

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 28
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Education
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1995, the 74th Legislature passed legislation to allow public charter schools to operate in Texas. Since then, public charter schools have served an increasing number of students across the state as part of the Texas public education system. However, numerous barriers remain, impeding the establishment of new charter schools to keep up with the growing needs of Texas families.

One major problem that has come to light is, while traditional school districts enjoy statutory exemptions from oft-burdensome and costly zoning, permitting, and land use regulations and fees, these existing statutes lack sufficient clarity to explicitly include public, open-enrollment charter schools in these exemptions.

Examples of this issue have resulted in local governments lacking the political will to: create reduced speed limit "school zones" on roads adjacent to charter schools; waive requirements for charter campuses in dense, urban areas, to have large areas of greenspace typically associated with traditional school district campuses; and waive tens of thousands of dollars in fees for charter schools that are routinely waived for traditional school districts — funding which could have been used in the classroom.

Additionally, the current approval process for new charter applications is wrought with further obstacles for much-needed additional charter school applications. For instance, the State Board of Education (SBOE) maintains veto power over charter school applications, regardless of whether the applicant meets the Texas Education Agency's (TEA) rigorous vetting standards. SBOE has vetoed seven high-impact charter schools to date, four of those in the last four years.

C.S.S.B. 28 provides the statutory clarity that public charter schools must be afforded equal treatment under local zoning and land use ordinances, regulations, and fees. It prevents local entities from prohibiting charter schools being built on specific properties within the jurisdiction.

C.S.S.B. 28 also adds:

- SBOE may veto new open-enrollment charters with a supermajority vote of 10 members.
- Provisions that SBOE may veto new open-enrollment charters for the following:
 - Sufficient staffing for special education and bilingual students;
 - Alignment of proposed curriculum with the Texas Essential Knowledge and Skills (TEKS);
 - Any issues with proposed charter leadership in conflict-of-interest or nepotism issues;
 - Any issues with the proposed charter applicant in academic or financial actions that led to a school closure or revocation;
 - Any issues with transparency or truthfulness in application.

C.S.S.B. 28 amends current law relating to the approval of open-enrollment charter schools and the applicability of certain state and local laws to open-enrollment charter schools.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.101(b-0), Education Code, as follows:

(b-0) Provides that the commissioner of education's (commissioner) proposal to grant a charter for an open-enrollment charter school takes effect unless, before the 90th day after the date on which the State Board of Education (SBOE) receives the notice from the commissioner, 10 SBOE members present and voting, rather than a majority of SBOE members present and voting, vote against the grant of that charter. Provides that, for each charter the commissioner proposes to grant, SBOE is limited to consideration of the following:

(1) the staffing proposed under the charter for special education programs under Subchapter A (Special Education Program), Chapter 29 (Educational Program), and for bilingual education and special language programs under Subchapter B (Bilingual Education and Special Language Programs), Chapter 29;

(2) the alignment of proposed curriculum with the essential knowledge and skills adopted under Subchapter A (Essential Knowledge and Skills; Curriculum), Chapter 28 (Courses of Study; Advancement);

(3) any prior issues involving the applicant related to open-enrollment charter school or campus operations, student performance and academic accountability, or fiscal management that led to the closure of an open-enrollment charter school, the suspension of the authority of an open-enrollment charter school to operate, or the revocation of a charter;

(4) any issues involving the applicant related to:

(A) a violation or potential violation of applicable state or local conflict-of-interest requirements; or

(B) a violation or potential violation of Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, involving prohibited nepotism between an individual serving the eligible entity and an individual proposed to serve on the governing body of an open-enrollment charter school to be operated under the charter, or between an individual serving the eligible entity and an individual proposed to serve at the management company for an open-enrollment charter school to be operated under the charter; and

(5) any issues involving lack of transparency or truthfulness in the application for the charter.

SECTION 2. Amends Section 12.1058, Education Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that, notwithstanding certain subsections, an open-enrollment charter school operated by a tax exempt entity as described by Section 12.101(a)(3) (relating to defining "eligible entity" to include certain tax exempt organizations) is not considered to be a political subdivision, local government, or local governmental entity unless certain criteria are met, including if a statute, rather than the applicable statute, specifically states that the statute applies to an open-enrollment charter school.

(d) Requires a municipality, county, special purpose district, or political subdivision, except as provided by Section 12.103(c) (relating to a provision that a campus of an open-enrollment charter school located in certain municipalities is not subject to the

municipal zoning ordinances governing public schools), to consider an open-enrollment charter school a school district for purposes of zoning, permitting, plat approvals, fees or other assessments, construction or site development work, code compliance, development, and any municipality, county, special purpose district, or political subdivision approval in the same manner and following the same timelines as if the charter school were a school district or state-owned facility located in that local government's jurisdiction.

SECTION 3. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1102, as follows:

Sec. 12.1102. APPEAL OF APPLICATION SELECTION DETERMINATION.

(a) Provides that this section applies only if the charter application selection process includes scoring criteria and procedures for use of the criteria by an external application review panel selected by the commissioner, and selection criteria that include the minimum score necessary for an applicant to be eligible for selection.

(b) Requires SBOE to adopt procedures for the appeal of an application selection determination made based on the submission of an application under a process described by Subsection (a).

(c) Requires that the procedures adopted under this section provide for an applicant who scores within 10 percentage points of the minimum score necessary for an applicant to be eligible for selection to appeal to SBOE a score determined by the external application review panel.

(d) Provides that the determination of SBOE in an appeal under the procedures adopted under this section is final.

(e) Requires the commissioner, if the charter applicant prevails in an appeal to SBOE, to consider the applicant's application.

SECTION 4. Amends Section 212.902, Local Government Code, as follows:

Sec. 212.902. New heading: SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL LAND DEVELOPMENT STANDARDS. (a) Provides that this section applies to an agreement between a school district or open-enrollment charter school and a municipality which has annexed territory for limited purposes, rather than agreements between school districts and any municipality which has annexed territory for limited purposes.

(b)-(d) Makes conforming changes to these subsections.

(e) Redefines "land development standards" and defines "open-enrollment charter school." Makes nonsubstantive changes.

(f) Makes a conforming change to this subsection.

SECTION 5. Amends Chapter 250, Local Government Code, by adding Section 250.012, as follows:

Sec. 250.012. REGULATION OF OPEN-ENROLLMENT CHARTER SCHOOLS. (a) Defines "local governmental entity" and "open-enrollment charter school."

(b) Prohibits a local governmental entity from enacting or enforcing an ordinance, order, regulation, resolution, rule, or policy or taking action that prohibits an open-enrollment charter school from operating a public school campus, educational support facility, or administrative office in the local governmental entity's jurisdiction or on any specific property in the jurisdiction of the local governmental entity.

(c) Provides that the commissioner has exclusive jurisdiction over the establishment and location of an open-enrollment charter school campus as provided by Subchapter D (Open-Enrollment Charter School), Chapter 12 (Charters), Education Code.

(d) Provides that this section applies to property purchased or leased with state funds received by an open-enrollment charter school under Section 12.128 (Property Purchased or Leased with State Funds), Education Code.

(e) Provides that this section does not affect the authority granted by state law to a local governmental entity to regulate an open-enrollment charter school.

SECTION 6. Amends Section 395.022(b), Local Government Code, as follows:

(b) Provides that a school district and an open-enrollment charter school are, rather than a school district is, not required to pay impact fees imposed under Chapter 395 (Financing Capital Improvements Required by New Development in Municipalities, Counties, and Certain Other Local Governments) unless the board of trustees of the district or the governing body of the charter school consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. Makes conforming changes.

SECTION 7. Amends Section 552.053, Local Government Code, by amending Subsection (b) and adding Subsections (b-1) and (b-2), as follows:

(b) Provides that that the following may be exempt from Subchapter C (Municipal Drainage Utility Systems) and all ordinances, resolutions, and rules adopted under Subchapter C:

(1) and (2) makes no changes to these subdivisions;

(3) makes a nonsubstantive change to this subdivision; or

(4) school districts and open-enrollment charter schools, rather than a school district.

(b-1) Requires that the exemption, for purposes of an exemption granted under Subsection (b)(4), be granted to both school districts and open-enrollment charter schools.

(b-2) Defines "open-enrollment charter school" for purposes of Section 552.053 (Exemptions).

SECTION 8. Requires SBOE, as soon as practicable after the effective date of this Act, to adopt procedures for the appeal of an application selection determination as provided by Section 12.1102, Education Code, as added by this Act.

SECTION 9. Provides that an exemption granted to a school district under Section 552.053(b)(4), Local Government Code, as that section existed before the effective date of this Act, automatically extends to all open-enrollment charter schools located in the municipality after the effective date of this Act unless the municipality repeals the exemption before the effective date of this Act.

SECTION 10. Effective date: upon passage or September 1, 2021.