

1-1 By: Bettencourt, et al. S.B. No. 28  
 1-2 (In the Senate - Filed March 11, 2021; March 11, 2021, read  
 1-3 first time and referred to Committee on Education; April 6, 2021,  
 1-4 reported adversely, with favorable Committee Substitute by the  
 1-5 following vote: Yeas 6, Nays 3; April 6, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Taylor	X			
1-8 Lucio	X			
1-9 Bettencourt	X			
1-10 Hall			X	
1-11 Hughes			X	
1-12 Menéndez		X		
1-13 Paxton	X			
1-14 Perry	X			
1-15 Powell		X		
1-16 Schwertner	X			
1-17 West		X		

1-19 COMMITTEE SUBSTITUTE FOR S.B. No. 28 By: Bettencourt

1-20 A BILL TO BE ENTITLED  
 1-21 AN ACT

1-22 relating to the approval of open-enrollment charter schools and the  
 1-23 applicability of certain state and local laws to open-enrollment  
 1-24 charter schools.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 12.101(b-0), Education Code, is amended  
 1-27 to read as follows:

1-28 (b-0) The commissioner shall notify the State Board of  
 1-29 Education of each charter the commissioner proposes to grant under  
 1-30 this subchapter. Unless, before the 90th day after the date on  
 1-31 which the board receives the notice from the commissioner, 10 [~~a~~  
 1-32 ~~majority of the~~] members of the board present and voting vote  
 1-33 against the grant of that charter, the commissioner's proposal to  
 1-34 grant the charter takes effect. The board may not deliberate or  
 1-35 vote on any grant of a charter that is not proposed by the  
 1-36 commissioner. For each charter the commissioner proposes to grant,  
 1-37 the board is limited to consideration of the following:

1-38 (1) the staffing proposed under the charter for:

1-39 (A) special education programs under Subchapter  
 1-40 A, Chapter 29; and

1-41 (B) bilingual education and special language  
 1-42 programs under Subchapter B, Chapter 29;

1-43 (2) the alignment of proposed curriculum with the  
 1-44 essential knowledge and skills adopted under Subchapter A, Chapter  
 1-45 28;

1-46 (3) any prior issues involving the applicant related  
 1-47 to open-enrollment charter school or campus operations, student  
 1-48 performance and academic accountability, or fiscal management that  
 1-49 led to the closure of an open-enrollment charter school, the  
 1-50 suspension of the authority of an open-enrollment charter school to  
 1-51 operate, or the revocation of a charter;

1-52 (4) any issues involving the applicant related to:

1-53 (A) a violation or potential violation of  
 1-54 applicable state or local conflict-of-interest requirements; or

1-55 (B) a violation or potential violation of Chapter  
 1-56 573, Government Code, involving prohibited nepotism between an  
 1-57 individual serving the eligible entity and:

1-58 (i) an individual proposed to serve on the  
 1-59 governing body of an open-enrollment charter school to be operated  
 1-60 under the charter; or

2-1 (ii) an individual proposed to serve at the  
2-2 management company for an open-enrollment charter school to be  
2-3 operated under the charter; and

2-4 (5) any issues involving lack of transparency or  
2-5 truthfulness in the application for the charter.

2-6 SECTION 2. Section 12.1058, Education Code, is amended by  
2-7 amending Subsection (c) and adding Subsection (d) to read as  
2-8 follows:

2-9 (c) Notwithstanding Subsection (a) or (b), an  
2-10 open-enrollment charter school operated by a tax exempt entity as  
2-11 described by Section 12.101(a)(3) is not considered to be a  
2-12 political subdivision, local government, or local governmental  
2-13 entity unless:

2-14 (1) a [the applicable] statute specifically states  
2-15 that the statute applies to an open-enrollment charter school; or

2-16 (2) a provision in this chapter states that a specific  
2-17 statute applies to an open-enrollment charter school.

2-18 (d) Except as provided by Section 12.103(c), a  
2-19 municipality, county, special purpose district, or political  
2-20 subdivision shall consider an open-enrollment charter school a  
2-21 school district for purposes of zoning, permitting, plat approvals,  
2-22 fees or other assessments, construction or site development work,  
2-23 code compliance, development, and any municipality, county,  
2-24 special purpose district, or political subdivision approval in the  
2-25 same manner and following the same timelines as if the charter  
2-26 school were a school district or state-owned facility located in  
2-27 that local government's jurisdiction.

2-28 SECTION 3. Subchapter D, Chapter 12, Education Code, is  
2-29 amended by adding Section 12.1102 to read as follows:

2-30 Sec. 12.1102. APPEAL OF APPLICATION SELECTION

2-31 DETERMINATION. (a) This section applies only if the charter  
2-32 application selection process includes:

2-33 (1) scoring criteria and procedures for use of the  
2-34 criteria by an external application review panel selected by the  
2-35 commissioner; and

2-36 (2) selection criteria that include the minimum score  
2-37 necessary for an applicant to be eligible for selection.

2-38 (b) The State Board of Education shall adopt procedures for  
2-39 the appeal of an application selection determination made based on  
2-40 the submission of an application under a process described by  
2-41 Subsection (a).

2-42 (c) The procedures adopted under this section must provide  
2-43 for an applicant who scores within 10 percentage points of the  
2-44 minimum score necessary for an applicant to be eligible for  
2-45 selection to appeal to the State Board of Education a score  
2-46 determined by the external application review panel.

2-47 (d) The determination of the State Board of Education in an  
2-48 appeal under the procedures adopted under this section is final.

2-49 (e) If the charter applicant prevails in an appeal to the  
2-50 State Board of Education, the commissioner shall consider the  
2-51 applicant's application.

2-52 SECTION 4. Section 212.902, Local Government Code, is  
2-53 amended to read as follows:

2-54 Sec. 212.902. SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER  
2-55 SCHOOL LAND DEVELOPMENT STANDARDS. (a) This section applies to an  
2-56 agreement [agreements] between a school district or  
2-57 open-enrollment charter school [districts] and a [any]  
2-58 municipality which has annexed territory for limited purposes.

2-59 (b) On request by a school district or open-enrollment  
2-60 charter school, a municipality shall enter an agreement with the  
2-61 board of trustees of the school district or the governing body of  
2-62 the open-enrollment charter school to establish review fees, review  
2-63 periods, and land development standards ordinances and to provide  
2-64 alternative water pollution control methodologies for school  
2-65 buildings constructed by the school district or open-enrollment  
2-66 charter school. The agreement shall include a provision exempting  
2-67 the district or charter school from all land development ordinances  
2-68 in cases where the district or charter school is adding temporary  
2-69 classroom buildings on an existing school campus.

3-1 (c) If the municipality and the school district or  
 3-2 open-enrollment charter school do not reach an agreement on or  
 3-3 before the 120th day after the date on which the municipality  
 3-4 receives the district's or charter school's request for an  
 3-5 agreement, proposed agreements by the [~~school~~] district or charter  
 3-6 school and the municipality shall be submitted to an independent  
 3-7 arbitrator appointed by the presiding district judge whose  
 3-8 jurisdiction includes the [~~school~~] district or charter school. The  
 3-9 arbitrator shall, after a hearing at which both the [~~school~~]  
 3-10 district or charter school and the municipality make presentations  
 3-11 on their proposed agreements, prepare an agreement resolving any  
 3-12 differences between the proposals. The agreement prepared by the  
 3-13 arbitrator will be final and binding upon both the [~~school~~]  
 3-14 district or charter school and the municipality. The cost of the  
 3-15 arbitration proceeding shall be borne equally by the [~~school~~]  
 3-16 district or charter school and the municipality.

3-17 (d) A school district or open-enrollment charter school  
 3-18 that requests an agreement under this section, at the time the  
 3-19 district or charter school [~~it~~] makes the request, shall send a copy  
 3-20 of the request to the commissioner of education. At the end of the  
 3-21 120-day period, the requesting district or charter school shall  
 3-22 report to the commissioner the status or result of negotiations  
 3-23 with the municipality. A municipality may send a separate status  
 3-24 report to the commissioner. The district or charter school shall  
 3-25 send to the commissioner a copy of each agreement between the  
 3-26 district or charter school and a municipality under this section.

3-27 (e) In this section:

3-28 (1) [~~7~~] "Land [~~land~~] development standards" includes  
 3-29 impervious cover limitations, building setbacks, floor to area  
 3-30 ratios, building heights and coverage, water quality controls,  
 3-31 landscaping, development setbacks, compatibility standards,  
 3-32 traffic analyses including traffic impact analyses, vehicle  
 3-33 queuing, parking requirements, signage requirements, and driveway  
 3-34 cuts, if applicable.

3-35 (2) "Open-enrollment charter school" means a school  
 3-36 granted a charter under Subchapter D or E, Chapter 12, Education  
 3-37 Code.

3-38 (f) Nothing in this section shall be construed to limit the  
 3-39 applicability of or waive fees for fire, safety, health, or  
 3-40 building code ordinances of the municipality prior to or during  
 3-41 construction of school buildings, nor shall any agreement waive any  
 3-42 fee or modify any ordinance of a municipality for an  
 3-43 administration, service, or athletic facility proposed for  
 3-44 construction by a school district or open-enrollment charter  
 3-45 school.

3-46 SECTION 5. Chapter 250, Local Government Code, is amended  
 3-47 by adding Section 250.012 to read as follows:

3-48 Sec. 250.012. REGULATION OF OPEN-ENROLLMENT CHARTER  
 3-49 SCHOOLS. (a) In this section:

3-50 (1) "Local governmental entity" means a political  
 3-51 subdivision of the state, including a:

3-52 (A) municipality;

3-53 (B) county; and

3-54 (C) special purpose district.

3-55 (2) "Open-enrollment charter school" means a school  
 3-56 granted a charter under Subchapter D or E, Chapter 12, Education  
 3-57 Code.

3-58 (b) A local governmental entity may not enact or enforce an  
 3-59 ordinance, order, regulation, resolution, rule, or policy or take  
 3-60 action that prohibits an open-enrollment charter school from  
 3-61 operating a public school campus, educational support facility, or  
 3-62 administrative office in the local governmental entity's  
 3-63 jurisdiction or on any specific property in the jurisdiction of the  
 3-64 local governmental entity.

3-65 (c) The commissioner of education has exclusive  
 3-66 jurisdiction over the establishment and location of an  
 3-67 open-enrollment charter school campus as provided by Subchapter D,  
 3-68 Chapter 12, Education Code.

3-69 (d) This section applies to property purchased or leased

4-1 with state funds received by an open-enrollment charter school  
4-2 under Section 12.128, Education Code.

4-3 (e) This section does not affect the authority granted by  
4-4 state law to a local governmental entity to regulate an  
4-5 open-enrollment charter school.

4-6 SECTION 6. Section 395.022(b), Local Government Code, is  
4-7 amended to read as follows:

4-8 (b) A school district and an open-enrollment charter school  
4-9 are [is] not required to pay impact fees imposed under this chapter  
4-10 unless the board of trustees of the district or the governing body  
4-11 of the charter school consents to the payment of the fees by  
4-12 entering a contract with the political subdivision that imposes the  
4-13 fees. The contract may contain terms the board of trustees or  
4-14 governing body considers advisable to provide for the payment of  
4-15 the fees.

4-16 SECTION 7. Section 552.053, Local Government Code, is  
4-17 amended by amending Subsection (b) and adding Subsections (b-1) and  
4-18 (b-2) to read as follows:

4-19 (b) The following may be exempt:

- 4-20 (1) this state;
- 4-21 (2) a county;
- 4-22 (3) a municipality; or
- 4-23 (4) [~~a~~] school districts and open-enrollment charter  
4-24 schools [~~district~~].

4-25 (b-1) For purposes of an exemption granted under Subsection  
4-26 (b)(4), the exemption must be granted to both school districts and  
4-27 open-enrollment charter schools.

4-28 (b-2) For purposes of this section, "open-enrollment  
4-29 charter school" means a school granted a charter under Subchapter D  
4-30 or E, Chapter 12, Education Code.

4-31 SECTION 8. As soon as practicable after the effective date  
4-32 of this Act, the State Board of Education shall adopt procedures for  
4-33 the appeal of an application selection determination as provided by  
4-34 Section 12.1102, Education Code, as added by this Act.

4-35 SECTION 9. An exemption granted to a school district under  
4-36 Section 552.053(b)(4), Local Government Code, as that section  
4-37 existed before the effective date of this Act, automatically  
4-38 extends to all open-enrollment charter schools located in the  
4-39 municipality after the effective date of this Act unless the  
4-40 municipality repeals the exemption before the effective date of  
4-41 this Act.

4-42 SECTION 10. This Act takes effect immediately if it  
4-43 receives a vote of two-thirds of all the members elected to each  
4-44 house, as provided by Section 39, Article III, Texas Constitution.  
4-45 If this Act does not receive the vote necessary for immediate  
4-46 effect, this Act takes effect September 1, 2021.

4-47 \* \* \* \* \*