

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 28  
By: Bettencourt et al.  
Education  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 1995, the 74th Legislature passed legislation to allow public charter schools to operate in Texas. Since then, public charter schools have served an increasing number of students across the state as part of the Texas public education system. However, numerous barriers remain, impeding the establishment of new charter schools to keep up with the growing needs of Texas families.

One major problem that has come to light is, while traditional school districts enjoy statutory exemptions from oft-burdensome and costly zoning, permitting, and land use regulations and fees, these existing statutes lack sufficient clarity to explicitly include public, open-enrollment charter schools in these exemptions.

Examples of this issue have resulted in local governments lacking the political will to: create reduced-speed limit "school zones" on roads adjacent to charter schools; waive requirements for charter campuses in dense, urban areas, to have large areas of greenspace typically associated with traditional school district campuses; and waive tens of thousands of dollars in fees, for charter schools that are routinely waived for traditional school districts — funding which could have been used in the classroom.

Additionally, the current approval process for new charter applications is wrought with further obstacles for much-needed, additional charter school applications. For instance, the State Board of Education (SBOE) maintains veto power over charter school applications, regardless of whether the applicant meets the Texas Education Agency's (TEA) rigorous vetting standards. The SBOE has vetoed seven high-impact charter schools to date, four of those in the last four years.

S.B. 28 provides the statutory clarity that public charter schools must be afforded equal treatment under local zoning and land use ordinances, regulations, and fees. It prevents local entities from prohibiting charter schools being built on specific properties within the jurisdiction. It also eliminates SBOE veto power over qualified charter school applications, while providing SBOE with additional power to petition TEA to reconsider charter applications of that fall just short of meeting.

Finally, S.B. 28 ensures that final authority in the location of charter schools lies with the TEA commissioner, and that local governments may not prohibit charters from operating within their jurisdictions.

As proposed, S.B. 28 amends current law relating to the approval of open-enrollment charter schools and the applicability of certain state and local laws to open-enrollment charter schools.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 12.1058, Education Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that, notwithstanding certain subsections, an open-enrollment charter school operated by a tax exempt entity as described by Section 12.101(a)(3) (relating to defining "eligible entity" to include certain tax exempt organizations) is not considered to be a political subdivision, local government, or local governmental entity unless certain criteria are met, including if a statute, rather than the applicable statute, specifically states that the statute applies to an open-enrollment charter school.

(d) Requires a municipality, county, special purpose district, or political subdivision, except as provided by Section 12.103(c) (relating to a provision that a campus of an open-enrollment charter school located in certain municipalities are not subject to the municipal zoning ordinances governing public schools), to consider an open-enrollment charter school a school district for purposes of zoning, permitting, plat approvals, fees or other assessments, construction or site development work, code compliance, development, and any municipality, county, special purpose district, or political subdivision approval in the same manner and following the same timelines as if the charter school were a school district or state-owned facility located in that local government's jurisdiction.

SECTION 2. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1102, as follows:

Sec. 12.1102. APPEAL OF APPLICATION SELECTION DETERMINATION.

(a) Provides that this section applies only if the charter application selection process includes scoring criteria and procedures for use of the criteria by an external application review panel selected by the commissioner of education (commissioner), and selection criteria that include the minimum score necessary for an applicant to be eligible for selection.

(b) Requires the State Board of Education (SBOE) to 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) Requires that the procedures adopted under this section 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 SBOE a score determined by the external application review panel.

(d) Provides that the determination of SBOE in an appeal under the procedures adopted under this section is final.

(e) Requires the commissioner, if the charter applicant prevails in an appeal to SBOE, to consider the applicant's application.

SECTION 3. Amends Section 212.902, Local Government Code, as follows:

Sec. 212.902. New heading: SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL LAND DEVELOPMENT STANDARDS. (a) Provides that this section applies to an agreement between a school district or open-enrollment charter school and a municipality which has annexed territory for limited purposes, rather than agreements between school districts and any municipality which has annexed territory for limited purposes.

(b)-(d) Makes conforming changes.

(e) Redefines "land development standards" and defines "open-enrollment charter school." Makes nonsubstantive changes.

(f) Makes a conforming change.

SECTION 4. Amends Chapter 250, Local Government Code, by adding Section 250.012, as follows:

Sec. 250.012. REGULATION OF OPEN-ENROLLMENT CHARTER SCHOOLS. (a) Defines "local governmental entity" and "open-enrollment charter school."

(b) Prohibits a local governmental entity from enacting or enforcing an ordinance, order, regulation, resolution, rule, or policy or taking 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) Provides that the commissioner has exclusive jurisdiction over the establishment and location of an open-enrollment charter school campus as provided by Subchapter D (Open-Enrollment Charter School), Chapter 12 (Charters), Education Code.

(d) Provides that this section applies to property purchased or leased with state funds received by an open-enrollment charter school under Section 12.128 (Property Purchased or Leased with State Funds), Education Code.

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

SECTION 5. Amends Section 395.022(b), Local Government Code, as follows:

(b) Provides that a school district and an open-enrollment charter school, rather than only a school district, are not required to pay impact fees imposed under Chapter 395 (Financing Capital Improvements Required by New Development in Municipalities, Counties, and Certain Other Local Governments) 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. Makes conforming changes.

SECTION 6. Amends Section 552.053, Local Government Code, by amending Subsection (b) and adding Subsections (b-1) and (b-2), as follows:

(b) Provides that that the following may be exempt from Subchapter C (Municipal Drainage Utility Systems) and all ordinances, resolutions, and rules adopted under Subchapter C:

(1) and (2) makes no changes to these subdivisions;

(3) makes a nonsubstantive change to this subdivision; or

(4) school districts and open-enrollment charter schools, rather than only a school district.

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

(b-2) Defines "open-enrollment charter school."

SECTION 7. Repealer: Section 12.101(b-0) (relating to the requirement that the commissioner notify SBOE of each charter the commissioner proposes to grant for an open-enrollment charter school), Education Code.

SECTION 8. Requires SBOE, as soon as practicable after the effective date of this Act, to adopt procedures for the appeal of an application selection determination as provided by Section 12.1102, Education Code, as added by this Act.

SECTION 9. Provides that 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 10. Effective date: upon passage or September 1, 2021.