

By: Klick

H.B. No. 4977

A BILL TO BE ENTITLED

AN ACT

relating to the operation of open-enrollment charter schools,  
including enrollment procedures and the applicability of certain  
laws to open-enrollment charter schools.

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

SECTION 1. The heading to Section 12.117, Education Code,  
is amended to read as follows:

Sec. 12.117. ADMISSION AND ENROLLMENT.

SECTION 2. Section 12.117, Education Code, is amended by  
amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3),  
and (b-1) to read as follows:

(a) For admission and enrollment to an open-enrollment  
charter school, the governing body of the school shall:

(1) require the applicant to complete and submit the  
common admission application form described by Section 12.1173 not  
later than a reasonable deadline the school establishes; and

(2) on receipt of more acceptable applications for  
admission under this section than available positions in a grade  
level or campus ~~[the school]~~:

(A) fill the available positions by lottery; or

(B) subject to Subsection (b), fill the available  
positions in the order in which applications received before the  
application deadline were received.

(a-1) An open-enrollment charter school that fills

available positions by lottery under Subsection (a)(2)(A) may use a weighted lottery that assigns weights to applicants so that an applicant's probability of admission increases if the applicant satisfies criteria selected by the school. The school may increase an applicant's probability of admission if the applicant is:

(1) eligible to participate in a special education program under Section 29.003;

(2) a student of limited English proficiency, as defined by Section 29.052; or

(3) educationally disadvantaged.

(a-2) The commissioner shall adopt rules regarding the implementation of a weighted lottery under Subsection (a-1), including rules that:

(1) establish the information an open-enrollment charter school may request an applicant to provide that is limited in scope to only the information necessary for the school to implement the lottery; and

(2) ensure compliance with:

(A) federal law regarding the confidentiality of student medical or educational information, including the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g); and

(B) any state law relating to the privacy of student information.

(a-3) An open-enrollment charter school that uses a weighted lottery under Subsection (a-1) shall:

1           (1) include in the school's admission and enrollment  
2 policy the information requested under Subsection (a-2)(1) that the  
3 school uses for the lottery;

4           (2) provide notice of the information requested of an  
5 applicant under Subsection (a-2)(1) only if the school receives  
6 more acceptable applications for admission than available  
7 positions in the school;

8           (3) clearly mark all information requested under  
9 Subdivision (2) as optional; and

10           (4) use any information provided by an applicant under  
11 Subdivision (2) only to determine if the applicant's probability of  
12 admission will increase in accordance with Subsection (a-1).

13           (b-1) An open-enrollment charter school shall make publicly  
14 available and post in a prominent and appropriate location on the  
15 school's public Internet website, if the school maintains a public  
16 Internet website, notice of the school's admission and enrollment  
17 policy, including:

18           (1) the method by which the school fills available  
19 positions in the school, including whether the school uses:

20                   (A) a lottery; or

21                   (B) a weighted lottery; and

22           (2) if the school fills available positions by  
23 weighted lottery under Subsection (a-1), the weights assigned to  
24 applicants under that subsection.

25           SECTION 3. Section [12.104](#), Education Code, is amended by  
26 amending Subsection (b) to read as follows:

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

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

3           (2) the provisions in Chapter 554, Government Code;  
4 and

5           (3) a prohibition, restriction, or requirement, as  
6 applicable, imposed by this title or a rule adopted under this  
7 title, relating to:

8                 (A) the Public Education Information Management  
9 System (PEIMS) to the extent necessary to monitor compliance with  
10 this subchapter as determined by the commissioner;

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

13                (C) reading instruments and accelerated reading  
14 instruction programs under Section 28.006;

15                (D) accelerated instruction under Section  
16 28.0211;

17                (E) high school graduation requirements under  
18 Section 28.025;

19                (F) special education programs under Subchapter  
20 A, Chapter 29;

21                (G) bilingual education under Subchapter B,  
22 Chapter 29;

23                (H) prekindergarten programs under Subchapter E  
24 or E-1, Chapter 29, except class size limits for prekindergarten  
25 classes imposed under Section 25.112, which do not apply;

26                (I) extracurricular activities under Section  
27 33.081;

1 (J) discipline management practices or behavior  
2 management techniques under Section 37.0021;

3 (K) health and safety under Chapter 38;

4 (L) the provisions of Subchapter A, Chapter 39;

5 (M) public school accountability and special  
6 investigations under Subchapters A, B, C, D, F, G, and J, Chapter  
7 39, and Chapter 39A;

8 (N) the requirement under Section 21.006 to  
9 report an educator's misconduct;

10 (O) intensive programs of instruction under  
11 Section 28.0213;

12 (P) the right of a school employee to report a  
13 crime, as provided by Section 37.148;

14 (Q) bullying prevention policies and procedures  
15 under Section 37.0832;

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

19 (S) the right under Section 37.0151 to report to  
20 local law enforcement certain conduct constituting assault or  
21 harassment;

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

25 (U) establishment of residency under Section  
26 25.001;

27 (V) school safety requirements under Sections

37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.1141, 37.115,  
37.207, and 37.2071;

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

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

(X) parental options to retain a student under  
Section 28.02124; and

(Y) technology and student information  
protection requirements under Chapter 32.

SECTION 4. Section 12.1058, Education Code, is amended by  
amending Subsection (c) and adding Subsections (d), (d-1), (d-2),  
(d-3), and (d-4) 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) 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, signage,  
subdivision regulation, property development projects, the

1 requirements for posting bonds or securities, contract  
2 requirements, land development standards as provided by Section  
3 212.902, Local Government Code, tree and vegetation regulations,  
4 regulations of architectural features of a structure, construction  
5 of fences, landscaping, garbage disposal, noise levels, fees or  
6 other assessments, and construction or site development work. An  
7 open-enrollment charter school does not have the power of eminent  
8 domain.

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

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

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

25       (d-4) In this section, "political subdivision" does not  
26 include a school district.

27       SECTION 5. Section 212.902, Local Government Code, is

1 amended to read as follows:

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

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

18       (c) If the municipality and the school district or  
19 open-enrollment charter school do not reach an agreement on or  
20 before the 120th day after the date on which the municipality  
21 receives the district's or charter school's request for an  
22 agreement, proposed agreements by the [~~school~~] district or charter  
23 school and the municipality shall be submitted to an independent  
24 arbitrator appointed by the presiding district judge whose  
25 jurisdiction includes the [~~school~~] district or charter school. The  
26 arbitrator shall, after a hearing at which both the [~~school~~]  
27 district or charter school and the municipality make presentations



1 on their proposed agreements, prepare an agreement resolving any  
2 differences between the proposals. The agreement prepared by the  
3 arbitrator will be final and binding upon both the [~~school~~]  
4 district or charter school and the municipality. The cost of the  
5 arbitration proceeding shall be borne equally by the [~~school~~]  
6 district or charter school and the municipality.

7 (d) A school district or open-enrollment charter school  
8 that requests an agreement under this section, at the time the  
9 district or charter school [~~it~~] makes the request, shall send a copy  
10 of the request to the commissioner of education. At the end of the  
11 120-day period, the requesting district or charter school shall  
12 report to the commissioner the status or result of negotiations  
13 with the municipality. A municipality may send a separate status  
14 report to the commissioner. The district or charter school shall  
15 send to the commissioner a copy of each agreement between the  
16 district or charter school and a municipality under this section.

17 (e) In this section:

18 (1) [~~7~~] "Land [~~land~~] development standards" includes  
19 impervious cover limitations, building setbacks, floor to area  
20 ratios, building heights and coverage, water quality controls,  
21 landscaping, development setbacks, compatibility standards,  
22 traffic analyses, including traffic impact analyses, parking  
23 requirements, signage requirements, and driveway cuts, if  
24 applicable.

25 (2) "Open-enrollment charter school" means a school  
26 granted a charter under Subchapter C, D, or E, Chapter 12, Education  
27 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. Section 552.053(b), Local Government Code, is amended 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]~~.

SECTION 7. Section 12.103(c), Education Code, is repealed.

SECTION 8. An exemption granted to a school district under Section 552.053(b)(4), Local Government Code, as that subdivision 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 7. 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

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1 Act does not receive the vote necessary for immediate effect, this  
2 Act takes effect September 1, 2023.