

- SUBJECT:** Disposing of the property of a closed charter school
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 13 ayes — Huberty, Bernal, Allen, Allison, Ashby, K. Bell, Dutton, M. González, K. King, Meyer, Sanford, Talarico, VanDeaver
- 0 nays
- SENATE VOTE:** On final passage, May 2 — 31-0
- WITNESSES:** For — (*Registered, but did not testify:* Dwight Harris, Texas American Federation of Teachers; Barry Haenisch, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Will Holleman, Texas Association of School Boards; Lisa Dawn-Fisher, Texas State Teachers Association; Marty De Leon, Texas Urban Council)
- Against — None
- On — (*Registered, but did not testify:* Christopher Jones and Heather Mauze, Texas Education Agency)
- BACKGROUND:** Education Code sec. 12.128 contains requirements for the education commissioner to take possession and assume control of the property of a charter school that was purchased or leased with state funds and that ceases to operate. The education commissioner must supervise the disposition of the property according to state law.
- Concerns have been raised that the involvement of various property interests, including those of the state, secured creditors, and charter holders, requires a clearer process for the sale, lease, and disposition of the property and the management of assets of a closed charter school.
- DIGEST:** CSSB 1454 would establish requirements for the disposition of property and management of assets when a charter school ceased operations. The

bill also would establish requirements for disclosure of transactions between a charter holder and a related party.

Remaining funds. The bill would require all remaining funds of a charter holder for an open-enrollment charter school that ceased to operate be returned to the Texas Education Agency (TEA) and deposited in the charter school liquidation fund. A charter school would cease to operate if its charter had been revoked, expired, surrendered, or abandoned, or if the school had otherwise ceased operation as a public school.

The agency could approve a transfer of a charter holder's remaining funds to another charter holder if the charter holder receiving the funds had not received certain notices involving the expiration or revocation of its charter for a charter school or notice of a reconstitution of the governing body. The commissioner of education could adopt rules specifying the time during which a former charter holder would have to return remaining funds and the qualifications for a charter holder to receive a transfer of remaining funds.

Property accounting. A charter school would have to provide an accounting of each parcel of the school's real property, including identifying the amount of local, state, and federal funds used to purchase or improve each parcel.

A closed charter school would have to submit a final annual financial report to TEA. The report would have to verify that all state property held by the charter holder had been returned or disposed of in accordance with Education Code sec. 12.128.

Purchased and leased property. While a charter school was in operation, the charter holder would hold title to its purchased property and could exercise complete control over it as permitted by law.

A charter holder could not transfer, sell, or otherwise dispose of any purchased or leased property without the prior written consent of TEA under certain conditions involving the expiration, nonrenewal, or

revocation of its charter; if the school was placed under discretionary review; or if the school had otherwise ceased to operate.

If a charter school had ceased to operate, TEA would have to take certain actions specified by the bill for property purchased with state funds. The agency also could approve an expenditure of a charter holder's remaining funds for insurance or utilities or for maintenance, repairs, or improvements necessary to dispose of leased or purchased property or to preserve its value.

A former charter holder of a charter school that had ceased to operate could retain leased or purchased property if the former charter holder reimbursed the state with non-state funds, provided written assurance that it would meet the bill's requirements for closing school operations, and received approval from TEA.

Upon receiving TEA's consent and a written agreement from any creditor with a security interest, the former charter holder could sell property for fair market value or transfer it to another charter school or a school district as provided by the bill. The state would be entitled to reimbursement for the property as specified by the bill.

A former charter holder retaining or selling property would have to:

- file an affidavit in the real property records of the county in which the property was located disclosing the state interest in the property;
- place a specified amount of non-state funds in escrow with the comptroller by certain dates; and
- not later than two weeks after the charter holder's final financial audit was filed, submit to the state the final state reimbursement amount using the funds in escrow in addition to any other necessary funds.

A former charter holder could retain any funds remaining after complying with those requirements.

As soon as TEA was satisfied that the former charter holder had complied with the bill's requirements, the agency would have to file written notice releasing the state's interest in the retained property and authorize the return of any funds not used for state reimbursement.

Subject to the satisfaction of any security interest or lien, a former charter holder that did not dispose of property would have to transfer the property to TEA. If the agency determined a former charter holder had failed to comply with the bill's requirements, it could request the attorney general take any appropriate legal action to compel the former charter holder to convey title to TEA or other authorized governmental entity.

Transferred property. TEA could approve the transfer of property from a closed charter school or could transfer property conveyed to the agency by the former charter holder to a school district or another charter school under certain conditions. Property received in this way by a charter school or district would be considered to be state property.

If TEA determined that the cost of disposing of personal property transferred to the agency by a closed charter school exceeded the return of value from the sale of the property, the agency could distribute the personal property to open-enrollment charter schools and districts in a manner determined by the commissioner.

Sale of property. After TEA received title to property purchased or leased with state funds, it could sell the property at any price it found acceptable. On request, the General Land Office and the Texas Facilities Commission would have to enter into a memorandum of understanding to sell real or personal property. The land office or facilities commission could recover incurred costs from the sale proceeds. Subject to the satisfaction of any security interest or lien, the sale proceeds would be deposited in the charter school liquidation fund.

Closure of operations. After extinguishing all payable obligations owed by a closed open-enrollment charter school, a former charter holder would

have to remit funds to TEA as proscribed by the bill. These funds would be deposited into the charter school liquidation fund.

TEA could use funds deposited into this fund to:

- pay expenses related to managing and closing a charter school, including maintenance of the school's student and other records and the agency's personnel costs associated with managing and closing the school;
- dispose of property; and
- maintain property, including expenses for insurance, utilities, maintenance, and repairs.

TEA could not use reclaimed funds until the commissioner determined if the closed charter school had received an overallocation of funds that would have to be recovered for the Foundation School Program.

TEA would have to annually review the amount of funds in the charter school liquidation fund and transfer any funds exceeding \$2 million to fund a grant program to encourage high school students to become teachers and assist current paraprofessionals and instructional aides in becoming credentialed teachers. The funds also could be transferred to the comptroller for deposit in the charter district bond guarantee reserve fund.

Under statutory requirements for interventions and sanctions, a board of managers appointed for the final closure of a former open-enrollment charter school would have authority to access and manage any former charter holder's bank account that contained state funds and, subject to approval by a creditor with a security interest in or lien on the property, sell or transfer to another charter holder or school district any property titled to the former charter holder identified as being acquired, wholly or partly, with state funds.

Related party transactions. CSSB 1454 would specify that state funds received by a charter holder could not be pledged or used to secure loans or bonds for any other organization, including a non-charter operation or

out-of-state operation conducted by the charter holder or a related party, or be used to support an operation or activity not related to the charter holder's educational activities.

The education commissioner would have to adopt a rule defining "related party" that would have to include:

- a party with a current or former board member, administrator, or officer who was a board member, administrator, or officer of an open-enrollment charter school or related within the third degree of consanguinity or affinity to a board member, administrator, or officer of a charter school;
- a charter holder's related organizations, joint ventures, and jointly governed organizations;
- a charter school's board members, administrators, or officers or a person related to those individuals within the third degree of consanguinity or affinity; and
- any other disqualified person, as that term is defined by 26 U.S.C. sec. 4958(f).

A person would be considered a former board member, administrator, or officer if the person served in that capacity within one year of the date on which a financial transaction between the charter holder and a related party occurred.

A charter holder would have to include a list of all transactions with a related party in its annual audit required under the bill.

The education commissioner could adopt rules to require a charter school to notify the commissioner that it intended to enter into a transaction with a related party and provide an appraisal from a certified appraiser to the TEA.

If the commissioner determined that a charter holder's transaction with a related party using state funds was structured in a manner that did not benefit the charter school or was in excess of fair market value, the

commissioner could order that the transaction be reclassified or that other action be taken to protect the school's interest. A failure to comply with the commissioner's order would be a material violation of the charter.

An audit by the commissioner of a charter entity could include the review of any real property transactions between the charter holder and the related party if the aggregate amount of all transactions between the charter holder and party exceeded \$5,000.

A statutorily required financial report filed by a charter school would have to separately disclose:

- all financial transactions between the charter school and any related party, separately stating the principal, interest, and lease payments; and
- the total compensation and benefits provided by the school and any related party for each member of the school's governing body and each officer and administrator and the related party.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.