

BILL ANALYSIS

C.S.S.B. 1830
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Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Charter schools were authorized in Texas to provide additional educational opportunities for students in the public school system. Charter schools, through the use of different and innovative learning methods, have proven to be extremely popular and successful in meeting the educational needs of many students. Open-enrollment charter schools have been particularly successful at meeting the needs of at-risk students and students seeking a college preparatory school. In 2008, almost 114,000 students attended a charter school, with more than 16,000 on waiting lists.

C.S.S.B. 1830 amends current law relating to the establishment, operation, and funding of an open-enrollment charter school, including provisions relating to the statutory limit on the number of charters the State Board of Education (SBOE) may grant for an open-enrollment charter school and to procedures for a charter's modification, placement on probation, or revocation, as well as adding provisions authorizing the SBOE to grant a charter for such a school intended primarily to serve students with disabilities and authorizing the SBOE to grant a charter on the application of a public junior college if certain criteria are satisfied.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 2, 3, and 6, and to the State Board for Education Certification in SECTION 2 of this bill.

ANALYSIS

C.S.S.B. 1830 amends the Education Code to raise the cap on the total number of charters that the State Board of Education (SBOE) may grant for open-enrollment charter schools from a maximum of 215 to a maximum of 275 and to cap the number of new charters the SBOE may grant in a state fiscal year at 15. The bill authorizes the SBOE to grant a charter, after thoroughly investigating and evaluating an applicant, only to an applicant that meets any financial, governing, curriculum development and implementation, and operational standards adopted by the commissioner of education.

C.S.S.B. 1830 authorizes the SBOE to grant a charter on the application of an eligible entity for an open-enrollment charter school intended primarily to serve students with disabilities, including students with autism. The bill establishes that such a charter is included for purposes of the caps on the number of open-enrollment charter schools described above. The bill establishes that an open-enrollment charter school intended primarily to serve students with disabilities, for purposes of the applicability of state and federal law, including a law prescribing requirements concerning students with disabilities, is considered the same as any other open-enrollment charter school for which a charter is granted by the SBOE. The bill authorizes a parent of a student with a disability, to the fullest extent permitted under federal law, to choose to enroll that child in an open-enrollment charter school intended primarily to serve students with disabilities regardless of whether a disproportionate number of the school's students are students

with disabilities. The bill provides that its provisions relating to an open-enrollment charter school intended primarily to serve students with disabilities do not authorize an open-enrollment charter school to discriminate in admissions or in the services provided based on the presence, absence, or nature of an applicant's or student's disability. The bill requires each educator, including a person performing the duties of a superintendent, employed or under contract to serve on the instructional or administrative staff of an open-enrollment charter school intended primarily to serve students with disabilities to hold the appropriate certificate, as determined in accordance with State Board for Educator Certification rule, to serve students with a disability of the same type as a disability of students enrolled in the school. The bill requires the commissioner and the State Board for Educator Certification to adopt rules as necessary to administer the bill's provisions relating to an open-enrollment charter school intended primarily to serve students with disabilities.

C.S.S.B 1830 requires, rather than authorizes, the commissioner to adopt rules to provide and account for state funding of open-enrollment charter schools. The bill entitles a charter holder to state funding for an open-enrollment charter school only if the charter holder provides required information for the Public Education Information Management System, submits to the commissioner required fiscal and financial records, and receives an unqualified opinion in the most recent independent auditor's report of the school's finances. The bill requires the commissioner to suspend the funding of a charter holder that fails to comply with an applicable commissioner rule until the commissioner determines that the charter holder is in compliance or has cured any noncompliance and has adopted adequate procedures to prevent future noncompliance. The bill requires such rules to require the commissioner to provide written notice to a charter holder before such suspension of funding. The bill requires the written notice to notify the charter holder that the charter holder's funding may be suspended; to specify the reason for the suspension, including an explanation of any noncompliance by the charter holder with a specified rule; to inform the charter holder that the charter holder has 30 calendar days after the date on which the charter holder receives the notice to demonstrate compliance or to cure any noncompliance before the charter holder's funding is suspended by the commissioner; and to contain any other information the commissioner determines necessary. The bill prohibits the commissioner from suspending the funding of a charter holder until the 30 day period has expired.

C.S.S.B. 1830 removes the requirement that each charter for an open-enrollment charter school specify the period for which the charter or any charter renewal is valid. The bill requires the charter to make the charter's continuation contingent on acceptable performance as determined under the public school accountability system, rather than making the charter's continuation or renewal contingent on acceptable student performance on statewide standardized tests adopted under that accountability system. The bill removes provisions that made continuation or renewal contingent on compliance with charter-specific accountability provisions by a deadline or at intervals specified by the charter and removes provisions that required the charter to establish the level of student performance considered acceptable for continuation or renewal of the charter and to specify the basis for denial of renewal. The bill requires a charter to specify any basis on which the charter may be modified as well as any basis for placement on probation or revocation.

C.S.S.B. 1830 removes the commissioner's authorization to deny renewal of a charter of an open-enrollment charter school under certain conditions. The bill requires any action the commissioner takes under the public school accountability system concerning an open-enrollment charter school to be taken in accordance with the provisions of that accountability system.

C.S.S.B. 1830 removes a provision requiring the commissioner to adopt a procedure to be used for denying renewal of the charter of an open-enrollment charter school. The bill requires the commissioner to close an open-enrollment charter school if, after all information required for determining a performance rating under the financial accountability rating system has been

considered, the commissioner determines that the school is insolvent as defined by commissioner rule. The bill requires the commissioner to revoke an open-enrollment charter school's charter without a hearing if each campus operated under the charter has been ordered closed. The bill requires the commissioner's procedure for denying, revoking, or modifying the charter of an open-enrollment charter school to provide for a hearing on the issue to be held in the county in which the school is located, except as provided under the campus closure provisions described above. The bill removes the requirement that the commissioner's procedure for modifying, placing on probation, or revoking an open-enrollment charter school's charter provide an opportunity for a hearing to the charter holder and to parents and guardians of students in the school and that such a hearing be held at the facility where the program is operated. The bill makes the Administrative Procedure Act applicable to a hearing that is related to a modification, placement on probation, or revocation of a charter for an open-enrollment charter school.

C.S.S.B. 1830 specifies that an annual evaluation of open-enrollment charter schools conducted by an impartial organization with experience in evaluating school choice programs, as designated by the commissioner, be conducted under the commissioner's supervision.

C.S.S.B. 1830 authorizes the SBOE to grant a charter on the application of a public junior college for an open-enrollment charter school to operate on the campus of the public junior college or in the same county in which the junior college campus is located and makes existing provisions that are applicable to a public senior college or university charter or charter school applicable also to a public junior college charter or charter school. The bill authorizes the SBOE to grant a charter to a public junior college only if the following criteria are satisfied in the public junior college's application, as determined by the SBOE and notwithstanding other required criteria:

- the junior college charter school's educational program must be implemented under the direct supervision of a member of the faculty of the public junior college;
- the faculty member supervising the junior college charter school's educational program must have substantial experience and expertise in teacher education, classroom instruction, or educational administration;
- the junior college charter school's educational program must be designed to meet specific goals described in the charter, such as dropout recovery, and each aspect of the program must be directed toward the attainment of the goals;
- the attainment of the junior college charter school's educational program goals must be measured using specific, objective standards set forth in the charter, including assessment methods and a time frame; and
- the financial operations of the junior college charter school must be supervised by the business office of the junior college.

The bill defines "public junior college" for such purposes by reference.

C.S.S.B. 1830 requires the commissioner to order closure of an open-enrollment charter school campus that is considered an academically unacceptable campus for three consecutive school years. The bill authorizes the commissioner to waive such requirement if the commissioner determines that, on the basis of significant improvement in student performance over the preceding two school years, the campus is likely to be rated as academically acceptable for the following school year.

C.S.S.B. 1830 requires the commissioner to develop and implement a financial accountability rating system applicable to open-enrollment charter schools in Texas as well as to school districts in Texas and makes conforming changes with respect to procedures and reporting requirements.

C.S.S.B. 1830 makes its provisions applicable beginning with the 2009-2010 school year.

C.S.S.B. 1830 provides that its provisions do not make an appropriation and that those provisions take effect only if a specific appropriation for implementation is provided in a general appropriations act of the 81st Legislature.

C.S.S.B. 1830 repeals the following sections in the Education Code:

- Section 12.113(b), establishing that a grant of a charter for an open-enrollment charter school does not create an entitlement to a renewal of a charter on the same terms as it was originally issued; and
- Section 12.1161(b), authorizing an open-enrollment charter school to continue to operate and receive state funds for the remainder of a school year if the commissioner denies renewal of the school's charter before the completion of that school year.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1830 differs from the original by raising the cap on the total number of charters that the State Board of Education (SBOE) may grant for open-enrollment charter schools from a maximum of 215 to a maximum of 275 and caps the number of new charters the SBOE may grant in a state fiscal year at 15, whereas the original eliminates the cap on the total number altogether and instead authorizes the SBOE to grant up to 10 new charters each state fiscal year.

C.S.S.B. 1830 omits provisions in the original authorizing a charter holder to establish one or more new open-enrollment charter school campuses under a charter without applying for authorization from the SBOE if certain conditions apply.

C.S.S.B. 1830 differs from the original by specifying that a charter for an open-enrollment charter school intended primarily to serve students with disabilities is included for purposes of the cap on the number of charters that may be granted for open-enrollment charter schools, whereas the original specifies that such a charter is not considered for purposes of that cap. The substitute adds a provision not in the original requiring each educator employed or under contract to serve on the instructional or administrative staff of an open-enrollment charter school intended primarily to serve students with disabilities to hold the appropriate certificate to serve students with a disability of the same type as a disability of students enrolled in the school. The substitute adds a provision not in the original requiring the commissioner of education and the State Board for Educator Certification to adopt rules as necessary to administer the bill's provisions relating to an open-enrollment charter school intended primarily to serve students with disabilities.

C.S.S.B. 1830 omits provisions in the original authorizing the commissioner, in computing dropout and completion rates for an open-enrollment charter school, to exclude students who are ordered by a court to attend a high school equivalency certificate program but who have not yet earned a high school equivalency certificate and to exclude students who were previously reported to the state as dropouts.

C.S.S.B. 1830 omits provisions in the original requiring the commissioner by rule to adopt a procedure for providing notice, on receipt by the SBOE of notice of the establishment of an open-enrollment charter school campus under an existing charter by a charter holder for which the charter holder was not required to apply for the SBOE authorization, as provided by provisions in the original omitted in the substitute, to the board of trustees of each school district from which the proposed open-enrollment charter school or campus is likely to draw students and to each member of the legislature who represents the geographic area to be served by the

proposed school or campus.

C.S.S.B. 1830 adds a provision not in the original requiring the commissioner to adopt rules to provide and account for state funding of open-enrollment charter schools. The substitute adds provisions not in the original establishing that a charter holder is entitled to receive state funding for an open-enrollment charter school only under certain conditions and requiring the commissioner to suspend the funding of a charter holder that fails to comply with applicable commissioner rules until the commissioner determines that the charter holder is in compliance or has cured any noncompliance and has adopted adequate procedures to prevent future noncompliance. The substitute adds a provision not in the original requiring such rules to require the commissioner to provide written notice to a charter holder before such suspension of funding. The substitute adds a provision not in the original prohibiting the commissioner from suspending the funding of a charter holder until the charter holder has had 30 calendar days to demonstrate compliance or cure any noncompliance.

C.S.S.B. 1830 differs from the original by removing the statutory requirement that each charter for an open-enrollment charter school specify the period for which the charter or any charter renewal is valid, whereas the original requires such a charter to specify the period for which any charter renewal is valid consistent with provisions in the original omitted in the substitute relating to a charter's automatic renewal for a minimum period of 10 years unless the charter is revoked. The substitute differs from the original by requiring the charter to make the charter's continuation contingent on acceptable performance, whereas the original requires the charter to make the charter's continuation or renewal contingent on the charter's status. The substitute adds a provision not in the original requiring a charter to specify any basis on which the charter may be modified in addition to the bases for placement on probation or revocation.

C.S.S.B. 1830 adds a provision not in the original requiring any action the commissioner takes under the public school accountability system concerning an open-enrollment charter school to be taken in accordance with such provisions. The bill omits a provision in the original adding a school's accreditation status as another basis for the commissioner's modification, placement on probation, or revocation of a charter for an open-enrollment charter school.

C.S.S.B. 1830 differs from the original by removing a statutory requirement for the commissioner to adopt a procedure for denying renewal of the charter of an open-enrollment charter school's charter. The substitute differs from the original by requiring the commissioner to close an open-enrollment charter school if, after all information required for determining a performance rating system under the financial accountability rating system has been considered, the commissioner determines that the school is insolvent as defined by commissioner rule, whereas the original requires the commissioner to revoke the charter of an open-enrollment charter school in accordance with the procedure adopted by the commissioner for modifying, placing on probation, revoking, or denying renewal of such a charter if, after all information required for determining a performance rating has been considered, the commissioner determines that the school is insolvent as a result of recovery of overallocated state funds. The substitute differs from the original by requiring the commissioner to revoke an open-enrollment charter school's charter without a hearing if each campus under the charter has been ordered closed under the public school accountability system (Chapter 39), whereas the original requires revocation without a hearing if each campus has been ordered closed specifically for failure to implement a campus improvement plan or for being considered an academically unacceptable campus following the campus's reconstitution (Sections 39.1324(d), (e), or (f)).

C.S.S.B. 1830 adds a provision not in the original requiring the commissioner's procedure for denying, revoking, or modifying the charter of an open-enrollment charter school to provide for a hearing on the issue to be held in the county in which the school is located, except as otherwise provided above for closure-related revocation. The substitute omits a provision in the original requiring the commissioner's procedure for denying renewal of the charter of an open-enrollment charter school to provide that the charter automatically renews unless it is revoked before the

expiration of a charter term. The substitute omits a provision in the original prohibiting the term for which a charter is renewed from being less than 10 years. The substitute adds a provision not in the original making the Administrative Procedure Act applicable to a hearing that is related to a modification, placement on probation, or revocation of an open-enrollment charter school.

C.S.S.B. 1830 omits provisions in the original authorizing the board of trustees of a district that leases a district facility for the operation of an open-enrollment charter school to be colocated on a district campus and that enters into an agreement in that regard with the charter school to elect to have data regarding the academic performance of students enrolled in the open-enrollment charter school combined with comparable data of the colocated district campus in determining the performance of the campus and the district and if the board of trustees elects to have academic data combined, to file annually with the Texas Education Agency (TEA) a copy of the lease and the agreement between the district and an open-enrollment charter school. The substitute omits provisions in the original setting forth requirements for such an agreement.

C.S.S.B. 1830 omits provisions in the original entitling a school district, if the district's board of trustees enters into an agreement with an open-enrollment charter school for the charter school to provide educational services to a student enrolled in school in the district, to receive additional funding in either the amount the charter school would receive under the statutory funding provisions for an open-enrollment charter school if the student were enrolled in the charter school or the amount to which the district is entitled for the student under the state's school finance system, whichever amount is greater. The substitute omits provisions in the original authorizing the board of trustees to elect to have the state and federal funds attributable to the students educated by the charter school paid directly to the charter school and requiring a district that makes such an election to make an annual declaration of the election to TEA in a manner determined by the commissioner. The substitute omits a provision in the original establishing that the district remains responsible for any overallocation or audit recovery of state or federal funds as determined by the commissioner.

C.S.S.B. 1830 adds a provision not in the original authorizing the SBOE to grant a charter on the application of a public junior college for an open-enrollment charter school to operate on the campus of the public junior college or in the same county in which the campus of the public junior college is located. The substitute adds provisions not in the original authorizing the SBOE to grant such a charter if certain criteria are satisfied in the public junior college's application. The substitute adds a provision not in the original defining "public junior college" for such purposes by reference.

C.S.S.B. 1830 adds provisions not in the original requiring the commissioner of education, notwithstanding any provision relating to accreditation sanctions, to order closure of an open-enrollment charter school campus that is considered an academically unacceptable campus for three consecutive school years and authorizing the commissioner to waive such requirement if the commissioner determines that, on the basis of significant improvement in student performance over the preceding two school years, the campus is likely to be rated as academically acceptable for the following school year.

C.S.S.B. 1830 adds a provision not in the original repealing an open-enrollment charter school's authorization to continue to operate and receive state funds for the remainder of a school year if the commissioner denies renewal of the school's charter before the completion of that school year.