

By: Huberty

H.B. No. 3615

A BILL TO BE ENTITLED

AN ACT

relating to the ownership, sale, lease, and disposition of property and management of assets of an open-enrollment charter school.

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

SECTION 1. Section 12.1012, Education Code, is amended by adding Subdivisions (7) and (8) to read as follows:

(7) "Payable obligation" means a contractually obligated expenditure that was reasonably incurred for the benefit of students enrolled at an open-enrollment charter school before the open-enrollment charter ceased operations. The term does not include any amount owed to a former charter holder or officer or director of the school.

(8) "Remaining funds" means funds held by a former charter holder after satisfaction of all payable obligations relating to the operation or closure of operations of an open-enrollment charter school that were identified as state property in the annual financial report filed under Section 44.008 and were received:

(A) under Section 12.106; or

(B) from the disposition of property.

SECTION 2. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.10125 to read as follows:

Sec. 12.10125. OPEN-ENROLLMENT CHARTER SCHOOL NOT IN OPERATION. An open-enrollment charter school ceases to operate if:

1 (1) the school's charter:

2 (A) has been revoked;

3 (B) has been denied renewal;

4 (C) has expired;

5 (D) has been surrendered; or

6 (E) has been abandoned; or

7 (2) the school has otherwise ceased operation as a
8 public school.

9 SECTION 3. Section 12.106, Education Code, is amended by
10 adding Subsections (d), (e), and (f) to read as follows:

11 (d) Except as provided by Subsection (e), all remaining
12 funds of a charter holder for an open-enrollment charter school
13 that ceases to operate must be returned to the agency and deposited
14 in the charter school liquidation fund.

15 (e) The agency may approve a transfer of a charter holder's
16 remaining funds to another charter holder if the charter holder
17 receiving the funds:

18 (1) has not received notice of the expiration or
19 revocation of the charter holder's charter for an open-enrollment
20 charter school or notice of a reconstitution of the governing body
21 of the charter holder under Section 12.1141 or 12.115; and

22 (2) has been approved for an expansion amendment or
23 been assigned the operation of the former charter school that
24 ceased to operate.

25 (f) The commissioner may adopt rules specifying:

26 (1) the time during which a former charter holder must
27 return remaining funds under Subsection (d); and

1 (2) the qualifications required for a charter holder
2 to receive a transfer of remaining funds under Subsection (e).

3 SECTION 4. Section 12.107(a), Education Code, is amended to
4 read as follows:

5 (a) Funds received under Section 12.106 after September 1,
6 2001, by a charter holder:

7 (1) are considered to be public funds for all purposes
8 under state law;

9 (2) are held in trust by the charter holder for the
10 benefit of the students of the open-enrollment charter school;

11 (3) may be used only for a purpose for which a school
12 may use local funds under Section 45.105(c); ~~and~~

13 (4) pending their use, must be deposited into a bank,
14 as defined by Section 45.201, with which the charter holder has
15 entered into a depository contract; and

16 (5) may not:

17 (A) be pledged or used to secure loans or bonds
18 for any other organization, including a non-charter operation or
19 out-of-state operation affiliated with the charter holder; or

20 (B) be used to support a non-charter operation or
21 out-of-state operation affiliated with the charter holder.

22 SECTION 5. Section 12.1163, Education Code, is amended by
23 adding Subsection (d) to read as follows:

24 (d) An audit under Subsection (a) may include the review of
25 any real property transactions between the charter holder and an
26 affiliated company, as defined by commissioner rule adopted under
27 Section 12.1166. If the commissioner determines that a sale and

1 leaseback transaction or similar transaction was structured in a
2 manner that did not benefit the open-enrollment charter school or
3 that the transaction was in excess of fair market value as
4 determined under Section 12.1166, the commissioner may order that
5 the transaction be reclassified or that other action be taken as
6 necessary to protect the school's interests. Failure to comply
7 with the commissioner's order is a material violation of the
8 charter.

9 SECTION 6. Subchapter D, Chapter 12, Education Code, is
10 amended by adding Sections 12.1166 and 12.1167 to read as follows:

11 Sec. 12.1166. VALUATION OF CERTAIN REAL PROPERTY
12 TRANSACTIONS. (a) The commissioner shall adopt a rule defining an
13 affiliated company for purposes of this section.

14 (b) Before an open-enrollment charter school may enter into
15 a real property transaction with an affiliated company, the
16 open-enrollment charter school must provide an appraisal of the
17 property to the agency. The school is required to pay for the
18 appraisal required under this section.

19 (c) The commissioner may adopt rules to implement this
20 section. Rules adopted under this section may require:

21 (1) an open-enrollment charter school to obtain
22 commissioner approval of the appraiser;

23 (2) the commissioner to publish a list of acceptable
24 appraisers;

25 (3) the appraiser to use specific methods for the
26 appraisal; or

27 (4) the appraisal to be filed with the agency.

1 Sec. 12.1167. FINANCIAL REPORT OF CERTAIN SCHOOLS. (a) In
2 this section, "affiliated company" has the meaning assigned by
3 commissioner rule adopted under Section 12.1166.

4 (b) An open-enrollment charter school that enters into a
5 financial transaction with an affiliated company for the sale or
6 lease of real property must include the business operations of the
7 affiliated company in the school's annual financial report.

8 (c) A financial report subject to Subsection (b) must
9 separately disclose:

10 (1) all financial transactions between the
11 open-enrollment charter school and the affiliated company,
12 separately stating the principal, interest, and lease payments; and

13 (2) the total compensation and benefits for:

14 (A) each member of the governing body and each
15 officer and administrator of the school and the affiliated company;
16 and

17 (B) each person related to a member, officer, or
18 administrator under Paragraph (A) in the third degree by
19 consanguinity or affinity, as determined under Chapter 573,
20 Government Code.

21 (d) The commissioner may adopt rules to implement this
22 section.

23 SECTION 7. Section 12.128, Education Code, is amended by
24 amending Subsections (a) and (c) and adding Subsections (a-1),
25 (b-1), (b-2), (c-1), (c-2), and (f) to read as follows:

26 (a) Property purchased [~~or leased~~] with funds received by a
27 charter holder under Section 12.106 after September 1, 2001:

1 (1) is considered to be public property for all
2 purposes under state law;

3 (2) is property of this state held in trust by the
4 charter holder for the benefit of the students of the
5 open-enrollment charter school; and

6 (3) may be used only for a purpose for which a school
7 district may use school district property.

8 (a-1) Property leased with funds received by a charter
9 holder under Section 12.106 after September 1, 2001:

10 (1) is considered to be public property for all
11 purposes under state law;

12 (2) is property of this state held in trust by the
13 charter holder for the benefit of the students of the
14 open-enrollment charter school; and

15 (3) may be used only for a purpose for which a school
16 district may use school district property.

17 (b-1) Subject to Subsection (b-2), while an open-enrollment
18 charter school is in operation, the charter holder holds title to
19 any property described by Subsection (a) or (b) and may exercise
20 complete control over the property as permitted under the law.

21 (b-2) A charter holder may not transfer, sell, or otherwise
22 dispose of any property described by this section without the prior
23 written consent of the agency if:

24 (1) the charter holder has received notice of:

25 (A) the expiration of the charter holder's
26 charter under Section 12.1141 and the charter has not been renewed;

27 or

1 (B) the charter's revocation under Section
2 12.115(c);

3 (2) the charter holder has received notice that the
4 open-enrollment charter school is under discretionary review by the
5 commissioner, which may result in the revocation of the charter or a
6 reconstitution of the governing body of the charter holder under
7 Section 12.115; or

8 (3) the open-enrollment charter school for which the
9 charter is held has otherwise ceased to operate.

10 (c) The commissioner shall:

11 (1) take possession and assume control of the property
12 described by Subsection (a) of an open-enrollment charter school
13 that ceases to operate; and

14 (2) supervise the disposition of the property in
15 accordance with this subchapter [~~law~~].

16 (c-1) Notwithstanding Subsection (c), if an open-enrollment
17 charter school ceases to operate, the agency:

18 (1) for property purchased with state funds, shall
19 direct the charter holder to dispose of the property through one of
20 the following methods:

21 (A) retain the property and provide
22 reimbursement to the state as provided by Section 12.1281;

23 (B) transfer the property to:
24 (i) the agency under Section 12.1281(h); or
25 (ii) a school district or open-enrollment
26 charter school under Section 12.1282;

27 (C) liquidate the property under Section

1 12.1283;

2 (D) close the operations of the open-enrollment
3 charter school under Section 12.1284; or

4 (E) take any combination of the actions described
5 by Subdivisions (A), (B), (C), and (D); and

6 (2) for property leased with state funds, may direct
7 the charter holder to assign the charter holder's interest in the
8 lease to the agency.

9 (c-2) The agency may approve an expenditure of remaining
10 funds by a former charter holder for improvements to property
11 described by this section if the agency determines that the
12 expenditure is reasonably necessary to dispose of the property or
13 preserve the property's value.

14 (f) A decision by the agency under this section is final and
15 may not be appealed.

16 SECTION 8. Subchapter D, Chapter 12, Education Code, is
17 amended by adding Sections 12.1281, 12.1282, 12.1283, and 12.1284
18 to read as follows:

19 Sec. 12.1281. DISPOSITION OF PROPERTY PURCHASED WITH STATE
20 FUNDS. (a) A former charter holder of an open-enrollment charter
21 school that has ceased to operate may retain property described by
22 Section 12.128 if the former charter holder reimburses the state
23 with non-state funds for the amount of state funds used to purchase
24 the property and the former charter holder:

25 (1) provides written assurance that the requirements
26 of Section 12.1284 will be met; and

27 (2) receives approval from the agency.

1 (b) On receiving consent from the agency under Section
2 12.128(b-2) and a written agreement from any creditor with a
3 security interest described by Section 12.128(e), the former
4 charter holder may:

5 (1) sell property for fair market value; or

6 (2) transfer property to an open-enrollment charter
7 school or a school district as provided under Section 12.1282.

8 (c) The amount of funds the state is entitled to as
9 reimbursement for property of a former charter holder is:

10 (1) for property retained by the former charter
11 holder, the current fair market value less the remaining principal
12 on any debt subject to a security interest or lien described by
13 Section 12.128(e); or

14 (2) for property sold by the former charter holder,
15 the net sales proceeds of the property multiplied by the percentage
16 of state funds used to purchase the property.

17 (d) To determine the amount of state funds a former charter
18 holder used to purchase property, the agency shall calculate:

19 (1) an estimated state reimbursement amount based on
20 the last annual financial report filed under Section 44.008
21 available at the time the former charter holder retains or sells the
22 property; and

23 (2) a final state reimbursement amount using the
24 former charter holder's final financial audit filed under Section
25 44.008.

26 (e) A former charter holder retaining property under
27 Subsection (a) or selling the property under Subsection (b)(1)

1 shall:

2 (1) if:

3 (A) retaining the property, file an affidavit in
4 the real property records of the county in which the property is
5 located disclosing the state interest in the property; or

6 (B) selling the property, provide written
7 assurance that the requirements of Section 12.1283 have been met;

8 (2) place in escrow with the state comptroller an
9 amount of non-state funds equal to 110 percent of the estimated
10 state reimbursement amount; and

11 (3) not later than two weeks after the date the charter
12 holder's final financial audit is filed under Section 44.008,
13 submit to the state the final state reimbursement amount using the
14 funds in escrow in addition to any other funds necessary to pay the
15 full amount of state reimbursement.

16 (f) A former charter holder may retain any funds remaining
17 after complying with this section.

18 (g) As soon as the agency is satisfied that the former
19 charter holder complied with Subsection (e), the agency shall issue
20 written notice of the release of the state interest in property the
21 former charter holder retains under this section and authorize the
22 return of any funds not used for state reimbursement to the former
23 charter holder.

24 (h) If a former charter holder does not dispose of property
25 under Subsection (a) or (b), the former charter holder shall
26 transfer the property, including a conveyance of title, to the
27 agency in accordance with the procedures and time requirements

1 established by the agency.

2 (i) If the agency determines a former charter holder failed
3 to comply with this section or Section 12.1282, on request of the
4 agency, the attorney general shall take any appropriate legal
5 action to compel the former charter holder to convey title to the
6 agency or other governmental entity authorized by the agency to
7 maintain or dispose of property.

8 (j) A decision by the agency under this section is final and
9 may not be appealed.

10 (k) The commissioner may adopt rules necessary to
11 administer this section.

12 Sec. 12.1282. TRANSFER OF PROPERTY PURCHASED WITH STATE
13 FUNDS. (a) The agency may approve the transfer of property
14 described by Section 12.128 from an open-enrollment charter school
15 that has ceased to operate, or may transfer property conveyed to the
16 agency by the former charter holder under Section 12.1281, to a
17 school district or an open-enrollment charter school if:

18 (1) the open-enrollment charter school or school
19 district receiving the property:

20 (A) agrees to the transfer; and

21 (B) agrees to identify the property as purchased
22 wholly or partly using state funds on the school's annual financial
23 report filed under Section 44.008;

24 (2) any creditor with a security interest in or lien on
25 the property described by Section 12.128(e) agrees to the transfer;
26 and

27 (3) the transfer of the property does not make the

1 open-enrollment charter school that ceases to operate insolvent.

2 (b) Property received by an open-enrollment charter school
3 or school district under this section is considered to be state
4 property under Section 12.128(a).

5 (c) The commissioner may adopt rules necessary to
6 administer this section, including rules establishing
7 qualifications and priority for a school district or
8 open-enrollment charter school to receive a transfer of property
9 under this section.

10 (d) If the agency determines that the cost of disposing of
11 personal property described by Section 12.128 transferred to the
12 agency by an open-enrollment charter school that ceases to operate
13 exceeds the return of value from the sale of the property, the
14 agency may distribute the personal property to open-enrollment
15 charter schools and school districts in a manner determined by the
16 commissioner.

17 (e) A determination by the agency under this section is
18 final and may not be appealed.

19 Sec. 12.1283. SALE OF PROPERTY PURCHASED WITH STATE FUNDS.

20 (a) After the agency receives title to property described by
21 Section 12.128, the agency may sell the property at any price
22 acceptable to the agency.

23 (b) On request of the agency, the following agencies shall
24 enter into a memorandum of understanding to sell property for the
25 agency:

26 (1) for real property, the General Land Office; and

27 (2) for personal property, the Texas Facilities

1 Commission.

2 (c) Proceeds from the sale of property under this section
3 shall be deposited in the charter school liquidation fund.

4 (d) The commissioner may adopt rules as necessary to
5 administer this section.

6 Sec. 12.1284. CLOSURE OF CHARTER SCHOOL OPERATIONS. (a)
7 After extinguishing all payable obligations owed by an
8 open-enrollment charter school that ceases to operate, including a
9 debt described by Section 12.128(e), a former charter holder shall:

10 (1) remit to the agency:

11 (A) any remaining funds described by Section
12 12.106(d); and

13 (B) any state reimbursement amounts from the sale
14 of property described by Section 12.128; or

15 (2) transfer the remaining funds to another charter
16 holder under Section 12.106(e).

17 (b) The agency shall deposit any funds received under
18 Subsection (a)(1) in the charter school liquidation fund.

19 (c) The commissioner may adopt rules necessary to
20 administer this section.

21 SECTION 9. Subchapter D, Chapter 12, Education Code, is
22 amended by adding Section 12.141 to read as follows:

23 Sec. 12.141. RECLAIMED FUNDS. (a) The agency shall deposit
24 funds received under Sections 12.106, 12.128, 12.1281, 12.1283, and
25 12.1284 into the charter school liquidation fund and may use the
26 funds to:

27 (1) pay expenses relating to managing and closing an

1 open-enrollment charter school that ceases to operate, including
2 maintenance of the school's student and other records; and

3 (2) dispose of property described by Section 12.128.

4 (b) The agency may not use funds under this section until
5 the commissioner determines if the open-enrollment charter school
6 that ceases to operate received an overallocation of funds under
7 Section 12.106 that must be recovered for the foundation school
8 program.

9 (c) The agency shall annually review the amount of funds in
10 the charter school liquidation fund and transfer any funds
11 exceeding \$2 million:

12 (1) for use in funding a high-quality educational
13 grant program established by the commissioner; or

14 (2) to the comptroller to deposit in the charter
15 district bond guarantee reserve fund under Section 45.0571.

16 (d) The agency may delay a transfer of funds under
17 Subsection (c) if the excess is less than \$100,000. Funds set aside
18 for an overallocation of funds from the foundation school program
19 are not included in determining whether the amount of funds exceeds
20 \$2 million.

21 (e) The commissioner may adopt rules necessary to implement
22 this section.

23 SECTION 10. Section 39.1121, Education Code, is amended by
24 adding Subsection (c-1) to read as follows:

25 (c-1) A board of managers appointed for the final closure of
26 a former open-enrollment charter school under Subsection (c) has
27 the authority to:

1 (1) access and manage any former charter holder's bank
2 account that contains funds received under Section 12.106; and

3 (2) subject to approval by a creditor with a security
4 interest in or lien on property described by Section 12.128 and in
5 accordance with Section 12.1282, sell or transfer to another
6 charter holder or school district any property titled to the former
7 charter holder that is identified in the former open-enrollment
8 charter school's annual financial report filed under Section 44.008
9 as being acquired, wholly or partly, with funds received under
10 Section 12.106.

11 SECTION 11. Section 39.1122, Education Code, is amended by
12 amending Subsection (c) to read as follows:

13 (c) The agency [~~commissioner~~] shall use funds received by or
14 due to the former charter holder under Section 12.106 or funds
15 returned to the state from liquidation of [~~state~~] property
16 described by Section 12.128 and held by a former charter holder for
17 compensation of a member of a board of managers for an
18 open-enrollment charter school or a campus of an open-enrollment
19 charter school or a superintendent.

20 SECTION 12. Section 43.001(a), Education Code, is amended
21 to read as follows:

22 (a) Except as provided by Subsection (b), the permanent
23 school fund, which is a perpetual endowment for the public schools
24 of this state, consists of:

25 (1) all land appropriated for the public schools by
26 the constitution and laws of this state;

27 (2) all of the unappropriated public domain remaining

1 in this state, including all land recovered by the state by suit or
2 otherwise except pine forest land as defined by Section [88.111](#) and
3 property described by Section [12.128](#);

4 (3) all proceeds from the authorized sale of permanent
5 school fund land;

6 (4) all proceeds from the lawful sale of any other
7 properties belonging to the permanent school fund;

8 (5) all investments authorized by Section [43.003](#) of
9 properties belonging to the permanent school fund; and

10 (6) all income from the mineral development of
11 permanent school fund land, including income from mineral
12 development of riverbeds and other submerged land.

13 SECTION 13. Section [44.008](#), Education Code, is amended by
14 adding Subsections (f), (g), and (h) to read as follows:

15 (f) An open-enrollment charter school shall provide an
16 accounting of each parcel of the school's real property, including
17 identifying the amount of local, state, and federal funds used to
18 purchase or improve each parcel of property.

19 (g) An open-enrollment charter school for which the charter
20 has expired, been revoked, been denied renewal, or been surrendered
21 or an open-enrollment charter school that otherwise ceases to
22 operate shall submit a final annual financial report to the agency.
23 The report must verify that all state property held by the charter
24 holder has been returned or disposed of in accordance with Section
25 [12.128](#).

26 (h) The commissioner may adopt rules necessary to implement
27 this section, including rules defining local funds.

1 SECTION 14. A transfer of property from an open-enrollment
2 charter school that ceases to operate to another open-enrollment
3 charter school that occurred before January 1, 2016, is ratified if
4 both open-enrollment charter schools classified the property as
5 purchased with state funds on each school's annual financial report
6 under Section 44.008, Education Code.

7 SECTION 15. This Act takes effect immediately if it
8 receives a vote of two-thirds of all the members elected to each
9 house, as provided by Section 39, Article III, Texas Constitution.
10 If this Act does not receive the vote necessary for immediate
11 effect, this Act takes effect September 1, 2017.