

BILL ANALYSIS

Senate Research Center
82R4404 CAS-D

S.B. 738
By: Shapiro
Education
3/21/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas currently requires high performing school districts to jump through the same hoops as consistently poor or average performers. While high performers make every dollar work, other schools and districts continue to operate despite their inability to turn things around. A school can fail for up to six years before it is closed down. Overall, 77 percent of district schools that were low-performing in the 2003-2004 school year were still in existence and low performing in the 2008-2009 school year.

Schools fail because they operate under rules which do not focus on student achievement. For children, their only choice is to switch schools when those schools undergo sanctions.

Finally, families who send their children to low-performing schools have no say in actually turning around the school. All they can do is switch schools, which often means more time and resources for the family.

S.B. 738 empowers school districts that continually perform well with autonomy to make decisions by automatically granting them home-rule status. S.B. 738 empowers parents to force change at low performing schools by petitioning for alternative management, reconstitution, or closure. Superintendents are allowed by this bill to create change by opening a charter school or converting a school to a charter campus so that new teachers and leaders can turn the school around. S.B. 738 empowers the commissioner of education to, where appropriate, grant charter status to reconstituted campuses to ensure efficacy.

As proposed, S.B. 738 amends current law relating to alternative methods of operating public schools.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 1 (Section 12.013, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.013, Education Code, by amending Subsection (b) and adding Subsections (c), (d), and (e), as follows:

(b) Provides that a home-rule school district is subject to:

- (1) a provision of this title establishing a criminal offense;
- (2) a provision of this title relating to limitations on liability; and
- (3) unless a waiver is granted under Subsection (c), a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to certain items. Sets forth those items. Deletes existing text relating to a home-rule district being subject to educator certification under Chapter 21 (Educators) and educator rights under Sections 21.407 (Requiring or Coercing Teachers to Join Groups, Clubs, Committees, or Organizations: Political Affairs),

21.408 (Right to Join or Not Join Professional Association), and 22.001 (Salary Reductions for Professional Dues); and to elementary class size limits under Section 25.112 (Class Size), in the case of any campus in the district that fails to satisfy any standard under Section 39.054(d) (relating to the commissioner of education evaluating performance) Makes nonsubstantive changes.

(c) Authorizes the commissioner of education (commissioner) to grant to a home-rule school district a waiver of a prohibition, restriction, or requirement to which the district is otherwise subject under Subsection (b)(3), other than a prohibition, restriction, or requirement to which the district is subject under Subsection (b)(3)(N) (relating to public school accountability), if:

(1) the district:

(A) submits a written request for the waiver in the time and manner required by commissioner rule; and

(B) states in the waiver request the purpose of the request, including the manner in which the waiver is intended to improve student performance; or reduce district operational costs without detrimentally affecting student performance; and

(2) the commissioner reasonably determines that the waiver is likely to assist the district in achieving the purpose stated in the waiver request.

(d) Requires the commissioner to adopt rules as necessary to administer Subsection (c).

(e) Requires the commissioner to submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of the standing committee of each house of the legislature with primary jurisdiction over public education, not later than December 31 of each even-numbered year, a written report of each waiver request made and granted under Subsection (c) for the preceding two complete school years.

SECTION 2. Amends Section 12.014, Education Code, as follows:

Sec. 12.014. APPOINTMENT OF CHARTER COMMISSION. (a) Creates this subsection from existing text. Requires the board of trustees of a school district to appoint a charter commission to frame a home-rule school district charter if:

(1) the board receives a petition requesting the appointment of a charter commission to frame a home-rule school district charter signed by at least five percent of the registered voters of the district;

(2) at least two-thirds of the total membership of the board adopt a resolution ordering that a charter commission be appointed; or

(3) a majority of the total membership of the board of a district that, for the preceding two school years, has been awarded an exemplary distinction designation under Subchapter G (Distinction Designations), Chapter 39 (Public School System Accountability), adopts a resolution ordering that a charter commission be appointed.

(b) Provides that Subsection (a)(3) applies to a school district awarded an exemplary distinction designation under Subchapter G, Chapter 39, only if the distinction designation has been awarded without considering the projected performance of district students on assessment instruments administered under Subchapter B (Assessment of Academic Skills), Chapter 39.

SECTION 3. Amends Section 12.016, Education Code, to require that each home-rule school district charter provide that continuation of the home-rule school district charter is contingent on maintenance of the district's exemplary distinction designation, in the case of a district described by Section 12.014(a)(3).

SECTION 4. Amends Section 12.019, Education Code, by adding Subsection (e), to provide that a school district described by Section 12.014(a)(3) is not required to hold an election under this section on the district's charter.

SECTION 5. Amends Section 12.020, Education Code, by adding Subsection (k), to provide that a school district described by Section 12.014(a)(3) is not required to hold an election under this section on a charter amendment.

SECTION 6. Amends Section 12.021(a), Education Code, to provide that a proposed home-rule school district charter or a proposed charter amendment is adopted if approved by a majority of the qualified voters of the district voting at an election held for that purpose, except as provided by Section 12.0211 and subject to Section 12.022.

SECTION 7. Amends Subchapter B, Chapter 12, Education Code, by adding Section 12.0211, as follows:

Sec. 12.0211. ALTERNATIVE ADOPTION OF CHARTER OR CHARTER AMENDMENT; EMPOWERMENT HOME-RULE SCHOOL DISTRICT. (a) Provides that Section 12.021 does not apply to a school district described by Section 12.014(a)(3).

(b) Provides that a proposed charter or charter amendment in a school district described by Section 12.14(a)(3) is considered adopted after approval under Section 12.018 or 12.020, as applicable, on order by the governing body declaring adoption. Requires that the charter or charter amendment specify an effective date and provides that it takes effect according to its terms.

(c) Provides that at the time a school district described by Section 12.014(a)(3) adopts a charter, the district becomes an empowerment home-rule school district.

SECTION 8. Amends Section 12.023(a), Education Code, to require the president of the board of trustees, as soon as practicable after a school district adopts a home-rule district charter or charter amendment, to certify to the secretary of state a copy of the charter or amendment showing the approval by the voters of the district, except that a district described by Section 12.014(a)(3) is not required to show approval by the voters of the district.

SECTION 9. Amends Sections 12.052(a) and (c), Education Code, as follows:

(a) Authorizes the board of trustees or the superintendent of a school district, in accordance with this subchapter, to grant a charter to parents and teachers for a campus or a program on a campus if the board or superintendent, as applicable, is presented with a petition signed by the parents of a majority of the students at that school campus, and a majority of the classroom teachers at that school campus.

(c) Prohibits a charter from arbitrarily being denied under this section.

SECTION 10. Amends Section 12.0521(a), Education Code, as follows:

(a) Authorizes the board of trustees or the superintendent of a school district to grant a charter for:

(1) a new district campus; or

(2) a program that is operated by an entity that has entered into a contract with the district under Section 11.157 (Contracts for Education Services) to provide

educational services to the district through the campus or program; and a program that is operated at a facility located in the boundaries of the district.

SECTION 11. Amends Subchapter C, Chapter 12, Education Code, by adding Section 12.0522, as follows:

Sec. 12.0522. **AUTHORIZATION FOR CAMPUS IDENTIFIED AS UNACCEPTABLE.** Requires the board of trustees of a school district, notwithstanding Section 12.052, in accordance with this subchapter, to, as ordered by the commissioner under Section 39.107(a)(2), grant a charter for a campus that has been identified as unacceptable for two consecutive years.

SECTION 12. Amends Section 12.053(a), Education Code, to authorize the board of trustees or the superintendent of a school district to grant a charter to parents and teachers at two or more campuses in the district for a cooperative charter program if the board or superintendent, as applicable, is presented with a petition signed by the parents of a majority of the students at each school campus, and a majority of the classroom teachers at each school campus.

SECTION 13. Amends Section 12.057(c), Education Code, to provide that a campus or program granted a charter under certain sections including Section 12.0522 is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers.

SECTION 14. Amends Sections 12.060, 12.061, 12.062, and 12.063, Education Code, as follows:

Sec. 12.060. **FORM.** Requires that a charter be in the form and substance of a written contract signed by the president of the board of trustees or the superintendent, as applicable, granting the charter and the chief operating officer of the campus or program for which the charter is granted.

Sec. 12.061. **CHARTER GRANTED.** Requires that each charter granted under this subchapter satisfy this subchapter, and include the information that is required under Section 12.059 consistent with the information provided in the application and any modification the board requires.

Sec. 12.062. **REVISION.** (a) Authorizes a charter granted under Section 12.052, 12.0522, or 12.053 to be revised:

(1) with the approval of the board of trustees or superintendent, as applicable, that granted the charter; and

(2) on a petition signed by a majority of the parents and a majority of the classroom teachers at the campus or in the program, as applicable.

(b) Authorizes a charter granted under Section 12.0521 to be revised with the approval of the board of trustees or superintendent, as applicable, that granted the charter. Authorizes a charter to be revised under this subsection only before the first day of instruction of a school year or after the final day of instruction of a school year.

Sec. 12.063. **BASIS FOR PLACEMENT ON PROBATION OR REVOCATION.** (a) Authorizes a board of trustees or superintendent to place on probation or revoke a charter the board or superintendent, as applicable, grants if the board or superintendent determines that the campus or program committed a material violation of the charter, failed to satisfy generally accepted accounting standards of fiscal management, or failed to comply with this subchapter, another law, or a state agency rule.

- (b) Requires that the action the board or superintendent take under Subsection (a) be based on the best interest of campus or program students, the severity of the violation, and any previous violation the campus or program has committed.

SECTION 15. Amends Section 12.064(a), Education Code, to require each board of trustees or superintendent that grants a charter under this subchapter to adopt a procedure to be used for placing on probation or revoking a charter the board or superintendent, as applicable, grants.

SECTION 16. Amends Subchapter C, Chapter 12, Education Code, by adding Sections 12.066 and 12.067, as follows:

Sec. 12.066. FUNDING. Prohibits the amount of funding for a campus or program granted a charter under this subchapter from being less, on a per student basis, than the amount of funding for any regular campus in the school district in which the campus or program is located.

Sec. 12.067. ITEMIZATION OF COSTS PROVIDED BY DISTRICT. Requires the district, if a charter is granted under Section 12.0521(a)(2) for a program that is operated by an entity that has entered into a contract with a school district under Section 11.157 to provide educational services to the district through the campus or program, to provide to the entity:

- (1) an itemized list of the services that the district provided for program purposes before operation of the program under the contract and the cost of those services; and
- (2) an itemized list of any services that the district will continue to provide for the program and the cost of those services.

SECTION 17. Amends the heading to Section 39.107, Education Code, to read as follows:

Sec. 39.107. RECONSTITUTION, CONVERSION TO CHARTER CAMPUS, REPURPOSING, ALTERNATIVE MANAGEMENT, AND CLOSURE.

SECTION 18. Amends Section 39.107, Education Code, by amending Subsections (a) and (e) and adding Subsections (a-2), (e-2), and (e-3), as follows:

(a) Requires the commissioner, after a campus has been identified as unacceptable for two consecutive school years, to:

- (1) order the reconstitution of the campus; or
- (2) order the reconstitution of the campus and direct the board of trustees of the school district or governing body of the home-rule school district in which the campus is located to convert the campus to a charter campus by granting a charter under Section 12.0522.

(a-2) Provides that after a campus is converted to a charter campus under Subsection (a)(2), this section continues to apply to the campus.

(e) Requires the commissioner, subject to Subsection (e-1) (authorizing the commissioner to waive the requirement to enter an order) or (e-2), if a campus is considered to have an unacceptable performance rating for three consecutive school years after the campus is reconstituted under Subsection (a), to order repurposing of the campus under this section, alternative management of the campus under this section, or closure of the campus.

(e-2) Provides that, for purposes of this subsection, "parent" has the meaning assigned by Section 12.051. Requires the commissioner to order the specific action requested if the commissioner is presented, in the time and manner specified by commissioner rule, a

written petition signed by the parents of a majority of the students enrolled at a campus to which Subsection (e) applies, specifying the action described by Subsection (e)(1), (2), or (3) that the parents request the commissioner to order, except as otherwise authorized by this subsection. Authorizes the commissioner to order the action requested by the board of trustees if the board of trustees of the school district in which the campus is located presents to the commissioner, in the time and manner specified by commissioner rule, a written request that the commissioner order specific action authorized under Subsection (e) other than the specific action requested in the parents' petition and a written explanation of the basis for the board's request.

(e-3) Provides that for purposes of Subsection (e-2), the signature of only one parent of a student is required.

SECTION 19. Requires that the report submitted by the commissioner on or before December 31, 2012, notwithstanding Section 12.013(e), cover only waiver requests made and granted for the 2011-2012 school year.

SECTION 20. Provides that this Act applies beginning with the 2011-2012 school year.

SECTION 21. Effective date: upon passage or September 1, 2011.