

By: Lucio

S.B. No. 1081

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 amended by  
6 Chapters 262 (H.B. 1597), 464 (S.B. 11), 467 (H.B. 4170), and 943  
7 (H.B. 3), Acts of the 86th Legislature, Regular Session, 2019, is  
8 reenacted and amended to read as follows:

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

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

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

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

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

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

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

24 (D) accelerated instruction under Section

- 1 28.0211;
- 2 (E) high school graduation requirements under
- 3 Section 28.025;
- 4 (F) special education programs under Subchapter
- 5 A, Chapter 29;
- 6 (G) bilingual education under Subchapter B,
- 7 Chapter 29;
- 8 (H) prekindergarten programs under Subchapter E
- 9 or E-1, Chapter 29;
- 10 (I) extracurricular activities under Section
- 11 33.081;
- 12 (J) discipline management practices or behavior
- 13 management techniques under Sections [~~Section~~] 37.0021, 37.0023,
- 14 and 37.004;
- 15 (K) health and safety under Chapter 38;
- 16 (L) public school accountability under
- 17 Subchapters B, C, D, F, G, and J, Chapter 39, and Chapter 39A;
- 18 (M) the requirement under Section 21.006 to
- 19 report an educator's misconduct;
- 20 (N) intensive programs of instruction under
- 21 Section 28.0213;
- 22 (O) the right of a school employee to report a
- 23 crime, as provided by Section 37.148;
- 24 (P) bullying prevention policies and procedures
- 25 under Section 37.0832;
- 26 (Q) the right of a school under Section 37.0052
- 27 to place a student who has engaged in certain bullying behavior in a

1 disciplinary alternative education program or to expel the student;

2 (R) the right under Section 37.0151 to report to  
3 local law enforcement certain conduct constituting assault or  
4 harassment;

5 (S) a parent's right to information regarding the  
6 provision of assistance for learning difficulties to the parent's  
7 child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d);

8 (T) establishment of residency under Section  
9 25.001*i*;

10 (U) [~~(T)~~] school safety requirements under  
11 Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.115,  
12 37.207, and 37.2071*i*;

13 (V) [~~(T)~~] the early childhood literacy and  
14 mathematics proficiency plans under Section 11.185; [~~and~~]

15 (W) [~~(U)~~] the college, career, and military  
16 readiness plans under Section 11.186*i*;

17 (X) educator certification requirements under  
18 Chapter 21; and

19 (Y) elementary class size limits under Section  
20 25.112.

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

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

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

27 (2) in the manner prescribed by Section 551.128,

1 Government Code, broadcast the open meeting over the Internet if  
2 the school includes campuses that are located in noncontiguous  
3 municipalities.

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

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

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

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

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

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

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

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

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

25 [~~(2) \$125].~~

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

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

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

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

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

15       (a) Each charter granted under this subchapter must:

16               (1) describe the educational program to be offered,  
17 which must include the required curriculum as provided by Section  
18 28.002;

19               (2) provide that continuation of the charter is  
20 contingent on the status of the charter as determined under Section  
21 12.1141 or 12.115 or under Chapter 39A;

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

26               (4) specify:

27                       (A) any basis, in addition to a basis specified

1 by this subchapter or Chapter 39A, on which the charter may be  
2 revoked, renewal of the charter may be denied, or the charter may be  
3 allowed to expire; and

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

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

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

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

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

26 (B) provide for an admission policy that requires  
27 a student to demonstrate artistic ability if the school specializes

1 in performing arts;

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

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

5 (A) the officer positions designated;

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

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

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

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

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

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

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

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

25 (11) describe the manner in which an annual audit of  
26 the financial and programmatic operations of the program is to be  
27 conducted, including the manner in which the person providing the

1 program will provide information necessary for the school district  
2 in which the program is located to participate, as required by this  
3 code or by commissioner rule, in the Public Education Information  
4 Management System (PEIMS);

5 (12) describe the facilities to be used;

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

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

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

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

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

27 SECTION 6. Section [12.1141](#), Education Code, is amended by



1 amending Subsections (a), (b), and (c) and adding Subsections  
2 (a-1), (a-2), (a-3), and (b-1) to read as follows:

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

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

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

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

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

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

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

26 (a-3) To renew a charter at the end of the term, the charter  
27 holder must submit a petition for renewal to the commissioner in the

1 time and manner established by commissioner rule.

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

11 (1) the charter holder has been assigned the highest  
12 or second highest performance rating under Subchapter C, Chapter  
13 39, for the three preceding school years;

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

18 (3) no campus operating under the charter has been  
19 assigned the lowest performance rating under Subchapter C, Chapter  
20 39, for the three preceding school years or such a campus has been  
21 closed.

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

26 (c) At the end of the term of a charter for an  
27 open-enrollment charter school, if a charter holder submits to the

1 commissioner a petition for renewal of the charter and the charter  
2 does not meet the criteria for expedited renewal under Subsection  
3 (b) or for expiration under Subsection (d) or if the commissioner  
4 denies expedited renewal under Subsection (b-1), the commissioner  
5 shall use the discretionary consideration process. The  
6 commissioner's decision under the discretionary consideration  
7 process must take into consideration the results of annual  
8 evaluations under the performance frameworks established under  
9 Section 12.1181. The renewal of the charter of an open-enrollment  
10 charter school that is registered under the agency's alternative  
11 education accountability procedures for evaluation under Chapter  
12 39 shall be considered under the discretionary consideration  
13 process regardless of the performance ratings under Subchapter C,  
14 Chapter 39, of the open-enrollment charter school or of any campus  
15 operating under the charter, except that if the charter holder has  
16 been assigned a financial accountability performance rating under  
17 Subchapter D, Chapter 39, indicating financial performance that is  
18 lower than satisfactory for any three of the five preceding school  
19 years, the commissioner shall allow the charter to expire under  
20 Subsection (d). In considering the renewal of the charter of an  
21 open-enrollment charter school that is registered under the  
22 agency's alternative education accountability procedures for  
23 evaluation under Chapter 39, such as a dropout recovery school or a  
24 school providing education within a residential treatment  
25 facility, the commissioner shall use academic criteria established  
26 by commissioner rule that are appropriate to measure the specific  
27 goals of the school. The criteria established by the commissioner

1 shall recognize growth in student achievement as well as  
2 educational attainment. For purposes of this subsection, the  
3 commissioner shall designate as a dropout recovery school an  
4 open-enrollment charter school or a campus of an open-enrollment  
5 charter school:

6 (1) that serves students in grades 9 through 12 and has  
7 an enrollment of which at least 50 percent of the students are 17  
8 years of age or older as of September 1 of the school year as  
9 reported for the fall semester Public Education Information  
10 Management System (PEIMS) submission; and

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

14 SECTION 7. Section [12.117](#), Education Code, is amended by  
15 adding Subsection (a-1) to read as follows:

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

22 SECTION 8. Section [12.1211](#), Education Code, is amended to  
23 read as follows:

24 Sec. 12.1211. INFORMATION REGARDING [~~NAMES OF~~] MEMBERS OF  
25 GOVERNING BODY LISTED ON WEBSITE. An open-enrollment charter  
26 school shall list the names of the members of the governing body on  
27 the home page of the school's Internet website and provide

1 additional information regarding members of the governing body that  
2 is easily accessible on the website, including:

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

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

9 (3) the total number of members;

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

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

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

15 SECTION 9. The heading to Section 12.131, Education Code,  
16 is amended to read as follows:

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

20 SECTION 10. Section 12.131, Education Code, is amended by  
21 amending Subsection (b) and adding Subsections (b-1), (d), (e), and  
22 (f) to read as follows:

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

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

26 (2) only [not elect to] expel a student for a reason  
27 for which expulsion [that] is [not] authorized under Subchapter A,

1 Chapter 37, [by Section 37.007] or [specified in] the school's code  
2 of conduct [as conduct that may result in expulsion].

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

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

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

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

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

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

17 SECTION 11. Subchapter D, Chapter 12, Education Code, is  
18 amended by adding Section 12.138 to read as follows:

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

25 SECTION 12. Chapter 255, Election Code, is amended by  
26 adding Section 255.0011 to read as follows:

27 Sec. 255.0011. OPEN-ENROLLMENT CHARTER SCHOOLS. In this

1 chapter, "open-enrollment charter school" has the meaning assigned  
2 by Section 5.001, Education Code.

3 SECTION 13. Sections 255.003(a), (b-1), (d), and (e),  
4 Election Code, are amended to read as follows:

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

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

- 12 (1) the officer or employee knows is false; and  
13 (2) is sufficiently substantial and important as to be  
14 reasonably likely to influence a voter to vote for or against the  
15 measure.

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

- 22 (1) a court of record;  
23 (2) the attorney general; or  
24 (3) the commission.

25 (e) On written request of the governing body of a political  
26 subdivision or open-enrollment charter school that has ordered an  
27 election on a measure, the commission shall prepare an advance

1 written advisory opinion as to whether a particular communication  
2 relating to the measure does or does not comply with this section.

3 SECTION 14. Sections 255.0031(a) and (b), Election Code,  
4 are amended to read as follows:

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

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

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

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

18 SECTION 15. Section 255.0031(d)(1), Election Code, is  
19 amended to read as follows:

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

24 SECTION 16. Section 554.001(2), Government Code, is amended  
25 to read as follows:

26 (2) "Local governmental entity" means:

27 (A) a political subdivision of the state,



1 including a~~+~~  
2                                   ~~[(A)]~~ county~~,~~~~+~~  
3                                   ~~[(B)]~~ municipality~~,~~~~+~~  
4                                   ~~[(C) — public]~~ school district~~,~~~~+~~ or  
5                                   ~~[(D)]~~ special-purpose district or authority; or  
6                                   (B) an open-enrollment charter school.

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

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

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

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

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

25           SECTION 18. To the extent of any conflict, this Act prevails  
26 over another Act of the 87th Legislature, Regular Session, 2021,  
27 relating to nonsubstantive additions to and corrections in enacted

1 codes.

2 SECTION 19. This Act takes effect September 1, 2021.