

By: Taylor of Galveston, et al.
(Huberty)

S.B. No. 1658

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 school ceased operations, including a
debt described by Section 12.128(e). 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 that are held by a
former charter holder after satisfaction of all payable obligations
and that 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) the school's charter:

(A) has been revoked;

- 1 (B) has expired;
- 2 (C) has been surrendered; or
- 3 (D) has been abandoned; or
- 4 (2) the school has otherwise ceased operation as a
- 5 public school.

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

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

12 (e) The agency may approve a transfer of a charter holder's
13 remaining funds to another charter holder if the charter holder
14 receiving the funds has not received notice of the expiration or
15 revocation of the charter holder's charter for an open-enrollment
16 charter school or notice of a reconstitution of the governing body
17 of the charter holder under Section 12.1141 or 12.115.

18 (f) The commissioner may adopt rules specifying:

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

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

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

25 (a) Funds received under Section 12.106 after September 1,
26 2001, by a charter holder:

27 (1) are considered to be public funds for all purposes

1 under state law;

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

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

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

9 (5) may not:

10 (A) be pledged or used to secure loans or bonds
11 for any other organization, including a non-charter operation or
12 out-of-state operation conducted by the charter holder or a related
13 party; or

14 (B) be used to support an operation or activity
15 not related to the educational activities of the charter holder.

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

18 (d) An audit under Subsection (a) may include the review of
19 any real property transactions between the charter holder and a
20 related party, as defined by commissioner rule adopted under
21 Section 12.1166. If the commissioner determines that a transaction
22 with a related party using funds received under Section 12.106 was
23 structured in a manner that did not benefit the open-enrollment
24 charter school or that the transaction was in excess of fair market
25 value as determined under Section 12.1167, the commissioner may
26 order that the transaction be reclassified or that other action be
27 taken as necessary to protect the school's interests. Failure to

1 comply with the commissioner's order is a material violation of the
2 charter.

3 SECTION 6. Subchapter D, Chapter 12, Education Code, is
4 amended by adding Sections 12.1166, 12.1167, and 12.1168 to read as
5 follows:

6 Sec. 12.1166. RELATED PARTY TRANSACTIONS. (a) The
7 commissioner shall adopt a rule defining "related party" for
8 purposes of this subchapter. The definition of "related party"
9 must include:

10 (1) a party with a current or former board member,
11 administrator, or officer who is:

12 (A) a board member, administrator, or officer of
13 an open-enrollment charter school; or

14 (B) related within the third degree of
15 consanguinity or affinity, as determined under Chapter 573,
16 Government Code, to a board member, administrator, or officer of an
17 open-enrollment charter school;

18 (2) a charter holder's related organizations, joint
19 ventures, and jointly governed organizations;

20 (3) an open-enrollment charter school's board members,
21 administrators, or officers or a person related to a board member,
22 administrator, or officer within the third degree of consanguinity
23 or affinity, as determined under Chapter 573, Government Code; and

24 (4) any other disqualified person, as that term is
25 defined by 26 U.S.C. Section 4958(f).

26 (b) For purposes of Subsection (a)(1), a person is a former
27 board member, administrator, or officer if the person served in

1 that capacity within one year of the date on which a financial
2 transaction between the charter holder and a related party
3 occurred.

4 (c) In a charter holder's annual audit filed under Section
5 44.008, the charter holder must include a list of all transactions
6 with a related party.

7 Sec. 12.1167. APPRAISAL OF CERTAIN PROPERTY. The
8 commissioner may adopt rules to require an open-enrollment charter
9 school to:

10 (1) notify the commissioner that the school intends to
11 enter into a transaction with a related party; and

12 (2) provide an appraisal from a certified appraiser to
13 the agency.

14 Sec. 12.1168. FINANCIAL REPORT OF CERTAIN SCHOOLS. (a) In
15 this section, "related party" has the meaning adopted by
16 commissioner rule under Section 12.1166.

17 (b) A financial report filed under Section 44.008 by an
18 open-enrollment charter school must separately disclose:

19 (1) all financial transactions between the
20 open-enrollment charter school and any related party, separately
21 stating the principal, interest, and lease payments; and

22 (2) the total compensation and benefits provided by
23 the school and any related party for each member of the governing
24 body and each officer and administrator of the school and the
25 related party.

26 (c) The commissioner may adopt rules to implement this
27 section.

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

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

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

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

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

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

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

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

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

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

26 (b-2) A charter holder may not transfer, sell, or otherwise
27 dispose of any property described by this section without the prior

1 written consent of the agency if:

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

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

5 or

6 (B) the charter's revocation under Section
7 12.115(c);

8 (2) the charter holder has received notice that the
9 open-enrollment charter school is under discretionary review by the
10 commissioner, which may result in the revocation of the charter or a
11 reconstitution of the governing body of the charter holder under
12 Section 12.115; or

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

15 (c) The commissioner shall:

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

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

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

23 (1) for property purchased with state funds, shall
24 direct the charter holder to dispose of the property through one of
25 the following methods:

26 (A) retain or liquidate the property and provide
27 reimbursement to the state as provided by Section 12.1281;

1 (B) transfer the property to:

2 (i) the agency under Section 12.1281(h); or

3 (ii) a school district or open-enrollment
4 charter school under Section 12.1282;

5 (C) close the operations of the open-enrollment
6 charter school under Section 12.1284; or

7 (D) take any combination of the actions described
8 by Paragraphs (A), (B), and (C); and

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

12 (c-2) The agency may approve an expenditure of remaining
13 funds by a former charter holder for insurance or utilities for or
14 maintenance, repairs, or improvements to property described by this
15 section if the agency determines that the expenditure is reasonably
16 necessary to dispose of the property or preserve the property's
17 value.

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

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

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

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

3 (2) receives approval from the agency.

4 (b) On receiving consent from the agency under Section
5 12.128(b-2) and a written agreement from any creditor with a
6 security interest described by Section 12.128(e), the former
7 charter holder may:

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

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

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

13 (1) for property retained by the former charter
14 holder, the current fair market value less the amount of any debt
15 subject to a security interest or lien described by Section
16 12.128(e), multiplied by the percentage of state funds used to
17 purchase the property; or

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

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

23 (1) an estimated state reimbursement amount based on
24 the last annual financial report filed under Section 44.008
25 available at the time the former charter holder retains or sells the
26 property; and

27 (2) a final state reimbursement amount using the

1 former charter holder's final financial audit filed under Section
2 44.008.

3 (e) A former charter holder retaining property under
4 Subsection (a) or selling the property under Subsection (b)(1)
5 shall:

6 (1) file an affidavit in the real property records of
7 the county in which the property is located disclosing the state
8 interest in the property;

9 (2) place in escrow with the state comptroller an
10 amount of non-state funds equal to 110 percent of the estimated
11 state reimbursement amount not later than:

12 (A) the closing date of the sale of the property
13 if the charter holder is selling the property; or

14 (B) the 90th day after the charter school's last
15 day of instruction if the charter holder is retaining the property;
16 and

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

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

24 (g) As soon as the agency is satisfied that the former
25 charter holder complied with Subsection (e), the agency shall file
26 written notice of the release of the state interest in property the
27 former charter holder retains under this section and authorize the

1 return of any funds not used for state reimbursement to the former
2 charter holder.

3 (h) Subject to the satisfaction of any security interest or
4 lien described by Section 12.128(e), if a former charter holder
5 does not dispose of property under Subsection (a) or (b), the former
6 charter holder shall transfer the property, including a conveyance
7 of title, to the agency in accordance with the procedures and time
8 requirements established by the agency.

9 (i) Subject to the satisfaction of any security interest or
10 lien described by Section 12.128(e), if the agency determines a
11 former charter holder failed to comply with this section or Section
12 12.1282, on request of the agency, the attorney general shall take
13 any appropriate legal action to compel the former charter holder to
14 convey title to the agency or other governmental entity authorized
15 by the agency to maintain or dispose of property.

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

18 (k) The commissioner may adopt rules necessary to
19 administer this section.

20 Sec. 12.1282. TRANSFER OF PROPERTY PURCHASED WITH STATE
21 FUNDS. (a) The agency may approve the transfer of property
22 described by Section 12.128 from an open-enrollment charter school
23 that has ceased to operate, or may transfer property conveyed to the
24 agency by the former charter holder under Section 12.1281, to a
25 school district or an open-enrollment charter school if:

26 (1) the open-enrollment charter school or school
27 district receiving the property:

1 (A) agrees to the transfer; and

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

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

8 (3) the transfer of the property does not make the
9 open-enrollment charter school or school district receiving the
10 property insolvent.

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

14 (c) The commissioner may adopt rules necessary to
15 administer this section, including rules establishing
16 qualifications and priority for a school district or
17 open-enrollment charter school to receive a transfer of property
18 under this section.

19 (d) If the agency determines that the cost of disposing of
20 personal property described by Section 12.128 transferred to the
21 agency by an open-enrollment charter school that ceases to operate
22 exceeds the return of value from the sale of the property, the
23 agency may distribute the personal property to open-enrollment
24 charter schools and school districts in a manner determined by the
25 commissioner.

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

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

2 (a) After the agency receives title to property described by
3 Section 12.128, the agency may sell the property at any price
4 acceptable to the agency.

5 (b) On request of the agency, the following state agencies
6 shall enter into a memorandum of understanding to sell property for
7 the agency:

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

9 (2) for personal property, the Texas Facilities
10 Commission.

11 (c) A memorandum of understanding entered into as provided
12 by Subsection (b) may allow the General Land Office or Texas
13 Facilities Commission to recover from the sale proceeds any cost
14 incurred by the agency in the sale of the property.

15 (d) Subject to the satisfaction of any security interest or
16 lien described by Section 12.128(e), proceeds from the sale of
17 property under this section shall be deposited in the charter
18 school liquidation fund.

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

21 Sec. 12.1284. CLOSURE OF CHARTER SCHOOL OPERATIONS.

22 (a) After extinguishing all payable obligations owed by an
23 open-enrollment charter school that ceases to operate, including a
24 debt described by Section 12.128(e), a former charter holder shall:

25 (1) remit to the agency:

26 (A) any remaining funds described by Section
27 12.106(d); and

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

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

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

7 (c) The commissioner may adopt rules necessary to
8 administer this section.

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

11 Sec. 12.141. RECLAIMED FUNDS. (a) The agency shall
12 deposit funds received under Sections 12.106, 12.128, 12.1281,
13 12.1283, and 12.1284 into the charter school liquidation fund and
14 may use the funds to:

15 (1) pay expenses relating to managing and closing an
16 open-enrollment charter school that ceases to operate, including:

17 (A) maintenance of the school's student and other
18 records; and

19 (B) the agency's personnel costs associated with
20 managing and closing the school;

21 (2) dispose of property described by Section 12.128;
22 and

23 (3) maintain property described by Section 12.128,
24 including expenses for insurance, utilities, maintenance, and
25 repairs.

26 (b) The agency may not use funds under this section until
27 the commissioner determines if the open-enrollment charter school

1 that ceases to operate received an overallocation of funds under
2 Section 12.106 that must be recovered for the foundation school
3 program.

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

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

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

11 (d) The agency may delay a transfer of funds under
12 Subsection (c) if the excess is less than \$100,000. Funds set aside
13 for an overallocation of funds from the foundation school program
14 are not included in determining whether the amount of funds exceeds
15 \$2 million.

16 (e) The commissioner may adopt rules necessary to implement
17 this section.

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

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

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

25 (2) subject to approval by a creditor with a security
26 interest in or lien on property described by Section 12.128 and in
27 accordance with Sections 12.1281 and 12.1282, sell or transfer to

1 another charter holder or school district any property titled to
2 the former charter holder that is identified in the former
3 open-enrollment charter school's annual financial report filed
4 under Section 44.008 as being acquired, wholly or partly, with
5 funds received under Section 12.106.

6 SECTION 11. Section 39.1122(c), Education Code, is amended
7 to read as follows:

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

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

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

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

22 (2) all of the unappropriated public domain remaining
23 in this state, including all land recovered by the state by suit or
24 otherwise except pine forest land as defined by Section 88.111 and
25 property described by Section 12.128;

26 (3) all proceeds from the authorized sale of permanent
27 school fund land;

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

3 (5) all investments authorized by Section 43.003 of
4 properties belonging to the permanent school fund; and

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

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

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

14 (g) An open-enrollment charter school for which the charter
15 has expired, been revoked, or been surrendered or an
16 open-enrollment charter school that otherwise ceases to operate
17 shall submit a final annual financial report to the agency. The
18 report must verify that all state property held by the charter
19 holder has been returned or disposed of in accordance with Section
20 12.128.

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

23 SECTION 14. A transfer of property from an open-enrollment
24 charter school that ceases to operate to another open-enrollment
25 charter school that occurred before the effective date of this Act
26 is ratified if both open-enrollment charter schools classified the
27 property as purchased with state funds on each school's annual

1 financial report under Section 44.008, Education Code.

2 SECTION 15. This Act takes effect only if a specific
3 appropriation for the implementation of the Act is provided in a
4 general appropriations act of the 85th Legislature.

5 SECTION 16. This Act takes effect immediately if it
6 receives a vote of two-thirds of all the members elected to each
7 house, as provided by Section 39, Article III, Texas Constitution.
8 If this Act does not receive the vote necessary for immediate
9 effect, this Act takes effect September 1, 2017.