

By: West

S.B. No. 2314

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(A) has been revoked;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 (h), (i), and (j) to read as follows:

8 (h) Except as provided by Subsection (i), 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 (i) 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 (j) The commissioner may adopt rules specifying:

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

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

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, as defined by commissioner rule adopted under Section
14 12.1166; or

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

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

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

1 the school's interests. Failure to comply with the commissioner's
2 order is a material violation of the 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, as defined by
12 commissioner rule adopted under Section 12.1166; and

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

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

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

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

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

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

1 section.

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

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

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

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

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

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

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

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

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

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

27 (b-2) A charter holder may not transfer, sell, or otherwise

1 dispose of any property described by this section without the prior
2 written consent of the agency if:

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

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

7 (B) the charter's revocation under Section
8 12.115(c);

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

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

16 (c) The commissioner shall:

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

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

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

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

27 (A) retain or liquidate the property and provide

1 reimbursement to the state as provided by Section 12.1281;

2 (B) transfer the property to:

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

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

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

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

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

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

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

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

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

1 with non-state funds and the former charter holder:

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

4 (2) receives approval from the agency.

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

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

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

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

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

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

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

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

1 (2) a final state reimbursement amount using the
2 former charter holder's final financial audit filed under Section
3 44.008.

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

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

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

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

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

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

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

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

1 former charter holder retains under this section and authorize the
2 return of any funds not used for state reimbursement to the former
3 charter holder.

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

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

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

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

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

27 (1) the open-enrollment charter school or school

1 district receiving the property:

2 (A) agrees to the transfer; and

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

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

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

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

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

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

27 (e) A determination by the agency under this section is

1 final and may not be appealed.

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

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

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

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

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

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

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

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

22 Sec. 12.1284. CLOSURE OF CHARTER SCHOOL OPERATIONS.

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

26 (1) remit to the agency:

27 (A) any remaining funds described by Section

1 12.106(h); and

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

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

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

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

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

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

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

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

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

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

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

27 (b) The agency may not use funds under this section until

1 the commissioner determines if the open-enrollment charter school
2 that ceases to operate received an overallocation of funds under
3 Section 12.106 that must be recovered for the foundation school
4 program.

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

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

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

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

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

19 SECTION 10. Section 39A.256, Education Code, is amended by
20 adding Subsection (c) to read as follows:

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

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

26 (2) subject to approval by a creditor with a security
27 interest in or lien on property described by Section 12.128 and in

1 accordance with Sections 12.1281 and 12.1282, sell or transfer to
2 another charter holder or school district any property titled to
3 the former charter holder that is identified in the former
4 open-enrollment charter school's annual financial report filed
5 under Section 44.008 as being acquired, wholly or partly, with
6 funds received under Section 12.106.

7 SECTION 11. Section 39A.259(c), Education Code, is amended
8 to read as follows:

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

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

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

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

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

27 (3) all proceeds from the authorized sale of permanent

1 school fund land;

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

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

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

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

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

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

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

24 SECTION 14. A transfer of property from an open-enrollment
25 charter school that ceases to operate to another open-enrollment
26 charter school that occurred before the effective date of this Act
27 is ratified if both open-enrollment charter schools classified the

1 property as purchased with state funds on each school's annual
2 financial report under Section 44.008, Education Code.

3 SECTION 15. This Act takes effect immediately if it
4 receives a vote of two-thirds of all the members elected to each
5 house, as provided by Section 39, Article III, Texas Constitution.
6 If this Act does not receive the vote necessary for immediate
7 effect, this Act takes effect September 1, 2019.