SUBJECT: Revising state oversight of open-enrollment charter schools

COMMITTEE: Public Education — committee substitute recommended

VOTE: 7 ayes — Grusendorf, Branch, Dutton, Eissler, Griggs, Hochberg, Madden

1 nay — Dawson

1 absent — Oliveira

WITNESSES: No public hearing

BACKGROUND: In 1995, the 74th Legislature authorized 20 open-enrollment charter schools and exempted them from many administrative and regulatory requirements that apply to public schools. The 75th Legislature in 1997 authorized an additional 100 charter schools and an unlimited number of "at-risk" charters for schools where at least 75 percent of the student body had been identified as at risk of dropping out.

In 2001, the 77th Legislature enacted HB 6 by Dunnam, significantly expanding state oversight of charter schools. The act imposed a moratorium on additional charter schools, transferred regulatory authority over charter schools from the State Board of Education (SBOE) to the Texas Education Agency (TEA), and authorized TEA to conduct hearings. The SBOE retained authority to grant, deny, modify, place on probation, or revoke a charter.

HB 6 also added controls over for-profit management companies that contract with nonprofit charter holders and charter schools to provide a variety of services, including planning a school's educational program, hiring staff, and managing a school's day-to-day operations. It prohibited charter schools from discriminating in admissions on the basis of such characteristics as artistic ability, and it authorized TEA to investigate charter schools that may have violated this prohibition.

DIGEST: CSHB 2224 would require financial, governing, and operational standards for charter school applicants adopted by the education commissioner to be "reasonable" and to be approved by the SBOE.

The bill would define an officer of an open-enrollment charter school as a member of the governing body who holds the position of presiding officer, president, vice president, secretary, or another similar position. It would delete from the definition of "officer" the principal, director, or other chief operating officer, an assistant principal or assistant director, or a person charged with managing the finances of a charter school. The bill would exempt charter school officers from the application of statutes concerning conflict of interest, nepotism, and annual reporting of information, including compensation, to the SBOE.

The bill would specify that a charter school is subject to the record-keeping requirements of a local government only with respect to personnel records and records of current and former students. A charter holder or school would be subject to laws governing nonprofit organizations in regard to the retention of other records related to the operation of the school. Provisions regarding the transfer of records for an open-enrollment charter that closed would apply only to records of personnel and of current and former students.

The governing body of an open-enrollment charter school could revise the school's charter without the approval of the commissioner as necessary to comply with a change in law. The governing body would have to notify the commissioner within 14 days of the board's approval of the change, and the change would be considered final if the commissioner did not provide written notice of disapproval within 30 days of the date the commissioner received the notice. With any notice of disapproval, the commissioner would have to include a statement of the reasons for disapproval.

CSHB 2224 would make hearings related to modifications, placement on probation, revocation, or denial of renewals of charters subject to Government Code, ch. 2001, the Administrative Procedures Act.

An open-enrollment charter school could give preference in admissions based on reasonable academic, artistic, or other eligibility standards, including gender, that were consistent with nonregulatory guidance provided by the U.S. Department of Education or were comparable with admissions standards at a public school. Admissions standards would have to be consistent with the school's mission and purpose as described in the charter and be consistent with admissions practices in public schools. A charter school could not

discriminate on the basis of a student's race, color, creed, religion, or national origin.

The bill would eliminate a provision in Education Code, sec. 12.120(a), that prohibits a person who has been convicted of a misdemeanor involving moral turpitude from serving as a member of a governing body of a charter holder or charter school. It would repeal a requirement in the Education Code that a charter school obtain criminal history record information about anyone whom the school intends to employ or who intends to serve as a volunteer.

The bill would stipulate that the attorney general may bring a suit against a charter school only to the extent that a suit could be brought against a member of a school district or board of trustees. It would repeal a provision that the attorney general's authority to bring suit is cumulative of all other remedies.

The education commissioner could adopt rules governing contracts between open-enrollment charter schools and a management company, but such a contract would not require the commissioner's approval. The bill would remove the commissioner's authority to prohibit, deny renewal of, suspend, or revoke a contract between a charter school and a management company, but the commissioner could require the charter school's governing body to consider doing so if the commissioner found that the school substantially failed to provide educational services, to protect the health, safety, or welfare of children, or otherwise failed to comply with any material contractual or legal obligation to provide services to the school.

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, 2003. It would apply beginning with the 2003-04 school year.

SUPPORTERS SAY:

CSHB 2224 would bring regulations for charter schools more into line with those governing public schools and would relieve unfair administrative burdens imposed on charter schools by HB 6. Many provisions of HB 6 were adopted in response to the actions of a few poorly managed charter schools and have created an unfair burden on well-managed charter schools.

The bill would allow nonprofit charter schools to function in much the same way as other nonprofits do, with fiduciary responsibility placed in the hands

of members of the governing board, rather than of staff members. Many good charter schools have had trouble persuading people to serve on boards and securing liability insurance because of overly punitive restrictions in HB 6. CSHB 2224 would not relieve a charter school of liability for financial mismanagement but would align charter school practices with those of other nonprofits. Similarly, prohibiting a person from serving on a board if the person has been convicted of a misdemeanor involving moral turpitude is overly restrictive and prevents a person from serving even if the crime was committed many years ago.

The bill would relieve charter schools of a requirement that all employees and volunteers be subject to a criminal background check. Public schools are not subject to this requirement, which creates an unnecessary and unfair burden on charter schools and management companies.

CSHB 2224 would allow charter schools to provide specialized programs, such as magnet schools or single-sex schools, provided that the school had reasonable admissions standards. This would allow charter schools to establish specialized programs that meet the needs of a particular segment of the community, just as public schools do with magnet and other specialized programs.

HB 6 established overly stringent regulations regarding prosecution by the attorney general for financial mismanagement of charter schools. CSHB 2224 would ensure that the attorney general could prosecute the governing bodies of charter schools only to the extent that public school board members may be prosecuted.

OPPONENTS SAY:

CSHB 2224 would repeal many of the substantive protections put in place by HB 6 to protect taxpayers and students from mismanagement by charter schools and their management companies.

The bill would restore to the SBOE the authority to approve standards established by TEA that applicants must meet to qualify for a charter. HB 6 transferred this authority to TEA because of a perception that the SBOE had not established and followed adequate standards for approving charter applicants. The SBOE should not be given back the authority to approve or disapprove application standards set by the education commissioner.

CSHB 2224 would place all fiduciary responsibility with members of the governing board and would exempt charter school staff members, including those charged with managing finances, from most oversight. While this might be consistent with how other nonprofit organizations operate, many charter schools do not operate in the same way as other nonprofits do. The governing boards of many charter schools have very little direct involvement with the schools and are unlikely to be aware if an employee is mismanaging school funds. Staff members who manage public funds should remain subject to strict regulations.

The bill would allow staff members of charter schools to have a significant financial interest in the operation of the school and would allow a person who had been convicted of theft or robbery to serve on the governing board of a charter school. This would invite the kinds of conflict of interest and potential criminal activity that HB 6 was enacted to prevent.

Some salaries paid to charter school management companies and staff members exceed the salaries of superintendents of large school districts. Under CSHB 2224, these officials would not have to report these high salaries in annual reports to the SBOE.

By allowing charter schools to consider particular student characteristics, such as academic or artistic ability, the bill would allow charter schools to operate like private schools, selecting only the best students and rejecting students who might not meet admission requirements. Texas charter schools are meant to be “open-enrollment” and to serve any student who wishes to attend.

NOTES:

As filed, HB 2224 only would have removed the superintendent, principal, vice principal, or other support administrative personnel from the definition of officers of the board of a charter school, and would have guaranteed a charter school access to state funding for eligible transportation at the same level as the funding is available to school districts.