

SUBJECT: Deregulating home-rule charters and changing election procedures

COMMITTEE: Public Education — committee substitute recommended

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

1 nay — Hochberg

1 absent — Oliveira

WITNESSES: For — Gary Inmon, Texas Association of School Boards; Ellen Williams

Against — Barbara Effenberger; Malinda Gaul, American Association of University Women; Brock Gregg, Association of Texas Professional Educators; Lonnie Hollingsworth, Texas Classroom Teachers Association; Donna New Haschke, Texas State Teachers Association; Ted Melina Raab, Texas Federation of Teachers; Joe Sanchez, Mexican American Legal Defense and Educational Fund; Ana Yanez-Correa, League of United Latin American Citizens; Samantha Smoot, Texas Freedom Network; Craig Tounget, Texas PTA; Marcela Uretia, National Council of LaRaza; Armando L. Villareal, United Farmworkers AFL-CIO

BACKGROUND: Education Code, ch. 12 authorizes four types of charter schools: home-rule school district charters, open-enrollment charters, university charters, and public school campus charters. Subch. B sets guidelines for approving and governing home-rule charters, under which local voters may choose to operate their independent school district as a home-rule school district.

A home-rule district is subject to all applicable federal laws and court orders, including those related to eligibility for the provision of special education and bilingual education. A home-rule district is exempt from all state education laws except those related to:

- criminal offenses and limitations on liability;
- the Public Education Information Management System (PEIMS);
- educator certification and educator rights;
- student admissions and attendance;

- interdistrict or intercounty transfers of students;
- elementary class size limits, but only in low-performing schools;
- high school graduation;
- special education and bilingual education;
- prekindergarten;
- school funding and equalized wealth;
- financial obligations with regard to bonds;
- fiscal management;
- no pass-no play rules for extracurricular activities;
- public school accountability and testing requirements;
- criminal history records;
- health and safety rules under Education Code, ch. 38; and
- safety rules regarding student transportation.

A rule adopted by the State Board of Education (SBOE) applies only if the statute authorizing the rule applies specifically to a home-rule district. Employees of home-rule districts qualify for the Teacher Retirement System in the same manner as employees of independent school districts.

Discrimination. Home-rule school districts may not deny placement of students with learning disabilities — including dyslexia and attention deficit/hyperactivity disorder — in gifted and talented programs. Home-rule districts also may not discriminate on the basis of race, socioeconomic status, learning disability, or family support status when placing students in the highest-level programs needed to ensure student success.

Charter commission. A school board must appoint a charter commission if the board receives a petition signed by 5 percent of registered voters in the district or if two-thirds of the board adopts a resolution to appoint the commission. Once authorized to appoint a charter commission, the board has 30 days to do so. The commission comprises 15 school-district residents appointed by the school board, the majority of whom must be parents of school-age children and 25 percent of whom must be classroom teachers selected by the district's professional staff. Membership must reflect the district's racial, ethnic, socioeconomic, and geographic diversity.

Charter content. The home-rule charter written by the charter commission must include the following:

- a description of the educational programs to be offered;
- a provision that continuing the charter is contingent on acceptable student performance on the Texas Assessment of Knowledge and Skills (TAKS) and compliance with other accountability provisions;
- a description of the basis for revoking or placing a charter on probation;
- a description of the governance structure of districts and campuses;
- specific procedures for protecting students' health and safety;
- a description of the process for adopting an annual budget, including the use of program-weight funds;
- a description of the manner in which annual audits will be conducted, including how a district will report PEIMS data; and
- any other provision the charter commission requires.

Voting Rights Act compliance. The charter commission must submit the proposed charter to the secretary of state. If the secretary determines that the proposed charter would change the district's governance structure, the board must submit the proposed change to the U.S. Department of Justice or the U.S. District Court for the District of Columbia for preclearance under the federal Voting Rights Act.

Minimum voter turnout. A home-rule school district is created if a majority of a school district's voters approve a home-rule charter in an election in which at least 25 percent of the district's registered voters participate. To amend a home-rule charter, the minimum voter turnout is 20 percent, and to rescind a home-rule charter, the threshold is 25 percent.

Legal review. The charter commission must submit the proposed charter to the education commissioner for a legal review to ensure that it complies with all applicable laws. If the commissioner does not act within 30 days, the proposed charter is deemed approved.

Amending the charter. The school board can propose to amend the home-rule charter after the amendment passes legal muster with the commissioner. A charter amendment election cannot take place for at least one year after the charter is formed, and an amendment may not contain more than one subject. An amendment approved by a majority of voters in an election with at least a 20 percent voter turnout is sent to the secretary of state for certification.

Governance. A home-rule district may adopt and operate under any governance structure. The district may create offices, determine the time and method for selecting officers, and prescribe officers' qualifications and duties.

Probation, suspension, or revocation of the charter. The SBOE can place a home-rule district on probation or suspension or can revoke a charter if the board decides that the district has violated the charter, has not satisfied generally accepted accounting standards, or has failed to comply with state law or agency rule. The procedure that SBOE adopts to suspend, revoke, or place on probation a home-rule district charter must provide an opportunity for a hearing.

District status in case of annexation or consolidation. If a home-rule school district is annexed to an independent school district, the governance structure of the receiving district is retained. In case of consolidation of two districts of different status, the consolidation ballot must state the proposed governance structure and allow a vote for or against it.

Rescinding a charter. Rescission of a home-rule charter must be put before the voters if the school board receives a petition from 5 percent of the district's registered voters calling for a rescission election, or if at least two-thirds of the board members adopt a resolution to that effect. In case of rescission, the home-rule school district reverts back to being an independent school district.

DIGEST:

CSHB 859 would modify state law regarding home-rule school districts by repealing Education Code, ch. 12, subchapter B and reinstating most of the current provisions, with some exceptions. Major changes would include:

- expanding the list of exemptions from state law for home-rule districts;
- revising election requirements, including eliminating the minimum voter turnout threshold for home-rule charter elections; and
- eliminating the charter commission and the education commissioner's authority over a home-rule school board's decision making.

The bill would expand the list of regulatory exemptions for home-rule districts in current law. It would eliminate state oversight for these districts in the areas of:

- educator certification and educator rights;
- interdistrict and intercounty transfers;
- elementary class size limits for low-performing schools;
- prekindergarten programs; and
- excused absence policies for students.

Home-rule districts also would be exempt from specific safety provisions regarding school transportation, such as requirements that children not be allowed to stand in a school bus. The bill also would exempt home-rule districts from state laws regarding school-based health centers, keeping and reporting immunization records, screening and treatment for dyslexia, child-abuse prevention programs and reporting, tobacco and alcohol bans on campus, obesity and Type II diabetes prevention programs, and allowing children to self-administer asthma medication on campus.

A home-rule school board could override an SBOE rule adopted specifically for home-rule districts by providing that unless the SBOE rule were approved by a two-thirds record vote of the school board, it would not take effect.

CSHB 859 would create a “hold-harmless” clause for public school employees subject to the minimum salary schedule, such that after the charter adoption, no employee on the minimum salary schedule would receive a salary less than the employee received before the charter was adopted.

Discrimination. The bill would eliminate prohibitions against discriminating by learning disability when making placement decisions in gifted and talented programs. It also would eliminate prohibitions against discriminating on the basis of race, socioeconomic status, learning disability, or family support status. (However, the author intends to introduce a floor amendment that would restore this entire section of current law.)

Charter commission. The bill would eliminate the requirement for the school board to appoint a 15-member charter commission representing the district’s racial, ethnic, socioeconomic, and geographic diversity, with a majority

membership of parents and 25 percent membership of teachers.

Election procedures and minimum voter turnout. CSHB 859 would make changes throughout Education Code, ch. 12 regarding the number of voters and school board members it would take to initiate an election to approve, amend, or rescind a home-rule charter.

The decision to frame, amend, or rescind a home-rule charter could be initiated by a petition signed by a number of registered voters equal to 5 percent of those who voted in the most recent gubernatorial election. The decision to frame a charter also could be initiated by a resolution adopted by a majority of school board members. The bill would eliminate minimum voter turnout requirements for any home-rule charter election and would delete the provisions on compliance with the Voting Rights Act.

Content of charter. The bill would retain current requirements for charter content, except that it would make continuation of the charter contingent on a home-rule district maintaining the school district's performance rating under the accreditation standards of state law. It also would delete the requirement for home-rule districts to include a description of the use of program-weight funds under the school finance formulas.

Governance. CSHB 859 would eliminate a specific section on governance for home-rule districts and would replace it with references to Education Code, ch. 11, subchapters C and D, which set guidelines for the organization and governance of school boards.

Legal review. The bill would delete requirements that a proposed charter and any amendments pass legal muster with the education commissioner. Instead, it would allow a school board's legal counsel to review the charter for compliance with applicable state and federal law. The commissioner's review no longer would be necessary before holding a charter election.

Amending the charter. The decision to amend a home-rule charter could be initiated by a petition signed by a number of registered voters equal to 5 percent of those who voted in the most recent gubernatorial election. A home-rule charter could not be amended for at least two years after its initial adoption. An amendment could be reviewed by the school board's legal

counsel before the election, rather by than the education commissioner. No minimum voter turnout would be required to approve a charter amendment.

Probation or revocation of charter. CSHB 859 would add new conditions for probation or revocation related to accountability and accreditation. SBOE could revoke a home-rule charter if the district were rated academically unacceptable for one year. SBOE also could revoke a home-rule charter if the district received a performance rating lower than its rating in the preceding year and if it failed to improve within one year. Revocation would not be immediate but would take place at the end of the school year. The procedure for placing a home-rule charter on probation would remain the same as in current law.

District status in case of annexation or consolidation. CSHB 859 would delete all current provisions for a home-rule district in case of annexation or consolidation with another district.

Rescinding a charter. The bill would delete current law on rescinding a charter and would replace it with references linking the rescission methods to the methods for amending a charter. It would delete language in current law that provides for a home-rule charter to revert back to being an independent school district in the event of rescission.

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.

**SUPPORTERS
SAY:**

CSHB 859 would remove unnecessary barriers to educational innovation by making it easier for local school districts to adopt home-rule charters. Home-rule districts have not had a chance to work because current law places such onerous requirements on communities that wish to try them. Since charter schools were authorized by the enactment of SB 1 in 1995, not one home-rule charter district has been created, primarily because of the election expenses connected with ensuring an unreasonably high voter participation level and because of the excessive state regulation that still would be imposed on home-rule districts.

State mandates comprise a major element in any school district budget,

consuming a large amount of administrative and financial resources. Since the enactment of SB 1 in 1995, more than 60 unfunded or partially-funded mandates have been added to state law, not counting agency rules that often result from legislation. Mandates put a strain on already overextended school district budgets, partly explaining why local property taxes have risen so dramatically in recent years. Many state mandates are unnecessary because they would be implemented at the local level whether the state required districts to do so or not.

CSHB 859 would show support for and trust in the common-sense judgment of local school boards and would give them the flexibility to respond to local needs. School districts need to be free from state regulatory burdens that stifle reform. Unencumbered by the grinding pace of state bureaucracy, a home-rule charter district could effect change quickly and could work individually with schools that had varying needs within the district. For example, the home-rule district could choose instructional methods and materials, rather than using state-mandated methods and texts. State-mandated “one-size-fits-all” policies no longer work for school districts, each of which could do a much better job tailoring policies and programs to suit its own unique characteristics.

The original logic applied to many home-rule district exemptions was to align the authority of these districts with that of home-rule cities. In general, state oversight is much less burdensome for home-rule cities than for general-law cities. Also, state regulations apply only when the home-rule city interacts with a third-party entity, such as with extraterritorial jurisdiction. However, the state generally takes a hands-off approach to internal issues such as governance, employees, and programs. When going down the checklist of exemptions for home-rule districts, the “internal issue versus third-party” rule of thumb was applied. Thus, in home-rule districts the state would regulate school funding in general, but not district policies on employees and programs.

CSHB 859 would eliminate state restrictions on categorical funds such as set-asides and program weights, thus giving school districts flexibility in using resources to meet the needs of children in their communities. Categorical funding brings paperwork, audit requirements, and other administrative burdens, all of which detract from the primary focus of public schools in Texas: helping all students develop and learn to their maximum potential. It is

unlikely that any school board would use the home-rule charter provision as an excuse to do less for students or to harm them in any way.

CSHB 859 would not eliminate certain programs at the local level but would restore local control. For example, by removing state regulatory requirements for prekindergarten and gifted and talented programs, the bill would not direct home-rule districts to stop offering them but merely would grant districts the flexibility they need to try new and innovative approaches. The bill would create an environment in which rapid change can take place in schools.

CSHB 859 would ensure that communities were invested in their schools. The approval process would require voter approval, a major test of community buy-in. The current requirements for a charter commission and a 25 percent minimum voter turnout were placed in state law as intentional roadblocks to community reform. Under the current minimum voter requirement, the only time a district realistically can hold a home-rule charter election or an amendment election is during a presidential or gubernatorial election.

CSHB 859 would give home-rule school districts the power to design and implement compensation programs that provide competitive professional salaries based on local needs and priorities. Because state mandates such as teacher salary schedules are not being supported by increased state funding in the appropriations process, legislators should give districts opportunities to work within the resources they have.

By eliminating teacher certification requirements, CSHB 859 would give home-rule districts more choices when hiring teachers. Research cited by the U.S. Department of Education shows that a teacher's two most important qualities are content mastery and verbal ability. Home-rule districts could hire teachers with these qualities without being bound by certification rules. Home-rule districts with high numbers of economically disadvantaged students would be motivated to continue employing certified teachers to keep federal funding under the No Child Left Behind Act.

CSHB 859 would enhance accountability standards for home-rule school districts, adding a requirement that the SBOE revoke a home-rule charter if the district did not meet high standards. A successful accountability system requires consistent application to all schools without regard to size, location,

or demographics, and home-rule districts would receive no exemptions from accountability. This would allow SBOE and local voters to see the district's report card, hold the school board accountable, and take action accordingly. Thus, home-rule districts that performed above the minimum standards could keep their home-rule charters, and home-rule districts that did not perform satisfactorily would have their charters revoked.

**OPPONENTS
SAY:**

CSHB 859 would wipe out state education standards in districts where home-rule charters are adopted, allowing local districts to legally ignore important state laws. Districts could abandon statewide policies that have proven beneficial for Texas students, teachers, and school employees. Many state requirements, such as the 22:1 student-teacher ratio for kindergarten through fourth grade, have helped students greatly and should not be abandoned.

Eliminating the requirement for a 25 percent minimum voter turnout would lower standards dangerously for community involvement in local schools. The standards would be relaxed further by requiring petitions to be brought by only 5 percent of the number of voters in the latest gubernatorial election, rather than 5 percent of all registered voters. Voter turnout in the most recent gubernatorial election was only 36 percent, and even that was higher than usual. Thus, in a school district with 10,000 registered voters, as few as 180 voters could petition for a home-rule charter or amendment.

The state would take a great risk in placing decisions about educational policy solely in the hands of local officials with inadequate oversight. Local school board members sometime lack expertise in education or budgetary matters, seek election to school boards as a stepping stone to other elected offices, and may not have students' best interests at heart.

Because of low voter turnout in school board elections, a small group of citizens in a home-rule school district could elect a majority of the school board who might make the public schools a vehicle for advancing extreme religious or political agendas. A few financially powerful citizens essentially could buy home-rule charters from the local school board.

The current method for becoming a home-rule district depends heavily on community involvement, both through the charter commission and the requirement for minimum voter turnout. CSHB 859 would remove parental

involvement and minimum voter turnout from the equation, creating a recipe for failure.

A home-rule school district is not the same as a home-rule city. In terms of writing a district's charter, CSHB 859 would give the school board much greater power than a city council has in a home-rule city. Also, the petition standards for a home-rule school district would be much lower than for a home-rule city. Citizens find it much easier to agree on the basic goals of a home-rule city — police, streets, and sewers — than on the goals of a home-rule school charter. Full community involvement is crucial in determining those goals, especially when the state no longer could provide safeguards.

All public school children should be treated equally and have the same access to the same level of education. A system of home-rule school districts would hurt students in districts that were poor or had low academic standards. Public education should be of uniform quality statewide, and the open-enrollment charter school experiment proves that innovation does not necessarily result in high performance. At the very least, home-rule charters should not be granted to at-risk school districts where academic ratings are low.

CSHB 859 would go too far in expanding the list of rules from which school districts would be exempt, and the accountability system would not provide enough of a fail-safe. The basic problem with using the accountability system to check the school board is that it takes too long to determine that things are not working. Realistically, the TAKS test provides only an annual evaluation of student progress. Also, by not allowing citizens to petition for a charter amendment for two years, it could take even longer to turn things around in a bad situation. If a child does poorly in school for one or two years, statistics show that the child is more likely to drop out.

The state can relax regulation but should not relax standards. The Legislature went through the Education Code with a fine-tooth comb in 1995. Everything left in the code is there for a good reason, and many of the provisions protect the health and safety of Texas children. For example, allowing children to stand in a bus is very unsafe. It is hard to find a good reason for allowing school districts to put so many children on the bus that they would have to stand in the aisles. The same applies to eliminating child-abuse prevention and reporting. Other than that it would allow school districts to cut their

budgets, the state could have no justification for lifting regulations that clearly protect the health and welfare of children.

**OTHER
OPPONENTS
SAY:**

CSHB 859 would remain silent on the status of a home-rule school district in the event of the charter's rescission. Current law provides for the district to revert back to an independent school district. The bill should provide that minimum amount of legal protection, rather than potentially leaving a failed home-rule district in limbo.

NOTES:

HB 859 as filed would have exempted home-rule districts from state regulations regarding student enrollment, high school graduation, special education, bond obligations under Education Code, ch. 46, and purchasing requirements under ch. 44. It would not have provided a "hold harmless" clause for employees on the state minimum salary schedule. It would have eliminated the requirement for legal review of a charter amendment. The committee substitute added authority for SBOE to revoke a home-rule district's charter on the basis of unsatisfactory or lowered ratings under the state accountability system.

A related bill, HB 973 by Grusendorf, which would grant exemplary-rated school districts the same level of deregulation as open-enrollment charter schools, was reported favorably, as amended, by the House Public Education Committee and is on tomorrow's General State Calendar.