87S20621 GCB-F

By:  Lucio S.B. No. 76

A BILL TO BE ENTITLED

AN ACT

relating to the regulation and operation of open-enrollment charter schools.

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

SECTION 1.  Section 12.104(b), Education Code, as reenacted and amended by H.B. 3607, S.B. 168, S.B. 1365, S.B. 1697, and S.B. 2081, Acts of the 87th Legislature, Regular Session, 2021, and effective September 1, 2021, is reenacted and amended to read as follows:

(b)  An open-enrollment charter school is subject to:

(1)  a provision of this title establishing a criminal offense;

(2)  the provisions in Chapter 554, Government Code; and

(3)  a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A)  the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B)  criminal history records under Subchapter C, Chapter 22;

(C)  reading instruments and accelerated reading instruction programs under Section 28.006;

(D)  accelerated instruction under Section 28.0211;

(E)  high school graduation requirements under Section 28.025;

(F)  special education programs under Subchapter A, Chapter 29;

(G)  bilingual education under Subchapter B, Chapter 29;

(H)  prekindergarten programs under Subchapter E or E-1, Chapter 29, except class size limits for prekindergarten classes imposed under Section 25.112, which do not apply;

(I)  extracurricular activities under Section 33.081;

(J)  discipline management practices or behavior management techniques under Sections [~~Section~~] 37.0021, 37.0023, and 37.004;

(K)  health and safety under Chapter 38;

(L)  the provisions of Subchapter A, Chapter 39;

(M)  public school accountability and special investigations under Subchapters A, B, C, D, F, G, and J, Chapter 39, and Chapter 39A;

(N)  the requirement under Section 21.006 to report an educator's misconduct;

(O)  intensive programs of instruction under Section 28.0213;

(P)  the right of a school employee to report a crime, as provided by Section 37.148;

(Q)  bullying prevention policies and procedures under Section 37.0832;

(R)  the right of a school under Section 37.0052 to place a student who has engaged in certain bullying behavior in a disciplinary alternative education program or to expel the student;

(S)  the right under Section 37.0151 to report to local law enforcement certain conduct constituting assault or harassment;

(T)  a parent's right to information regarding the provision of assistance for learning difficulties to the parent's child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d);

(U)  establishment of residency under Section 25.001;

(V)  school safety requirements under Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.1141, 37.115, 37.207, and 37.2071;

(W)  the early childhood literacy and mathematics proficiency plans under Section 11.185;

(X)  the college, career, and military readiness plans under Section 11.186; [~~and~~]

(Y) [~~(X)~~]  parental options to retain a student under Section 28.02124;

(Z)  educator certification requirements under Chapter 21; and

(AA) elementary class size limits under Section 25.112.

SECTION 2.  Section 12.1051, Education Code, is amended by adding Subsection (c) to read as follows:

(c)  The governing body of a charter holder and the governing body of an open-enrollment charter school shall:

(1)  hold each open meeting within the geographical area served by the school; and

(2)  in the manner prescribed by Section 551.128, Government Code, broadcast the open meeting over the Internet if the school includes campuses that are located in noncontiguous municipalities.

SECTION 3.  Section 12.106(a-2), Education Code, is amended to read as follows:

(a-2)  In addition to the funding provided by Subsection (a), a charter holder is entitled to receive for the open-enrollment charter school an allotment per student in average daily attendance equal to the allotment under Section 48.101 the charter holder would be entitled to under that section if the school were a school district [~~in an amount equal to the difference between:~~

[~~(1)  the product of:~~

[~~(A)  the quotient of:~~

[~~(i)  the total amount of funding provided to eligible school districts under Section 48.101(b) or (c); and~~

[~~(ii)  the total number of students in average daily attendance in school districts that receive an allotment under Section 48.101(b) or (c); and~~

[~~(B)  the sum of one and the quotient of:~~

[~~(i)  the total number of students in average daily attendance in school districts that receive an allotment under Section 48.101(b) or (c); and~~

[~~(ii)  the total number of students in average daily attendance in school districts statewide; and~~

[~~(2)  $125~~].

SECTION 4.  Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1072 to read as follows:

Sec. 12.1072.  PROHIBITION AGAINST USE OF STATE FUNDING TO PURCHASE, LEASE, OR MAINTAIN AN AIRCRAFT; EXCEPTION. (a) In this section, "aircraft" means a self-propelled motor vehicle that can be used to transport a person by flight in the air.

(b)  Except as provided by Subsection (c), a charter holder may not use funds received under Section 12.106 for the purpose of purchasing, leasing, or maintaining an aircraft.

(c)  This section does not prohibit a charter holder from purchasing, leasing, or maintaining an aircraft for purposes of an agency-approved career and technical education course involving aviation or aviation maintenance.

SECTION 5.  Section 12.111, Education Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  Each charter granted under this subchapter must:

(1)  describe the educational program to be offered, which must include the required curriculum as provided by Section 28.002;

(2)  provide that continuation of the charter is contingent on the status of the charter as determined under Section 12.1141 or 12.115 or under Chapter 39A;

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

(4)  specify:

(A)  any basis, in addition to a basis specified by this subchapter or Chapter 39A, on which the charter may be revoked, renewal of the charter may be denied, or the charter may be allowed to expire; and

(B)  the standards for evaluation of a school operating under the charter for purposes of charter renewal, denial of renewal, expiration, revocation, or other intervention in accordance with Section 12.1141 or 12.115 or Chapter 39A, as applicable;

(5)  prohibit discrimination in admission policy on the basis of sex, national origin, ethnicity, religion, disability, eligibility for special education programs under Subchapter A, Chapter 29, or bilingual education and special language programs under Subchapter B, Chapter 29, discipline history, academic, artistic, or athletic ability, or the district the child would otherwise attend in accordance with this code, although the charter may:

(A)  provide for the exclusion of a student who is currently:

(i)  placed in a disciplinary alternative education program or a juvenile justice alternative education program; or

(ii)  subject to an order of expulsion from a school district or open-enrollment charter school [~~has a documented history of a criminal offense, a juvenile court adjudication, or discipline problems under Subchapter A, Chapter 37~~]; and

(B)  provide for an admission policy that requires a student to demonstrate artistic ability if the school specializes in performing arts;

(6)  specify the grade levels to be offered;

(7)  describe the governing structure of the program, including:

(A)  the officer positions designated;

(B)  the manner in which officers are selected and removed from office;

(C)  the manner in which members of the governing body of the school are selected and removed from office;

(D)  the manner in which vacancies on that governing body are filled;

(E)  the term for which members of that governing body serve; and

(F)  whether the terms are to be staggered;

(8)  specify the powers or duties of the governing body of the school that the governing body may delegate to an officer;

(9)  specify the manner in which the school will distribute to parents information related to the qualifications of each professional employee of the program, including any professional or educational degree held by each employee, a statement of any certification under Subchapter B, Chapter 21, held by each employee, and any relevant experience of each employee;

(10)  describe the process by which the person providing the program will adopt an annual budget;

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

(12)  describe the facilities to be used;

(13)  describe the geographical area served by the program;

(14)  specify any type of enrollment criteria to be used;

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

(16)  specify that the governing body of an open-enrollment charter school accepts and may not delegate ultimate responsibility for the school, including the school's academic performance and financial and operational viability, and is responsible for overseeing any management company providing management services for the school and for holding the management company accountable for the school's performance.

(a-1)  Notwithstanding Subsection (a)(5), a charter granted under this subchapter may provide for the exclusion of a student from an open-enrollment charter school campus that includes a child-care facility based on the student's conviction for a criminal offense that would preclude the student from being admitted to a school district campus that includes a child-care facility.

SECTION 6.  Section 12.1141, Education Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), and (b-1) to read as follows:

(a)  The commissioner shall develop and by rule adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter. The procedure must include:

(1)  consideration of the performance under Chapters 39 and 39A of the charter holder and each campus operating under the charter; and

(2)  a determination under Subsection (a-2) of whether the charter holder had an excessive number of students transfer during the term of the charter.

(a-1)  The procedure developed under Subsection (a) must include three distinct processes, which must be expedited renewal, discretionary consideration of renewal or denial of renewal, and expiration.

(a-2)  The commissioner shall by rule adopt a standard for determining whether a charter holder had an excessive number of students transfer to schools other than schools operated by the charter holder:

(1)  after completing the second grade and before entering the third grade; or

(2)  during the 60 days before the date the transferring student would be administered an assessment instrument under Section 39.023.

(a-3)  To renew a charter at the end of the term, the charter holder must submit a petition for renewal to the commissioner in the time and manner established by commissioner rule.

(b-1)  The commissioner may deny expedited renewal of a charter if, under the standard adopted under Subsection (a-2), the commissioner determines that an excessive number of student transfers occurred during the term of the charter.

SECTION 7.  Sections 12.1141(b) and (c), Education Code, as effective September 1, 2021, are amended to read as follows:

(b)  At the end of the term of a charter for an open-enrollment charter school, if a charter holder submits to the commissioner a petition for expedited renewal of the charter, the charter automatically renews unless, not later than the 30th day after the date the charter holder submits the petition, the commissioner provides written notice to the charter holder that expedited renewal of the charter is denied. Except as provided by Subsection (b-1), the [~~The~~] commissioner may not deny expedited renewal of a charter if:

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

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

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

(c)  At the end of the term of a charter for an open-enrollment charter school, if a charter holder submits to the commissioner a petition for renewal of the charter and the charter does not meet the criteria for expedited renewal under Subsection (b) or for expiration under Subsection (d) or if the commissioner denies expedited renewal under Subsection (b-1), the commissioner shall use the discretionary consideration process. The commissioner's decision under the discretionary consideration process must take into consideration the results of annual evaluations under the performance frameworks established under Section 12.1181. The renewal of the charter of an open-enrollment charter school that is registered under the agency's alternative education accountability procedures for evaluation under Chapter 39 shall be considered under the discretionary consideration process regardless of the performance ratings under Subchapter C, Chapter 39, of the open-enrollment charter school or of any campus operating under the charter, except that if the charter holder has been assigned a financial accountability performance rating under Subchapter D, Chapter 39, indicating financial performance that is lower than satisfactory for any three of the five preceding school years, the commissioner shall allow the charter to expire under Subsection (d). In considering the renewal of the charter of an open-enrollment charter school that is registered under the agency's alternative education accountability procedures for evaluation under Chapter 39, such as a dropout recovery school or a school providing education within a residential treatment facility, the commissioner shall use academic criteria established by commissioner rule that are appropriate to measure the specific goals of the school. The criteria established by the commissioner shall recognize growth in student achievement as well as educational attainment. For purposes of this subsection, the commissioner shall designate as a dropout recovery school an open-enrollment charter school or a campus of an open-enrollment charter school:

(1)  that serves students in grades 9 through 12 and has an enrollment of which at least 60 percent of the students are 16 years of age or older as of September 1 of the school year as reported for the fall semester Public Education Information Management System (PEIMS) submission; and

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

SECTION 8.  Section 12.117, Education Code, is amended by adding Subsection (a-1) to read as follows:

(a-1)  An application required under Subsection (a) or any communication with the applicant or with the school in which the applicant is currently enrolled may not include a request for information regarding the applicant's discipline history except for a disciplinary action described by Section 12.111(a)(5)(A) or a notice of disciplinary action under Section 37.022.

SECTION 9.  Section 12.1211, Education Code, is amended to read as follows:

Sec. 12.1211.  INFORMATION REGARDING [~~NAMES OF~~] MEMBERS OF GOVERNING BODY LISTED ON WEBSITE. An open-enrollment charter school shall list the names of the members of the governing body on the home page of the school's Internet website and provide additional information regarding members of the governing body that is easily accessible on the website, including:

(1)  relevant biographical information for each member related to employment history and educational experience;

(2)  whether a member has a substantial interest in a business entity as described by Section 171.002, Local Government Code, and if so, whether that business entity contracts with the school;

(3)  the total number of members;

(4)  the manner in which the members are selected as described in the school's charter;

(5)  the terms of service of each member on the governing body; and

(6)  the total number of years each member has served.

SECTION 10.  The heading to Section 12.131, Education Code, is amended to read as follows:

Sec. 12.131.  STUDENT DISCIPLINE [~~REMOVAL OF STUDENTS TO DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM; EXPULSION OF STUDENTS~~].

SECTION 11.  Section 12.131, Education Code, is amended by amending Subsection (b) and adding Subsections (b-1), (d), (e), and (f) to read as follows:

(b)  An open-enrollment charter school may:

(1)  only suspend a student for a reason identified in the school's code of conduct; and

(2)  only [~~not elect to~~] expel a student for a reason for which expulsion [~~that~~] is [~~not~~] authorized under Subchapter A, Chapter 37, [~~by Section 37.007~~] or [~~specified in~~] the school's code of conduct [~~as conduct that may result in expulsion~~].

(b-1)  An open-enrollment charter school's code of conduct may not authorize expulsion based on:

(1)  a student's attendance or academic ability or performance; or

(2)  acts or omissions of a student's parent or legal guardian.

(d)  A suspension under this section may not exceed three school days.

(e)  Except as required under Section 37.007(e), a student who is younger than 10 years of age may not be expelled for a period of more than one school year.

(f)  An employee of an open-enrollment charter school may not suggest a student withdraw from the school in lieu of being disciplined as provided by the school's code of conduct.

SECTION 12.  Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.138 to read as follows:

Sec. 12.138.  ELECTIONEERING PROHIBITED. Notwithstanding any other law, the governing body or a member of the governing body of an open-enrollment charter school or an employee or contractor of an open-enrollment charter school may not use state or local funds or other resources of the school to electioneer for or against any candidate, measure, or political party.

SECTION 13.  Chapter 255, Election Code, is amended by adding Section 255.0011 to read as follows:

Sec. 255.0011.  OPEN-ENROLLMENT CHARTER SCHOOLS. In this chapter, "open-enrollment charter school" has the meaning assigned by Section 5.001, Education Code.

SECTION 14.  Sections 255.003(a), (b-1), (d), and (e), Election Code, are amended to read as follows:

(a)  An officer or employee of a political subdivision or open-enrollment charter school may not knowingly spend or authorize the spending of public funds for political advertising.

(b-1)  An officer or employee of a political subdivision or open-enrollment charter school may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:

(1)  the officer or employee knows is false; and

(2)  is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

(d)  It is an affirmative defense to prosecution for an offense under this section or the imposition of a civil penalty for conduct under this section that an officer or employee of a political subdivision or open-enrollment charter school reasonably relied on a court order or an interpretation of this section in a written opinion issued by:

(1)  a court of record;

(2)  the attorney general; or

(3)  the commission.

(e)  On written request of the governing body of a political subdivision or open-enrollment charter school that has ordered an election on a measure, the commission shall prepare an advance written advisory opinion as to whether a particular communication relating to the measure does or does not comply with this section.

SECTION 15.  Sections 255.0031(a) and (b), Election Code, are amended to read as follows:

(a)  An officer or employee of a state agency, [~~or~~] political subdivision, or open-enrollment charter school may not knowingly use or authorize the use of an internal mail system for the distribution of political advertising.

(b)  Subsection (a) does not apply to:

(1)  the use of an internal mail system to distribute political advertising that is delivered to the premises of a state agency, [~~or~~] political subdivision, or open-enrollment charter school through the United States Postal Service; or

(2)  the use of an internal mail system by a state agency or municipality to distribute political advertising that is the subject of or related to an investigation, hearing, or other official proceeding of the agency or municipality.

SECTION 16.  Section 255.0031(d)(1), Election Code, is amended to read as follows:

(1)  "Internal mail system" means a system operated by a state agency, [~~or~~] political subdivision, or open-enrollment charter school to deliver written documents to officers or employees of the agency or subdivision.

SECTION 17.  Section 554.001(2), Government Code, is amended to read as follows:

(2)  "Local governmental entity" means:

(A)  a political subdivision of the state, including a[~~:~~

[~~(A)~~]  county,[~~;~~

[~~(B)~~]  municipality,[~~;~~

[~~(C)  public~~] school district,[~~;~~] or

[~~(D)~~]  special-purpose district or authority; or

(B)  an open-enrollment charter school.

SECTION 18.  (a) Notwithstanding Section 12.104(b), Education Code, as amended by this Act, a person employed by an open-enrollment charter school on the effective date of this Act is not required to comply with the changes in law made by this Act until the beginning of the 2023-2024 school year.

(b)  The change in law made to Section 12.1051, Education Code, applies only to an open meeting held on or after the effective date of this Act.

(c)  Notwithstanding the effective date of this Act, a charter holder that, on the effective date of this Act, owns or leases an aircraft in a manner other than as authorized under Section 12.1072, Education Code, as added by this Act, must, by a date not later than September 1, 2022:

(1)  offer an agency-approved career and technical education course involving aviation or aviation maintenance, and cease use of the aircraft for any other purpose; or

(2)  sell the aircraft or terminate the lease for the aircraft, as applicable.

SECTION 19.  This Act takes effect September 1, 2021, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this Act takes effect on the 91st day after the last day of the legislative session.