

BILL ANALYSIS

Senate Research Center

S.B. 2293
By: Fallon
Education
6/17/2019
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Since inception of charter schools in 1995, it was the intent and legal framework of the Texas Legislature that charter schools operated by nonprofit corporations are treated like public entities at the legislature's discretion. Charter schools are public schools and their employees are public employees due to receiving public funds to educate children and are accountable like public schools for academic and financial performance.

In several states, charter schools have recently been the subject of unionization efforts. The National Labor Relations Board has ruled in cases from Louisiana, New York, and Pennsylvania on determining whether charter school employees can organize in the last 18 months. Independent school districts in Texas, as political subdivisions, are not subject to unionization and collective bargaining by their employees. A recent Fifth Circuit Case upheld a National Labor Relations Board ruling that confirmed public charter schools in Texas are political subdivisions for purposes of the National Labor Relations Act, just like school districts. However, state law does not include charter schools in Chapter 617, Government Code, for purposes of collective bargaining agreements. The unionization of charter schools would be costly to the operations of charter schools and not allow them to be flexible and creative to meet the purpose of providing a unique learning environment.

S.B. 2293 adds open-enrollment charter schools to the definition of political subdivisions in Chapter 617, Government Code, clarifying that charter schools are to be treated like school districts and are a political subdivision for purposes of collective bargaining agreements. (Original Author's/Sponsor's Statement of Intent)

S.B. 2293 amends current law relating to the applicability of certain laws to and admission procedures for open-enrollment charter schools.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 4 (Section 12.1173, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.1058(c), Education Code, as follows:

(c) Provides that, notwithstanding Subsection (a) or (b) (relating to open-enrollment charter schools being considered public entities under certain conditions), an open-enrollment charter school operated by a tax exempt entity as described by Section 12.101(a)(3) (relating to certain nonprofit organizations being included in the definition of "eligible entity") is not considered to be a political subdivision, local government, or local governmental entity unless:

(1) creates this subdivision from existing text and makes a nonsubstantive change;
or

(2) a provision in this chapter (Charters) states that a specific statute applies to an open-enrollment charter school.

SECTION 2. Amends Section 12.117(a), Education Code, as follows:

(a) Requires the governing body of an open-enrollment charter school, for the admission to the school, to:

(1) require the applicant to complete and submit the common admission application form described by Section 12.1173, rather than an application, not later than a reasonable deadline the school establishes; and

(2) makes no changes to this subdivision.

SECTION 3. Amends Section 12.1171, Education Code, as follows:

Sec. 12.1171. **ADMISSION TO OPEN-ENROLLMENT CHARTER SCHOOLS SPECIALIZING IN PERFORMING ARTS.** Authorizes the governing body of an open-enrollment charter school that specializes in one or more performing arts, notwithstanding Section 12.117 (Admission), to require an applicant to audition for admission to the school in addition to completing and submitting the common admission application form under Section 12.1173.

SECTION 4. Amends Subchapter D, Chapter 12, Education Code, by adding Sections 12.1173 and 12.1174, as follows:

Sec. 12.1173. **COMMON ADMISSION APPLICATION FORM; WAITING LIST FOR ADMISSION.** (a) Requires the commissioner of education (commissioner) by rule to adopt a common admission application form for use by an applicant for admission to an open-enrollment charter school that provides for the submission of information that the commissioner considers appropriate.

(b) Prohibits the form adopted under this section from advertising or otherwise promoting any person or open-enrollment charter school or soliciting money, goods, or services from an applicant.

(c) Requires the commissioner to publicize the availability of the form adopted under this section, including by posting the form on the Texas Education Agency's (TEA) Internet website.

(d) Requires the commissioner by rule to adopt guidelines for an open-enrollment charter school that receives more acceptable applications for admission than available positions at the school to create and manage a waiting list each school year for applicants who are not admitted.

(e) Requires the commissioner to adopt any other rules as necessary to implement this section, including rules to ensure this section complies with federal law regarding confidentiality of student medical or educational information, including the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information.

Sec. 12.1174. **ENROLLMENT AND WAITING LIST REPORT.** (a) Requires the governing body of a charter holder, not later than the last Friday in October of each school year, in the form prescribed by commissioner rule, to report to TEA for that school year:

(1) the following information for each campus operating under the charter holder's charter:

(A) the number of students enrolled;

(B) the enrollment capacity; and

(C) if a charter holder uses a waiting list for admission to a campus:

(i) the total number of students on the waiting list; and

(ii) the number of students on the waiting list disaggregated by grade level;

(2) the information described by Subdivision (1) aggregated for all campuses operating under the charter holder's charter; and

(3) any information required by the commissioner as necessary to identify each student admitted to or on a waiting list for admission to a campus operating under the charter holder's charter who is or was previously enrolled in a public school in this state.

(b) Requires the commissioner, from information provided to the commissioner by each charter holder under this subchapter, to identify each group of charter holders considered by the commissioner to be corporate affiliates or substantially related charter holders. Requires TEA, using the information reported under Subsections (a)(1) and (2), to aggregate the information for each group of charter holders identified by the commissioner under this subsection.

(c) Requires the commissioner, not later than March 15 of each year, to post on TEA's Internet website:

(1) the information reported by charter holders under Subsections (a)(1) and (2); and

(2) the information aggregated by TEA under Subsection (b).

(d) Requires the commissioner to adopt rules as necessary to implement this section, including rules to ensure this section complies with federal law regarding confidentiality of student educational information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information.

SECTION 5. Amends Chapter 617, Government Code, by adding Section 617.0025, as follows:

Sec. 617.0025. **APPLICABILITY OF CHAPTER TO OPEN-ENROLLMENT CHARTER SCHOOL.** (a) Provides that an open-enrollment charter school established under Subchapter D (Open-Enrollment Charter School), Chapter 12, Education Code, is a political subdivision for purposes of this chapter (Collective Bargaining and Strikes).

(b) Provides that a member of the governing body of a charter holder, a member of the governing body of an open-enrollment charter school, and an officer of an open-enrollment charter school are considered to be officials of a political subdivision and an employee of an open-enrollment charter school is considered to be a public employee under this chapter.

SECTION 6. Provides that Sections 12.117 and 12.1171, Education Code, as amended by this Act, and Section 12.1174, Education Code, as added by this Act, apply beginning with the 2020-2021 school year.

SECTION 7. Requires the commissioner, not later than January 1, 2020, to adopt a common admission application form, waiting list guidelines, and any other rules as necessary to implement Sections 12.1173 and 12.1174, Education Code, as added by this Act.

SECTION 8. Provides that, with respect to Section 617.0025, Government Code, as added by this Act, if an open-enrollment charter school entered into a collective bargaining contract with a labor organization before the effective date of this Act, Chapter 617, Government Code, does not apply during the term of that contract. Prohibits a collective bargaining contract entered into before the effective date of this Act from being renewed.

SECTION 9. Effective date: upon passage or September 1, 2019.