

BILL ANALYSIS

Senate Research Center
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S.B. 1898
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2013, S.B. 2 was passed by the 83rd Legislature to update the Education Code regarding open-enrollment charters in Texas. As part of this comprehensive bill, language was included to strengthen the authority of the commissioner of education (commissioner) to close poor-performing charters, both for poor academic and financial accountability ratings. As a result, almost two dozen open-enrollment charters have been revoked by the commissioner in the past two years.

Through the process of closing these charters and the campuses, the Texas Education Agency (TEA) has been left with multiple properties and other assets, but without the authority to obtain the property titles in order to sell the properties or transfer the finances back to the state. As a result, TEA has to use the remaining financial assets to maintain property and provide for the ongoing use of the facilities.

S.B. 1898 seeks to grant authority to the commissioner to appoint a board of managers to oversee the closure of an open-enrollment charter, and establishes a charter school liquidation account for funds received from the closing of the charter. Furthermore, the bill provides authority for the commissioner to request an appointed receiver to liquidate the assets of the revoked charter. Funds of the revoked charter and funds received from the liquidated assets would then be placed into the liquidation account and used to pay for the board of managers and the receivership.

As proposed, S.B. 1898 amends current law relating to revocation of a charter for an open-enrollment charter school and procedures for the disposition of property owned by a charter school after revocation or surrender of a charter.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 4 (Section 12.270, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.116, Education Code, by amending Subsections (a), (c), and (d) and adding Subsections (e) and (f), as follows:

(a) Requires the commissioner of education (commissioner) to adopt an informal review procedure to be used for revoking the charter of an open-enrollment charter school or for reconstituting the governing body of the charter holder as authorized by Section 12.115 (Basis for Charter Revocation or Modification of Governance).

(c) Provides that, notwithstanding Chapter 2001 (Administrative Procedure), Government Code:

(1) the State Office of Administrative Hearings (SOAH) shall conduct a revocation review hearing and issue a final decision not later than the 90th day after the date that the notice of hearing is filed with SOAH;

(2) Creates this subdivision from existing text and makes no further changes; and

(3) Redesignates existing Subdivision (2) as Subdivision (3) and makes a nonsubstantive change.

(d) Authorizes the commissioner, if the commissioner issues a decision to revoke the charter of an open-enrollment charter school, rather than if the commissioner revokes the charter of an open-enrollment charter school, to:

(1) and (2) Makes nonsubstantive changes.

(3) appoint a board of managers under Section 12.1165 or an agent of the commissioner to close the operations of the school and manage the disposition of the state's personal and real property in the possession of the charter holder.

(e) Authorizes the commissioner, if the commissioner decides to manage the school under Subsection (d)(1), to:

(1) allow the existing governing body of the school to manage the school, under the commissioner's direction, until the conclusion of the academic school year;

(2) appoint a board of managers under Section 12.1165; or

(3) appoint an individual to serve as the agent of the commissioner.

(f) Requires the commissioner to transfer to the charter school liquidation account established under Section 12.269 any funds received by the charter holder under Section 12.106 (State Funding) that remain after the operations of the school are closed under this section.

SECTION 2. Amends Subchapter D, Chapter 12, Education Code, by adding Sections 12.1165 and 12.1166, as follows:

Sec. 12.1165. BOARD OF MANAGERS FOR OPERATION OR DISSOLUTION. (a) Authorizes the commissioner, if the commissioner issues a decision to revoke the charter of an open-enrollment charter school, to appoint a board of managers and a charter superintendent to:

(1) manage the school under Section 12.116(d)(1) (authorizing the commissioner, if the commissioner revokes the charter of an open-enrollment charter school, to manage the school until alternative arrangements are made for the school's students); or

(2) close the operations of the school under Section 12.116(d)(3).

(b) Authorizes the commissioner to designate an individual member of the board of managers to submit to the Texas Education Agency (TEA) any required data, reports, or other information necessary to close the operations of the school.

(c) Authorizes the board of managers to exercise all of the powers and duties assigned to a governing body of a charter holder by any statute or rule.

(d) Provides that the governing body's powers, if the governing body of a charter holder is managing a school under Section 12.116(e)(1), are terminated on the effective date of the commissioner's appointment of the board of managers.

(e) Authorizes the board of managers, notwithstanding any other provision of this code, to amend the school's budget. Authorizes the board of managers to use cash on hand received by the former charter holder under Section 12.106 or any allocation of state funding due to the former charter holder under Section 12.106

to close the operations of the school. Provides that actions taken under this subsection are subject to the approval of the commissioner.

(f) Provides that a person who serves on the board of managers or as a charter superintendent under this section acts on behalf of the commissioner and is entitled to:

(1) sovereign immunity; and

(2) representation by the attorney general for any act or omission taken while acting in the person's official capacity.

(g) Requires the board of managers to continue to operate until dissolved by the commissioner. Provides that members of the board of managers and a charter superintendent serve at the discretion of the commissioner and may be replaced by the commissioner at any time.

(h) Provides that this chapter, except as otherwise provided, applies to a school governed by a board of managers in the same manner this chapter applies to any other charter school.

Sec. 12.1166. COMPENSATION OF BOARD OF MANAGERS AND CHARTER SUPERINTENDENT. (a) Authorizes the commissioner to authorize compensation for a member of a board of managers or a charter superintendent appointed under Section 12.1165.

(b) Requires the commissioner to establish the terms of compensation provided under Subsection (a).

(c) Requires the commissioner to use funds of the former school due or received under Section 12.106 for compensation of a charter superintendent or a member of a board of managers.

(d) Authorizes the commissioner, if funds described by Subsection (c) are not available or the commissioner determines that the circumstances require, to use available agency funds for compensation under this section, provided that the use of the available funds for that purpose is not prohibited by other law.

(e) Authorizes the commissioner, if the commissioner determines that the amount appropriated for purposes of the Foundation School Program exceeds the amount to which school districts are entitled under Chapters 42 (Foundation School Program) and 46 (Assistance with Instructional Facilities and Payment of Existing Debt), to authorize the comptroller of public accounts of the State of Texas to transfer funds from the Foundation School Program to TEA's administrative account for compensation as provided by this section.

SECTION 3. Amends Section 12.128, Education Code, by adding Subsections (c-1), (c-2), and (f), as follows:

(c-1) Authorizes the commissioner, in supervising the disposition of property under Subsection (c)(2) (requiring the commissioner to supervise the disposition of the property in accordance with law), to:

(1) file a suit for receivership under Subchapter G; or

(2) seek a court of competent jurisdiction to declare the property to be state property and order the property to be titled in the name of the state.

(c-2) Provides that if the commissioner obtains a court declaration described by Subsection (c-1)(2):

(1) the Texas General Land Office (GLO) shall:

(A) sell any real property through any method available to GLO; and

(B) transfer any proceeds of the sale of the real property to the charter school liquidation account established under Section 12.269; and

(2) the Texas Facilities Commission shall transfer any proceeds from the sale of property disposed of under Chapter 2175 (Surplus and Salvage Property), Government Code, into the charter school liquidation account established under Section 12.269.

(f) Provides that the proceeds of the sale of property under Subsection (c-2) are not subject to the requirements of the General Appropriations Act or statutory requirements or rules related to the general revenue fund.

SECTION 4. Amends Chapter 12, Education Code, by adding Subchapter G, as follows:

SUBCHAPTER G. CHARTER SCHOOL RECEIVERSHIP AND LIQUIDATION

Sec. 12.251. PURPOSE. Provides that the purpose of this subchapter is to aid the commissioner in carrying out the commissioner's duty to supervise the disposition of public property of a charter school that ceases to operate. Requires that this subchapter be liberally construed to permit the commissioner, acting as a receiver, to promptly dispose of public property to preserve state funds.

Sec. 12.252. DEFINITIONS. Defines "former charter school," "liquidation order," "proposed disposition plan," "receiver," "receivership order," and "special deputy receiver."

Sec. 12.253. RECEIVERSHIP; JURISDICTION AND VENUE. (a) Authorizes the commissioner, if the commissioner revokes or accepts the surrender of the charter of a charter school, to determine that a receivership is warranted to conserve or dispose of public property over which the commissioner assumes control or possession under this chapter or Chapter 39 (Public School System Accountability).

(b) Requires the attorney general, at the request of the commissioner, to bring an action in a Travis County district court to appoint a receiver to liquidate the assets of a former charter school or a charter school that has otherwise ceased to operate.

(c) Provides that a court does not have jurisdiction over any receivership proceeding for a charter school commenced on behalf of a person other than the commissioner.

(d) Requires the court, not later than the 30th day after the date the attorney general brings an action to appoint a receiver under this section, to enter a receivership order opening the receivership proceeding.

Sec. 12.254. RECEIVERSHIP ORDER. (a) Requires a receivership order to:

(1) appoint the commissioner and any successor in office as the receiver for the former charter school; and

(2) direct the receiver to take possession of the property of the former charter school and administer the property subject to this subchapter.

(b) Authorizes the receiver to request that the receivership court appoint a single judge to supervise the receivership and hear any cases or controversies arising out of or related to the receivership.

(c) Provides that the rights and liabilities of all persons interested in the assets of the former charter school become fixed as of the date of entry of the court's receivership order.

Sec. 12.255. POWERS AND DUTIES OF RECEIVER. (a) Authorizes the receiver to assume or reject any executory contract or unexpired lease of the former charter school.

(b) Provides that the receiver, notwithstanding any other law, is authorized to liquidate by sale or contract for sale any real property owned by a former charter school to satisfy debts of the school and return public property and proceeds to the state.

(c) Authorizes the receiver to dispose of the former charter school's property using provisions for:

(1) the disposal of surplus and salvage property under Chapter 2175 (Surplus and Salvage Property), Government Code; or

(2) the sale of real property under Section 12.128(c-2).

(d) Requires the receivership court, if the receiver disposes of real property under Subsection (c)(2), to assume sole jurisdiction of the transfer of title.

(e) Requires the receiver to dispose of any property determined to be held in trust or any federal property in compliance with applicable law.

Sec. 12.256. APPLICABILITY OF OTHER LAWS. (a) Provides that any law governing the procurement of goods and services by the state does not apply to a contract entered into by the commissioner as a receiver. Provides that this section does not waive any immunity or create a cause of action against the state.

(b) Provides that a receiver appointed under this subchapter may not be required to pay any filing, recording, transcript, or authentication fee to any public officer in the state.

Sec. 12.257. SPECIAL DEPUTY RECEIVER; OTHER EMPLOYMENT. (a) Authorizes the receiver to appoint or contract with one or more special deputy receivers to act for the receiver under this subchapter and employ or contract with legal counsel, actuaries, accountants, appraisers, consultants, clerks, assistants, and other personnel necessary to assist in the liquidation of the former charter school's assets.

(b) Provides that a special deputy receiver has all powers of the receiver granted by this subchapter, unless specifically limited by the receiver, and serves at the pleasure of the receiver.

(c) Authorizes a special deputy receiver or other person with whom the receiver contracts under this section to act on behalf of the commissioner only in the commissioner's capacity as receiver.

(d) Authorizes the receiver to determine the reasonable compensation for any special deputy, employee, or contractor and pay compensation in accordance with Section 12.262.

Sec. 12.258. PERFORMANCE BOND REQUIRED. Requires the receiver to execute a bond to ensure the proper performance of the receiver's duties under this subchapter in an amount to be set by the court.

Sec. 12.259. ASSETS OF FORMER CHARTER SCHOOL. (a) Requires the receiver or a special deputy receiver to take possession of all student records, books, papers,

electronic data, personal and real property, and other assets purchased or acquired, wholly or partly, with state funds of a former charter school.

(b) Authorizes the receiver, if a record or asset described under Subsection (a) is in the possession of a special deputy receiver, to review that asset promptly on request made to the special deputy receiver.

(c) Provides that a receiver or special deputy receiver is required to comply with the Family Educational Rights and Privacy Act (20 U.S.C. Section 1232g).

Sec. 12.260. IMMUNITY, INDEMNIFICATION, AND REPRESENTATION. (a) Entitles the commissioner to immunity for all acts taken as a receiver. Entitles a special deputy receiver to immunity to the same extent as the commissioner acting as a receiver.

(b) Provides that the receiver or special deputy receiver, if any legal action is commenced against the receiver or a special deputy receiver, whether against the receiver or special deputy receiver personally or in their official capacity, resulting from an alleged act, error, or omission of the receiver or special deputy receiver arising out of or by reason of their duties or employment, is indemnified for all expenses, attorney's fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action, unless it is determined on a final adjudication on the merits that the alleged act, error, or omission of the receiver or special deputy receiver giving rise to the claim:

(1) did not arise out of or by reason of the receiver's or special deputy receiver's duties or employment; or

(2) was caused by intentional or wilful and wanton misconduct.

(c) Requires that any indemnification first be paid from the assets of the former charter school. Requires that the state, if no assets of the former charter school are available, indemnify the receiver or special deputy receiver.

(d) Requires the attorney general to represent the receiver or special deputy receiver:

(1) in all actions relating to a receivership under this subchapter; and

(2) in any suit challenging an action taken by the receiver or special deputy receiver in the receiver's or special deputy receiver's capacity as a receiver unless the conduct was caused by intentional or wilful and wanton misconduct.

Sec. 12.261. REQUESTED NOTICE. (a) Requires a person, on written request to the receiver, to be placed on the service list to receive notice of matters filed by the receiver. Provides that it is the responsibility of the person requesting notice to inform the receiver in writing of any changes in the person's address or to request that the person's name be deleted from the service list. Authorizes the receiver to require that a person on the service list provide confirmation to remain on the service list. Provides that any person who fails to confirm the person's intent to remain on the service list may be purged from the service list. Provides that inclusion on the service list does not confer standing in the receivership proceeding to raise, appear, or be heard on any issue.

(b) Requires that notice of a proposed disposition plan to a person on the service list be provided as established by Section 12.265.

Sec. 12.262. APPROVAL AND PAYMENT OF EXPENSES. (a) Requires the receiver to submit an estimate of expenses to the receivership court for approval.

(b) Authorizes the receiver to pay any expenses under contracts, leases, employment agreements, or other arrangements entered into by the former charter school before receivership from the assets of the former charter school. Provides that the receiver is not required to pay any expenses that the receiver determines are not necessary and may reject any contract under Section 12.257.

(c) Authorizes the receiver to deposit former charter school funds in the charter school liquidation account established under Section 12.269 and pay former charter school expenses from that account.

(d) Provides that the special deputy receiver, if a special deputy receiver has been appointed to pay certain expenses and the special deputy receiver has insufficient funds to pay those expenses from the assets of the former charter school, may request that the receiver draw funds from the charter school liquidation account established under Section 12.269 to pay the expenses.

(e) Authorizes the receiver, if the receiver determines that the expenses under Subsection (d) are necessary, to withdraw the amount necessary to pay the expenses of the receivership.

Sec. 12.263. PRIORITIZATION AND SATISFACTION OF DEBTS. (a) Prohibits the state, commissioner, or receiver from being held liable for the debts or liabilities incurred by a former charter school.

(b) Requires the receiver to satisfy debts of a former charter school in accordance with a proposed disposition plan after payment of:

- (1) debts to state and federal governmental entities, including payments to a conservator, monitor, superintendent, or member of a board of managers or management;
- (2) perfected liens;
- (3) secured debts; and
- (4) expenses of the receivership.

(c) Requires that any remaining state assets of a former charter school, after satisfaction of the debts and expenses listed in Subsection (b), be used to satisfy debts in the following priority, unless otherwise ordered by the receivership court:

- (1) salary owed to non-administrative faculty and staff;
- (2) unpaid, unsecured rent on leasehold;
- (3) vendors; and
- (4) any other debts recognized by law.

Sec. 12.264. PROPOSED DISPOSITION PLAN. (a) Requires the receiver to file with the court a proposed disposition plan that accounts for:

- (1) the disposition of all known assets of the former charter school; and
- (2) the amount of all expenses that the receiver may incur.

(b) Requires that the proposed disposition plan specifically identify any property that is not considered to be public property under Section 12.128.

(c) Requires the special deputy receiver, if the commissioner appoints a special deputy receiver to develop the disposition plan, to present the plan to the commissioner for approval before filing the plan with the court.

Sec. 12.265. NOTICE OF PROPOSED DISPOSITION PLAN. (a) Requires the receiver, unless the receivership court otherwise directs, to give notice of the proposed disposition plan as soon as possible:

(1) by first class mail or electronic communication as permitted by the receivership court to:

(A) any person known or reasonably expected to have a claim against the former charter school, at the person's last known address as indicated by the records of the former charter school;

(B) each state and federal agency with an interest in the proceeding; and

(C) any person on the service list under Section 12.261; and

(2) by publication in a newspaper of general circulation in the county in which the principal place of business of the former charter school was located, in any county in which the former charter holder operated a school, and in any other location as the receiver deems appropriate.

(b) Requires that the notice of the proposed disposition plan contain or provide directions for obtaining the following information:

(1) a statement that the former charter school has ceased to operate and that the commissioner has taken possession and assumed control of the school's assets under Section 12.128;

(2) a statement of the date, time, and location of any initial status hearing scheduled at the time the notice is sent;

(3) a description of the process for obtaining notice of matters before the receivership court; and

(4) any other information the receiver or the receivership court deems appropriate.

(c) Provides that the distribution of property of the former charter school under this subchapter, if notice is given in accordance with this section, is conclusive with respect to all claimants, regardless of whether the claimant received notice.

(d) Provides that the receiver has no duty to locate any person if an address, notwithstanding any other provision of this section, is not found in the records of the former charter school or if mailings are returned to the receiver because of the inability to deliver to the address shown in the records of the school. Provides that notice by publication or actual notice received, if notice is not given to a person as provided by this subsection, is sufficient.

(e) Provides that written certification by the receiver or other knowledgeable person acting for the receiver that the notice was deposited in the United States mail, postage prepaid, or that the notice has been electronically transmitted is prima facie evidence of mailing and receipt of notice. Requires all claimants to keep the receiver informed of any changes of address.

Sec. 12.266. HEARING AND APPEAL ON DISPOSITION PLAN. (a) Requires any party objecting to the proposed disposition plan to file an objection specifying the

grounds for the objection not later than the 45th day after the date of the notice of the filing of the proposed disposition plan or within another period as the receivership court may set. Requires that an objection also be served on the receiver and any other person served with the proposed disposition plan. Provides that an objecting party has the burden of showing why the receivership court should not authorize the proposed disposition plan or any other action proposed by the receiver.

(b) Requires the receivership court, if no objection to the proposed disposition plan is timely filed, to enter an order approving the application without a hearing. Authorizes the receiver to request that the receivership court enter an order or hold a hearing on any outstanding motions on an expedited basis.

(c) Authorizes the receivership court, if an objection is timely filed, to hold a hearing. Requires the receivership court, if the receivership court approves the proposed disposition plan and, on a motion by the receiver, determines that the objection was frivolous or filed for delay or for another improper purpose, to order the objecting party to pay the receiver's reasonable costs and fees of defending the action.

Sec. 12.267. LIQUIDATION ORDER. (a) Requires the receiver, when the receiver has disposed of all assets according to the proposed disposition plan approved by the court, to promptly apply to the receivership court for entry of a liquidation order.

(b) Requires the court, on demonstration to the court that the receiver has complied with the disposition plan and all assets have been disposed of in accordance with the plan, to enter a liquidation order discharging the receiver and closing the receivership.

(c) Provides that a liquidation order under this subchapter is final and may not be appealed.

Sec. 12.268. DISPOSITION OF REMAINING FUNDS. Requires the commissioner, after a liquidation order has been entered, to deposit any remaining funds from the former charter school in the charter school liquidation account established under Section 12.269.

Sec. 12.269. CHARTER SCHOOL LIQUIDATION ACCOUNT. (a) Requires the commissioner to remit to the comptroller funds received under Sections 12.116 and 12.128 and this subchapter for deposit in an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company to be known as the charter school liquidation account. Authorizes money in the account to be spent by the commissioner only for the purposes provided by this section.

(b) Requires the charter school liquidation account to be administered by the commissioner to pay the expenses incurred during a receivership of any former charter school.

(c) Requires the commissioner to annually review the charter school liquidation account and transfer any funds exceeding \$2 million to the comptroller for deposit in the charter district bond guarantee reserve fund established under Section 45.0571. Authorizes the commissioner to delay a transfer under this subsection if the excess does not exceed \$100,000.

Sec. 12.270. RULES. Authorizes the commissioner to adopt rules necessary to implement this subchapter.

SECTION 5. Effective date: September 1, 2015.