

BILL ANALYSIS

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S.B. 1454
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Education
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 2, passed during the 83rd Legislative Session, required the Texas Education Agency (TEA) to close a charter school if it is assigned an unacceptable academic and/or financial rating for three consecutive years. After S.B. 2, approximately 26 charters have been closed. This amount exceeds the total number of closures within the past 10 years combined and has brought to light the lack of process in the disposition of assets purchased with state funds upon the cessation of operations of a charter school.

One of the Senate Committee on Education's interim charges from the 84th session was to study this issue and develop legislative recommendations for addressing this problem. S.B. 1454 is a result of intensive stakeholder discussions since the committee's interim hearing in December 2015. The committee sought input from TEA, the General Land Office, the Texas Charter School Association, Texans for Quality Public Charter Schools, the Texas League of Community Charter Schools, bond attorneys, and charter school operators during this process. S.B. 1454 will reduce litigation related to charter school closures, encourage greater transparency in charter school real estate transactions, and provide TEA clear and helpful guidance on disposing of the property of a charter that ceases to operate.

S.B. 1454 provides guidance to the state on how to dispose of a charter holder's property purchased with state funds.

The bill language authorizes TEA to direct the charter holder upon closure to dispose of the property through one of the following methods:

- o retain property and reimburse the state; or
- o transfer title to the property to TEA or another public school; and/or o Liquidate the property.

Clarifies that that property purchased with state funds may not be transferred, sold, or otherwise disposed of without the prior written consent of TEA if the charter holder receives notice of revocation, nonrenewal, or expiration.

All remaining state funds of a charter holder that ceases to operate must be returned to TEA and deposited in the charter school liquidation fund. TEA may approve a transfer of these remaining funds to an entity that is taking over the operations of the charter that has ceased to operate.

Requires a charter school to provide an accounting of each parcel of the school's real property, including identifying the amount of local, state, and federal funds used to purchase or improve each parcel.

Ensures Texans taxpayer dollars remain in Texas by prohibiting the use of state funds to be pledged or used to secure loans or bonds for any other organization or to support a non-charter operation or out-of-state operation affiliated with the charter holder.

Requires that a charter school, prior to entering a real property transaction with a related entity, provide TEA with an appraisal of the property. Gives TEA the authority to reclassify

transactions between a charter holder and a related entity if TEA believes the transaction was not in the material interest of the charter holder.

If entering into a financial transaction with a related entity, the charter school must include the business operations of the affiliated company in the school's annual financial report.

Including all financial transactions between the charter school and the affiliated company, the total compensation and benefits of board members, officers, and administrators of the school and affiliated company, and each member related to a board member, officer or administrator.

Allows a board of managers to access and manage the former charter holder's bank account that contains state funds and sell or transfer property to another charter holder or district.

As proposed, S.B. 1454 amends current law relating to the ownership, sale, lease, and disposition of property and management of assets of an open-enrollment charter school.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 3, SECTION 6, SECTION 8, SECTION 9, and SECTION 13 (Section 12.106, Section 12.1166, Section 12.1167, Section 12.1168, Section 12.1281, Section 12.1282, Section 12.1283, Section 12.1284, Section 12.141, and Section 44.008, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.1012, Education Code, to define "payable obligation" and "remaining funds" for purposes of this section.

SECTION 2. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.10125, as follows:

Sec. 12.10125. OPEN-ENROLLMENT CHARTER SCHOOL NOT IN OPERATION. Provides that an open-enrollment charter school ceases to operate if the school's charter has been revoked, has expired, has been surrendered, or has been abandoned, or the school has otherwise ceased operation as a public school.

SECTION 3. Amends Section 12.106, Education Code, by adding Subsections (h), (i), and (j), as follows:

(h) Requires all remaining funds of a charter holder for an open-enrollment charter school that ceases to operate to be returned to the Texas Education Agency (TEA) and deposited in the charter school liquidation fund, except as provided by Subsection (i).

(i) Authorizes TEA to approve a transfer of a charter holder's remaining funds to another charter holder if the charter holder receiving the funds has not received notice of the expiration or revocation of the charter holder's charter for an open-enrollment charter school or notice of a reconstitution of the governing body of the charter holder under Section 12.1141 (Renewal of Charter; Denial of Renewal; Expiration) or 12.115 (Basis For Charter Revocation or Modification of Governance).

(j) Authorizes the commissioner of education (commissioner) to adopt rules specifying the time during which a former charter holder must return remaining funds under Subsection (h) and the qualifications required for a charter holder to receive a transfer of remaining funds under Subsection (i).

SECTION 4. Amends Section 12.107(a), Education Code, as follows:

(a) Provides that funds received under Section 12.106 after September 1, 2001, by a charter holder:

- (1)-(4) makes no changes to these subdivision;
- (3)-(4) makes nonsubstantive changes to these subdivisions; and
- (5) are prohibited:

(A) from being pledged or used to secure loans or bonds for any other organization, including a non-charter operation or out-of-state operation conducted by the charter holder or a related party, as defined by commissioner rule adopted under Section 12.1166; or

(B) from being used to support an operation or activity not related to the educational activities of the charter holder.

SECTION 5. Amends Section 12.1163, Education Code, by adding Subsection (d), as follows:

(d) Authorizes an audit under Subsection (a) (relating to authorizing the commissioner to audit the records of certain entities relating to open-enrollment charter schools) to include the review of any real property transactions between the charter holder and a related party, as defined by commissioner rule adopted under Section 12.1166. Authorizes the commissioner, if the commissioner determines that a transaction with a related party using funds received under Section 12.106 was structured in a manner that did not benefit the open-enrollment charter school or that the transaction was in excess of fair market value, to order that the transaction be reclassified or that other action be taken as necessary to protect the school's interests. Provides that failure to comply with the commissioner's order is a material violation of the charter.

SECTION 6. Amends Subchapter D, Chapter 12, Education Code, by adding Sections 12.1166, 12.1167, and 12.1168, as follows:

Sec. 12.1166. RELATED PARTY TRANSACTIONS. (a) Requires the commissioner to adopt a rule defining "related party" for purposes of this subchapter. Requires the definition of "related party" to include:

(1) a party with a current or former board member, administrator, or officer who is a board member, administrator, or officer of an open-enrollment charter school, or related within the third degree of consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, to a board member, administrator, or officer of an open-enrollment charter school;

(2) a charter holder's related organizations, joint ventures, and jointly governed organizations;

(3) an open-enrollment charter school's board members, administrators, or officers or a person related to a board member, administrator, or officer within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code; and

(4) any other disqualified person, as that term is defined by 26 U.S.C. Section 4958(f).

(b) Provides that for purposes of Subsection (a)(1), a person is a former board member, administrator, or officer if the person served in that capacity within one year of the date on which a financial transaction between the charter holder and a related party occurred.

(c) Requires the charter holder, in a charter holder's annual audit filed under Section 44.008 (Annual Audit; Report), to include a list of all transactions with a related party.

Sec. 12.1167. APPRAISAL OF CERTAIN PROPERTY. Authorizes the commissioner to adopt rules to require an open-enrollment charter school to notify the commissioner that the school intends to enter into a transaction with a related party, as defined by commissioner rule adopted under Section 12.1166 and provide an appraisal from a certified appraiser to TEA.

Sec. 12.1168. FINANCIAL REPORT OF CERTAIN SCHOOLS. (a) Defines "related party" for purposes of this section.

(b) Provides that a financial report filed under Section 44.008 by an open-enrollment charter school must separately disclose all financial transactions between the open-enrollment charter school and any related party, separately stating the principal, interest, and lease payments and the total compensation and benefits provided by the school and any related party for each member of the governing body and each officer and administrator of the school and the related party.

(c) Authorizes the commissioner to adopt rules to implement this section.

SECTION 7. Amends Section 12.128, Education Code, by amending Subsections (a) and (c) and adding Subsections (a-1), (b-1), (b-2), (c-1), (c-2), and (f), as follows:

(a) Provides that property purchased, rather than purchased or leased, with funds received by a charter holder under Section 12.106 after September 1, 2001:

(1)–(3) makes no changes to these subdivisions.

(a-1) Provides that property leased with funds received by a charter holder under Section 12.106 after September 1, 2001, is considered to be public property for all purposes under state law, is property of this state held in trust by the charter holder for the benefit of the students of the open-enrollment charter school, and is authorized to be used only for a purpose for which a school district is authorized to use school district property.

(b-1) Provides that, subject to Subsection (b-2), while an open-enrollment charter school is in operation, the charter holder holds title to any property described by Subsection (a) or (b) (relating to a provision that the property is considered to be public property to the extent it was purchased with those funds under certain conditions) and is authorized to exercise complete control over the property as permitted under the law.

(b-2) Prohibits a charter holder from transferring, selling, or otherwise disposing of any property described by this section without the prior written consent of TEA if:

(1) the charter holder has received notice of:

(A) the expiration of the charter holder's charter under Section 12.1141 and the charter has not been renewed; or

(B) the charter's revocation under Section 12.115(c) (relating to authorizing the commissioner to revoke the charter of an open-enrollment charter school under certain conditions);

(2) the charter holder has received notice that the open-enrollment charter school is under discretionary review by the commissioner, which may result in the revocation of the charter or a reconstitution of the governing body of the charter holder under Section 12.115; or

(3) the open-enrollment charter school for which the charter is held has otherwise ceased to operate.

(c) Requires the commissioner to:

(1) makes no changes to this subdivision; and

(2) supervise the disposition of the property in accordance with this subchapter, rather than law.

(c-1) Provides that, notwithstanding Subsection (c), if an open-enrollment charter school ceases to operate, TEA:

(1) is required to, for property purchased with state funds, direct the charter holder to dispose of the property through one of the following methods:

(A) retain or liquidate the property and provide reimbursement to the state as provided by Section 12.1281;

(B) transfer the property to TEA under Section 12.1281(h) or a school district or open-enrollment charter school under Section 12.1282;

(C) close the operations of the open-enrollment charter school under Section 12.1284; or

(D) take any combination of the actions described by Paragraphs (A), (B), and (C); and

(2) is authorized to, for property leased with state funds, direct the charter holder to assign the charter holder's interest in the lease to TEA.

(c-2) Authorizes TEA to approve an expenditure of remaining funds by a former charter holder for insurance or utilities for or maintenance, repairs, or improvements to property described by this section if TEA determines that the expenditure is reasonably necessary to dispose of the property or preserve the property's value.

(f) Provides that a decision by TEA under this section is final and is prohibited from being appealed.

SECTION 8. Amends Subchapter D, Chapter 12, Education Code, by adding Sections 12.1281, 12.1282, 12.1283, and 12.1284, as follows:

Sec. 12.1281. DISPOSITION OF PROPERTY PURCHASED WITH STATE FUNDS.

(a) Authorizes a former charter holder of an open-enrollment charter school that has ceased to operate to retain property described by Section 12.128 (Property Purchased or Leased With State Funds) if the former charter holder reimburses the state with non-state funds and the former charter holder provides written assurance that the requirements of Section 12.1284 will be met and receives approval from TEA.

(b) Authorizes the former charter holder, on receiving consent from TEA under Section 12.128(b-2) and a written agreement from any creditor with a security interest described by Section 12.128(e) (relating to a provision that this section does not affect a security interest in or lien on property established by a creditor relating to certain sales of property), to:

(1) sell property for fair market value; or

(2) transfer property to an open-enrollment charter school or a school district as provided under Section 12.1282.

(c) Provides that the amount of funds the state is entitled to as reimbursement for property of a former charter holder is for property retained by the former charter holder, the current fair market value less the amount of any debt subject to a

security interest or lien described by Section 12.128(e), multiplied by the percentage of state funds used to purchase the property or for property sold by the former charter holder, the net sales proceeds of the property multiplied by the percentage of state funds used to purchase the property.

(d) Requires TEA, to determine the amount of state funds a former charter holder used to purchase property, to calculate an estimated state reimbursement amount based on the last annual financial report filed under Section 44.008 available at the time the former charter holder retains or sells the property and a final state reimbursement amount using the former charter holder's final financial audit filed under Section 44.008.

(e) Requires a former charter holder retaining property under Subsection (a) or selling the property under Subsection (b)(1) to:

(1) file an affidavit in the real property records of the county in which the property is located disclosing the state interest in the property;

(2) place in escrow with the comptroller of public accounts of the State of Texas (comptroller) an amount of non-state funds equal to 110 percent of the estimated state reimbursement amount not later than:

(A) the closing date of the sale of the property if the charter holder is selling the property; or

(B) the 90th day after the charter school's last day of instruction if the charter holder is retaining the property; and

(3) not later than two weeks after the date the charter holder's final financial audit is filed under Section 44.008, submit to the state the final state reimbursement amount using the funds in escrow in addition to any other funds necessary to pay the full amount of state reimbursement.

(f) Authorizes a former charter holder to retain any funds remaining after complying with this section.

(g) Requires TEA, as soon as it is satisfied that the former charter holder complied with Subsection (e), to file written notice of the release of the state interest in property the former charter holder retains under this section and authorize the return of any funds not used for state reimbursement to the former charter holder.

(h) Requires the former charter holder, Subject to the satisfaction of any security interest or lien described by Section 12.128(e), if a former charter holder does not dispose of property under Subsection (a) or (b), to transfer the property, including a conveyance of title, to TEA in accordance with the procedures and time requirements established by TEA.

(i) Requires the Texas attorney general, subject to the satisfaction of any security interest or lien described by Section 12.128(e), if TEA determines a former charter holder failed to comply with this section or Section 12.1282, on request of TEA, to take any appropriate legal action to compel the former charter holder to convey title to the agency or other governmental entity authorized by TEA to maintain or dispose of property.

(j) Provides that a decision by TEA under this section is final and is prohibited from being appealed.

(k) Authorizes the commissioner to adopt rules necessary to administer this section.

Sec. 12.1282. TRANSFER OF PROPERTY PURCHASED WITH STATE FUNDS. (a) Authorizes TEA to approve the transfer of property described by Section 12.128 from an open-enrollment charter school that has ceased to operate, or to transfer property conveyed to TEA by the former charter holder under Section 12.1281, to a school district or an open-enrollment charter school if:

(1) the open-enrollment charter school or school district receiving the property:

(A) agrees to the transfer; and

(B) agrees to identify the property as purchased wholly or partly using state funds on the school's annual financial report filed under Section 44.008;

(2) any creditor with a security interest in or lien on the property described by Section 12.128(e) agrees to the transfer; and

(3) the transfer of the property does not make the open-enrollment charter school or school district receiving the property insolvent.

(b) Provides that property received by an open-enrollment charter school or school district under this section is considered to be state property under Section 12.128(a).

(c) Authorizes the commissioner to adopt rules necessary to administer this section, including rules establishing qualifications and priority for a school district or open-enrollment charter school to receive a transfer of property under this section.

(d) Authorizes TEA, if TEA determines that the cost of disposing of personal property described by Section 12.128 transferred to TEA by an open-enrollment charter school that ceases to operate exceeds the return of value from the sale of the property, to distribute the personal property to open-enrollment charter schools and school districts in a manner determined by the commissioner.

(e) Provides that a determination by TEA under this section is final and is prohibited from being appealed.

Sec. 12.1283. SALE OF PROPERTY PURCHASED WITH STATE FUNDS. (a) Requires TEA, after it receives title to property described by Section 12.128, to sell the property at any price acceptable to TEA.

(b) Requires the following state agencies, on request of TEA, to enter into a memorandum of understanding to sell property for TEA: for real property, the Texas General Land Office (GLO), and for personal property, the Texas Facilities Commission (TFC).

(c) Authorizes a memorandum of understanding entered into as provided by Subsection (b) to allow GLO or TFC to recover from the sale proceeds any cost incurred by the GLO or TFC in the sale of the property.

(d) Requires proceeds from the sale of property under this section, subject to the satisfaction of any security interest or lien described by Section 12.128(e), to be deposited in the charter school liquidation fund.

(e) Authorizes the commissioner to adopt rules as necessary to administer this section.

Sec. 12.1284. CLOSURE OF CHARTER SCHOOL OPERATIONS. (a) Requires a former charter holder, after extinguishing all payable obligations owed by an open-enrollment charter school that ceases to operate, including a debt described by Section 12.128(e), to remit to TEA any remaining funds described by Section 12.106(h) and any state reimbursement amounts from the sale of property described by Section 12.128, or transfer the remaining funds to another charter holder under Section 12.106(i).

(b) Requires TEA to deposit any funds received under Subsection (a)(1) in the charter school liquidation fund.

(c) Requires the commissioner to adopt rules necessary to administer this section.

SECTION 9. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.141, as follows:

Sec. 12.141. RECLAIMED FUNDS. (a) Requires TEA to deposit funds received under Sections 12.106, 12.128, 12.1281, 12.1283, and 12.1284 into the charter school liquidation fund and authorizes TEA to use the funds to:

(1) pay expenses relating to managing and closing an open-enrollment charter school that ceases to operate, including:

(A) maintenance of the school's student and other records; and

(B) TEA's personnel costs associated with managing and closing the school;

(2) dispose of property described by Section 12.128; and

(3) maintain property described by Section 12.128, including expenses for insurance, utilities, maintenance, and repairs.

(b) Prohibits TEA from using funds under this section until the commissioner determines if the open-enrollment charter school that ceases to operate received an overallocation of funds under Section 12.106 that is required to be recovered for the foundation school program.

(c) Requires TEA to annually review the amount of funds in the charter school liquidation fund and transfer any funds exceeding \$2 million for use in funding a high-quality educational grant program established by the commissioner or to the comptroller to deposit in the charter district bond guarantee reserve fund under Section 45.0571 (Charter District Bond Guarantee Reserve Fund).

(d) Authorizes TEA to delay a transfer of funds under Subsection (c) if the excess is less than \$100,000. Provides that funds set aside for an overallocation of funds from the foundation school program are not included in determining whether the amount of funds exceeds \$2 million.

(e) Authorizes the commissioner to adopt rules necessary to implement this section.

SECTION 10. Amends Section 39A.256, Education Code, by adding Subsection (c), as follows:

(c) Provides that a board of managers appointed for the final closure of a former open-enrollment charter school under Subsection (b) has the authority to:

(1) access and manage any former charter holder's bank account that contains funds received under Section 12.106; and

(2) subject to approval by a creditor with a security interest in or lien on property described by Section 12.128 and in accordance with Sections 12.1281 and 12.1282, sell or transfer to another charter holder or school district any property titled to the former charter holder that is identified in the former open-enrollment charter school's annual financial report filed under Section 44.008 as being acquired, wholly or partly, with funds received under Section 12.106.

SECTION 11. Amends Section 39A.259(c), Education Code, as follows:

(c) Requires TEA, rather than the commissioner, to use funds received by or due to the former charter holder under Section 12.106 or funds returned to the state from liquidation of property, rather than state property, described by Section 12.128 and held by a former charter holder for compensation of a member of a board of managers for an open-enrollment charter school or a campus of an open-enrollment charter school or a superintendent.

SECTION 12. Amends Section 43.001(a), Education Code, to make a conforming change.

SECTION 13. Amends Section 44.008, Education Code, by adding Subsections (f), (g), and (h), as follows:

(f) Requires an open-enrollment charter school to provide an accounting of each parcel of the school's real property, including identifying the amount of local, state, and federal funds used to purchase or improve each parcel of property.

(g) Requires an open-enrollment charter school for which the charter has expired, been revoked, or been surrendered or an open-enrollment charter school that otherwise ceases to operate to submit a final annual financial report to TEA. Requires the report to verify that all state property held by the charter holder has been returned or disposed of in accordance with Section 12.128.

(h) Authorizes the commissioner to adopt rules necessary to implement this section, including rules defining local funds.

SECTION 14. Provides that a transfer of property from an open-enrollment charter school that ceases to operate to another open-enrollment charter school that occurred before the effective date of this Act is ratified if both open-enrollment charter schools classified the property as purchased with state funds on each school's annual financial report under Section 44.008 (Annual Audit; Report), Education Code.

SECTION 15. Effective date: upon passage or September 1, 2019.