

1-1 By: Taylor, West S.B. No. 1454
1-2 (In the Senate - Filed March 4, 2019; March 14, 2019, read
1-3 first time and referred to Committee on Education; April 29, 2019,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 10, Nays 0; April 29, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Taylor	X			
1-8 Lucio			X	
1-9 Bettencourt	X			
1-10 Campbell	X			
1-11 Fallon	X			
1-12 Hall	X			
1-13 Hughes	X			
1-14 Paxton	X			
1-15 Powell	X			
1-16 Watson	X			
1-17 West	X			

1-19 COMMITTEE SUBSTITUTE FOR S.B. No. 1454 By: Taylor

1-20 A BILL TO BE ENTITLED
1-21 AN ACT

1-22 relating to the ownership, sale, lease, and disposition of property
1-23 and management of assets of an open-enrollment charter school.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 12.1012, Education Code, is amended by
1-26 adding Subdivisions (7) and (8) to read as follows:

1-27 (7) "Payable obligation" means a contractually
1-28 obligated expenditure that was reasonably incurred for the benefit
1-29 of students enrolled at an open-enrollment charter school before
1-30 the open-enrollment charter school ceased operations, including a
1-31 debt described by Section 12.128(e). The term does not include any
1-32 amount owed to a former charter holder or officer or director of the
1-33 school.

1-34 (8) "Remaining funds" means funds that are held by a
1-35 former charter holder after satisfaction of all payable obligations
1-36 and that were received:

1-37 (A) under Section 12.106; or

1-38 (B) from the disposition of property.

1-39 SECTION 2. Subchapter D, Chapter 12, Education Code, is
1-40 amended by adding Section 12.10125 to read as follows:

1-41 Sec. 12.10125. OPEN-ENROLLMENT CHARTER SCHOOL NOT IN
1-42 OPERATION. An open-enrollment charter school ceases to operate if:

1-43 (1) the school's charter:

1-44 (A) has been revoked;

1-45 (B) has expired;

1-46 (C) has been surrendered; or

1-47 (D) has been abandoned; or

1-48 (2) the school has otherwise ceased operation as a
1-49 public school.

1-50 SECTION 3. Section 12.106, Education Code, is amended by
1-51 adding Subsections (h), (i), and (j) to read as follows:

1-52 (h) Except as provided by Subsection (i), all remaining
1-53 funds of a charter holder for an open-enrollment charter school
1-54 that ceases to operate must be returned to the agency and deposited
1-55 in the charter school liquidation fund.

1-56 (i) The agency may approve a transfer of a charter holder's
1-57 remaining funds to another charter holder if the charter holder
1-58 receiving the funds has not received notice of the expiration or
1-59 revocation of the charter holder's charter for an open-enrollment
1-60 charter school or notice of a reconstitution of the governing body

of the charter holder under Section [12.1141](#) or [12.115](#).

(j) The commissioner may adopt rules specifying:

(1) the time during which a former charter holder must return remaining funds under Subsection (h); and

(2) the qualifications required for a charter holder to receive a transfer of remaining funds under Subsection (i).

SECTION 4. Section [12.107](#)(a), Education Code, is amended to read as follows:

(a) Funds received under Section [12.106](#) after September 1, 2001, by a charter holder:

(1) are considered to be public funds for all purposes under state law;

(2) are held in trust by the charter holder for the benefit of the students of the open-enrollment charter school;

(3) may be used only for a purpose for which a school may use local funds under Section [45.105](#)(c); ~~and~~

(4) pending their use, must be deposited into a bank, as defined by Section [45.201](#), with which the charter holder has entered into a depository contract; and

(5) may not:

(A) be 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) be used to support an operation or activity not related to the educational activities of the charter holder.

SECTION 5. Section [12.1163](#), Education Code, is amended by adding Subsection (d) to read as follows:

(d) If the aggregate amount of all transactions between a charter holder and a related party, as defined by commissioner rule adopted under Section [12.1166](#), exceeds \$25,000, an audit under Subsection (a) may include the review of any real property transactions between the charter holder and the related party. 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, the commissioner may order that the transaction be reclassified or that other action be taken as necessary to protect the school's interests. Failure to comply with the commissioner's order is a material violation of the charter.

SECTION 6. Subchapter D, Chapter [12](#), Education Code, is amended by adding Sections [12.1166](#), [12.1167](#), and [12.1168](#) to read as follows:

Sec. [12.1166](#). RELATED PARTY TRANSACTIONS. (a) The commissioner shall adopt a rule defining "related party" for purposes of this subchapter. The definition of "related party" must include:

(1) a party with a current or former board member, administrator, or officer who is:

(A) a board member, administrator, or officer of an open-enrollment charter school; or

(B) related within the third degree of consanguinity or affinity, as determined under Chapter [573](#), 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) 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) In a charter holder's annual audit filed under Section 44.008, the charter holder must include a list of all transactions with a related party.

Sec. 12.1167. APPRAISAL OF CERTAIN PROPERTY. The commissioner may adopt rules to require an open-enrollment charter school to:

(1) 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

(2) provide an appraisal from a certified appraiser to the agency.

Sec. 12.1168. FINANCIAL REPORT OF CERTAIN SCHOOLS. (a) In this section, "related party" has the meaning adopted by commissioner rule under Section 12.1166.

(b) A financial report filed under Section 44.008 by an open-enrollment charter school must separately disclose:

(1) all financial transactions between the open-enrollment charter school and any related party, separately stating the principal, interest, and lease payments; and

(2) 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) The commissioner may adopt rules to implement this section.

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

(a) Property purchased ~~[or leased]~~ with funds received by a charter holder under Section 12.106 after September 1, 2001:

(1) is considered to be public property for all purposes under state law;

(2) 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

(3) may be used only for a purpose for which a school district may use school district property.

(a-1) Property leased with funds received by a charter holder under Section 12.106 after September 1, 2001:

(1) is considered to be public property for all purposes under state law;

(2) 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

(3) may be used only for a purpose for which a school district may use school district property.

(b-1) 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) and may exercise complete control over the property as permitted under the law.

(b-2) A charter holder may not transfer, sell, or otherwise dispose of any property described by this section without the prior written consent of the agency 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);

(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) The commissioner shall:

(1) take possession and assume control of the property

described by Subsection (a) of an open-enrollment charter school that ceases to operate; and

(2) supervise the disposition of the property in accordance with this subchapter [law].

(c-1) Notwithstanding Subsection (c), if an open-enrollment charter school ceases to operate, the agency:

(1) for property purchased with state funds, shall 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:

(i) the agency under Section 12.1281(h); or

(ii) 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) for property leased with state funds, may direct the charter holder to assign the charter holder's interest in the lease to the agency.

(c-2) The agency may 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 the agency determines that the expenditure is reasonably necessary to dispose of the property or preserve the property's value.

(f) A decision by the agency under this section is final and may not be appealed.

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

Sec. 12.1281. DISPOSITION OF PROPERTY PURCHASED WITH STATE FUNDS. (a) A former charter holder of an open-enrollment charter school that has ceased to operate may retain property described by Section 12.128 if the former charter holder reimburses the state with non-state funds and the former charter holder:

(1) provides written assurance that the requirements of Section 12.1284 will be met; and

(2) receives approval from the agency.

(b) On receiving consent from the agency under Section 12.128(b-2) and a written agreement from any creditor with a security interest described by Section 12.128(e), the former charter holder may:

(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) The amount of funds the state is entitled to as reimbursement for property of a former charter holder is:

(1) 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

(2) 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) To determine the amount of state funds a former charter holder used to purchase property, the agency shall calculate:

(1) 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

(2) a final state reimbursement amount using the former charter holder's final financial audit filed under Section 44.008.

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

shall:

(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 state 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) A former charter holder may retain any funds remaining after complying with this section.

(g) As soon as the agency is satisfied that the former charter holder complied with Subsection (e), the agency shall 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) 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), the former charter holder shall transfer the property, including a conveyance of title, to the agency in accordance with the procedures and time requirements established by the agency.

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

(j) A decision by the agency under this section is final and may not be appealed.

(k) The commissioner may adopt rules necessary to administer this section.

Sec. 12.1282. TRANSFER OF PROPERTY PURCHASED WITH STATE FUNDS. (a) The agency may approve the transfer of property described by Section 12.128 from an open-enrollment charter school that has ceased to operate, or may transfer property conveyed to the agency 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) 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) The commissioner may 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) If the agency determines that the cost of disposing of

personal property described by Section [12.128](#) transferred to the agency by an open-enrollment charter school that ceases to operate exceeds the return of value from the sale of the property, the agency may distribute the personal property to open-enrollment charter schools and school districts in a manner determined by the commissioner.

(e) A determination by the agency under this section is final and may not be appealed.

Sec. 12.1283. SALE OF PROPERTY PURCHASED WITH STATE FUNDS.

(a) After the agency receives title to property described by Section [12.128](#), the agency may sell the property at any price acceptable to the agency.

(b) On request of the agency, the following state agencies shall enter into a memorandum of understanding to sell property for the agency:

(1) for real property, the General Land Office; and
(2) for personal property, the Texas Facilities Commission.

(c) A memorandum of understanding entered into as provided by Subsection (b) may allow the General Land Office or Texas Facilities Commission to recover from the sale proceeds any cost incurred by the office or commission in the sale of the property.

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

(e) The commissioner may adopt rules as necessary to administer this section.

Sec. 12.1284. CLOSURE OF CHARTER SCHOOL OPERATIONS.

(a) After extinguishing all payable obligations owed by an open-enrollment charter school that ceases to operate, including a debt described by Section [12.128\(e\)](#), a former charter holder shall:

(1) remit to the agency:
(A) any remaining funds described by Section [12.106\(h\)](#); and

(B) any state reimbursement amounts from the sale of property described by Section [12.128](#); or

(2) transfer the remaining funds to another charter holder under Section [12.106\(i\)](#).

(b) The agency shall deposit any funds received under Subsection (a)(1) in the charter school liquidation fund.

(c) The commissioner may adopt rules necessary to administer this section.

SECTION 9. Subchapter D, Chapter [12](#), Education Code, is amended by adding Section 12.141 to read as follows:

Sec. 12.141. RECLAIMED FUNDS. (a) The agency shall deposit funds received under Sections [12.106](#), [12.128](#), [12.1281](#), [12.1283](#), and [12.1284](#) into the charter school liquidation fund and may 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) the agency'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) The agency may not use 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 must be recovered for the Foundation School Program.

(c) The agency shall annually review the amount of funds in the charter school liquidation fund and transfer any funds exceeding \$2 million:

(1) for use in funding a high-quality educational

grant program established by the commissioner; or
 (2) to the comptroller to deposit in the charter district bond guarantee reserve fund under Section 45.0571.

(d) The agency may delay a transfer of funds under Subsection (c) if the excess is less than \$100,000. 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) The commissioner may adopt rules necessary to implement this section.

SECTION 10. Section 39A.256, Education Code, is amended by adding Subsection (c) to read as follows:

(c) 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. Section 39A.259(c), Education Code, is amended to read as follows:

(c) The agency [~~commissioner~~] shall use funds received by or due to the former charter holder under Section 12.106 or funds returned to the state from liquidation of [~~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. Section 43.001(a), Education Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the permanent school fund, which is a perpetual endowment for the public schools of this state, consists of:

(1) all land appropriated for the public schools by the constitution and laws of this state;

(2) all of the unappropriated public domain remaining in this state, including all land recovered by the state by suit or otherwise except pine forest land as defined by Section 88.111 and property described by Section 12.128;

(3) all proceeds from the authorized sale of permanent school fund land;

(4) all proceeds from the lawful sale of any other properties belonging to the permanent school fund;

(5) all investments authorized by Section 43.003 of properties belonging to the permanent school fund; and

(6) all income from the mineral development of permanent school fund land, including income from mineral development of riverbeds and other submerged land.

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

(f) An open-enrollment charter school shall 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) 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 shall submit a final annual financial report to the agency. The report must verify that all state property held by the charter holder has been returned or disposed of in accordance with Section 12.128.

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

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