12.1014, Education Code), SECTION 23 (Section 12.114, Education Code), SECTION 24 (Section 12.1141, Education Code), SECTION 25 (Section 12.115, Education Code), SECTION 30 (Section 12.1181, Education Code), and SECTION 43 (Section 39.152, Education Code) of this bill.

Rulemaking authority previously granted to the commissioner of education is modified in SECTION 19 (Section 12.1101, Education Code) of this bill.

Rulemaking authority previously granted to the State Board of Education is transferred to the commissioner of education in SECTION 20 (Section 12.111, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter D, Chapter 11, Education Code, by adding Sections 11.1542 and 11.1543, as follows:

Sec. 11.1542. OPEN-ENROLLMENT CHARTER SCHOOL OFFER FOR DISTRICT FACILITY. (a) Requires the board of trustees of an independent school district (board of trustees) that intends to sell, lease, or allow use for a purpose other than a district purpose of an unused or underused district facility to give each open-enrollment charter school located wholly or partly within the boundaries of the district the opportunity to make an offer to purchase, lease, or use the facility, as applicable, in response to any terms established by the board of trustees, before offering the facility for sale or lease to any other specific entity.

(b) Provides that this section does not require the board of trustees to accept an offer made by an open-enrollment charter school.

Sec. 11.1543. CHARTER SCHOOL PAYMENT FOR FACILITIES USE OR FOR SERVICES. (a) Prohibits an independent school district from requiring a campus or campus program that has been granted a charter under Subchapter C (Campus or Campus Program Charter), Chapter 12 (Charters), and that is the result of the conversion of the status of an existing school district campus to pay rent for or to purchase a facility in order to use the facility.

(b) Prohibits an independent school district from requiring a campus or campus program described by Subsection (a) or an open-enrollment charter school to pay for any service provided by the district under a contract between the district and the campus, campus program, or open-enrollment charter school an amount that is greater than the amount of the actual costs to the district of providing the service.

SECTION 2. Amends Section 12.052(a), Education Code, to require, rather than to authorize, the board of trustees of a school district or the governing body of a home-rule school district, in accordance with this subchapter, to grant or deny, through a public vote of the board of trustees or governing body, a charter to parents and teachers for a campus or a program on a campus if the board of trustees is presented with a petition signed by the parents of a majority of the students at that school campus, and a majority of the classroom teachers at that school campus.

SECTION 3. Amends Subchapter C, Chapter 12, Education Code, by adding Section 12.0522, as follows:

Sec. 12.0522. DISTRICT CHARTER AUTHORIZATION. (a) Authorizes the board of trustees of a school district or the governing body of a home-rule school district to grant a district charter to a campus to the extent authorized under this section, notwithstanding Section 12.052 (Authorization), in a manner provided by this section.

(b) Authorizes a district charter, except as otherwise provided by this subsection or Subsection (c), to be granted under this section only to one or more campuses serving in total a percentage of the district's student enrollment equal to not more than 15 percent of the district's student enrollment for the preceding school year. Prohibits the percentage limit from preventing a district from granting a district charter to at least one feeder pattern of schools, including an elementary, middle or junior high, and high school.

(c) Authorizes a district charter to be granted to any campus that has received the lowest performance rating under Subchapter C (Accreditation), Chapter 39 (Public School System Accountability).

(d) Provides that Subchapter D (Open-Enrollment Charter School) applies to a campus granted a district charter under this section as though the campus were granted a charter under Subchapter D, and the campus is considered an open-enrollment charter school.

(e) Provides that a charter granted under this section is not considered for purposes of the limit on the number of charters for open-enrollment charter schools imposed by Section 12.101 (Authorization).

(f) Authorizes the commissioner of education to adopt rules as necessary for the administration of this section.

SECTION 4. Amends Subchapter C, Chapter 12, Education Code, by adding Sections 12.0531 and 12.0532, as follows:

Sec. 12.0531. PERFORMANCE CONTRACT; DURATION OF CHARTER. Requires the board of trustees of the school district that granted the charter to enter into a performance contract with the principal or equivalent chief operating officer of the campus or program if a charter is granted under this subchapter. Requires that the performance contract specify enhanced authority granted to the principal or equivalent

officer in order to achieve the academic goals that must be met by campus or program students. Provides that the charter granted under this subchapter expires 10 years from the date the charter is granted unless the specified goals are substantially met, as determined by the board of trustees of the school district that granted the charter.

Sec. 12.0532. NEIGHBORHOOD SCHOOL. (a) Authorizes a charter granted under this subchapter for a campus to provide for the campus to be a neighborhood school as determined by the board of trustees of the school district granting the charter.

(b) Requires the principal or equivalent chief operating officer of a neighborhood school, except as otherwise provided by this subsection, to manage the funding provided for the school under this code and any other funding provided for the school in the manner the principal or other officer determines best meets the needs of the school's students. Authorizes the district in which the school is located to retain that portion of funding that the district generally withholds from a campus for costs associated with the salary of the district superintendent or other district governance.

(c) Authorizes the principal or equivalent chief operating officer of a neighborhood school to use school funding to purchase from the school district in which the school is located services for the school, including bus service, facilities maintenance services, and other services generally provided by a school district to district campuses. Requires the school to pay for each service an amount that reflects the actual cost to the district of providing the service for the number of the school's students for which the service is provided.

SECTION 5. Amends Section 12.055, Education Code, as follows:

Sec. 12.055. APPLICABILITY OF LAWS AND RULES TO CAMPUS OR PROGRAM GRANTED CHARTER. (a) Creates this subsection from existing text and makes no further change to this subsection.

(b) Authorizes a school district to contract with another district or an open-enrollment charter school for services at a campus charter. Provides that an employee of the district or open-enrollment charter school providing contracted services to a campus charter is eligible for membership in and benefits from the Teacher Retirement System of Texas (TRS) if the employee would be eligible for membership and benefits if holding the same position at the employing district or open-enrollment charter school.

SECTION 6. Amends Section 12.056(b), Education Code, to provide that a campus or program for which a charter is granted under this subchapter is subject to certain conditions, including a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to public school accountability under Subchapters D (Financial Accountability) and F (Procedures for Challenge of Accountability Determination, Intervention, or Sanction), Chapter 39, in addition to other provisions.

SECTION 7. Amends Section 12.057, Education Code, by adding Subsection (b-1), to require an employee of a charter holder, as defined by Section 12.1012 (Definitions), who is employed on a campus or in a program granted a charter under this subchapter and who qualifies for membership in TRS to be covered under the system in the same manner and to the same extent as a qualified employee of an independent school district who is employed on a regularly operating campus or in a regularly operating program.

SECTION 8. Amends Section 12.059, Education Code, to require that each charter granted under this subchapter:

(1) Makes no change to this subdivision;

(2) provide that continuation of the charter is contingent on satisfactory student performance under Subchapter B (Assessment of Academic Skills), Chapter 39, satisfactory financial performance under Subchapter D (Financial Accountability), Chapter 39, and compliance with other applicable accountability provisions under Chapter 39;

(3) specify any basis, in addition to a basis specified by this subchapter, on which the charter is authorized to be revoked, rather than to be placed on probation or revoked;

(4)-(6) Makes no change to these subdivisions; and

(7) describe the manner in which an annual audit of financial and programmatic operations of the campus or program is to be conducted, including the manner in which the campus or program will provide information necessary for the school district in which it is located to participate, as required by this code or by commissioner rule, rather than State Board of Education (SBOE) rule, in the Public Education Information Management System (PEIMS).

SECTION 9. Amends Section 12.101, Education Code, by amending Subsections (a) and (b) and adding Subsections (b-0), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), (b-7) and (b-8), as follows:

(a) Authorizes the commissioner, rather than SBOE, in accordance with this subchapter, to 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.

(b) Authorizes the commissioner, after thoroughly investigating and evaluating an applicant, in coordination with a member of SBOE designated for the purpose by the chair of SBOE, to grant a charter for an open-enrollment charter school only to an applicant that meets any financial, governing, educational, and operational standards adopted by the commissioner under this subchapter, that the commissioner determines is capable of carrying out the responsibilities provided by the charter and likely to operate a school of high quality, and that:

(1) has not within the preceding 10 years had a charter under this chapter or a similar charter issued under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned; or

(2) is not, under rules adopted by the commissioner, considered to be a corporate affiliate of or substantially related to an entity that has within the preceding 10 years had a charter under this chapter or a similar charter issued under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned.

Makes nonsubstantive changes.

(b-0) Requires the commissioner to notify SBOE of each charter the commissioner proposes to grant under this subchapter. Provides that unless a majority of the members of SBOE present and voting vote against the grant of that charter before the 90th day after the date on which SBOE receives the notice from the commissioner, the commissioner's proposal to grant the charter takes effect. Prohibits SBOE from deliberating or voting on any grant of a charter that is not proposed by the commissioner.

(b-1) Prohibits the commissioner, rather than SBOE, in granting charters for open-enrollment charter schools, from granting a total of more than:

(1) 215 charters through the fiscal year ending August 31, 2014;

(2) 225 charters for the fiscal year beginning September 1, 2014;

- (3) 240 charters beginning September 1, 2015;
- (4) 255 charters beginning September 1, 2016;
- (5) 270 charters beginning September 1, 2017; and
- (6) 285 charters beginning September 1, 2018.

Deletes existing text prohibiting SBOE from granting more than 215 charters for an open-enrollment charter school.

(b-2) Provides that the total number of charters for open-enrollment charter schools authorized to be granted is 305 beginning September 1, 2019.

(b-3) Prohibits the commissioner from granting more than one charter for an open-enrollment charter school to any charter holder. Authorizes the commissioner to consolidate charters for an open-enrollment charter school held by multiple charter holders into a single charter held by a single charter holder with the written consent to the terms of consolidation by or at the request of each charter holder affected by the consolidation.

(b-4) Provides that, notwithstanding Section 12.114 (Revision), approval of the commissioner under that section is not required for establishment of a new open-enrollment charter school campus if the requirements of this subsection, including the absence of commissioner disapproval under Subdivision (3), are satisfied. Authorizes a charter holder having an accreditation status of accredited and at least 50 percent of its student population in grades assessed under Subchapter B, Chapter 39, or at least 50 percent of the students in the grades assessed having been enrolled in the school for at least three school years to establish one or more new campuses under an existing charter held by the charter holder if:

- (1) the charter holder is currently evaluated under the standard accountability procedures for evaluation under Chapter 39 and received a district rating in the highest or second highest performance rating category under Subchapter C, Chapter 39, for three of the last five years with at least 75 percent of the campuses rated under the charter also receiving a rating in the highest or second highest performance rating category and with no campus with a rating in the lowest performance rating category in the most recent ratings;

- (2) the charter holder provides written notice to the commissioner of the establishment of any campus under this subsection in the time, manner, and form provided by rule of the commissioner; and

- (3) not later than the 60th day after the date the charter holder provides written notice under Subdivision (2), the commissioner does not provide written notice to the charter holder of disapproval of a new campus under this section.

(b-5) Provides that the initial term of a charter granted under this section is five years.

(b-6) Requires the commissioner to adopt rules to modify criteria for granting a charter for an open-enrollment charter school under this section to the extent necessary to address changes in performance rating categories or in the financial accountability system under Chapter 39.

(b-7) Provides that a charter granted under this section for a dropout recovery school is not considered for purposes of the limit on the number of charters for open-enrollment charter schools imposed by this section. Provides that, for purposes of this subsection, an open-enrollment charter school is considered to be a dropout recovery school if the school meets the criteria for designation as a dropout recovery school under Section 12.1141(c).

(b-8) Prohibits the commissioner, in adopting any financial standards under this subchapter that an applicant for a charter for an open-enrollment charter school is required to meet, from excluding any loan or line of credit in determining an applicant's available funding, or excluding an applicant from the grant of a charter solely because the applicant fails to demonstrate having a certain amount of current assets in cash.

SECTION 10. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1011, as follows:

Sec. 12.1011. CHARTER AUTHORIZATION FOR HIGH-PERFORMING ENTITIES.

(a) Authorizes the commissioner, notwithstanding Section 12.101(b), to grant a charter for an open-enrollment charter school to an applicant that is:

(1) an eligible entity under Section 12.101(a)(3) (relating to authorizing the commissioner to grant a charter on the application of an eligible entity for an open-enrollment charter school to operate in a facility of certain eligible nonprofit entities and defining "eligible entity") that proposes to operate the charter school program of a charter operator that operates one or more charter schools in another state and with which the eligible entity is affiliated and, as determined by the commissioner in accordance with commissioner rule, has performed at a level of performance comparable to performance under the highest or second highest performance rating category under Subchapter C, Chapter 39; or

(2) an entity that has operated one or more charter schools established under this subchapter or Subchapter C or E (Accreditation Interventions and Sanctions) and, as determined by the commissioner in accordance with commissioner rule, has performed in the highest or second highest performance rating category under Subchapter C, Chapter 39.

(b) Authorizes a charter holder granted a charter for an open-enrollment charter school under Subsection (a) to vest management of corporate affairs in a member entity provided that the member entity is authorized to change the members of the governing body of the charter holder before the expiration of a member's term only with the express written approval of the commissioner.

(c) Provides that the initial term of a charter granted under this section is five years.

(d) Requires the commissioner to adopt rules to modify criteria for granting a charter for an open-enrollment charter school under this section to the extent necessary to address changes in performance rating categories under Subchapter C, Chapter 39.

SECTION 11. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1013, as follows:

Sec. 12.1013. CHARTER AUTHORIZER ACCOUNTABILITY. (a) Requires the commissioner to select a center for education research authorized by Section 1.005 (Education Research Centers; Sharing Student Information) to prepare an annual report concerning the performance of open-enrollment charter schools by authorizer compared to campus charters and matched traditional campuses, which are required to be provided annually under Subchapters J (Parent and Educator Reports) and K (Reports by Texas Education Agency), Chapter 39.

(b) Requires that the format of the report enable the public to distinguish and compare the performance of each type of public school by classifying the schools as follows:

- (1) open-enrollment charters granted by SBOE;
- (2) open-enrollment charters granted by the commissioner;
- (3) charters granted by school districts; and
- (4) matched traditional campuses.

(c) Requires that the report include the performance of each public school in each class described by Subsection (b) as measured by the student achievement indicators adopted under Section 39.053 (Performance Indicators: Student Achievement) and student attrition rates.

(d) Requires that the report also:

- (1) aggregate and compare the performance of open-enrollment charter schools granted charters by SBOE, open-enrollment charter schools granted charters by the commissioner, campuses and programs granted charters by school districts, and matched traditional campuses; and
- (2) rate the aggregate performance of elementary, middle or junior high, and high schools within each class described by Subsection (b) as indicated by the composite rating that would be assigned to the class of elementary, middle or junior high, and high schools if the students attending all schools in that class were cumulatively enrolled in one elementary, middle or junior high, or high school.

(e) Requires that the report also include an analysis of whether the performance of matched traditional campuses would likely improve if there were consolidation of school districts within the county in which the campuses are located. Provides that this subsection applies only to a county that includes at least seven school districts and at least 10 open-enrollment charter schools.

SECTION 12. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1014, as follows:

**Sec. 12.1014. AUTHORIZATION FOR GRANT OF CHARTERS FOR SCHOOLS PRIMARILY SERVING STUDENTS WITH DISABILITIES.** (a) Authorizes the commissioner to 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 eligible to receive services under Subchapter A (Special Education Program), Chapter 29.

(b) Provides that the limit on the number of charters for open-enrollment charter schools imposed by Section 12.101 does not apply to a charter granted under this section to a school at which at least 50 percent of the students are eligible to receive services under Subchapter A, Chapter 29. Prohibits more than five charters from being granted for schools described by this subsection.

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

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

(e) Provides that this section does not authorize an open-enrollment 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.

(f) Requires the commissioner and the State Board for Educator Certification to adopt rules as necessary to administer this section.

SECTION 13. Amends Section 12.102, Education Code, to provide that an open-enrollment charter school retains authority to operate under the charter to the extent authorized under Sections 12.1141 and 12.115 and Subchapter E, Chapter 39, rather than under the charter contingent on satisfactory student performance as provided by the charter in accordance with Section 12.111 (Content).

SECTION 14. Amends Section 12.104, Education Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Provides that an open-enrollment charter school is subject to certain conditions, including a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to public school accountability under Subchapter F, Chapter 39, among other requirements.

(b-1) Requires the Texas Education Agency (TEA) to assist the school as necessary in complying with requirements under Subsection (b)(2)(A) (relating to providing that an open-enrollment charter school is subject to a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to PEIMS to the extent necessary to monitor compliance with this subchapter as determined by the commissioner) during the first three years an open-enrollment charter school is in operation.

SECTION 15. Amends Section 12.1053(a), Education Code, to provide that this section applies to an open-enrollment charter school unless the school's charter otherwise describes procedures for purchasing and contracting and the procedures are approved by the commissioner, rather than by SBOE.

SECTION 16. Amends Section 12.1055, Education Code, by adding Subsections (c) and (d), as follows:

(c) Provides that Section 11.1513(f) (relating to providing that the superintendent is a public official for purposes of Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, and each member of the board of trustees remains subject to that chapter with respect to all district employees, if, under the employment policy, the board of trustees delegates the to the superintendent the final authority to select district personnel) applies to an open-enrollment charter school as though the governing body of the school were the board of trustees of a school district and to the superintendent or, as applicable, the administrator serving as educational leader and chief executive officer of the school as though that person were the superintendent of a school district.

(d) Provides that, notwithstanding any other provision of this section, a person who was not restricted or prohibited under this section as this section existed before September 1, 2013, from being employed by an open-enrollment charter school and who was employed by an open-enrollment charter school before September 1, 2013, is considered to have been in continuous employment as provided by Section 573.062(a) (relating to providing that a nepotism prohibition prescribed by Section 573.041 (Prohibition Applicable to Public Official) or by a municipal chapter or ordinance does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual under certain circumstances), Government Code, and is not prohibited from continuing employment with the school.



SECTION 17. Amends Section 12.1057(a), Education Code, to require an employee of an open-enrollment charter school, rather than an employee of an open-enrollment charter school operating under a charter granted by SBOE, who qualifies for membership in TRS to be covered under TRS to the same extent a qualified employee of a school district is covered.

SECTION 18. Amends Section 12.110, Education Code, by amending Subsections (a), (c), and (d) and adding Subsection (e), as follows:

(a) Requires the commissioner, rather than SBOE, to adopt an application form and a procedure that must be used to apply for a charter for an open-enrollment charter school and criteria to use in selecting a program for which to grant a charter.

(c) Authorizes the commissioner, rather than SBOE, as part of the application procedure, to require a petition supporting a charter for a school signed by a specified number of parents or guardians of school-age children residing in the area in which a school is proposed or may hold a public hearing to determine parental support for the school.

(d) Requires the commissioner, rather than authorizing SBOE, to approve or deny an application based on:

- (1) documented evidence collected through the application review process;
- (2) merit; and
- (3) other criteria as adopted by the commissioner, rather than SBOE, which is required to include, among other requirements, criteria relating to the capability of the applicant to carry out the responsibilities provided by the charter and the likelihood that the applicant will operate a school of high quality.

Makes nonsubstantive changes.

(e) Requires the commissioner to give priority to applications that propose an open-enrollment charter school campus to be located in the attendance zone of a school district campus assigned an unacceptable performance rating under Section 39.054 (Methods and Standards for Evaluating Performance) for the two preceding school years.

SECTION 19. Amends Section 12.1101, Education Code, as follows:

Sec. 12.1101. New heading: NOTIFICATION OF CHARTER APPLICATION OR ESTABLISHMENT OF CAMPUS. Requires the commissioner by rule to adopt a procedure for providing notice to certain persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school under Section 12.110 (Application) or of notice of the establishment of a campus as authorized under Section 12.101(b-4), rather than requiring the commissioner by rule to adopt a procedure for providing notice to certain persons on receipt by SBOE of an application for a charter for an open-enrollment charter school under Section 12.110. Makes conforming changes.

SECTION 20. Amends Section 12.111(a), Education Code, as follows:

(a) Requires that each charter granted under this subchapter:

- (1) Makes no change to this subdivision;
- (2) provide that continuation, rather than continuation or renewal, of the charter is contingent on the status of the charter as determined under Section 12.1141 or 12.115 or under Subchapter E, Chapter 39, rather than contingent on acceptable student performance on assessment instruments adopted under Subchapter B, Chapter 39, and on compliance with any accountability provision specified by the charter, by a deadline or at intervals specified by the charter;

(3) specify the academic, operational, and financial performance expectations by which a school operating under the charter will be evaluated, which must include applicable elements of the performance frameworks adopted under Section 12.1181;

(4) specify any basis, in addition to a basis specified by this subchapter or Subchapter E, Chapter 39, on which the charter may be revoked, renewal of the charter may be denied, or the charter may be allowed to expire and the standards for evaluation of a school operating under the charter for purposes of charter renewal, denial of renewal, expiration, revocation, or other intervention in accordance with Section 12.1141 or 12.115 or Subchapter E, Chapter 39, as applicable;

(5)-(10) Makes nonsubstantive changes;

(11) describe the manner in which an annual audit of the financial and programmatic operations of the program is to be conducted, including the manner in which the person providing the program will provide information necessary for the school district in which the program is located to participate, as required by this code or by commissioner rule, rather than by SBOE rule, in PEIMS;

(12)-(14) Makes nonsubstantive changes;

(15) provide information, as determined by the commissioner, relating to any management company that will provide management services to a school operating under the charter; and

(16) specify that the governing body of an open-enrollment charter school accepts and is prohibited from delegating ultimate responsibility for the school, including the school's academic performance and financial and operational viability, and is responsible for overseeing any management company providing management services for the school and for holding the management company accountable for the school's performance.

Deletes text of existing Subdivision (2) relating to the requirement that each charter granted under this subchapter specify the period for which the charter or any charter renewal is valid. Deletes text of existing Subdivision (4) relating to the requirement that each charter granted under this subchapter establish the level of student performance that is considered acceptable for purposes of Subdivision (3). Deletes existing text requiring that each charter granted under this subchapter specify any basis, in addition to a basis specified by this subchapter on which the charter may be placed on probation, or revoked, or on which renewal of the charter may be denied. Makes nonsubstantive changes.

SECTION 21. Amends Section 12.112, Education Code, to require that a charter for an open-enrollment charter school be in the form of a written contract signed by the commissioner, rather than by the chair of SBOE, and the chief operating officer of the school.

SECTION 22. Amends Section 12.113(a), Education Code, to require each charter the commissioner, rather than SBOE, grants for an open-enrollment charter school to satisfy this subchapter, and include the information that is required under Section 12.111 consistent with the information provided in the application and any modification the commissioner, rather than SBOE, requires.

SECTION 23. Amends Section 12.114, Education Code, by adding Subsection (c), to require the commissioner to provide the charter holder written notice of approval or disapproval of the amendment not later than the 60th day after the date that a charter holder submits to the commissioner a completed request for approval for an expansion amendment, including a new school amendment, as defined by commissioner rule.

SECTION 24. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1141, as follows:

Sec. 12.1141. RENEWAL OF CHARTER; DENIAL OF RENEWAL; EXPIRATION.

(a) Requires the commissioner to develop and by rule adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter. Requires that the procedure include consideration of the performance under Chapter 39 of the charter holder and each campus operating under the charter and is required to include three distinct processes, which are required to be expedited renewal, discretionary consideration of renewal or denial of renewal, and expiration. Requires the charter holder, to renew a charter at the end of the term, to submit a petition for renewal to the commissioner in the time and manner established by commissioner rule.

(b) Provides that a charter for an open-enrollment charter school automatically renews, at the end of the term of the charter, if a charter holder submits to the commissioner a petition for expedited renewal of the charter, unless, not later than the 30th day after the date the charter holder submits the petition, the commissioner provides written notice to the charter holder that expedited renewal of the charter is denied. Prohibits the commissioner from denying expedited renewal of a charter if:

(1) the charter holder has been assigned the highest or second highest performance rating under Subchapter C, Chapter 39, for the three preceding school years;

(2) the charter holder has been assigned a financial performance accountability rating under Subchapter D, Chapter 39, indicating financial performance that is satisfactory or better for the three preceding school years; and

(3) no campus operating under the charter has been assigned the lowest performance rating under Subchapter C, Chapter 39, for the three preceding school years or such a campus has been closed.

(c) Requires the commissioner, at the end of the term of a charter for an open-enrollment charter school, if a charter holder submits to the commissioner a petition for renewal of the charter and the charter does not meet the criteria for expedited renewal under Subsection (b) or for expiration under Subsection (d), to use the discretionary consideration process. Requires that the commissioner's decision under the discretionary consideration process take into consideration the results of annual evaluations under the performance frameworks established under Section 12.1181. Requires that the renewal of the charter of an open-enrollment charter school that is registered under TEA's alternative education accountability procedures for evaluation under Chapter 39 be considered under the discretionary consideration process regardless of the performance ratings under Subchapter C, Chapter 39, of the open-enrollment charter school or of any campus operating under the charter, except that if the charter holder has been assigned a financial accountability performance rating under Subchapter D, Chapter 39, indicating financial performance that is lower than satisfactory for any three of the five preceding school years, the commissioner is required to allow the charter to expire under Subsection (d). Requires the commissioner to use academic criteria established by commissioner rule that are appropriate to measure the specific goals of the school in considering the renewal of the charter of an open-enrollment charter school that is registered under TEA's alternative education accountability procedures for evaluation under Chapter 39, such as a dropout recovery school or a school providing education within a residential treatment facility. Requires that the criteria established by the commissioner recognize growth in student achievement as well as educational attainment. Requires the commissioner, for purposes of this subsection, to designate as a dropout recovery

school an open-enrollment charter school or a campus of an open-enrollment charter school:

(1) that serves students in grades 9 through 12 and has an enrollment of which at least 50 percent of the students are 17 years of age or older as of September 1 of the school year as reported for the fall semester PEIMS submission; and

(2) that meets the eligibility requirements for and is registered under alternative education accountability procedures adopted by the commissioner.

(d) Prohibits the commissioner, at the end of the term of a charter for an open-enrollment charter school, if a charter holder submits to the commissioner a petition for renewal of the charter, from renewing the charter is required to allow the charter to expire if:

(1) the charter holder has been assigned the lowest performance rating under Subchapter C, Chapter 39, for any three of the five preceding school years;

(2) the charter holder has been assigned a financial accountability performance rating under Subchapter D, Chapter 39, indicating financial performance that is lower than satisfactory for any three of the five preceding school years;

(3) the charter holder has been assigned any combination of the ratings described by Subdivision (1) or (2) for any three of the five preceding school years; or

(4) any campus operating under the charter has been assigned the lowest performance rating under Subchapter C, Chapter 39, for the three preceding school years and such a campus has not been closed.

(e) Provides that a determination by the commissioner under Subsection (d), notwithstanding any other law, is final and is prohibited from being appealed.

(f) Requires the commissioner not later than the 90th day after the date on which a charter holder submits a petition for renewal of a charter for an open-enrollment charter school at the end of the term of the charter, to provide written notice to the charter holder, in accordance with commissioner rule, of the basis on which the charter qualified for expedited renewal, discretionary consideration, or expiration, regarding whether to renew the charter, deny renewal of the charter, or allow the charter to expire.

(g) Provides that a decision by the commissioner to deny renewal of a charter for an open-enrollment charter school, except as provided by Subsection (e), is subject to review by the State Office of Administrative Hearings (SOAH). Provides that, notwithstanding Chapter 2001 (Administrative Procedure), Government Code, the administrative law judge is required to uphold a decision by the commissioner to deny renewal of a charter for an open-enrollment charter school unless the judge finds the decision is arbitrary and capricious or clearly erroneous, and a decision of the administrative law judge under this subsection is final and is prohibited from being appealed.

(h) Provides that the charter term, if a charter holder submits a petition for renewal of a charter for an open-enrollment charter school, notwithstanding the expiration date of the charter, is extended until the commissioner has provided notice to the charter holder of the renewal, denial of renewal, or expiration of the charter.

(i) Provides that the term of a charter renewed under this section is 10 years for each renewal.

(j) Requires the commissioner to adopt rules to modify criteria for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school under this section to the extent necessary to address changes in performance rating categories or in the financial accountability system under Chapter 39.

(k) Prohibits performance during the 2011-2012 school year from being considered for purposes of determination of renewal under Subsection (b)(1) or (3) or (d)(1) or (4). Requires that the initial three school years for which performance ratings under Subchapter C, Chapter 39, be considered are the 2009-2010, 2010-2011, and 2012-2013 school years for purposes of determination of renewal under Subsection (b)(1) or (3) or (d)(1) or (4). Authorizes the earliest school year for which financial accountability performance ratings under Subchapter D, Chapter 39, are authorized to be considered is the 2010-2011 school year for purposes of determination of renewal under Subsection (b)(2) or (d)(2). Provides that this subsection expires September 1, 2016.

SECTION 25. Amends Section 12.115, Education Code, as follows:

Sec. 12.115. New heading: BASIS FOR CHARTER REVOCATION OR MODIFICATION OF GOVERNANCE. (a) Requires the commissioner, except as provided by Subsection (c), to revoke the charter of an open-enrollment charter school or reconstitute the governing body of the charter holder if the commissioner makes certain determinations about the charter holder, including that the charter holder failed to satisfy the performance framework standards adopted under Section 12.1181, or is imminently insolvent as determined by the commissioner in accordance with commissioner rule. Deletes existing text authorizing the commissioner to modify, place on probation, or deny renewal of the charter of an open-enrollment charter school if the commissioner makes certain determinations about the charter holder.

(b) Requires that the action the commissioner takes under Subsection (a) be based on the best interest of the open-enrollment charter school's students, the severity of the violation, any previous violation the school has committed, and the accreditation status of the school.

(c) Requires the commissioner to revoke the charter of an open-enrollment charter school if:

(1) the charter holder has been assigned an unacceptable performance rating under Subchapter C, Chapter 39, for the three preceding school years;

(2) the charter holder has been assigned a financial accountability performance rating under Subchapter D, Chapter 39, indicating financial performance lower than satisfactory for the three preceding school years; or

(3) the charter holder has been assigned any combination of the ratings described by Subdivision (1) or (2) for the three preceding school years.

(c-1) Prohibits performance during the 2011-2012 school year from being considered for purposes of revocation under Subsection (c)(1). Requires that the initial three school years for which performance ratings under Subchapter C, Chapter 39, be considered, for purposes of revocation under Subsection (c)(1), are the 2009-2010, 2010-2011, and 2012-2013 school years. Requires that the initial three school years for which financial accountability performance ratings under Subchapter D, Chapter 39, be considered, for purposes of revocation under

Subsection (c)(2), are the 2010-2011, 2011-2012, and 2012-2013 school years. Provides that this subsection expires September 1, 2016.

(d) Requires the commissioner, in reconstituting the governing body of a charter holder under this section, to appoint members to the governing body. Provides that the commissioner, in appointing members under this subsection:

(1) is required to consider:

(A) local input from community members and parents; and

(B) appropriate credentials and expertise for membership, including financial expertise, whether the person lives in the geographic area the charter holder serves, and whether the person is an educator; and

(2) is authorized to reappoint current members of the governing body.

(e) Authorizes the commissioner to require a charter holder to create a new, single-purpose organization that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986, to govern the open-enrollment charter school and to require the charter holder to surrender the charter to the commissioner for transfer to the organization created under this subsection if the governing body of a charter holder subject to reconstitution under this section governs enterprises other than the open-enrollment charter school. Requires the commissioner to appoint the members of the governing body of an organization created under this subsection.

(f) Provides that this section does not limit the authority of the attorney general to take any action authorized by law.

(g) Requires the commissioner to adopt rules necessary to administer this section.

(h) Requires the commissioner to adopt initial rules under Subsection (g) not later than September 1, 2014. Provides that this subsection expires October 1, 2014.

SECTION 26. Amends Section 12.116, Education Code, as follows:

Sec. 12.116. New heading: PROCEDURE FOR REVOCATION OR MODIFICATION OF GOVERNANCE. (a) Requires the commissioner to adopt an informal procedure to be used for revoking the charter of an open-enrollment charter school or for reconstituting the governing body of the charter holder as authorized by Section 12.115, rather than a procedure to be used for modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school.

(b) Provides that Chapter 2001, Government Code, does not apply to a procedure that is related to a revocation or modification of governance under this subchapter, rather than to a hearing that is related to a modification, placement on probation, revocation, or denial of renewal under this subchapter. Deletes existing Subsection (b) requiring that the procedure adopted under Subsection (a) provide an opportunity for a hearing to the charter holder and to parents and guardians of students in the school, and requiring that a hearing under this subsection be held at the facility at which the program is operated.

(c) Provides that a decision by the commissioner to revoke a charter is subject to review by SOAH. Provides that, notwithstanding Chapter 2001, Government Code, the administrative law judge is required to uphold a decision by the commissioner to revoke a charter unless the judge finds the decision is arbitrary and capricious or clearly erroneous, and a decision of the administrative law judge under this subsection is final and is prohibited from being appealed.

(d) Authorizes the commissioner, if the commissioner revokes the charter of an open-enrollment charter school, to manage the school until alternative arrangements are made for the school's students, and assign operation of one or more campuses formerly operated by the charter holder who held the revoked charter to a different charter holder who consents to the assignment.

SECTION 27. Amends Section 12.1161(a), Education Code, as follows:

(a) Deletes an exception under Section 12.1161(b) (relating to continuing operation and funding after denial of renewal of charter). Prohibits the school, if the commissioner revokes or denies the renewal of a charter of an open-enrollment charter school or an open-enrollment charter school surrenders its charter, from continuing to operate under this subchapter or from receiving state funds under this subchapter.

SECTION 28. Amends Sections 12.1163(c), Education Code, as follows:

(c) Prohibits the commissioner, unless the commissioner has specific cause to conduct an additional audit, from conducting more than one on-site audit during any fiscal year, rather than more than one on-site audit under Section 12.1163, including any financial and administrative records. Provides that, for purposes of this subsection, an audit of a charter holder or management company associated with an open-enrollment charter school is not considered an audit of the school.

SECTION 29. Amends Section 12.1164(a), Education Code, to require the commissioner to notify TRS in writing of the revocation, denial of renewal, expiration, or surrender of a charter under this subchapter not later than the 10th business day after the date of the event.

SECTION 30. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1181, as follows:

Sec. 12.1181. PERFORMANCE FRAMEWORKS; ANNUAL EVALUATIONS. (a) Requires the commissioner to develop and by rule adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school. Requires the commissioner to develop and by rule adopt separate, specific performance frameworks by which to measure the performance of an open-enrollment charter school that is registered under TEA's alternative education accountability procedures for evaluation under Chapter 39. Requires that the performance frameworks be based on national best practices that charter school authorizers use in developing and applying standards for charter school performance. Requires the commissioner, in developing the performance frameworks, to solicit advice from charter holders, the members of the governing bodies of open-enrollment charter schools, and other interested persons.

(b) Authorizes the performance frameworks to include a variety of standards. Requires the commissioner, in evaluating an open-enrollment charter school, to measure school performance against an established set of quality standards developed and adopted by the commissioner.

(c) Requires the commissioner, each year, to evaluate the performance of each open-enrollment charter school based on the applicable performance frameworks adopted under Subsection (a). Prohibits the performance of a school on a performance framework from being considered for purposes of renewal of a charter under Section 12.1141(d) or revocation of a charter under Section 12.115(c).

SECTION 31. Amends Section 12.119, Education Code, as follows:

Sec. 12.119. BYLAWS; ANNUAL REPORT. (a) Requires a charter holder to file with the commissioner, rather than with SBOE, a copy of its articles of incorporation and

bylaws, or comparable documents if the charter holder does not have articles of incorporation or bylaws, within the period and in the manner prescribed by the commissioner, rather than by SBOE.

(b) Requires each open-enrollment charter school, each year within the period and in a form prescribed by the commissioner, rather than by SBOE, to file with the commissioner, rather than with SBOE, certain information.

(c) Requires the commissioner, rather than SBOE, on request, to provide the information required by this section and Section 12.111(a)(7), rather than by this section and Section 12.111(a)(8), to a member of the public. Makes conforming changes.

SECTION 32. Amends Section 12.120, Education Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes an open-enrollment charter school, notwithstanding Subsection (a), subject to Section 12.1059 (Agency Approval Required for Certain Employees), to employ a person:

(1) as a teacher or educational aide if:

(A) a school district could employ the person as a teacher or educational aide; or

(B) a school district could employ the person as a teacher or educational aide if the person held the appropriate certificate issued under Subchapter B (Certification of Educators), Chapter 21 (Educators), and the person has never held a certificate issued under Subchapter B, Chapter 21; or

(2) in a position other than a position described by Subdivision (1) if a school district could employ the person in that position.

SECTION 33. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1202, as follows:

Sec. 12.1202. REQUIREMENT FOR MAJORITY OF MEMBERS OF GOVERNING BODY. Requires that a majority of the members of the governing body of an open-enrollment charter school or the governing body of a charter holder be qualified voters.

SECTION 34. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1211, as follows:

Sec. 12.1211. NAMES OF MEMBERS OF GOVERNING BODY LISTED ON WEBSITE. Requires an open-enrollment charter school to list the names of the members of the governing body on the home page of the school's Internet website.

SECTION 35. Amends Section 12.122(a), Education Code, to authorize the attorney general, notwithstanding the applicable provisions of the Business Organizations Code, rather than notwithstanding the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., V.T.C.S.) or other law, on request of the commissioner, to bring suit against a member of the governing body of an open-enrollment charter school for breach of a fiduciary duty by the member, including misapplication of public funds.

SECTION 36. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1231, as follows:

Sec. 12.1231. TRAINING FOR AGENCY EMPLOYEES. Requires each agency employee assigned responsibility related to granting charters for open-enrollment charter schools or providing oversight or monitoring of charter holders or open-enrollment charter schools, not later than October 1, 2013, to participate in training on charter school



authorization, oversight, and monitoring provided by a nationally recognized organization of charter school authorizers identified by the commissioner. Provides that this section expires January 1, 2014.

SECTION 37. Amends Section 12.128(a), Education Code, as follows:

(a) Provides that property purchased or leased with funds received by a charter holder under Section 12.106 after September 1, 2001:

- (1) Makes no change to this subdivision;
- (2) is property of this state held in trust by the charter holder for the benefit of the students of the open-enrollment charter school; and
- (3) Makes no change to this subdivision.

SECTION 38. Amends Section 12.129, Election Code, as follows:

Sec. 12.129. New heading: **MINIMUM QUALIFICATIONS FOR PRINCIPALS AND TEACHERS**. Requires a person employed as a principal or a teacher by an open-enrollment charter school to hold a baccalaureate degree, rather than a high school diploma.

SECTION 39. Amends Subchapter D, Chapter 12, Election Code, by adding Section 12.136, as follows:

Sec. 12.136. **POSTING OF CHIEF EXECUTIVE OFFICER SALARY**. Requires an open-enrollment charter school to post on the school's Internet website the salary of the school's superintendent or, as applicable, of the administrator serving as educational leader and chief executive officer.

SECTION 40. Amends Sections 12.152 and 12.154, Education Code, as follows:

Sec. 12.152. **AUTHORIZATION**. Deletes existing Subsection (a) designation. Authorizes the commissioner, rather than SBOE, in accordance with this subchapter and Subchapter D (Open-Enrollment Charter School), to grant a charter on the application of certain colleges or universities for an open-enrollment charter school under certain circumstances.

Sec. 12.154. **CONTENT**. (a) Authorizes the commissioner, rather than SBOE, notwithstanding Section 12.110(d) (relating to the approval or denial of an application), to grant a charter under this subchapter to a public senior college or university only if certain criteria are satisfied in the public senior college's or university's application, as determined by the commissioner, rather than by SBOE.

(b) Authorizes the commissioner, rather than SBOE, notwithstanding Section 12.110(d), to grant a charter under this subchapter to a public junior college only if certain criteria are satisfied in the public junior college's application, as determined by the commissioner, rather than by SBOE.

SECTION 41. Amends Section 12.156(b), Education Code, to provide that a charter granted under this subchapter is not considered for purposes of the limit on the number of open-enrollment charter schools imposed by Section 12.101, and to make a conforming change.

SECTION 42. Amends Sections 25.082(b), (c), and (d), Education Code, as follows:

(b) Requires the board of trustees of each school district and the governing board of each open-enrollment charter school to require students, once during each school day at each campus, rather than at each school in the district, to recite:

(1) the pledge of allegiance to the United States flag in accordance with 4 U.S.C. Section 4; and

(2) the pledge of allegiance to the state flag in accordance with Subchapter C (Pledge of Allegiance to State Flag), Chapter 3100 (State Flag), Government Code.

Makes a nonsubstantive change.

(c) Requires a school district or open-enrollment charter school to excuse the student from reciting a pledge of allegiance under Subsection (b) on written request from a student's parent or guardian.

(d) Requires the board of trustees of each school district and the governing board of each open-enrollment charter school to provide for the observance of one minute of silence at each campus, rather than at each school in the district, following the recitation of the pledges of allegiance to the United States and Texas flags under Subsection (b). Authorizes each student, as the student chooses, to reflect, pray, meditate, or engage in any other silent activity that is not likely to interfere with or distract another student during the one-minute period. Requires each teacher or other school employee in charge of students during that period to ensure that each of those students remains silent and does not act in a manner that is likely to interfere with or distract another student.

SECTION 43. Amends Section 39.152, Education Code, as follows:

Sec. 39.152. REVIEW BY STATE OFFICE OF ADMINISTRATIVE HEARINGS: SANCTIONS. (a) Requires a school district or open-enrollment charter school that intends to challenge a decision by the commissioner under this chapter to close the district or a district campus or the charter school or to pursue alternative management of a district campus or the charter school to appeal the decision under this section, rather than under the procedures provided for a contested case under Chapter 2001, Government Code.

(b) Requires the commissioner to adopt procedural rules for a challenge under this section.

(c) Provides that, notwithstanding other law:

(1) SOAH is required to conduct, rather than provide, an expedited review of a challenge under this section;

(2)-(3) Makes nonsubstantive changes; and

(4) the decision of the administrative law judge is authorized to set an effective date for an action under this section.

SECTION 44. Amends Section 221.0071(a), Human Resources Code, to authorize the commissioner, rather than SBOE, notwithstanding any other law and in addition to the number of charters allowed under Subchapter D, Chapter 12, Education Code, to grant a charter on the application of a detention, correctional, or residential facility established only for juvenile offenders under Section 51.12 (Place and Conditions of Detention), 51.125 (Post-Adjudication Correctional Facilities), or 51.126 (Nonsecure Correctional Facilities), Family Code.

SECTION 45. Amends Section 221.056(d), Human Resources Code, to require the commissioner, rather than SBOE, notwithstanding any other law and in addition to the number of charters allowed under Subchapter D, Chapter 12, Education Code, to grant a charter on the application of a residential treatment facility established under this section for a school chartered for the purposes of this section.

SECTION 46. Amends Section 140.006(c), Local Government Code, as follows:

(c) Requires the presiding officer of a school district to submit a financial statement prepared under Section 140.005 (Annual Financial Statement of School, Road, or Other District) to a daily, weekly, or biweekly newspaper published within the boundaries of the district. Requires that the financial statement be published in the manner provided by Subsections (a) (relating to requiring the presiding officer of a governing body to submit a financial statement prepared under Section 140.005 to a newspaper in each county in which the district or any part of the district is located) and (b) (relating to authorizing the financial statement to be published in a newspaper that has general circulation in the district if the district is located in more than one county, or published in a newspaper in an adjoining county if a newspaper is not published in the county) if a daily, weekly, or biweekly newspaper is not published within the boundaries of the school district. Requires the governing body of an open-enrollment charter school to take action to ensure that the school's financial statement is made available in the manner provided by Chapter 552 (Public Information), Government Code, and is posted continuously on the school's Internet website. Makes a nonsubstantive change.

SECTION 47. Repealers: Section 12.1055(b) (relating to providing that Chapter 573, Government Code, does not apply to an open-enrollment charter school if the school is rated acceptable or higher for at least two of the preceding three years, and requiring a member of the governing body of a charter holder or a member of the governing body or officer of an open-enrollment charter school to comply with certain requirements with respect to certain personal matters), 12.113(b) (relating to providing that the grant of a charter does not create an entitlement to a renewal of a charter on the same terms as it was originally issued), and Section 12.1161(b) (relating to providing that an open-enrollment charter school continues to operate and receive state funds for the remainder of the school year if the commissioner denies renewal of the charter before the completion of that school year), Education Code.

SECTION 48. Requires SBOE to implement Section 12.1014, Education Code, as added by this Act, only if the legislature appropriates money specifically for that purpose. Authorizes SBOE to implement that section using other appropriations available for that purpose if the legislature does not appropriate money specifically for that purpose.

SECTION 49. Effective date: September 1, 2013.