

SUBJECT: Open-enrollment charter school moratorium and regulation

COMMITTEE: Public Education — committee substitute recommended

VOTE: 8 ayes — Sadler, Dunnam, Grusendorf, Hardcastle, Hochberg, Oliveira,
Olivo, Smith

0 nays

1 absent — Dutton

WITNESSES: For — Glenda Barrera; Tracy Beasley; Charlotte Coffelt, Houston Area Chapter of Americans United for Separation of Church and State; Mary Duty, Texas PTA; Archie Hatton III; Johnette Hicks, EOAC Waco Charter School; Stella Hinojosa; Donna Howard; Mark Lewis; Nancy Lomax, Rowena Palladina, Manuel Rodriguez, Parents for Public Schools; Michele Molter, Association of Texas Professional Educators; Richard Neavel, The League of Women Voters of Texas; John O' Sullivan, Texas Federation of Teachers; M. Esther Rendon; Eddie Rohrer; Rachel Rohrer; John Segrest; Jeri Stone, Texas Classroom Teachers Association; Marjorie Wall, Texas State Teachers Association

Against — Trent Petty, Town of Westlake, TX and The Westlake Academy; Kye Tatum, Texas Hill Country NAACP

On — Luis Cano, Juan Galaviz Academy; Felicia Escobar, National Council of La Raza; Nancy Grayson; Christi Martin, Association of Charter Educators; Francis Teran, Association of Charter Educators, La Escuela de las Americas Public Charter School; Joe Wisnoski, Texas Education Agency

BACKGROUND: In 1995, the 74th Legislature authorized 20 open-enrollment charter schools, which were exempted from much of the administrative and regulatory requirements for public schools. The 75th Legislature in 1997 authorized an additional 100 charter schools as well as 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. According to the interim report by the

House Public Education Committee, the State Board of Education (SBOE) SBOE has approved 192 charter applications, with 163 charters in operation.

In 1998 and 1999, several charter school failures received intense media attention. The most highly publicized cases were Emma L. Harrison Charter School in Waco, and Ramses Academy in San Antonio, which closed owing taxpayers and vendors more than \$400,000, and forced approximately 600 children to repeat a grade of school.

DIGEST: CSHB 6 would revise state regulation of open-enrollment charter schools.

Moratorium on additional charter schools. CSHB 6 would prohibit the SBOE from issuing additional charters after August 31, 2001. This provision would expire September 1, 2003.

Minimum enrollment. A charter school would have to have and maintain an enrollment of at least 50 students. The SBOE could grant a waiver if it determined that the nature of the charter school required fewer than 50 students and allow a school to operate with as few as 20 students. SBOE could revoke a charter school's charter if enrollment dropped below the minimum requirement for a period of time prescribed by SBOE. In the case of a charter receiving more applications for admission than it had available places, the bill would require a school to allocate the available places by lottery.

State Board of Education (SBOE) delegation to commissioner. The SBOE to delegate its authority over charter schools to commissioner of education, except to grant, deny, modify, place on probation, deny renewal of, or revoke a charter. It specifically would allow the commissioner to conduct hearings.

General applicability of laws and rules. Charter schools would be considered part of the public school system and subject to federal and state laws governing public schools or public school districts. The commissioner could exempt charter schools from a state law or rule if the commissioner determined it was impracticable or inefficient to apply it to charter schools.

Applicability of purchasing and contracting Rules. Charter schools would be subject to prohibitions, restrictions, or requirements for purchasing and contracting. The commissioner could adopt rules applying these provisions to charter schools, to the extent the commissioner found it necessary or advisable to account for state funding to these schools.

Length of school day. Charter schools would be subject to laws regarding the length of a school day, unless the commissioner granted a waiver.

A charter school seeking a waiver from the length of school day would have to make a request in writing at least 31 days prior to beginning a shorter day. The request would have to include a statement of achievement objectives for the charter school and explain how the school day length requirement inhibited achievement of those objectives. The commissioner would be required to respond to a request, and in the absence of a response, it would be deemed approved. The commissioner could not deny a waiver application from a charter school rated as academically acceptable or higher for the preceding three years.

The commissioner could not grant a waiver if it was to support an athletic or artistic activity. A waiver of the required school day length would be limited to three years. At the end of three years, the charter school could receive an open-ended exception if the school had fulfilled the achievement objectives in its request for the initial waiver. The exception would end if and when the commissioner determined the charter school's achievement level had declined.

Open Meetings and Public Information acts. The governing bodies of a charter holder and a charter school would be considered governmental bodies for purposes of the Open Meetings Act and Public Information (Open Records) Act (Government Code, chs. 551 and 552). Any requirement under chs. 551 and 552 that applies to a school district, board of trustees of a school district, or public school students would be applicable to the governing body of a charter holder, governing body of a charter school, or charter school students.

Record-keeping requirements. A charter school would be considered a local government for the purposes of record-keeping requirements applicable

to a school district, board of trustees of a school district, or an officer or employee of the school district applicable to a charter school, governing body of a charter school, governing body of a charter holder, or an officer or employee of the charter school.

The record of a charter school and of a charter holder that relate to the charter school would be considered government records for all purposes under state law. The commissioner would be directed to specify a manner of transmission for records of a charter school that ceases to operate and would designate a custodian who was capable of maintaining them, making them readily accessible for persons entitled to access, and complying with state and federal laws regarding access. If a charter school that ceased to operate refused to comply with the specified manner of transmission, the commissioner could ask the attorney general to petition a court for transmission of the records. If the petition was granted, the court would have to award attorney fees and costs to the state.

Charter schools in existence on September 1, 2001, would have to comply with Local Government Code, secs. 203.025 (designation of records management officer), 203.026 (establishment of records management program), and 203.041 (preparation and filing of records control schedules) no later than September 1, 2002.

Public purchasing and contracting. CSHB 6 would characterize a charter school as a government entity subject to requirement for purchasing and contracting.

Nepotism. CSHB 6 would characterize a member of a governing body of a charter holder, member of a governing body of a charter school, or officer of a charter school as a public official for purposes of Local Government Code, ch. 171, concerning nepotism. A member or officer would be considered to have a substantial interest in a business entity if he or she was related within the third degree of sanguinity. If a charter school had been rated as academically acceptable or higher for the preceding three school years, a member or officer would not be subject to sec. 171.009.

Teachers Retirement System (TRS). A qualifying management company employee could be covered by TRS to the same extent as a school district

employee or charter school employee. The charter holder or management company would be responsible for the contribution that a school district must pay for a qualified school district employee.

State funding. Effective beginning with the 2003-04 school year, a charter holder would receive funding as if it were a school district without a Tier I local share and without local revenue. Adjustments made under Education Code, secs. 42.102-42.105, and the school district enrichment tax rate (DTR) under Education Code, sec. 42.302 would be based on the average adjustment and average DTR for the state.

All funds received by a charter holder after September 1, 2001, would be considered public funds under state law, to be held in trust for the benefit of the charter school students, and only to be used for purposes for which a school district may use local school funds. The funds would have to be deposited into a bank with which the charter holder had a depository contract, and the charter holder would have to deliver a copy of the contract to the SBOE.

Effect of accepting state funds. A charter school accepting funds after the effective date of the bill would have to agree to be subject to provisions regarding acceptance and use of funds, regardless of the date when the charter was granted. A charter school accepting funds after September 1, 2001, would have to accept all liability for funds accepted prior to September 1, 2001. CSHB 6 would not create liability for charter holder conduct occurring before September 1, 2001.

Annual financial statements. CSHB 6 would include a charter school in the list of entities required to prepare an annual financial statement.

A charter school would have to submit a financial statement to a daily, weekly, or monthly newspaper published within the geographical area served by the charter school, or, if such a paper did not exist, to a general circulation newspaper in the area served by the charter school.

Student fees. A governing body of a charter school could charge students only fees that a school district may require.

Charter renewal. The SBOE would be required to adopt a form and procedure for renewing a school charter. CSHB 6 would amend the information required in a charter application or a charter renewal application by adding a description of the program to be provided on a typical school day, including the number of hours the program is offered to students, and a description of the types of instructional approaches the charter would use.

The grant of a charter would not create an entitlement to renewal of that charter on the same terms.

Content of charter. CSHB 6 would amend Education Code, sec. 12.111 to amend the required contents of a school charter. CSHB 6 would add “artistic ability” to the list of characteristics that could not be used as part of the admissions policy. The charter would have to specify the powers and duties that the governing body of a charter holder could delegate to an officer. CSHB 6 also would require the charter to specify how the school would distribute information to parents regarding the qualifications of professional employees, including their degrees, certifications, and relevant experience.

Charter revision. A charter school desiring to revise its charter to expand to additional campuses or sites not in its original charter, to add grade levels not in its original charter, or to increase enrollment would be required to submit an application to the SBOE. The SBOE would be required to interview appropriate school representatives and take other actions necessary to thoroughly review the application. The SBOE would be prohibited from approving these three types of revisions if the applicant charter school was not rated as academically acceptable or higher for each of the preceding three years.

This section would apply to a revision proposed by a charter school that has not been approved by the SBOE prior to September 1, 2001, regardless of when the school proposed the revision.

Modification, probation, revocation, or denial of renewal. The SBOE could modify, place on probation, revoke, or deny renewal of a charter based on failure of the charter to protect the health, safety, or welfare of the students. State administrative procedures in Government Code, ch. 2001

would be inapplicable to a hearing related to the modification, probation, revocation, or renewal of a charter.

Effect of revocation, denial of renewal, or surrender of charter. A charter school could not continue to operate or receive state funds if the SBOE revoked or denied renewal of a charter, or if the school surrendered its charter. If the SBOE revoked or refused to renew a charter before completion of the school year, this section would allow a charter school to continue operating and receiving state funds through the end of that school year.

Emergency suspensions. The commissioner could temporarily withhold funding, suspend the authority of a charter to operate, or take other necessary action to protect students based on evidence that the conditions at the school present a danger to the health, safety, or welfare of the students. The charter school would not be permitted to resume operation after a suspension until the commissioner or SBOE determined that despite initial evidence there was no danger, or that conditions that presented a danger had been corrected.

If the commissioner imposed a suspension, the charter school would be entitled to a hearing within three days of the suspension. If the commissioner does not lift the suspension, the SBOE would be required to consider the suspension at its next meeting. Government Code, ch. 2001 would not apply to an emergency suspension.

Evaluation of charter schools. Evaluations would have to include an assessment of whether school districts or campus employees were informing students at-risk of dropping out of school of the opportunity to attend charter schools for the purpose of enabling the district or campus to avoid responsibility for them.

An evaluation of a charter school that assists students in earning a high school diploma or high school equivalency certificate would have to include evaluations of the quality of the educational program, the number of hours per day the program is provided, the class size and student to teacher ratio, and student success in earning a high school diploma or high school equivalency certificate.

Study of charter schools. SBOE would have to study charter schools' instructional methods to determine the extent to which charter schools are using innovative educational concepts, and the extent to which those innovative educational concepts result in improvements in student performance on academic assessments (e.g. TAAS), attendance, or grades.

The SBOE also would have to study how it received information from charter schools. This study would be required to focus on the extent to which procedures produced data sufficient to permit effective and timely oversight of charter schools, solicit comments from those involved or interested in operating charter schools, and develop recommendations for modifying procedures for obtaining information.

The SBOE would have to include the results of the studies in the comprehensive biennial report due on December 2, 2002.

Conflicts of interest. A person could not serve as a member of a governing body of a charter school, an officer of a charter school, or an employee if the person or the person's spouse had a substantial interest in a management company. This section would define "substantial interest" to mean a person who:

- ! had a controlling interest in the company;
- ! owned more than ten percent of the voting interest of the company;
- ! owned more than \$25,000 of the fair market value of the company;
- ! had a direct or indirect participating interest in more than ten percent of the profits, proceeds, or capital gains of the company;
- ! was a member of the board of directors or governing body of the company;
- ! was an elected officer of the company; or is an employee of the company.

Governing body powers and duties. The general powers and duties of the governing body of a charter school would include:

- ! governing and overseeing management of the charter school;
- ! contracting with a management company if necessary and desirable;
- ! selecting, compensating, evaluating, and terminating the principal or chief

operation officer;

- ! approving employment, compensation, promotion, demotion, or termination of other professional employees of the school;
- ! adopting and amending the budget;
- ! ensuring school compliance with applicable laws; and
- ! selecting the textbooks.

CSHB 6 would prohibit the governing body of the charter school from delegating the governing body's powers to another person, except as provided by Education Code, sec. 12.111(9) (delegation in school's charter). In addition, the governing body would have to provide for an appeal to the governing body or its designee in student disciplinary matters in which a student would be entitled to appeal.

Liability. Notwithstanding the Texas Non-Profit Corporation Act, members of a governing body of a charter holder and of a charter school would be personally liable for misallocation of state funds or property purchased or leased with state funds, including any use of funds or property that resulted in an improper personal benefit for the member. If a charter holder received funds after September 1, 2001, a member serving in that capacity after September 1, 2001, would accept liability regarding state funds accepted during the person's service as a member.

A member would not be liable for approving or agreeing to use of state funds if that member relied in good faith on the advice of legal counsel that the use was authorized. In addition, a member would be entitled to contribution from any other person who knowingly accepted or received improperly used funds.

Training. The SBOE would have to adopt rules no later than January 1, 2002, for the training of members of governing bodies and officers of charter schools. These rules would have to specify the minimum amount and frequency of the training and would require the training be provided by SBOE, the regional education centers, other entities approved by the SBOE, or a combination thereof. The training would have to include basic school law, health and safety issues, accountability requirements related to the use of public funds, and other accountability requirements (e.g. open meetings,

public information). SBOE would be required to mandate reporting to monitor compliance.

Members of the governing body of a charter school and officers would have to complete the training or face removal or termination of employment. If a person did not complete the training and the charter did not take action, the bill would require SBOE to place the charter on probation or revoke the charter.

Management companies. A charter holder or governing body of a charter school could not accept a loan from a management company that had a contract to provide services to that school or another charter school operating under the charter holder.

A charter school would have to submit any contract between the school and a management company to the commissioner for approval. The bill would prohibit the contract from taking effect until approved by the commissioner, who would be required to adopt criteria for contract approval. These criteria would have to require the company have substantial experience and expertise, a reliable record, and the necessary resources, to provide management services in an educational context. The criteria also would require the company to demonstrate it did not employ a person who had engaged in conduct that would be a basis for the commissioner to deny approval or, deny renewal of, or suspend a management company contract.

The commissioner could deny approval of, deny renewal of, or suspend a management company contract if the management company:

- ! failed to provide services in compliance with contractual and legal obligations;
- ! failed to protect the health, safety, and welfare of charter school students;
- ! violated this subchapter or a ruled adopted thereunder;
- ! engaged in conduct that could result in action under Education Code, secs. 12.115 and 12.116,;
- ! refused to meet reasonable health and safety requirements; or
- ! compromised a charter school's eligibility under Education Code, sec. 12.101(a)(3).

Management contracts approved by the commissioner would not be assignable. Management contracts to provide services for the 2001-02 school year or a later school year, executed prior to September 1, 2001 would have no effect unless the contract is approved by the commissioner.

The bill would require the commissioner to adopt criteria for approval of management contracts by November 1, 2001.

Liability of management company. A management company would be liable for damages incurred by the state or an affected school district by the company's failure to comply with its contractual or legal obligations. The SBOE could request the attorney general to bring suit against the management company for damages, injunctive relief, or any equitable remedy the court finds appropriate. An affected school district could not bring suit against the management company, but could participate in a suit brought by the attorney general with his consent.

These provisions would be cumulative and would not affect liability of the management company to the charter holder; or liability of the charter holder, members of the governing body of the charter holder, or a member of the governing body of a charter school to the state.

This section would apply only to a cause of action that accrued on or after September 1, 2001. A cause of action that accrued prior to September 1, 2001, would be governed by the law in effect at the time the cause of action accrued, and that law would be continued in effect for that purpose.

Property purchased or leased with state funds. Property purchased or leased with funds received by a charter school after September 1, 2001, would be public property for all purposes under state law, held in trust for the benefit of the charter school students, and could be used only for a purpose for which a school district may use school district property.

The bill would characterize all real property purchased with at least 50 percent state funds received before September 1, 2001, as public property, to the extent that it was purchased with those funds.

The bill would direct the commissioner to take possession and assume control of such property if a charter school ceased to operate and supervise the disposition of that property under state law. The commissioner could adopt necessary rules to administer these provisions.

The bill would not affect a security interest or lien established by a creditor in compliance with law if the security interest or lien arose in connection with the sale or lease of the real property to the charter holder.

Minimum teacher qualifications. All charter school teachers would have to hold a high school diploma or equivalency certificate. A teacher assigned to teach a foundation curriculum subject would have to hold at least a bachelor's degree or a teaching certificate, unless otherwise approved by the commissioner.

A person employed as charter school teacher during the 2000-01 school year could teach a foundation curriculum subject without a bachelor's degree if the person held a high school diploma or equivalency certificate, was employed under a contract that guaranteed the right to remain employed for the 2001-02 school year or a later school year, and the person enrolled in a higher education institution by January 1, 2002, in order to obtain a bachelor's degree by June 30, 2007, made satisfactory progress towards the degree, and obtained the degree not later than June 30, 2007.

Access to criminal history records. A charter school would have to obtain criminal history information relating to any person the charter school intended to employ who did not hold a certificate issued under subchapter B, ch. 21, and a person who served as a member of the governing body of the school. A charter school also would be permitted to obtain criminal history information relating to any person who had indicated in writing an intent to volunteer at the charter school.

CSHB 6 would amend Government Code, sec. 411.097 to entitle a charter school to obtain the required criminal history information and would require schools to do so beginning September 1, 2001.

Special accreditation investigations. The commissioner could authorize a special accreditation investigation in response to an allegation that school

district or campus employees were informing students at-risk of dropping out of school of the opportunity to attend a charter school for the purpose of enabling the district or campus to avoid responsibility for those students.

TEA Investigation. TEA could investigate charter schools to determine whether any effectively are requiring students to possess artistic, athletic, or other abilities, in violation of Education Code, sec. 12.111. TEA would have to report such violations to SBOE by January 1, 2002.

Effective Dates. Unless otherwise indicated, this bill would take effect September 1, 2001.

SUPPORTERS
SAY:

CSHB 6 is needed to close many loopholes that have been subject to abuse by certain charter schools and to provide additional public accountability. Increased public accountability, particularly with regard to the use of tax dollars, will foster a more positive public perception of charter schools.

An interim subcommittee of the House Public Education Committee conducted an interim evaluation of the charter school program, including a review of the roles of the state, the TEA, local school districts, and agencies, as well as a review of the performance of charter schools and their students. The interim subcommittee expressed concern that TEA was unable to account for the number of campuses in operation. The subcommittee also expressed concern that charter school staff had refused to comply with open records laws and withheld other information from state education agencies.

Some charter schools have been very successful, such as those sponsored by and accountable to school districts. Many successful charters already are doing many of the things that CSHB 6 would require. These charters support CSHB 6 because it would help to eliminate irresponsible and abusive charter schools.

CSHB 6 would reflect the highest priority in the charter school system: the education of students. When a charter school fails, students may be forced to repeat a grade, causing their self-esteem to suffer and creating an increased likelihood that the student will dropout.

Moratorium. A temporary moratorium on granting new charters is necessary to improve the charter system. Some Texas charter schools are in trouble. Many charter schools have closed without any forewarning to TEA or SBOE. TEA and SBOE currently do not have the resources to monitor existing charter schools, much less new charter schools. Students would be better served if the state could study and improve the existing charter schools and make arrangements for oversight by TEA before more charter schools are created. This would not be a ban on charter schools; the moratorium would temporary.

Minimum enrollment. Minimum enrollment is necessary to prevent the creation of sham charter schools. Without minimum enrollment limitations, a home schooling parent could become a charter holder, and this was not the intent of the original charter school legislation.

Length of school day. Students attending charter schools need an academic education. Under the current school funding formula, public schools are paid the same amount of money for offering a four-hour school day as they are for providing a seven-hour school day. As a result, many charter schools offer only four hours of instruction, then spend the rest of the day on non-academic activities, such as gymnastics or ice skating. This confuses the purpose of public schools. Other schools have a rotation system, where one group of students receives four hours of instruction, after which another “shift” of students arrives. This allows the school to receive additional funds without necessarily providing them a solid education. CSHB 6 would allow the commissioner to grant a waiver if a charter school could show good reason why it should be allowed to offer less than a full day of academic instruction, but no waivers would be granted for athletic or artistic purposes.

Open meetings, public information and local government records. Charter schools should be subject to the same rules and laws as regular public schools. Charter schools are public schools, and when public funds are spent or decisions are made about a public school, those actions should be transparent, with decisions being made in open meetings.

Charter schools should be required to maintain student records. Many parents and students have complained about the lack of record-keeping at charter schools or their unwillingness to give access to those records.

Records often are incomplete or incorrect, e.g., not showing grades, or including grades for courses a student did not take. Some closed charter schools failed to provide any academic records for students, forcing them to repeat a grade upon closure of the school. School records are important to students for many reasons, including college admission, voluntary transfer to another school, or return to a regular public school in the event the charter school closes.

Financial issues. The much-publicized closing of some charter schools has angered the public, who have no way to require accountability from charter schools receiving tax dollars. Some charter schools have comingled funds, passed funds back and forth, and used funds for grossly unnecessary expenses. Professional auditors have had no success in tracing funds for some charter schools.

Charter schools have no reason to object to these provisions if they spend their money legally and keep responsible financial records. If a school spends money illegally or fails to keep financial records, the public has a right to know because they are financing the charter school through tax dollars. Public funds in other areas are subject to at least this minimum amount of scrutiny.

Charter content, renewal, and revision. The proposed laws regarding charters would strengthen the charter application process. The content requirements would help the state to ensure that a charter school has a solid academic plan. This is crucial, as some charter holders have more business experience than education experience.

Emergency suspensions. Emergency suspensions would allow the commissioner to take immediate action to protect students. This is important because some charter schools are housed in unsafe facilities or have other safety issues with regards to weapons, violence, and drugs.

Evaluation and study of charter schools. A thorough study of charter schools would allow duplication of successful innovation in other charter schools and regular public schools as well as elimination of abuses. Students at-risk of dropping out are three times more likely to be referred to a charter school than other students. Some regular public schools are clearly referring

at-risk students to charter schools in an attempt to avoid responsibility for these students. Regular schools may be eager to get rid of at-risk students because their TAAS scores tend to be low and could bring down a campus' rating.

Restrictions on governing members and employees. The anti-nepotism provisions would subject a charter school to rules similar to those that already govern many public entities. These rules would protect charter schools' image and avoid any appearance of impropriety.

Training. Charter schools need competent staff and well-defined roles. Training would ensure that members and officers understood the legal requirements applicable to charter schools.

Management Companies. While a charter school, especially a new one, may need or want the advice and assistance of a management company, the company should not run or effectively own the charter school. Authorizing the commissioner to oversee management companies would provide additional accountability for charter schools. The commissioner should be allowed to prevent management companies with poor track records from opening additional charter schools in Texas.

Texas law should hold management companies accountable for their actions. For example, public schools are legally required to provide certain services for students with disabilities, such as speech therapy. Current law does not provide accountability or sanctions for failure to provide such services or for failure to provide adequately trained staff to provide these services. At one charter school, after the speech therapist left, the director hired a personal friend with no speech therapy training, no college education, and only one year of experience as a teacher aide. The management company was unresponsive to parental complaints. Charter school boards have difficulty getting the support and assistance of management companies.

CSHB 6 would make management companies liable for failing to comply with contractual or legal obligations. The provision allowing the SBOE to request the attorney general's assistance would give the provision teeth and would assist charter schools, parents, and the state in their attempts to hold management companies accountable for their action or inaction.

Minimum teacher qualifications. Some charter schools are using high school dropouts to teach classes. This is unacceptable, and CSHB 6 would remedy that problem. CSHB 6 would a fair compromise because it would raise the minimum qualifications for teachers without disrupting existing charter schools.

Access to criminal history records. Giving schools and regional service centers access to potential employees' criminal history records would protect students. Regular public school teachers are subject to background checks for the protection of students. Students in charter schools deserve the same amount of protection.

TEA investigation. A TEA investigation is necessary to ensure that all charter schools are adhering to the admissions rules. Some schools clearly discriminate based on athletic ability, for example. An investigation would identify and sanction schools that are engaging in such activities.

**OPPONENTS
SAY:**

A moratorium on granting new charters would send the public the wrong message about charter schools. This would be particularly problematic for fledgling charter schools who would be harmed should potential partners, investors, banks, and teachers see CSHB 6 as confirmation that Texas plans to halt the charter school program. They may decide not to participate or to discontinue existing participation in charter schools.

This bill would burden charter schools with additional administrative tasks, such as providing specific reports and records, performing criminal background checks, and sending members and officers for training. This would increase the bureaucracy without providing schools with the additional resources necessary to accomplish those tasks.

CSHB 6 would not provide enough focus on the state's role in charter school failures. Some charter schools failed due to lack of governmental direction, oversight, or support. It is unfair to blame these failures on the charter schools without attempting to evaluate and improve state agencies' role in the charter school process. Some charter holders were unprepared to operate a charter school because the charter application neglected to ensure charters were only granted to applicants with the experience and resources to succeed.

CSHB 6 would not strengthen charter schools' dedication to education because many of the provisions are arbitrary and would burden charter schools with the same administrative red tape that the charter school experiment was supposed to avoid. Instead of requiring a minimum enrollment, a specified school-day length, or minimum teacher qualifications, the state should look to the performance of charter school students. If students are succeeding academically without the imposition of these rules, then the rules are not necessary to protect the quality of the students' education, and charter schools should not be required to follow them.

In addition, when a charter school is found to be violating a rule, the state should assist them in adhering to that rule. If the school refuses to comply, it should be shut down.

Moratorium. The moratorium, though temporary, would be the first step towards abolishing charter schools. Charter schools provide an important educational alternative for many minority and low-income students who otherwise would fall through the cracks of the public education system. Some potentially qualified applicants will continue to present meritorious, compelling reasons why they should become charter holders. The past bad acts of some charter schools should not result in automatic denial of their applications due to a moratorium.

Open meetings. The open meetings provisions are problematic because they would require a nonprofit organization that became a charter holder to make its meetings open to the public. An organization such as the Red Cross, United Way, or Boy Scouts of America could, potentially, become a charter holder. This provision should be more narrowly tailored to relate only to meetings where charter school business is conducted.

Financial Issues. Charter schools are grossly underfunded when compared to public schools. Charter schools do not receive facilities funding to purchase or lease school buildings, which is why many seek loans from management companies. This is a critical issue. There also are other significant start-up costs involved in opening a charter school, such as investment in textbooks and school supplies. Charter schools could not survive if they were held to the same rules that applied to regular public schools without being funded on an equal basis.

Most charter schools are relatively small, and their infrastructure is not large enough to deal with competitive government bidding requirements. Charter schools should be free to continue to operate in accordance with free market principles.

CSHB 6 would allow the state to claim property that was promised to others. Existing charter schools may have acquired real property prior to September 1, 2001, using some state funds with a financing arrangement that, for example, assured the local community that the real property would belong to the town or community.

Charter content, revision, and renewal. The revision provisions would penalize cautious charter schools. For example, some charter schools planned to expand by adding a grade every year, but did not include this plan in their charters out of an abundance of caution. This effectively would penalize a cautious school that was prepared and could support an additional grade by requiring a separate review, while a less cautious school that wrote expansion into its charter but is not prepared or cannot support an additional grade still would be permitted to expand.

Liability of governing members. This provision would be inconsistent with existing law, as it does not adequately clarify when a member would be subject to the Education Code provisions versus the Texas Non-Profit Corporation Act if a non-profit became a charter holder.

Management companies. CSHB 6 would not take into account fledgling management companies. For example, as charter schools are relatively new in Texas, there may be some relatively new management companies who are capable of doing an excellent job of assisting a charter school but have no track record. This would discourage existing companies that provide management services in other areas from entering the charter school market.

While there will inevitably be some unscrupulous management companies, the state should not intervene if a charter school's contracts with a company are otherwise legal. If it is necessary to place limitations on management companies, those limitations should be issues of local control and overseen by the county. Other political entities are not subject to such extreme

limitations on transactions with management companies, and charter schools should not be either.

Minimum teacher qualifications. Very few, if any, teachers would qualify for the exception built into this section. Charter school teachers are not subject to chapter 21 and thus are not required to have written contracts. As such, most charter educators do not have written contracts.

Miscellaneous and general. The bill would provide for a waiver of certain provisions, if a school was rated academically acceptable for the past three years. Charter schools are not rated during their first year, so this effectively would limit the exemption for charter schools that have been operating for more than four years. At the very least, this waiver should be permitted if a school has been, or would have been, rated academically acceptable to take into account the lack of a formal first year rating.

OTHER
OPPONENTS
SAY:

CSHB 6 would not go far enough in imposing public responsibility on charter schools. Charter schools should be subject to all of the same restrictions and rules that other public schools must follow. Laws about background checks and the fire code, for example, are put in place to protect all children, not just those attending regular public schools.

Moratorium. The moratorium on issuing new charters should not be absolute. It should contain an exception for charter schools chartered to a municipal entity, which would be subject to the same rules as that municipal entity and thus have built-in accountability. For example, the city of Westlake near Fort Worth has no public school and is on the periphery of three different school districts. The citizens of Westlake believe that a school is an integral part of the community infrastructure and would like Westlake to have a charter school with Westlake as the charter holder. However, TEA and SBOE have stopped reviewing charter applications due to this bill, and a moratorium would preclude Westlake from receiving a charter. Given the amount of time and money already invested in preparing the charter, it is difficult to ascertain whether Westlake would be able to regather the support and resources necessary to apply for a charter when the moratorium is lifted in 2003.

The moratorium should include an exception for pending applications that show exceptional promise, such as those potential charter holders who have experience in education and are planning to work with under-served populations, such as juvenile offenders. A potential charter holder should be able to obtain a charter when there is a compelling showing that a governmental entity wants to open a charter school to work with children who otherwise would not have access to an education.

The bill does not address charters granted by local ISDs but should apply to those charters as well. If the state puts a moratorium on state-issued charters, then applicants will seek charters from local ISDs. TEA and SBOE thus would become even further removed from charter education.

Management companies. If the state would limit the use of management companies or otherwise oversee use of management companies, these issues should be dealt with before the charter is granted as part of the application process. This would allow the state a thorough review of the potential management company arrangements, and provide the state with additional leverage to ensure compliance.

Minimum teacher qualifications. Charter schools should be subject to the same requirements as public schools regarding certified teachers. State certification requirements are in place for a reason: to guarantee minimum competence of teachers and to protect Texas schoolchildren.

Miscellaneous and general. CSHB 6 would fail to address the interim committee's concern regarding whether charter schools are subject to municipal zoning requirements. In addition, CSHB 6 would place additional burdens on the already-overtaxed TEA and the SBOE without providing additional funding or resources.

The legislature should change the funding provisions for charter schools. Under the present system, regular public schools lose funding due to a decrease in average daily attendance (ADA) when students leave to attend charter schools. This makes it hard for a school district to plan a budget as new charter schools open and additional students leave the school district each year.

The bill should further clarify the definition of charter school or otherwise amend the law to prohibit a private school that has tuition-paying students from receiving a charter and comingling tuition-paying private school students with public charter school students. It also should prohibit such a school from co-mingling private and public funds.