

- SUBJECT:** Making open-enrollment charter schools subject to municipal zoning
- COMMITTEE:** Public Education — favorable, without amendment
- VOTE:** 7 ayes — Sadler, Dutton, Dunnam, Hardcastle, Hochberg, Olivo, Smith
1 nay — Grusendorf
1 absent — Oliveira
- WITNESSES:** For — Randy Hampton, Dallas Police Department
Against — Felicia Escobar, National Council of La Raza
- BACKGROUND:** In 1995, the 74th Legislature enacted Education Code, ch. 12, to authorize the operation of charter schools as a state-funded alternative to public schools for Texas students. Open-enrollment charters are governed by rules set forth under ch. 12, subchapter D. Open-enrollment charter schools receive state funding and are subject to the educational policies described in their charter granted through the State Board of Education (SBOE), as well as being subject to federal and state laws and rules governing public schools.
- Education Code, sec. 12.101(b) limited the SBOE to grant 20 charters for open-enrollment schools that operate in a facility of a commercial or nonprofit entity or a school district, including a home-rule school district. Sec. 12.1011 authorized the SBOE to grant another 100 charters for open-enrollment charter schools that admit students under the Public Education Grant (PEG) program. The PEG program was created in 1995 to provide choices for parents whose children attend low-ranking schools where 50 percent or more of the students do not perform satisfactorily on assessment tests. Additional charters for open-enrollment charter schools may be granted to schools where at least 75 percent of the prospective student population is at-risk of dropping out.
- DIGEST:** HB 423 would amend Education Code, sec. 12.103 to make open-enrollment charter schools subject to municipal zoning ordinances.

The effective date would be September 1, 2001.

**SUPPORTERS
SAY:**

HB 423 would allow for municipal review of the proposed location of open-enrollment charter schools and would prevent them from locating in inappropriate places such as strip malls. Nothing in current law prevents open-enrollment charter schools from locating near liquor stores, bars, or sexually-oriented businesses. HB 423 would provide for reasonable regulation to provide for the health, safety, morals, and general welfare of students, teachers, and staff members of open-enrollment charter schools.

HB 423 would protect strip-mall businesses from losing customers due to fear of unruly teens. Charter schools often are designed with at-risk students in mind. Students of charter schools located in strip commercial centers often will loiter in front of other businesses between classes and after school, interfering with the operations of convenience stores. Some students start fights and engage in gang activity near the strip malls where at-risk charter schools are located. This interferes with business and keeps customers away.

Restrictions on the location of open-enrollment charter schools could protect the property rights of existing businesses. Some businesses — such as bars, liquor stores or sexually-oriented businesses — have distance restrictions on how close they can locate near schools. If a charter school were to move too close to a restricted business, it could lead to costly and unnecessary litigation to determine the property rights of the restricted business.

Local-zoning ordinances typically grant wide latitude in locating both schools and churches, even in residential areas. Placing these facilities in a neighborhood would locate them closer to the homes of students, teachers, and staffs than locating them in commercial areas such as strip shopping centers. Real estate prices may be more affordable in residential areas. Zoning ordinances provide reasonable regulations, such as parking and lot coverage rules, which would allow schools and churches to co-exist peacefully with the surrounding neighborhood.

**OPPONENTS
SAY:**

HB 423 would impose another layer of bureaucratic regulation and government control on open-enrollment charter schools. The Legislature intended to ease restrictions on these schools so that they could provide

more innovative ways to educate students whose needs were not being served in traditional public schools. The bill only would add more costly red tape for operators of these schools.

Open-charter schools lack the resources to purchase the large tracts of land such as those used for traditional public schools. Typically a small charter school can afford only a small storefront in a mostly vacant strip commercial center. The school administrators should be responsible for the safety of their students and avoid locating near potentially conflicting land uses.

HB 423 would discriminate against open-enrollment charter schools that provide valuable alternatives to students who were not served well by the public schools. Charter schools serve all types of students and for the most part co-exist peacefully with their neighbors. A charter school student is a student who wants to learn badly enough to try an alternate setting. There is no need to submit these schools to special restrictions, which would essentially amount to restrictions on the students and parents they serve.

NOTES:

The companion bill, SB 949 by Shapiro, was considered in a public hearing by the Senate Intergovernmental Affairs Committee on April 17 and was left pending.