

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 127
By: Patrick
Education
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The intent of C.S.S.B. 127 is to address the establishment and operation of new charter schools in Texas.

C.S.S.B. 127 amends current law relating to the establishment, operation, and funding of charter schools, and provides administrative penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education (commissioner) in SECTION 1 (Section 12.101, Education Code) and SECTION 3 (Section 12.110, Education Code) of this bill.

Rulemaking authority expressly granted to the commissioner is modified in SECTION 4 (Section 12.1101, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.101, Education Code, by amending Subsection (b) and adding Subsections (b-1) and (b-2), as follows:

(b) Authorizes the State Board of Education (SBOE), after thoroughly investigating and evaluating an applicant, to grant a charter for an open-enrollment charter school only to an applicant that meets any financial, governing, curriculum development and implementation, and operational standards adopted by the commissioner of education (commissioner) under this subchapter. Prohibits SBOE, in a state fiscal year, from granting more than 10 new charters, rather than a total of more than 215 charters, for an open-enrollment charter school plus a number of charters equal to any number of charters for an open-enrollment charter school revoked or surrendered during the preceding state fiscal year.

(b-1) Authorizes a charter holder to establish one or more new open-enrollment charter campuses under a charter without applying for authorization if:

(1) each open-enrollment charter school campus operating under the charter has been assigned an acceptable performance rating as provided by Subchapter C (Accreditation), Chapter 39 (Public School System Accountability), for the two preceding school years;

(2) the charter holder satisfies standards of fiscal solvency and financial accountability established by commissioner rule;

(3) the charter holder provides written notice, in the time, manner, and form provided by commissioner rule, to SBOE and the commissioner of the establishment of any campus under this subsection; and

(4) not later than the 90th day after the date the charter holder provides written notice under Subdivision (3), the commissioner does not provide written notice to the charter holder disapproving a new campus under this section.

(b-2) Provides that, for purposes of Subsection (b-1), an open-enrollment charter school campus rated as academically acceptable or higher under Subchapter D (Financial Accountability), Chapter 39, as that subchapter existed January 1, 2009, for the 2009-2010 or 2010-2011 school year is considered to have been assigned an acceptable performance rating for the applicable school year. Provides that this subsection expires January 1, 2015.

SECTION 2. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1011, as follows:

Sec. 12.1011. AUTHORIZATION FOR GRANT OF CHARTERS FOR SCHOOLS PRIMARILY SERVING STUDENTS WITH DISABILITIES. (a) Authorizes SBOE to grant under Section 12.101 a charter on the application of an eligible entity for an open-enrollment charter school intended primarily to serve students with disabilities, including students with autism. Prohibits SBOE from granting more than two new charters for an open-enrollment charter school under this section each state fiscal year. Provides that a charter granted under this section is not considered for purposes of the limit on the number of open-enrollment charter schools imposed by Section 12.101(b).

(b) Provides that for purposes of the applicability of state and federal law, including a law prescribing requirements concerning students with disabilities, an open-enrollment charter school described by Subsection (a) is considered the same as any other school for which a charter is granted under Section 12.101.

(c) Authorizes a parent of a student with a disability, to the fullest extent permitted under federal law, to choose to enroll the parent's child in an open-enrollment charter school described by Subsection (a) regardless of whether a disproportionate number of the school's students are students with disabilities.

(d) Provides that this section does not authorize an open-enrollment charter school to discriminate in admissions or in the services provided based on the presence, absence, or nature of an applicant's or student's disability.

SECTION 3. Amends Section 12.110, Education Code, by adding Subsection (e), as follows:

(e) Authorizes the commissioner by rule to establish a fee for applying for a charter for an open-enrollment charter school. Requires that a fee established under this subsection be sufficient to cover Texas Education Agency's (TEA) administrative costs for the application process, including the costs of investigating the proposed charter holder.

SECTION 4. Amends Section 12.1101, Education Code, as follows:

Sec. 12.1101. New heading: NOTIFICATION OF CHARTER APPLICATION OR ESTABLISHMENT OF CAMPUS. Requires the commissioner by rule to adopt a procedure for providing notice to the following persons on receipt by SBOE of an application for a charter for an open-enrollment charter school under Section 12.110 (Application) or on receipt by SBOE and the commissioner of notice of the establishment of a campus as authorized under Section 12.101(b-1):

(1) the board of trustees of each school district from which the proposed open-enrollment charter school or campus is likely to draw students as determined by the commissioner; and

(2) each member of the legislature that represents the geographic area to be served by the proposed school or campus, as determined by the commissioner.

SECTION 5. Amends Section 12.11, Education Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires each charter granted under this subchapter to:

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

(2) specify the period for which the charter, or consistent with Section 12.116 (b-1), any charter renewal is valid;

(3) provide that the continuation or renewal of the charter is contingent on the status of the charter as provided by Section 12.116(b-1), rather than provide that the continuation of the renewal of the chart is contingent on acceptable student performance on assessment instruments adopted under Subchapter B, Chapter 39, and on compliance with any accountability provision specified by the charter, by a deadline or at intervals specified by the charter;

(4) Deletes existing text of Subdivision (4) establishing the level of student performance that is considered acceptable for purposes of Subdivision (3). Creates a new Subdivision (4) from existing text of Subdivision (5) requiring each charter granted under this subchapter to specify any basis, in addition to a basis specified by this subchapter, on which the charter may be placed on probation or revoked or on which an alternative to revoking the charter, as described by Section 12.115(a-1), may be used, rather than specify any basis, in addition to a basis specified by this subchapter, on which the charter may be placed on probation or revoked or on which renewal of the charter may be denied; and

(5)-(14) Redesignates existing Subdivisions (6)-(15) as Subdivisions (5)-(14).

(c) Provides that the enrollment of a student with a disability, including autism, is not considered for purposes of any maximum student enrollment described by the charter.

SECTION 6. Amends Section 12.115, Education Code, as follows:

Sec. 12.115. New heading: BASIS FOR MODIFICATION, PLACEMENT ON PROBATION, OR REVOCATION; ALTERNATIVE TO REVOCATION. (a) Requires the commissioner to modify, place on probation, or revoke the charter of an open-enrollment charter school if the commissioner makes certain determinations regarding the charter holder. Deletes existing text authorizing the commissioner to deny renewal of the charter of an open-enrollment charter school if the commissioner makes certain determinations regarding the charter holder.

(a-1) Authorizes the commissioner, based on a determination described by Subsection (a) concerning the charter holder, as an alternative to revoking the charter of an open-enrollment charter school, to:

(1) reconstitute the governing body of the charter holder; or

(2) assign operations of a school campus to a different charter holder.

(b) Requires that the action the commissioner takes under Subsection (a) or (a-1) be based, among other considerations, on the accreditation status of the school under Subchapter C, Chapter 39. Makes nonsubstantive changes.

SECTION 7. Amends Section 12.116, Education Code, as follows:

Sec. 12.116. New heading: PROCEDURE FOR MODIFICATION, PLACEMENT ON PROBATION, REVOCATION, ALTERNATIVE TO REVOCATION, OR DENIAL OF RENEWAL. (a) Requires the commissioner to adopt a procedure for modifying, placing on probation, revoking, or denying renewal for of the charter of an open-enrollment charter school or for using an alternative to revocation as described by Section 12.115(a-1). Deletes existing designation of Subsection (b). Requires that the procedure, except as

provided by Subsection (b), provide an opportunity for a hearing to the charter holder and to parents and guardians of students enrolled in the school. Requires that a hearing under this subsection be held in the county in which the school is located, rather than at the facility at which the program is operated. Makes a conforming and a nonsubstantive change.

(a-1) Requires the commissioner to revoke the charter of an open-enrollment charter school in accordance with the procedure adopted under Subsection (a) (relating to the procedure to be used for modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school) if, after all information required for determining a performance rating has been considered, the commissioner determines that the school is insolvent. Requires the commissioner, in determining whether the school is insolvent, to consider whether the insolvency is a result of recovery of overallocated state funds under Section 42.258(a) (relating to the recovery of overallocated funds).

(b) Requires the commissioner to revoke the charter of an open-enrollment charter school without a hearing if each campus operated under the school's charter has been ordered closed under Section 39.107 (Reconstitution, Repurposing, Alternative Management, and Closure).

(b-1) Requires that the procedure adopted under Subsection (a) for denying renewal of the charter of an open-enrollment charter school provide that the charter automatically renews unless the school's charter is revoked under Subchapter E (Accreditation Interventions and Sanctions), Chapter 39, before the expiration of a charter term. Requires the procedure, in addition, to require the commissioner and the charter holder to act in a timely manner, according to the procedure, to initiate revocation or renewal of the charter, as applicable. Requires that the term for which a charter is renewed not be less than 10 years.

(c) Provides that Chapter 2001 (Administrative Procedure), Government Code, does not apply to a hearing that is related to a modification, placement on probation, revocation, alternative to revocation, or denial of renewal under this subchapter.

SECTION 8. Amends Section 12.1161, Education Code, as follows:

Sec. 12.1161. New heading: EFFECT OF REVOCATION OR SURRENDER OF CHARTER. Deletes existing designation of Subsection (a). Prohibits an open-enrollment charter school, if the commissioner revokes the charter, rather than revokes or denies renewal of a charter, of the open-enrollment charter school, or if the open-enrollment charter school surrenders its charter from:

(1) continuing to operate under this subchapter; or

(2) receiving state funds under this subchapter.

Deletes existing Subsection (b) authorizing an open-enrollment charter school to continue to operate and receive state funds under this subchapter for the remainder of a school year if the commissioner denies renewal of the school's charter before the completion of that school year.

SECTION 9. Amends Section 12.1164(a), Education Code, to require the commissioner to notify the Teacher Retirement System of Texas in writing of the revocation or surrender of a charter, rather than the revocation, denial of renewal, or surrender of a charter, under this subchapter not later than the 10th business day after the date of the event.

SECTION 10. Amends Section 12.117, Education Code, by adding Subsection (c), as follows:

(c) Prohibits an open-enrollment charter school for which a charter is granted on or after September 1, 2011, from admitting a student unless the student:

(1) was enrolled in a public school in this state during the school year preceding the school year for which the student is seeking admission to the charter school; or

(2) is seeking admission for the first grade or a lower grade level.

SECTION 11. Amends Section 12.118(a), Education Code, to require the commissioner to designate an impartial organization with experience in evaluating school choice programs to conduct, under the supervision of the commissioner, an annual evaluation of open-enrollment charter schools.

SECTION 12. Amends Section 12.119(c), Education Code, to require SBOE, on request, to provide the information required by this section and Section 12.111(a)(7), rather than 12.111(8), to a member of the public. Authorizes SBOE to charge a reasonable fee to cover SBOE's cost in providing the information.

SECTION 13. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.136, as follows:

Sec. 12.136. ADMINISTRATIVE PENALTY. (a) Authorizes the commissioner to impose a reasonable administrative penalty against a person who knowingly violated this subchapter or a rule adopted under this subchapter.

(b) Requires the commissioner to provide for a hearing to be held to determine whether a penalty is to be imposed and, if so, the amount of the penalty. Requires the commissioner to base the amount of the penalty on:

(1) the seriousness of the violation;

(2) any history of a previous violation;

(3) the amount necessary to deter a future violation;

(4) any effort to correct the violation;

(5) the cost to TEA to address the violation, including providing a remedy in response to the violation; and

(6) any other matter justice requires.

(c) Requires that a hearing under Subsection (b) be held in accordance with commissioner rule.

(d) Authorizes that a penalty collected under this section be used by TEA in paying costs of administering this subchapter.

SECTION 14. Repealer: Section 12.113(b) (relating to prohibiting an entitlement of a renewal of a charter), Education Code.

SECTION 15. Provides that Sections 1 and 2 of this Act apply beginning with the 2012-2013 school year. Requires that the remainder of the bill apply as soon as this Act takes effect.

SECTION 16. Effective date: upon passage or September 1, 2011.