

By: Lucio

S.B. No. 76

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the regulation and operation of open-enrollment charter  
3 schools.

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

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

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

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

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

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

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

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

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

- 1 (D) accelerated instruction under Section  
2 [28.0211](#);
- 3 (E) high school graduation requirements under  
4 Section [28.025](#);
- 5 (F) special education programs under Subchapter  
6 [A](#), Chapter [29](#);
- 7 (G) bilingual education under Subchapter [B](#),  
8 Chapter [29](#);
- 9 (H) prekindergarten programs under Subchapter E  
10 or E-1, Chapter 29, except class size limits for prekindergarten  
11 classes imposed under Section 25.112, which do not apply;
- 12 (I) extracurricular activities under Section  
13 [33.081](#);
- 14 (J) discipline management practices or behavior  
15 management techniques under Sections [~~Section~~] [37.0021](#), [37.0023](#),  
16 [and 37.004](#);
- 17 (K) health and safety under Chapter [38](#);
- 18 (L) the provisions of Subchapter [A](#), Chapter [39](#);
- 19 (M) public school accountability and special  
20 investigations under Subchapters [A](#), [B](#), [C](#), [D](#), [F](#), [G](#), and [J](#), Chapter  
21 [39](#), and Chapter [39A](#);
- 22 (N) the requirement under Section 21.006 to  
23 report an educator's misconduct;
- 24 (O) intensive programs of instruction under  
25 Section [28.0213](#);
- 26 (P) the right of a school employee to report a  
27 crime, as provided by Section [37.148](#);

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

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

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

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

12 (U) establishment of residency under Section  
13 25.001;

14 (V) school safety requirements under Sections  
15 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.1141, 37.115,  
16 37.207, and 37.2071;

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

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

21 (Y) ~~(X)~~ parental options to retain a student  
22 under Section 28.02124;

23 (Z) educator certification requirements under  
24 Chapter 21; and

25 (AA) elementary class size limits under Section  
26 25.112.

27 SECTION 2. Section 12.1051, Education Code, is amended by

1 adding Subsection (c) to read as follows:

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

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

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

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

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

18 [~~(1) the product of:~~

19 [~~(A) the quotient of:~~

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

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

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

26 [~~(i) the total number of students in~~  
27 ~~average daily attendance in school districts that receive an~~



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

5           (4) specify:

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

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

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

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

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

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

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

8                   (6) specify the grade levels to be offered;

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

11                   (A) the officer positions designated;

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

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

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

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

20                   (F) whether the terms are to be staggered;

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

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

1 by each employee, and any relevant experience of each employee;

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

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

11 (12) describe the facilities to be used;

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

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

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

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

26 (a-1) Notwithstanding Subsection (a)(5), a charter granted  
27 under this subchapter may provide for the exclusion of a student



1 from an open-enrollment charter school campus that includes a  
2 child-care facility based on the student's conviction for a  
3 criminal offense that would preclude the student from being  
4 admitted to a school district campus that includes a child-care  
5 facility.

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

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

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

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

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

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

27 (1) after completing the second grade and before

1 entering the third grade; or

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

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

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

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

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

23 (1) the charter holder has been assigned the highest  
24 or second highest performance rating under Subchapter C, Chapter  
25 39, for the three preceding school years;

26 (2) the charter holder has been assigned a financial  
27 performance accountability rating under Subchapter D, Chapter 39,

1 indicating financial performance that is satisfactory or better for  
2 the three preceding school years; and

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

7 (c) At the end of the term of a charter for an  
8 open-enrollment charter school, if a charter holder submits to the  
9 commissioner a petition for renewal of the charter and the charter  
10 does not meet the criteria for expedited renewal under Subsection  
11 (b) or for expiration under Subsection (d) or if the commissioner  
12 denies expedited renewal under Subsection (b-1), the commissioner  
13 shall use the discretionary consideration process. The  
14 commissioner's decision under the discretionary consideration  
15 process must take into consideration the results of annual  
16 evaluations under the performance frameworks established under  
17 Section 12.1181. The renewal of the charter of an open-enrollment  
18 charter school that is registered under the agency's alternative  
19 education accountability procedures for evaluation under Chapter  
20 39 shall be considered under the discretionary consideration  
21 process regardless of the performance ratings under Subchapter C,  
22 Chapter 39, of the open-enrollment charter school or of any campus  
23 operating under the charter, except that if the charter holder has  
24 been assigned a financial accountability performance rating under  
25 Subchapter D, Chapter 39, indicating financial performance that is  
26 lower than satisfactory for any three of the five preceding school  
27 years, the commissioner shall allow the charter to expire under

1 Subsection (d). In considering the renewal of the charter of an  
2 open-enrollment charter school that is registered under the  
3 agency's alternative education accountability procedures for  
4 evaluation under Chapter 39, such as a dropout recovery school or a  
5 school providing education within a residential treatment  
6 facility, the commissioner shall use academic criteria established  
7 by commissioner rule that are appropriate to measure the specific  
8 goals of the school. The criteria established by the commissioner  
9 shall recognize growth in student achievement as well as  
10 educational attainment. For purposes of this subsection, the  
11 commissioner shall designate as a dropout recovery school an  
12 open-enrollment charter school or a campus of an open-enrollment  
13 charter school:

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

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

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

24 (a-1) An application required under Subsection (a) or any  
25 communication with the applicant or with the school in which the  
26 applicant is currently enrolled may not include a request for  
27 information regarding the applicant's discipline history except

1 for a disciplinary action described by Section 12.111(a)(5)(A) or a  
2 notice of disciplinary action under Section 37.022.

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

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

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

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

17 (3) the total number of members;

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

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

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

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

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

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

4 (b) An open-enrollment charter school may:

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

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

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

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

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

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

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

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

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

27 Sec. 12.138. ELECTIONEERING PROHIBITED. Notwithstanding

1 any other law, the governing body or a member of the governing body  
2 of an open-enrollment charter school or an employee or contractor  
3 of an open-enrollment charter school may not use state or local  
4 funds or other resources of the school to electioneer for or against  
5 any candidate, measure, or political party.

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

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

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

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

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

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

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

24 (d) It is an affirmative defense to prosecution for an  
25 offense under this section or the imposition of a civil penalty for  
26 conduct under this section that an officer or employee of a  
27 political subdivision or open-enrollment charter school reasonably

1 relied on a court order or an interpretation of this section in a  
2 written opinion issued by:

- 3 (1) a court of record;
- 4 (2) the attorney general; or
- 5 (3) the commission.

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

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

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

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

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

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

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



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

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

7           (2) "Local governmental entity" means:  
8           (A) a political subdivision of the state,  
9 including a~~+~~  
10           ~~(A)~~ county, ~~+~~  
11           ~~(B)~~ municipality, ~~+~~  
12           ~~(C) public~~ school district, ~~+~~ or  
13           ~~(D)~~ special-purpose district or authority; or  
14           (B) an open-enrollment charter school.

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

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

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

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

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

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