By:  Bettencourt, et al. S.B. No. 28

A BILL TO BE ENTITLED

AN ACT

relating to the approval of open-enrollment charter schools and the applicability of certain state and local laws to open-enrollment charter schools.

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

SECTION 1.  Section 12.101(b-0), Education Code, is amended to read as follows:

(b-0)  The commissioner shall notify the State Board of Education of each charter the commissioner proposes to grant under this subchapter. Unless, before the 90th day after the date on which the board receives the notice from the commissioner, 9 [~~a majority of the~~] members of the board present and voting vote against the grant of that charter, the commissioner's proposal to grant the charter takes effect. The board may not deliberate or vote on any grant of a charter that is not proposed by the commissioner. For each charter the commissioner proposes to grant, the board is limited to consideration of the following:

(1)  the staffing proposed under the charter for:

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

(B)  bilingual education and special language programs under Subchapter B, Chapter 29;

(2)  the alignment of proposed curriculum with the essential knowledge and skills adopted under Subchapter A, Chapter 28;

(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, Government Code, involving prohibited nepotism between an individual serving the eligible entity and:

(i)  an individual proposed to serve on the governing body of an open-enrollment charter school to be operated under the charter; or

(ii)  an individual proposed to serve at the management company for an open-enrollment charter school to be operated under the charter;

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

(6)  evidence that:

(A)  the recruitment policies of the open-enrollment charter school or campus encourage special education students to apply and the admission and enrollment of special education students at the school or campus is not limited;

(B)  the proposed leadership of the open-enrollment charter school or campus has a record of prior performance that demonstrates improvement in school and campus operations, academic and fiscal management, and student performance;

(C)  the proposed budget of the open-enrollment charter school or campus includes sufficient funding to support the academic programs, support services, and staffing included in the application; and

(D)  the fiduciary responsibilities and decisions of the open-enrollment charter school or campus are executed by the governing body of the charter school.

SECTION 2.  Section 12.1058, Education Code, is amended by amending Subsection (c) and adding Subsections (d), (d-1), (d-2), and (d-3) to read as follows:

(c)  Notwithstanding Subsection (a) or (b), an open-enrollment charter school operated by a tax exempt entity as described by Section 12.101(a)(3) is not considered to be a political subdivision, local government, or local governmental entity unless:

(1)  a [~~the applicable~~] statute specifically states that the statute applies to an open-enrollment charter school; or

(2)  a provision in this chapter states that a specific statute applies to an open-enrollment charter school.

(d)  Except as provided by Section 12.103(c), a political subdivision shall consider an open-enrollment charter school a school district for purposes of zoning, project permitting, platting and replatting processes, business licensing, franchises, utility services, eminent domain, signage, subdivision regulation, property development projects, the requirements for posting bonds or securities, contract requirements, land development standards as provided by Section 212.902, Local Government Code, tree and vegetation regulations, regulations of architectural features of a structure, construction of fences, landscaping, garbage disposal, noise levels, fees or other assessments, and construction or site development work. An open-enrollment charter school does not have the power of eminent domain.

(d-1)  A political subdivision may not take any action that prohibits an open-enrollment charter school from operating a public school campus, educational support facility, athletic facility, or administrative office within the political subdivision's jurisdiction or on any specific property located within the jurisdiction of the political subdivision that it could not take against a school district. A political subdivision shall grant approval in the same manner and follow the same timelines as if the charter school were a school district located in that political subdivision's jurisdiction.

(d-2)  This section applies to both owned and leased property of the open-enrollment charter school under Section 12.128.

(d-3)  Except as provided by this section, this section does not affect the authority granted by state law to a political subdivision to regulate an open-enrollment charter school regarding health and safety ordinances.

SECTION 3.  Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1102 to read as follows:

Sec. 12.1102.  APPEAL OF APPLICATION SELECTION DETERMINATION. (a)  This section applies only if the charter application selection process includes:

(1)  scoring criteria and procedures for use of the criteria by an external application review panel selected by the commissioner; and

(2)  selection criteria that include the minimum score necessary for an applicant to be eligible for selection.

(b)  The State Board of Education shall 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)  The procedures adopted under this section must 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 the State Board of Education a score determined by the external application review panel.

(d)  The determination of the State Board of Education in an appeal under the procedures adopted under this section is final.

(e)  If the charter applicant prevails in an appeal to the State Board of Education, the commissioner shall consider the applicant's application.

SECTION 4.  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 authority; or

(B)  an open-enrollment charter school.

SECTION 5.  Section 212.902, Local Government Code, is amended to read as follows:

Sec. 212.902.  SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL LAND DEVELOPMENT STANDARDS. (a)  This section applies to an agreement [~~agreements~~] between a school district or open-enrollment charter school [~~districts~~] and a [~~any~~] municipality which has annexed territory for limited purposes.

(b)  On request by a school district or open-enrollment charter school, a municipality shall enter an agreement with the board of trustees of the school district or the governing body of the open-enrollment charter school to establish review fees, review periods, and land development standards ordinances and to provide alternative water pollution control methodologies for school buildings constructed by the school district or open-enrollment charter school. The agreement shall include a provision exempting the district or charter school from all land development ordinances in cases where the district or charter school is adding temporary classroom buildings on an existing school campus.

(c)  If the municipality and the school district or open-enrollment charter school do not reach an agreement on or before the 120th day after the date on which the municipality receives the district's or charter school's request for an agreement, proposed agreements by the [~~school~~] district or charter school and the municipality shall be submitted to an independent arbitrator appointed by the presiding district judge whose jurisdiction includes the [~~school~~] district or charter school. The arbitrator shall, after a hearing at which both the [~~school~~] district or charter school and the municipality make presentations on their proposed agreements, prepare an agreement resolving any differences between the proposals. The agreement prepared by the arbitrator will be final and binding upon both the [~~school~~] district or charter school and the municipality. The cost of the arbitration proceeding shall be borne equally by the [~~school~~] district or charter school and the municipality.

(d)  A school district or open-enrollment charter school that requests an agreement under this section, at the time the district or charter school [~~it~~] makes the request, shall send a copy of the request to the commissioner of education. At the end of the 120-day period, the requesting district or charter school shall report to the commissioner the status or result of negotiations with the municipality. A municipality may send a separate status report to the commissioner. The district or charter school shall send to the commissioner a copy of each agreement between the district or charter school and a municipality under this section.

(e)  In this section:

(1)  [~~,~~] "Land [~~land~~] development standards" includes impervious cover limitations, building setbacks, floor to area ratios, building heights and coverage, water quality controls, landscaping, development setbacks, compatibility standards, traffic analyses including traffic impact analyses, vehicle queuing, parking requirements, signage requirements, and driveway cuts, if applicable.

(2)  "Open-enrollment charter school" means a school granted a charter under Subchapter C, D, or E, Chapter 12, Education Code.

(f)  Nothing in this section shall be construed to limit the applicability of or waive fees for fire, safety, health, or building code ordinances of the municipality prior to or during construction of school buildings, nor shall any agreement waive any fee or modify any ordinance of a municipality for an administration, service, or athletic facility proposed for construction by a school district or open-enrollment charter school.

SECTION 6.  Chapter 250, Local Government Code, is amended by adding Section 250.012 to read as follows:

Sec. 250.012.  REGULATION OF OPEN-ENROLLMENT CHARTER SCHOOLS. (a)  In this section:

(1)  "Local governmental entity" means a political subdivision of the state, including a:

(A)  municipality;

(B)  county; and

(C)  special purpose district.

(2)  "Open-enrollment charter school" means a school granted a charter under Subchapter D or E, Chapter 12, Education Code.

(b)  A local governmental entity may not enact or enforce an ordinance, order, regulation, resolution, rule, or policy or take 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)  The commissioner of education has exclusive jurisdiction over the establishment and location of an open-enrollment charter school campus as provided by Subchapter D, Chapter 12, Education Code.

(d)  This section applies to property purchased or leased with state funds received by an open-enrollment charter school under Section 12.128, Education Code.

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

SECTION 7.  Section 395.022(b), Local Government Code, is amended to read as follows:

(b)  A school district and an open-enrollment charter school are [~~is~~] not required to pay impact fees imposed under this chapter 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. The contract may contain terms the board of trustees or governing body considers advisable to provide for the payment of the fees. This section applies only to an open-enrollment charter school campus constructed on land that:

(1)  is owned by the charter holder or the charter holder's parent nonprofit entity; and

(2)  does not include any other uses.

SECTION 8.  Section 552.053, Local Government Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows:

(b)  The following may be exempt:

(1)  this state;

(2)  a county;

(3)  a municipality; or

(4)  [~~a~~] school districts and open-enrollment charter schools [~~district~~].

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

(b-2)  For purposes of this section, "open-enrollment charter school" means a school granted a charter under Subchapter D or E, Chapter 12, Education Code.

SECTION 9.  As soon as practicable after the effective date of this Act, the State Board of Education shall adopt procedures for the appeal of an application selection determination as provided by Section 12.1102, Education Code, as added by this Act.

SECTION 10.  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 11.  This Act takes effect immediately 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 immediate effect, this Act takes effect September 1, 2021.