

BILL ANALYSIS

C.S.S.B. 1454
By: Taylor
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that, with the closure of open-enrollment charter schools due to consecutive unacceptable academic or financial ratings, issues have arisen regarding the disposal of charter school assets. In particular, such disposal has been complicated by the involvement of various property interests, including those of the state, secured creditors, and charter holders. C.S.S.B. 1454 seeks to address this issue by clarifying the process relating to the sale, lease, and disposition of property and the management of assets of charter schools.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTIONS 3, 6, 8, 9, and 13 of this bill.

ANALYSIS

C.S.S.B. 1454 amends the Education Code to establish that an open-enrollment charter school ceases to operate if the school's charter has expired or been revoked, surrendered, or abandoned or if the school has otherwise ceased operation as a public school. The bill establishes that all remaining funds of a charter holder for a charter school that ceases to operate must be returned to the Texas Education Agency (TEA) and deposited in the charter school liquidation fund but that TEA may approve a transfer of a charter holder's remaining funds to another charter holder if the charter holder receiving the funds has not received notice of the expiration or revocation of the charter holder's charter for a charter school or notice of a reconstitution of the governing body of the charter holder. The bill defines "remaining funds" as funds that are held by a former charter holder after satisfaction of all payable obligations and that were received from the state or from the disposition of property and "payable obligation" as a contractually obligated expenditure that was reasonably incurred for the benefit of students enrolled at a charter school before the charter school ceased operations, excluding any amount owed to a former charter holder or officer or director of the school. The bill authorizes the commissioner of education to adopt rules specifying the time during which a former charter holder must return the remaining funds to TEA and the qualifications required for a charter holder to receive a transfer of remaining funds. The bill prohibits state funds received after September 1, 2001, by a charter holder from being pledged or used to secure loans or bonds for any other organization or being used to support an operation or activity not related to the educational activities of the charter holder.

C.S.S.B. 1454 requires the commissioner to adopt a rule defining "related party" and sets out requirements for that definition. The bill requires a charter holder to include a list of all

transactions with a related party in the charter holder's annual audit. The bill authorizes the commissioner to adopt rules to require a charter school to notify the commissioner that the school intends to enter into a transaction with a related party and to provide an appraisal from a certified appraiser to TEA. The bill sets out certain disclosures relating to financial transactions with related parties and compensation and benefits that are required to be included in a charter school's annual financial report and authorizes the commissioner to adopt rules to implement the disclosure requirement. The bill authorizes an audit by the commissioner of the records of a charter school, a charter holder, or a management company to include the review of any real property transactions between a charter holder and a related party if the aggregate amount of all transactions between the charter holder and the related party exceeds \$5,000. The bill authorizes the commissioner to order that a transaction with a related party using state funds be reclassified or that other action be taken as necessary to protect a charter school's interests if the commissioner determines that the transaction was structured in a manner that did not benefit the school or that the transaction was in excess of fair market value. The bill makes failure to comply with the commissioner's order a material violation of the charter.

C.S.S.B. 1454 establishes that, while a charter school is in operation, the charter holder holds title to any property purchased with state funds received by the charter holder that is considered to be public property and may exercise complete control over the property as permitted under the law, except that a charter holder may not transfer, sell, or otherwise dispose of any property described by provisions relating to property purchased or leased by a charter holder with state funds without the prior written consent of TEA if any of the following conditions are met:

- the charter holder has received notice of the expiration of the charter holder's charter and the charter has not been renewed;
- the charter holder has received notice of the charter's revocation;
- the charter holder has received notice that the charter school is under discretionary review by the commissioner, which may result in the revocation of the charter or a reconstitution of the governing body of the charter holder; or
- the charter school for which the charter is held has otherwise ceased to operate.

C.S.S.B. 1454 requires TEA, if a charter school ceases to operate, to direct the charter holder to dispose of property purchased with state funds through one of the following methods: retain or liquidate the property and provide reimbursement to the state, transfer the property to TEA or a public school district or charter school, close the operations of the charter school, or take any combination of those actions. The bill authorizes TEA, for property that is leased by the charter holder with state funds, to direct the charter holder to assign the charter holder's interest in the lease to TEA. The bill authorizes TEA to approve an expenditure of remaining funds by a former charter holder for insurance or utilities for or maintenance, repairs, or improvements to such purchased or leased property if TEA determines that the expenditure is reasonably necessary to dispose of the property or preserve the property's value. The bill establishes that a decision by TEA relating to property purchased or leased by a charter holder with state funds is final and may not be appealed.

C.S.S.B. 1454 authorizes a former charter holder of a charter school that has ceased to operate to retain property described by provisions relating to property purchased or leased by a charter holder with state funds if the following conditions are met:

- the former charter holder reimburses the state with non-state funds; and
- the former charter holder provides written assurance that the bill's requirements for the closure of charter school operations will be met and receives approval from TEA.

C.S.S.B. 1454 authorizes the former charter holder, on receiving consent from TEA and a written agreement from certain creditors with a security interest in the property, to sell property for fair market value or to transfer property to a charter school or a school district as provided

by the bill's provisions. The bill sets out the method for determining the amount of funds to which the state is entitled as reimbursement for property of a former charter holder. The bill prescribes procedures for a former charter holder retaining or selling property and authorizes a former charter holder to retain any funds remaining after complying with the bill's provisions regarding the disposition of property purchased with state funds. The bill requires TEA, as soon as TEA is satisfied that the former charter holder complied with those procedures, to file written notice of the release of the state interest in property the former charter holder retains and to authorize the return of any funds not used for state reimbursement to the former charter holder.

C.S.S.B. 1454 requires a former charter holder, if the former charter holder does not otherwise dispose of property in accordance with the bill's provisions and subject to the satisfaction of certain security interests or liens, to transfer the property to TEA in accordance with the procedures and time requirements established by TEA. The bill establishes that a decision by TEA under the bill's provisions relating to the disposition of property purchased with state funds is final and may not be appealed and authorizes the commissioner to adopt rules necessary to administer those provisions. The bill sets out the conditions under which TEA may approve the transfer of property described by provisions relating to property purchased or leased by a charter holder with state funds, or may transfer certain property conveyed to TEA by a former charter holder, to a school district or charter school and the conditions under which TEA may distribute certain transferred personal property to charter schools and school districts. The bill establishes that such property received by a charter school or school district is considered to be state property and authorizes the commissioner to adopt rules necessary to administer the bill's provisions relating to the transfer of property purchased with state funds. The bill establishes that a determination made by TEA under those provisions is final and may not be appealed. The bill requires the attorney general, on TEA request if TEA determines a former charter holder failed to comply with the bill's provisions regarding the disposition or transfer of property purchased with state funds and subject to the satisfaction of certain security interests or liens, to take any appropriate legal action to compel the former charter holder to convey title to TEA or another governmental entity authorized by TEA to maintain or dispose of property.

C.S.S.B. 1454 authorizes TEA, after receiving title to property described by provisions relating to property purchased or leased by a charter holder with state funds, to sell the property at any price acceptable to TEA. The bill requires the General Land Office (GLO), on request of TEA, to enter into a memorandum of understanding to sell real property for TEA and requires the Texas Facilities Commission (TFC), on request of TEA, to enter into a memorandum of understanding to sell personal property for TEA. The bill authorizes such a memorandum of understanding to allow the GLO or the TFC to recover from the sale proceeds any cost incurred by the GLO or the TFC in the sale of the property. The bill requires proceeds from the sale of such property, subject to the satisfaction of certain security interests or liens, to be deposited in the charter school liquidation fund and authorizes the commissioner to adopt rules as necessary to administer the bill's provisions relating to the sale of property purchased with state funds. The bill requires a former charter holder, after extinguishing all payable obligations owed by a charter school that ceases to operate, to remit to TEA any remaining funds and any state reimbursement amounts from the sale of property described by provisions relating to property purchased or leased by a charter holder with state funds or to transfer the remaining funds to another charter holder. The bill requires TEA to deposit any remaining funds received by TEA in the charter school liquidation fund. The bill authorizes the commissioner to adopt rules necessary to administer the bill's provisions relating to the closure of charter school operations.

C.S.S.B. 1454 requires TEA to deposit funds received under the bill's provisions into the charter school liquidation fund, sets out the authorized uses of those funds, and prohibits TEA from using the funds until the commissioner determines if the charter school that ceases to operate received an overallocation of state funds that must be recovered for the foundation school program (FSP). The bill requires TEA to review annually the amount of funds in the charter school liquidation fund and transfer any funds exceeding \$2 million:

- for use in funding a grant program established by TEA to encourage high school students to enter the teaching profession and assist current paraprofessionals and instructional aides in pursuing the necessary credentials to become full-time teachers; or
- to the comptroller of public accounts to deposit in the charter district bond guarantee reserve fund.

The bill authorizes TEA to delay such a transfer of funds if the excess is less than \$100,000. Funds set aside for an overallocation of funds from the FSP are not included in determining whether the amount of funds exceeds \$2 million. The bill authorizes the commissioner to adopt rules necessary to implement the bill's provisions relating to reclaimed funds.

C.S.S.B. 1454 establishes the authority of a board of managers appointed for the final closure of a former charter school regarding access to and management of any former charter holder's bank account that contains state funds and regarding property acquired with state funds and clarifies the duties of TEA regarding the use of certain state funds to compensate a member of a board of managers for a charter school or a school campus or a superintendent. The bill clarifies that certain property purchased or leased with state funds received by a charter holder after September 1, 2001, and recovered by the state is not an asset of the permanent school fund.

C.S.S.B. 1454 requires a charter school 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 of property. The bill requires a charter school for which the charter has expired, been revoked, or been surrendered or a charter school that otherwise ceases to operate to submit a final annual financial report to TEA verifying that all state property held by the charter holder has been returned or disposed of in accordance with provisions regarding property purchased or leased by a charter holder with state funds. The bill authorizes the commissioner to adopt rules necessary to implement provisions relating to a financial report filed by a school district or a charter school. The bill establishes that a transfer of property from a charter school that ceases to operate to another charter school that occurred before the bill's effective date is ratified if both charter schools classified the property as purchased with state funds on each school's annual financial report.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1454 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute changes the type of grant program for which TEA may use funds exceeding \$2 million in the charter school liquidation fund from a high-quality educational grant program established by the commissioner of education to a grant program established by TEA for purposes of encouraging high school students to enter the teaching profession and assisting current paraprofessionals and instructional aides in pursuing the necessary credentials to become full-time teachers.