

By: Aycock

H.B. No. 3347

A BILL TO BE ENTITLED

AN ACT

1
2 relating to revocation of a charter for an open-enrollment charter
3 school and procedures for the disposition of property owned by a
4 charter school after revocation or surrender of a charter.

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

6 SECTION 1. Section 12.116, Education Code, is amended by
7 amending Subsections (a), (c), and (d) and adding Subsections (e)
8 and (f) to read as follows:

9 (a) The commissioner shall adopt an informal review
10 procedure to be used for revoking the charter of an open-enrollment
11 charter school or for reconstituting the governing body of the
12 charter holder as authorized by Section 12.115.

13 (c) A decision by the commissioner to revoke a charter is
14 subject to review by the State Office of Administrative
15 Hearings. Notwithstanding Chapter 2001, Government Code:

16 (1) the State Office of Administrative Hearings shall
17 conduct a revocation review hearing and issue a final decision not
18 later than the 90th day after the date that the notice of hearing is
19 filed with the State Office of Administrative Hearings;

20 (2) the administrative law judge shall uphold a
21 decision by the commissioner to revoke a charter unless the judge
22 finds the decision is arbitrary and capricious or clearly
23 erroneous; and

24 (3) [~~2~~] a decision of the administrative law judge

1 under this subsection is final and may not be appealed.

2 (d) If the commissioner issues a decision to revoke
3 ~~[revokes]~~ the charter of an open-enrollment charter school, the
4 commissioner may:

5 (1) manage the school until alternative arrangements
6 are made for the school's students; ~~[and]~~

7 (2) assign operation of one or more campuses formerly
8 operated by the charter holder who held the revoked charter to a
9 different charter holder who consents to the assignment; or

10 (3) appoint a board of managers under Section 12.1165
11 or an agent of the commissioner to close the operations of the
12 school and manage the disposition of the state's personal and real
13 property in the possession of the charter holder.

14 (e) If the commissioner decides to manage the school under
15 Subsection (d)(1), the commissioner may:

16 (1) allow the existing governing body of the school to
17 manage the school, under the commissioner's direction, until the
18 conclusion of the academic school year;

19 (2) appoint a board of managers under Section 12.1165;
20 or

21 (3) appoint an individual to serve as the agent of the
22 commissioner.

23 (f) The commissioner shall transfer to the charter school
24 liquidation account established under Section 12.269 any funds
25 received by the charter holder under Section 12.106 that remain
26 after the operations of the school are closed under this section.

27 SECTION 2. Subchapter D, Chapter 12, Education Code, is

1 amended by adding Sections 12.1165 and 12.1166 to read as follows:

2 Sec. 12.1165. BOARD OF MANAGERS FOR OPERATION OR
3 DISSOLUTION. (a) If the commissioner issues a decision to revoke
4 the charter of an open-enrollment charter school, the commissioner
5 may appoint a board of managers and a charter superintendent to:

- 6 (1) manage the school under Section 12.116(d)(1); or
7 (2) close the operations of the school under Section
8 12.116(d)(3).

9 (b) The commissioner may designate an individual member of
10 the board of managers to submit to the agency any required data,
11 reports, or other information necessary to close the operations of
12 the school.

13 (c) The board of managers may exercise all of the powers and
14 duties assigned to a governing body of a charter holder by any
15 statute or rule.

16 (d) If the governing body of a charter holder is managing a
17 school under Section 12.116(e)(1), the governing body's powers are
18 terminated on the effective date of the commissioner's appointment
19 of the board of managers.

20 (e) Notwithstanding any other provision of this code, the
21 board of managers may amend the school's budget. The board of
22 managers may use cash on hand received by the former charter holder
23 under Section 12.106 or any allocation of state funding due to the
24 former charter holder under Section 12.106 to close the operations
25 of the school. Actions taken under this subsection are subject to
26 the approval of the commissioner.

27 (f) A person who serves on the board of managers or as a

1 charter superintendent under this section acts on behalf of the
2 commissioner and is entitled to:

- 3 (1) sovereign immunity; and
4 (2) representation by the attorney general for any act
5 or omission taken while acting in the person's official capacity.

6 (g) The board of managers shall continue to operate until
7 dissolved by the commissioner. Members of the board of managers and
8 a charter superintendent serve at the discretion of the
9 commissioner and may be replaced by the commissioner at any time.

10 (h) Except as otherwise provided, this chapter applies to a
11 school governed by a board of managers in the same manner this
12 chapter applies to any other charter school.

13 Sec. 12.1166. COMPENSATION OF BOARD OF MANAGERS AND CHARTER
14 SUPERINTENDENT. (a) The commissioner may authorize compensation
15 for a member of a board of managers or a charter superintendent
16 appointed under Section 12.1165.

17 (b) The commissioner shall establish the terms of
18 compensation provided under Subsection (a).

19 (c) The commissioner shall use funds of the former school
20 due or received under Section 12.106 for compensation of a charter
21 superintendent or a member of a board of managers.

22 (d) If funds described by Subsection (c) are not available
23 or the commissioner determines that the circumstances require, the
24 commissioner may use available agency funds for compensation under
25 this section, provided that the use of the available funds for that
26 purpose is not prohibited by other law.

27 (e) If the commissioner determines that the amount

1 appropriated for purposes of the Foundation School Program exceeds
2 the amount to which school districts are entitled under Chapters 42
3 and 46, the commissioner may authorize the comptroller to transfer
4 funds from the Foundation School Program to the agency's
5 administrative account for compensation as provided by this
6 section.

7 SECTION 3. Section 12.128, Education Code, is amended by
8 adding Subsections (c-1), (c-2), and (f) to read as follows:

9 (c-1) In supervising the disposition of property under
10 Subsection (c)(2), the commissioner may:

11 (1) file a suit for receivership under Subchapter G;
12 or

13 (2) seek a court of competent jurisdiction to declare
14 the property to be state property and order the property to be
15 titled in the name of the state.

16 (c-2) If the commissioner obtains a court declaration
17 described by Subsection (c-1)(2):

18 (1) the General Land Office shall:

19 (A) sell any real property through any method
20 available to the General Land Office; and

21 (B) transfer any proceeds of the sale of the real
22 property to the charter school liquidation account established
23 under Section 12.269; and

24 (2) the Texas Facilities Commission shall transfer any
25 proceeds from the sale of property disposed of under Chapter 2175,
26 Government Code, into the charter school liquidation account
27 established under Section 12.269.

1 (f) The proceeds of the sale of property under Subsection
2 (c-2) are not subject to the requirements of the General
3 Appropriations Act or statutory requirements or rules related to
4 the general revenue fund.

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

7 SUBCHAPTER G. CHARTER SCHOOL RECEIVERSHIP AND LIQUIDATION

8 Sec. 12.251. PURPOSE. The purpose of this subchapter is to
9 aid the commissioner in carrying out the commissioner's duty to
10 supervise the disposition of public property of a charter school
11 that ceases to operate. This subchapter shall be liberally
12 construed to permit the commissioner, acting as a receiver, to
13 promptly dispose of public property to preserve state funds.

14 Sec. 12.252. DEFINITIONS. In this subchapter:

15 (1) "Former charter school" means a charter school
16 that may no longer function as a charter school under this chapter
17 or Chapter 39 because the school's charter has been revoked or
18 surrendered.

19 (2) "Liquidation order" means a final order entered by
20 the receivership court approving the receiver's disposition of all
21 public property and closing the receivership.

22 (3) "Proposed disposition plan" means a plan presented
23 by the receiver to the court that accounts for the disposition of
24 all assets in the possession of a former charter school.

25 (4) "Receiver" means the commissioner, acting in an
26 official capacity to take possession, assume control, and dispose
27 of public property of a former charter school. The term includes a

1 special deputy receiver.

2 (5) "Receivership order" means a court order by which
3 the court assumes jurisdiction, opens a receivership proceeding,
4 and appoints the commissioner as the receiver for the assets of a
5 former charter school.

6 (6) "Special deputy receiver" means a person appointed
7 by or acting under a contract with the commissioner as a receiver on
8 the commissioner's behalf.

9 Sec. 12.253. RECEIVERSHIP; JURISDICTION AND VENUE. (a) If
10 the commissioner revokes or accepts the surrender of the charter of
11 a charter school, the commissioner may determine that a
12 receivership is warranted to conserve or dispose of public property
13 over which the commissioner assumes control or possession under
14 this chapter or Chapter 39.

15 (b) At the request of the commissioner, the attorney general
16 shall bring an action in a Travis County district court to appoint a
17 receiver to liquidate the assets of a former charter school or a
18 charter school that has otherwise ceased to operate.

19 (c) A court does not have jurisdiction over any receivership
20 proceeding for a charter school commenced on behalf of a person
21 other than the commissioner.

22 (d) Not later than the 30th day after the date the attorney
23 general brings an action to appoint a receiver under this section,
24 the court shall enter a receivership order opening the receivership
25 proceeding.

26 Sec. 12.254. RECEIVERSHIP ORDER. (a) A receivership order
27 shall:

1 (1) appoint the commissioner and any successor in
2 office as the receiver for the former charter school; and

3 (2) direct the receiver to take possession of the
4 property of the former charter school and administer the property
5 subject to this subchapter.

6 (b) The receiver may request that the receivership court
7 appoint a single judge to supervise the receivership and hear any
8 cases or controversies arising out of or related to the
9 receivership.

10 (c) The rights and liabilities of all persons interested in
11 the assets of the former charter school become fixed as of the date
12 of entry of the court's receivership order.

13 Sec. 12.255. POWERS AND DUTIES OF RECEIVER. (a) The
14 receiver may assume or reject any executory contract or unexpired
15 lease of the former charter school.

16 (b) Notwithstanding any other law, the receiver is
17 authorized to liquidate by sale or contract for sale any real
18 property owned by a former charter school to satisfy debts of the
19 school and return public property and proceeds to the state.

20 (c) The receiver may dispose of the former charter school's
21 property using provisions for:

22 (1) the disposal of surplus and salvage property under
23 Chapter 2175, Government Code; or

24 (2) the sale of real property under Section
25 12.128(c-2).

26 (d) If the receiver disposes of real property under
27 Subsection (c)(2), the receivership court shall assume sole

1 jurisdiction of the transfer of title.

2 (e) The receiver shall dispose of any property determined to
3 be held in trust or any federal property in compliance with
4 applicable law.

5 Sec. 12.256. APPLICABILITY OF OTHER LAWS. (a) Any law
6 governing the procurement of goods and services by the state does
7 not apply to a contract entered into by the commissioner as a
8 receiver. This section does not waive any immunity or create a
9 cause of action against the state.

10 (b) A receiver appointed under this subchapter may not be
11 required to pay any filing, recording, transcript, or
12 authentication fee to any public officer in the state.

13 Sec. 12.257. SPECIAL DEPUTY RECEIVER; OTHER EMPLOYMENT.

14 (a) The receiver may appoint or contract with one or more special
15 deputy receivers to act for the receiver under this subchapter and
16 employ or contract with legal counsel, actuaries, accountants,
17 appraisers, consultants, clerks, assistants, and other personnel
18 necessary to assist in the liquidation of the former charter
19 school's assets.

20 (b) A special deputy receiver has all powers of the receiver
21 granted by this subchapter, unless specifically limited by the
22 receiver, and serves at the pleasure of the receiver.

23 (c) A special deputy receiver or other person with whom the
24 receiver contracts under this section may act on behalf of the
25 commissioner only in the commissioner's capacity as receiver.

26 (d) The receiver may determine the reasonable compensation
27 for any special deputy, employee, or contractor and pay

1 compensation in accordance with Section 12.262.

2 Sec. 12.258. PERFORMANCE BOND REQUIRED. The receiver shall
3 execute a bond to ensure the proper performance of the receiver's
4 duties under this subchapter in an amount to be set by the court.

5 Sec. 12.259. ASSETS OF FORMER CHARTER SCHOOL. (a) The
6 receiver or a special deputy receiver shall take possession of all
7 student records, books, papers, electronic data, personal and real
8 property, and other assets purchased or acquired, wholly or partly,
9 with state funds of a former charter school.

10 (b) If a record or asset described under Subsection (a) is
11 in the possession of a special deputy receiver, the receiver may
12 review that asset promptly on request made to the special deputy
13 receiver.

14 (c) A receiver or special deputy receiver is required to
15 comply with the Family Educational Rights and Privacy Act (20
16 U.S.C. Section 1232g).

17 Sec. 12.260. IMMUNITY, INDEMNIFICATION, AND
18 REPRESENTATION. (a) The commissioner is entitled to immunity for
19 all acts taken as a receiver. A special deputy receiver is entitled
20 to immunity to the same extent as the commissioner acting as a
21 receiver.

22 (b) If any legal action is commenced against the receiver or
23 a special deputy receiver, whether against the receiver or special
24 deputy receiver personally or in their official capacity, resulting
25 from an alleged act, error, or omission of the receiver or special
26 deputy receiver arising out of or by reason of their duties or
27 employment, the receiver or special deputy receiver is indemnified

1 for all expenses, attorney's fees, judgments, settlements,
2 decrees, or amounts due and owing or paid in satisfaction of or
3 incurred in the defense of the legal action, unless it is determined
4 on a final adjudication on the merits that the alleged act, error,
5 or omission of the receiver or special deputy receiver giving rise
6 to the claim:

7 (1) did not arise out of or by reason of the receiver's
8 or special deputy receiver's duties or employment; or

9 (2) was caused by intentional or wilful and wanton
10 misconduct.

11 (c) Any indemnification shall first be paid from the assets
12 of the former charter school. If no assets of the former charter
13 school are available, the state shall indemnify the receiver or
14 special deputy receiver.

15 (d) The attorney general shall represent the receiver or
16 special deputy receiver:

17 (1) in all actions relating to a receivership under
18 this subchapter; and

19 (2) in any suit challenging an action taken by the
20 receiver or special deputy receiver in the receiver's or special
21 deputy receiver's capacity as a receiver unless the conduct was
22 caused by intentional or wilful and wanton misconduct.

23 Sec. 12.261. REQUESTED NOTICE. (a) On written request to
24 the receiver, a person must be placed on the service list to receive
25 notice of matters filed by the receiver. It is the responsibility
26 of the person requesting notice to inform the receiver in writing of
27 any changes in the person's address or to request that the person's

1 name be deleted from the service list. The receiver may require
2 that a person on the service list provide confirmation to remain on
3 the service list. Any person who fails to confirm the person's
4 intent to remain on the service list may be purged from the service
5 list. Inclusion on the service list does not confer standing in the
6 receivership proceeding to raise, appear, or be heard on any issue.

7 (b) Notice of a proposed disposition plan to a person on the
8 service list must be provided as established by Section 12.265.

9 Sec. 12.262. APPROVAL AND PAYMENT OF EXPENSES. (a) The
10 receiver shall submit an estimate of expenses to the receivership
11 court for approval.

12 (b) The receiver may pay any expenses under contracts,
13 leases, employment agreements, or other arrangements entered into
14 by the former charter school before receivership from the assets of
15 the former charter school. The receiver is not required to pay any
16 expenses that the receiver determines are not necessary and may
17 reject any contract under Section 12.257.

18 (c) The receiver may deposit former charter school funds in
19 the charter school liquidation account established under Section
20 12.269 and pay former charter school expenses from that account.

21 (d) If a special deputy receiver has been appointed to pay
22 certain expenses and the special deputy receiver has insufficient
23 funds to pay those expenses from the assets of the former charter
24 school, the special deputy receiver may request that the receiver
25 draw funds from the charter school liquidation account established
26 under Section 12.269 to pay the expenses.

27 (e) If the receiver determines that the expenses under

1 Subsection (d) are necessary, the receiver may withdraw the amount
2 necessary to pay the expenses of the receivership.

3 Sec. 12.263. PRIORITIZATION AND SATISFACTION OF DEBTS. (a)
4 The state, commissioner, or receiver may not be held liable for the
5 debts or liabilities incurred by a former charter school.

6 (b) The receiver shall satisfy debts of a former charter
7 school in accordance with a proposed disposition plan after payment
8 of:

9 (1) debts to state and federal governmental entities,
10 including payments to a conservator, monitor, superintendent, or
11 member of a board of managers or management;

12 (2) perfected liens;

13 (3) secured debts; and

14 (4) expenses of the receivership.

15 (c) After satisfaction of the debts and expenses listed in
16 Subsection (b), any remaining state assets of a former charter
17 school shall be used to satisfy debts in the following priority,
18 unless otherwise ordered by the receivership court:

19 (1) salary owed to non-administrative faculty and
20 staff;

21 (2) unpaid, unsecured rent on leasehold;

22 (3) vendors; and

23 (4) any other debts recognized by law.

24 Sec. 12.264. PROPOSED DISPOSITION PLAN. (a) The receiver
25 shall file with the court a proposed disposition plan that accounts
26 for:

27 (1) the disposition of all known assets of the former

1 charter school; and

2 (2) the amount of all expenses that the receiver may
3 incur.

4 (b) The proposed disposition plan must specifically
5 identify any property that is not considered to be public property
6 under Section 12.128.

7 (c) If the commissioner appoints a special deputy receiver
8 to develop the disposition plan, the special deputy receiver must
9 present the plan to the commissioner for approval before filing the
10 plan with the court.

11 Sec. 12.265. NOTICE OF PROPOSED DISPOSITION PLAN. (a)
12 Unless the receivership court otherwise directs, the receiver shall
13 give notice of the proposed disposition plan as soon as possible:

14 (1) by first class mail or electronic communication as
15 permitted by the receivership court to:

16 (A) any person known or reasonably expected to
17 have a claim against the former charter school, at the person's last
18 known address as indicated by the records of the former charter
19 school;

20 (B) each state and federal agency with an
21 interest in the proceeding; and

22 (C) any person on the service list under Section
23 12.261; and

24 (2) by publication in a newspaper of general
25 circulation in the county in which the principal place of business
26 of the former charter school was located, in any county in which the
27 former charter holder operated a school, and in any other location

1 as the receiver deems appropriate.

2 (b) The notice of the proposed disposition plan must contain
3 or provide directions for obtaining the following information:

4 (1) a statement that the former charter school has
5 ceased to operate and that the commissioner has taken possession
6 and assumed control of the school's assets under Section 12.128;

7 (2) a statement of the date, time, and location of any
8 initial status hearing scheduled at the time the notice is sent;

9 (3) a description of the process for obtaining notice
10 of matters before the receivership court; and

11 (4) any other information the receiver or the
12 receivership court deems appropriate.

13 (c) If notice is given in accordance with this section, the
14 distribution of property of the former charter school under this
15 subchapter is conclusive with respect to all claimants, regardless
16 of whether the claimant received notice.

17 (d) Notwithstanding any other provision of this section,
18 the receiver has no duty to locate any person if an address is not
19 found in the records of the former charter school or if mailings are
20 returned to the receiver because of the inability to deliver to the
21 address shown in the records of the school. If notice is not given
22 to a person as provided by this subsection, notice by publication or
23 actual notice received is sufficient.

24 (e) Written certification by the receiver or other
25 knowledgeable person acting for the receiver that the notice was
26 deposited in the United States mail, postage prepaid, or that the
27 notice has been electronically transmitted is prima facie evidence

1 of mailing and receipt of notice. All claimants shall keep the
2 receiver informed of any changes of address.

3 Sec. 12.266. HEARING AND APPEAL ON DISPOSITION PLAN. (a)
4 Any party objecting to the proposed disposition plan must file an
5 objection specifying the grounds for the objection not later than
6 the 45th day after the date of the notice of the filing of the
7 proposed disposition plan or within another period as the
8 receivership court may set. An objection must also be served on the
9 receiver and any other person served with the proposed disposition
10 plan. An objecting party has the burden of showing why the
11 receivership court should not authorize the proposed disposition
12 plan or any other action proposed by the receiver.

13 (b) If no objection to the proposed disposition plan is
14 timely filed, the receivership court shall enter an order approving
15 the application without a hearing. The receiver may request that
16 the receivership court enter an order or hold a hearing on any
17 outstanding motions on an expedited basis.

18 (c) If an objection is timely filed, the receivership court
19 may hold a hearing. If the receivership court approves the proposed
20 disposition plan and, on a motion by the receiver, determines that
21 the objection was frivolous or filed for delay or for another
22 improper purpose, the receivership court shall order the objecting
23 party to pay the receiver's reasonable costs and fees of defending
24 the action.

25 Sec. 12.267. LIQUIDATION ORDER. (a) When the receiver has
26 disposed of all assets according to the proposed disposition plan
27 approved by the court, the receiver shall promptly apply to the

1 receivership court for entry of a liquidation order.

2 (b) On demonstration to the court that the receiver has
3 complied with the disposition plan and all assets have been
4 disposed of in accordance with the plan, the court shall enter a
5 liquidation order discharging the receiver and closing the
6 receivership.

7 (c) A liquidation order under this subchapter is final and
8 may not be appealed.

9 Sec. 12.268. DISPOSITION OF REMAINING FUNDS. After a
10 liquidation order has been entered, the commissioner shall deposit
11 any remaining funds from the former charter school in the charter
12 school liquidation account established under Section 12.269.

13 Sec. 12.269. CHARTER SCHOOL LIQUIDATION ACCOUNT. (a) The
14 commissioner shall remit to the comptroller funds received under
15 Sections 12.116 and 12.128 and this subchapter for deposit in an
16 interest-bearing deposit account in the Texas Treasury Safekeeping
17 Trust Company to be known as the charter school liquidation
18 account. Money in the account may be spent by the commissioner only
19 for the purposes provided by this section.

20 (b) The charter school liquidation account shall be
21 administered by the commissioner to pay the expenses incurred
22 during a receivership of any former charter school.

23 (c) The commissioner shall annually review the charter
24 school liquidation account and transfer any funds exceeding \$2
25 million to the comptroller for deposit in the charter district bond
26 guarantee reserve fund established under Section 45.0571. The
27 commissioner may delay a transfer under this subsection if the

1 excess does not exceed \$100,000.

2 Sec. 12.270. RULES. The commissioner may adopt rules
3 necessary to implement this subchapter.

4 SECTION 5. This Act takes effect September 1, 2015.