

SUBJECT: Charter school expansion and accountability

COMMITTEE: Public Education — committee substitute recommended

VOTE: 7 ayes — Aycock, Allen, Deshotel, Farney, Huberty, Ratliff, Villarreal
0 nays
4 absent — J. Davis, Dutton, K. King, J. Rodriguez

SENATE VOTE: On final passage, April 11 — 30-1 (Nichols)

WITNESSES: For — Traci Berry, Goodwill Industries of Central Texas; David Dunn, Texas Charter Schools Association; Mike Feinberg, KIPP Houston Public Schools; Terry Ford, Neighbors United for Quality Education dba East Dallas Community Schools; Christopher Garcia, Uplift Education; James Golsan, Texas Public Policy Foundation; Steve Munisteri, Republican Party of Texas; Charles Pulliam, Life School of Dallas; Larkin Tackett, IDEA Public Schools; Richard Trabulsi, Texans for Education Reform; Peggy Venable, Americans for Prosperity-Texas; Kathleen Zimmermann, NYOS Charter School; (*Registered, but did not testify:* David Anthony, Raise Your Hand Texas; Ellen Arnold, Texas PTA; Andrew Erben, Texas Institute for Education Reform; Garza Brown; Eric Glenn, Texas Charter Schools Association; Terri Hall; Bill Hammond, Texas Association of Business; Patricia V. Hayes, Stand for Children Texas; David Maddox, Kids First; Annie Mahoney, Texas Conservative Coalition; Dustin Matocha, Texans for Fiscal Responsibility; Thomas Mayes, Beatrice Mayes Institute Charter School; Jonathan Saenz, Texas Values; Michelle Smith, Concerned Women for America; Todd Webster, Spring Branch ISD; Justin Yancy, Texas Business Leadership Council)

Against — Yannis Banks, Texas NAACP; Monty Exter, The Association of Texas Professional Educators; Lonnie Hollingsworth, Texas Classroom Teachers Association; Zenobia Joseph; Ed Martin, Texas State Teachers Association; Ted Melina Raab, Texas American Federation of Teachers; Columba Wilson; (*Registered, but did not testify:* Portia Bosse, Texas State Teachers Association; Anne Roussos, League of Women Voters of Texas; Chandra Villanueva, Center for Public Policy Priorities; Marjorie

Wood; Herb Youngblood, Texas Association of Community Schools)

On — David Anderson, Texas Education Agency; MerryLynn Gerstenschlager, Texas Eagle Forum; Parc Smith, American YouthWorks; (*Registered, but did not testify*: Lisa Dawn-Fisher, Texas Education Agency)

BACKGROUND: The 74th Legislature in 1995 enacted SB 1 by Ratliff. Among its many provisions, this revision of the Texas Education Code established a new type of public school known as a charter school. Charter schools are subject to fewer state laws than other public schools, but like school districts, charter schools are monitored and accredited under the statewide testing and accountability system.

According to the Texas Education Code, the purposes of charter schools are to:

- improve student learning;
- increase the choice of learning opportunities within the public school system;
- create professional opportunities that will attract new teachers to the public school system;
- establish a new form of accountability for public schools; and
- encourage different and innovative learning methods.

Four classes of charters are authorized by the Texas Education Code. They are home-rule school district charters; campus or campus program charters; open-enrollment charters; and college or university charters. There are currently no schools operating under home-rule school district charters. There are 74 campus charters operated by 15 school districts and three operated by colleges or universities. Most of the charter schools in Texas operate under open-enrollment charters, which are granted by the State Board of Education (SBOE).

The SBOE may grant up to 215 open-enrollment charters, although some charter holders may operate more than one campus. There currently are 552 open-enrollment charter school campuses.

The term for an open-enrollment charter is not set out in statute; however, the current practice has been to grant open-enrollment charters for five-year periods and then to renew the charters for 10-year periods.

DIGEST:

CSSB 2 would increase the charter school cap while maintaining the State Board of Education (SBOE) as the charter school authorizer, with new veto authority for the commissioner of education. The bill would establish new requirements for reviewing charter applicants, new accountability measures, and new procedures for renewing and revoking charters.

Facilities. A district that intended to sell or lease unused facilities would be required to give charter schools the first opportunity to purchase, lease or use the facility. A district would not have to accept a charter school's offer. Additionally, a district could not require a charter school it had contracted with to provide educational services to rent or buy a facility.

Applications. The cap on the number of open-enrollment charter schools would increase by 10 each fiscal year beginning September 1, 2014, for a total of 275 by September 1, 2019. The initial term for a new charter would be set at five years.

The SBOE would be directed to give priority to applications that proposed to locate a charter school in the attendance zone of a district campus assigned an unacceptable performance rating for the preceding two school years.

The SBOE would be required to thoroughly investigate and evaluate a charter school applicant to determine that the applicant was likely to operate a school of high quality and:

- had not in the preceding 10 years had a charter issued by Texas or another state surrendered, revoked or denied renewal; or
- was not a corporate affiliate or substantially related to such an entity.

The commissioner would have veto authority over any charter the SBOE granted within 90 days. The SBOE would be prohibited from granting more than one charter to a holder but could consolidate multiple charters with the written consent of current charter holders.

The bill would codify expedited rules allowing expansion campuses for high-performing charters that had at least half of their students in grades 3-11. Unless the commissioner disapproved within 60 days after receiving notice, a charter holder could open a new campus location.

The bill would allow the SBOE to grant charters to affiliates of out-of-state entities that met high performance standards.

Renewals. After the initial charter term of five years had expired, CSSB 2 would establish renewal periods of 10 years and three renewal processes — expedited, discretionary, and expiration.

An expedited process allowing automatic renewal 30 days after written notice would be available for charter holders that had:

- the highest or second-highest rating in the accountability system for the preceding three years;
- a satisfactory or better financial rating for the preceding three years; and
- no low-performing campuses that the charter holder had not closed in the three preceding years.

For charters not meeting expedited criteria, the commissioner would use the discretionary process, which would evaluate charter schools using accountability rates and performance framework criteria. For purposes of the discretionary process, the commissioner would designate a charter as a dropout recovery school if at least half the students enrolled at the school were at least 17 years old and registered in the alternative education accountability system.

The bill would establish an appeal procedure for discretionary renewal appeals to the State Office of Administrative Hearings (SOAH).

The commissioner would be required to let a charter expire if the charter holder had:

- received the lowest academic rating for any three of the five preceding years;
- received a financial accountability rating lower than satisfactory for three of the five preceding years;
- received any combination of the above ratings for three of the five preceding years; or
- had not closed any campus that held an unacceptable rating in each of the three preceding years.

An expiration decision would be final and could not be appealed.

Revocations. The bill would require the commissioner to revoke the charter or reconstitute the governing body if the insolvency of a charter holder was imminent or for the charter's failure to:

- comply with fiscal management requirements;
- protect the health and safety of students; or
- meet accountability or performance framework standards.

The bill would delete probation and modification as possible actions for charters not meeting academic or financial standards.

The commissioner would be required to revoke the charter if the charter holder:

- received an unacceptable performance rating for the three preceding school years;
- received an unsatisfactory financial accountability performance rating for the three preceding school years; or
- received any combination of the above ratings for the three preceding school years.

The commissioner would be directed to adopt an informal procedure for revoking charters or reconstituting the governing body of a charter school. The appeals process would be moved to SOAH, which could only reverse the commissioner's decision on a finding that it was arbitrary and capricious or clearly erroneous. The SOAH decision would be final.

The bill would repeal a provision that allows the holder of a charter that had been revoked to continue to operate and receive state funds for the remainder of a school year. Instead, the commissioner could manage such a school until alternative arrangements could be made for students or a different charter holder took over the school.

Accountability. The bill would specify that charter holders were subject to financial accountability and procedures for appeals. It would direct the commissioner to develop performance frameworks based on national best practices to measure charter schools under either standard accountability or alternative education accountability criteria. The commissioner would adopt the frameworks with advice from charter holders, governing body

members, and other interested persons. The performance frameworks would have to include student attrition rate as a standard.

Employment. CSSB 2 would align charter school hiring and nepotism provisions with those of other school districts by repealing language that currently exempts certain high-performing charter schools from state nepotism laws.

The bill would fix a gap in eligibility for membership in the Teacher Retirement System of Texas (TRS) for employees providing contracted services to a campus charter.

Transparency. The bill would require a charter school's governing body to post the agenda of a meeting on the school's website at least 48 hours before a meeting. It would require a charter school to post on its website the names of governing board members and the school superintendent's salary.

The bill would direct the commissioner to establish rules for charters to hold open meetings by telephone conference call or video conference. During a telephone or video conference call, a quorum of the governing body members would not have to be present at a single location, but there would have to be a location with two-way communication open to the public.

Reporting. The bill would establish an annual commissioner's report comparing the performance of charter schools to "matched traditional campuses," defined as a school district campus that has a student demographic composition similar to the charter school. The report would be required to allow the public to draw comparisons between open-enrollment charter schools, campuses or programs operating under charters granted by school districts, and matched traditional campuses.

Other. The bill would make charters schools subject to Education Code provisions on parental rights and responsibilities. Charter school students would be required to pledge allegiance to the U.S. and Texas flags and to observe a minute of silence each day.

CSSB 2 would clarify that property purchased or leased by charters with state funds was state property.

Texas Education Agency (TEA) employees assigned responsibility related to granting charters or providing oversight or monitoring would be required to participate in training by October 1, 2013.

The bill would define a specialty high school as one that enrolled students without regard to attendance zones. For the purpose of participating in league contests, the University Interscholastic League (UIL) would be required to assign a specialty high school to the conference with the largest student enrollment and to make reasonable exceptions for travel, availability of participant schools, or other criteria.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSSB 2 would strike an important balance between encouraging the growth of high-quality charter schools and ensuring that the commissioner of education had the necessary tools to provide effective quality control and oversight.

Charter schools in Texas today educate about 154,000 students, and there are more than 101,000 on waiting lists. Many of these are students whose traditional neighborhood schools are failing, and their educational opportunities should not be limited by their zip code.

Texas is home to many outstanding charter schools that have been able to provide a range of options for students, from college prep to dropout recovery. However, the state has outdated and ineffective laws governing charters. This has created a situation where the cap prevents new high-quality schools from forming while poor performing schools are allowed to remain open.

Expansion. Successful schools like KIPP and YES Prep are working hard to meet the demand by adding campuses, but their growth options are limited to maintain quality. IDEA Public Schools, for instance, has a child on a waitlist for every enrolled student. IDEA simply cannot grow at a rate fast enough to keep up with a waitlist ratio that high. Beyond that—one of the original intentions of the charter model was to promote innovation. Increasing the cap would allow all kinds of charter models to start schools. About 30 percent of charters are dropout recovery schools. There are also special mission schools that focus on STEM (science, technology, engineering, and mathematics), college prep, classical education, Montessori, and other models.

Facilities. The bill would promote efficient use of public resources and help charter schools improve their facilities by allowing them first refusal for mothballed school district facilities. This type of facility sharing would encourage cooperation between school districts and charter schools, which are at a distinct disadvantage compared to public schools when it comes to facilities funding. Charter schools are not allowed to levy taxes to pay for their facilities and are not eligible for programs that provide state funding to help eligible school districts with facilities costs.

Oversight. CSSB 2 would streamline expansion and renewal for quality charters and provide a clear process for closing or modifying schools that were not meeting the needs of students. It adequately would staff and train TEA employees who oversee the charter school program.

The bill would address serious regulatory flaws that the TEA Sunset reviewed identified. It would require a very strong standard for revoking a charter if a school had three consecutive years of any combination of failing academic or financial ratings. It also would authorize the commissioner to revoke an imminently insolvent charter school so it did not open without sufficient funding to complete the term.

CSSB 2 would restructure the renewal process by establishing objective financial and academic criteria that constitute high performers and low performers. High quality charters would be rewarded with a simple automatic renewal, and the charters of low performers would automatically expire if they did not meet the new standards.

Studies have shown that a charter school's first five years of operation are strongly indicative of how the school will perform over the long run, and the bill appropriately would close schools that failed to meet accountability and/or financial performance standards for three consecutive years. This would give Texas one of the strictest charter oversight laws in the nation.

The three-tiered renewal process would allow good charter schools to continue to serve students without additional bureaucratic red tape and burdensome renewal processes.

The bill would provide additional accountability for charter schools over and above the standard academic and financial accountability systems. A

new annual report would match charter schools with traditional campuses, allowing direct comparison between the two types of public schools.

The bill also would implement another Sunset recommendation by applying standard provisions on nepotism to all members of a charter holder board and employees. This could prevent conflicts of interest, morale problems, and the hiring of employees at charter schools who were not qualified.

Transparency. The bill would increase transparency of charter school governance by requiring governing boards to post meeting agendas on their websites 48 hours before a meeting. It also would require the names of the governing board and the superintendent's salary to be posted on the each school's website.

OPPONENTS
SAY:

CSSB 2 would put quantity before quality when it comes to charter schools. The state should wait for quality control measures to take effect before raising the cap on the number of charters allowed to operate in Texas.

The state frees charter schools from certain restrictions, such as class-size and teacher certification requirements, in exchange for an expectation of higher performance. While many charter schools perform well, poor performance by some charter schools threatens the delivery of a quality education for their students, according to the 2012 Sunset report on TEA.

Expansion. In some districts, public schools receive less funding per student than charter schools statewide receive on average. Public schools also must follow more rules and state regulations than charters. CSSB 2 would not adequately address these funding and regulatory issues, and until the playing field is leveled and school funding addressed, there should not be any further expansion of charter schools.

There is no need to raise the cap because successful operators such as KIPP and YES Prep already can add campuses. Replication is why there are twice as many charter campuses as there are charter holders.

Oversight. Three years of poor academic or financial performance would be too long to allow bad charter schools to keep operating. The bill would increase oversight of charter schools, but that oversight would come at a cost of \$900,000 for 11 employees in fiscal 2016, increasing to \$1 million

for 13 employees in each subsequent year, according to the fiscal note.

OTHER
OPPONENTS
SAY:

CSSB 2 would not go far enough in supporting school choice and should eliminate any arbitrary cap on charter schools.

The bill's requirement that schools have half of their enrollment in grades 3-11 in order to automatically create an expansion campus could be detrimental to schools that focus on early childhood education.

The bill would not account for efforts by the charter to correct poor performance on accountability systems. One charter holder testified that his school's finances improved dramatically after receiving grant funding, but that his charter could be subject to automatic expiration based on its financial status five years go. A "human review" should be required before a charter automatically expires.

CSSB 1 should grandfather current staff from the proposed changes to nepotism rules, similar to what happened when the law was changed for traditional school district employees. Some good charter schools truly are family-run, and it would be unfair to force out employees who were performing their jobs well.

NOTES:

The Legislative Budget Board (LBB) estimated CSSB 2 would have no significant fiscal impact to general revenue related funds through fiscal 2014-15. However, the bill would result in a negative impact of \$1.7 million in fiscal 2016. The costs would increase to \$2.5 million in fiscal 2017 and \$5.9 million in fiscal 2018. The costs would stem from the enrollment of new students in charters who are not currently served by public schools and from salaries and benefits paid to new TEA staff responsible for administration and oversight of charters.

Compared to the Senate-passed version, the committee substitute would:

- eliminate language allowing school districts to convert failing campuses to open-enrollment charter campuses;
- maintain the SBOE as the charter school authorizer and grant the commissioner veto power;
- increase the charter school cap to 275 instead of 305 and place dropout recovery charters under the cap;
- require the commissioner to give priority to charters locating in

- areas served by academically unacceptable campuses;
- make alternative education accountability campuses eligible for the renewal and revocation processes;
 - require governing boards to post meeting agendas on their websites 48 hours before a meeting and to post the superintendent's salary;
 - allow charters to use video and teleconference for governing board meetings;
 - repeal the current nepotism exemption for charter schools;
 - require charter schools to comply with Education Code provisions on parent rights;
 - require charters specializing in UIL contests to play in the conference with the largest enrollment;
 - align district and charter employment prohibitions; and
 - require charter school students daily to pledge allegiance to the U.S. and Texas flags, followed by observing a minute of silence.