

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/29/09

Date

Honorable David Dewhurst
President of the Senate

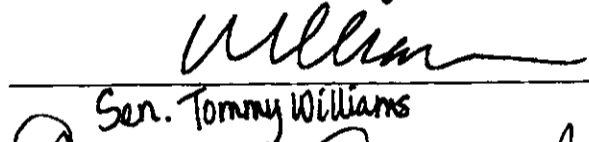
Honorable Joe Straus
Speaker of the House of Representatives

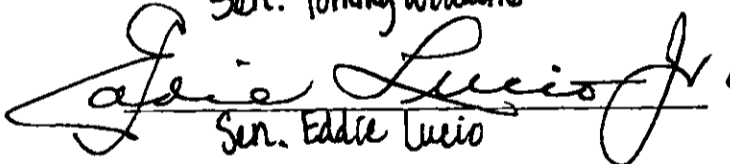
Sirs:

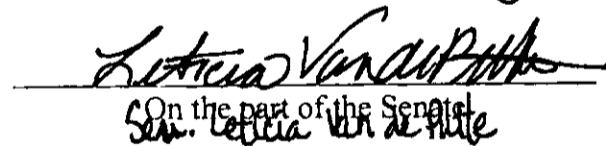
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB3220 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.


Sen. Dan Patrick

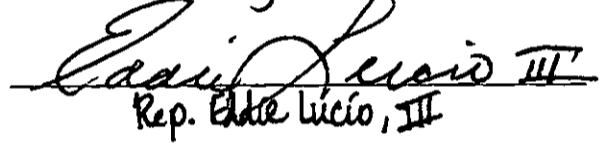

Sen. Florence Shapiro

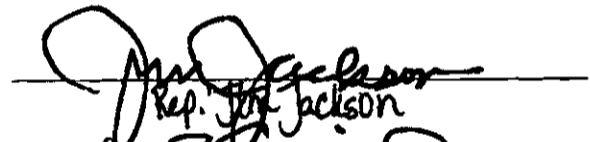

Sen. Tommy Williams

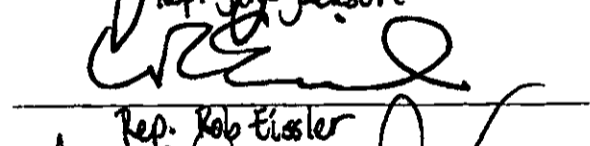

Sen. Eddie Lucio

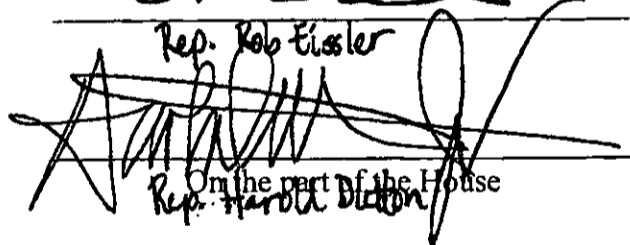

On the part of the Senate
Sen. Leticia Van de Putte


Rep. Kelly Hancock


Rep. Eddie Lucio, III


Rep. Jeff Jackson


Rep. Rob Eissler


On the part of the House
Rep. Harold Dutton

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3220

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the establishment, operation, and funding of
3 open-enrollment charter schools.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 12.101, Education Code, is amended by
6 amending Subsection (b) and adding Subsection (b-1) to read as
7 follows:

8 (b) The State Board of Education, after thoroughly
9 investigating and evaluating an applicant, may grant a charter for
10 an open-enrollment charter school only to an applicant that meets
11 any financial, governing, curriculum development and
12 implementation, and operational standards adopted by the
13 commissioner under this subchapter. The State Board of Education
14 may not grant [~~a total of~~] more than 12 new [~~215~~] charters for an
15 open-enrollment charter school each state fiscal year. At least
16 two of the charters granted each year must be granted to schools
17 that will primarily serve students with disabilities.

18 (b-1) A charter holder may establish one or more new
19 open-enrollment charter school campuses under a charter without
20 applying for authorization from the State Board of Education if:

21 (1) 90 percent or more of the open-enrollment charter
22 school campuses operating under the charter have been rated as
23 academically acceptable or higher under Subchapter D, Chapter 39,
24 for the two preceding school years;

1 (2) either no campus operating under the charter has
2 been rated as academically unacceptable for any two of the three
3 preceding school years or such a campus has been closed;

4 (3) the charter holder satisfies generally accepted
5 accounting standards of fiscal management;

6 (4) the charter holder provides written notice, in the
7 time, manner, and form provided by commissioner rule, to the State
8 Board of Education and the commissioner of the establishment of any
9 campus under this subsection; and

10 (5) not later than the 90th day after the date the
11 charter holder provides written notice under Subdivision (4), the
12 commissioner does not provide written notice to the charter holder
13 disapproving a new campus under this section.

14 SECTION 2. Subchapter D, Chapter 12, Education Code, is
15 amended by adding Section 12.1011 to read as follows:

16 Sec. 12.1011. AUTHORIZATION FOR GRANT OF CHARTERS FOR
17 SCHOOLS PRIMARILY SERVING STUDENTS WITH DISABILITIES. (a) The
18 State Board of Education may grant under Section 12.101 a charter on
19 the application of an eligible entity for an open-enrollment
20 charter school intended primarily to serve students with
21 disabilities, including students with autism. A charter granted
22 under this section is included for purposes of the limits on the
23 number of open-enrollment charter schools imposed by Section
24 12.101(b).

25 (b) For purposes of the applicability of state and federal
26 law, including a law prescribing requirements concerning students
27 with disabilities, an open-enrollment charter school described by

1 Subsection (a) is considered the same as any other school for which
2 a charter is granted under Section 12.101.

3 (c) To the fullest extent permitted under federal law, a
4 parent of a student with a disability may choose to enroll the
5 parent's child in an open-enrollment charter school described by
6 Subsection (a) regardless of whether a disproportionate number of
7 the school's students are students with disabilities.

8 (d) This section does not authorize an open-enrollment
9 charter school to discriminate in admissions or in the services
10 provided based on the presence, absence, or nature of an
11 applicant's or student's disability.

12 (e) Each educator, including a person performing the duties
13 of a campus administrator, employed or under contract to serve on
14 the instructional staff of an open-enrollment charter school
15 described by Subsection (a) must hold the appropriate certificate,
16 as determined in accordance with State Board for Educator
17 Certification rule, to serve students with a disability of the same
18 type as a disability of students enrolled in the school.

19 (f) The commissioner and the State Board for Educator
20 Certification shall adopt rules as necessary to administer this
21 section.

22 SECTION 3. Section 12.1056, Education Code, is amended to
23 read as follows:

24 Sec. 12.1056. IMMUNITY FROM LIABILITY. (a) In matters
25 related to operation of an open-enrollment charter school, an
26 open-enrollment charter school is immune from liability to the same
27 extent as a school district, and its employees and volunteers are

1 immune from liability to the same extent as school district
2 employees and volunteers. A member of the governing body of an
3 open-enrollment charter school or of a charter holder is immune
4 from liability to the same extent as a school district trustee.

5 (b) An open-enrollment charter school is a governmental
6 unit as defined by Section 101.001, Civil Practice and Remedies
7 Code, and is subject to liability only as provided by Chapter 101,
8 Civil Practice and Remedies Code, and only in the manner that
9 liability is provided by that chapter for a school district.

10 (c) An open-enrollment charter school is a local government
11 as defined by Section 102.001, Civil Practice and Remedies Code,
12 and a payment on a tort claim must comply with Chapter 102, Civil
13 Practice and Remedies Code.

14 SECTION 4. Subchapter D, Chapter 12, Education Code, is
15 amended by adding Section 12.1058 to read as follows:

16 Sec. 12.1058. APPLICABILITY OF OTHER LAWS. (a) An
17 open-enrollment charter school is considered to be:

18 (1) a local government for purposes of Chapter 791,
19 Government Code;

20 (2) a local government for purposes of Chapter 2259,
21 Government Code, except that an open-enrollment charter school may
22 not issue public securities as provided by Section 2259.031(b),
23 Government Code; and

24 (3) a political subdivision for purposes of Chapter
25 172, Local Government Code.

26 (b) An open-enrollment charter school may elect to extend
27 workers' compensation benefits to employees of the school through

1 any method available to a political subdivision under Chapter 504,
2 Labor Code. An open-enrollment charter school that elects to
3 extend workers' compensation benefits as permitted under this
4 section is considered to be a political subdivision for all
5 purposes under Chapter 504, Labor Code.

6 SECTION 5. Section 12.106, Education Code, is amended by
7 amending Subsection (c) and adding Subsections (d), (e), (f), and
8 (g) to read as follows:

9 (c) The commissioner shall [~~may~~] adopt rules to provide and
10 account for state funding of open-enrollment charter schools under
11 this section. A rule adopted under this section may be similar to a
12 provision of this code that is not similar to Section 12.104(b) if
13 the commissioner determines that the rule is related to financing
14 of open-enrollment charter schools and is necessary or prudent to
15 provide or account for state funds.

16 (d) A charter holder is entitled to receive funding under
17 this section for an open-enrollment charter school only if the
18 charter holder:

19 (1) provides information for the Public Education
20 Information Management System (PEIMS) as required by this chapter
21 or by commissioner rule;

22 (2) submits to the commissioner appropriate fiscal and
23 financial records as required by this chapter or by commissioner
24 rule; and

25 (3) has submitted the most recent audit report and the
26 report did not include an adverse opinion or disclaimer opinion.

27 (e) The commissioner shall suspend the funding of a charter

1 holder that fails to comply with a rule adopted under Subsection (c)
2 or with the provisions of Subsection (d) until the commissioner
3 determines that the charter holder:

4 (1) is in compliance or has cured any noncompliance;
5 and

6 (2) has adopted adequate procedures to prevent future
7 noncompliance.

8 (f) The rules the commissioner adopts under Subsection (c)
9 must require the commissioner to provide written notice to a
10 charter holder before the suspension of funding under Subsection
11 (e). The written notice must:

12 (1) notify the charter holder that the charter
13 holder's funding may be suspended;

14 (2) specify the reason for which the funding may be
15 suspended, including an explanation of any noncompliance by the
16 charter holder with a specified rule adopted under Subsection (c);

17 (3) inform the charter holder that the charter holder
18 has 30 calendar days after the date on which the charter holder
19 receives the notice to demonstrate compliance or to cure any
20 noncompliance before the charter holder's funding is suspended by
21 the commissioner; and

22 (4) contain any other information the commissioner
23 determines necessary.

24 (g) The commissioner may not suspend the funding of a
25 charter holder under this section until the period specified by
26 Subsection (f) has expired.

27 SECTION 6. Section 12.111(a), Education Code, is amended to

1 read as follows:

2 (a) Each charter granted under this subchapter must:

3 (1) describe the educational program to be offered,
4 which must include the required curriculum as provided by Section
5 28.002;

6 (2) [~~specify the period for which the charter or any~~
7 ~~charter renewal is valid,~~

8 [+3] provide that continuation [~~or renewal~~] of the
9 charter is contingent on acceptable [~~student~~] performance as
10 determined [~~on assessment instruments adopted~~] under [~~Subchapter~~
11 ~~B7~~] Chapter 39[~~, and on compliance with any accountability~~
12 ~~provision specified by the charter, by a deadline or at intervals~~
13 ~~specified by the charter~~];

14 (3) [~~(4)~~] ~~establish the level of student performance~~
15 ~~that is considered acceptable for purposes of Subdivision (3),~~

16 [+5] specify any basis, in addition to a basis
17 specified by this subchapter, on which the charter may be modified,
18 placed on probation, or revoked [~~or on which renewal of the charter~~
19 ~~may be denied~~];

20 (4) [+6] prohibit discrimination in admission policy
21 on the basis of sex, national origin, ethnicity, religion,
22 disability, academic, artistic, or athletic ability, or the
23 district the child would otherwise attend in accordance with this
24 code, although the charter may:

25 (A) provide for the exclusion of a student who
26 has a documented history of a criminal offense, a juvenile court
27 adjudication, or discipline problems under Subchapter A, Chapter

1 37; and

2 (B) provide for an admission policy that requires
3 a student to demonstrate artistic ability if the school specializes
4 in performing arts;

5 (5) [~~7~~] specify the grade levels to be offered;

6 (6) [~~8~~] describe the governing structure of the
7 program, including:

8 (A) the officer positions designated;

9 (B) the manner in which officers are selected and
10 removed from office;

11 (C) the manner in which members of the governing
12 body of the school are selected and removed from office;

13 (D) the manner in which vacancies on that
14 governing body are filled;

15 (E) the term for which members of that governing
16 body serve; and

17 (F) whether the terms are to be staggered;

18 (7) [~~9~~] specify the powers or duties of the
19 governing body of the school that the governing body may delegate to
20 an officer;

21 (8) [~~10~~] specify the manner in which the school will
22 distribute to parents information related to the qualifications of
23 each professional employee of the program, including any
24 professional or educational degree held by each employee, a
25 statement of any certification under Subchapter B, Chapter 21, held
26 by each employee, and any relevant experience of each employee;

27 (9) [~~11~~] describe the process by which the person

1 providing the program will adopt an annual budget;

2 (10) [~~(12)~~] describe the manner in which an annual
3 audit of the financial and programmatic operations of the program
4 is to be conducted, including the manner in which the person
5 providing the program will provide information necessary for the
6 school district in which the program is located to participate, as
7 required by this code or by State Board of Education rule, in the
8 Public Education Information Management System (PEIMS);

9 (11) [~~(13)~~] describe the facilities to be used;

10 (12) [~~(14)~~] describe the geographical area served by
11 the program; and

12 (13) [~~(15)~~] specify any type of enrollment criteria to
13 be used.

14 SECTION 7. Section 12.115, Education Code, is amended to
15 read as follows:

16 Sec. 12.115. BASIS FOR MODIFICATION, PLACEMENT ON
17 PROBATION, OR REVOCATION[~~, OR DENIAL OF RENEWAL~~]. (a) The
18 commissioner may modify, place on probation, or revoke[~~, or deny~~
19 ~~renewal of~~] the charter of an open-enrollment charter school if the
20 commissioner determines that the charter holder:

21 (1) committed a material violation of the charter,
22 including failure to satisfy accountability provisions prescribed
23 by the charter;

24 (2) failed to satisfy generally accepted accounting
25 standards of fiscal management;

26 (3) failed to protect the health, safety, or welfare
27 of the students enrolled at the school; or

1 (4) failed to comply with this subchapter or another
2 applicable law or rule.

3 (b) The action the commissioner takes under Subsection (a)
4 shall be based on the best interest of the school's students, the
5 severity of the violation, and any previous violation the school
6 has committed. Any action the commissioner takes under Chapter 39
7 concerning an open-enrollment charter school shall be taken in
8 accordance with that chapter.

9 SECTION 8. Section 12.116, Education Code, is amended to
10 read as follows:

11 Sec. 12.116. PROCEDURE FOR MODIFICATION, PLACEMENT ON
12 PROBATION, OR REVOCATION; CLOSURE UNDER CHAPTER 39 [~~, OR DENIAL OF~~
13 ~~RENEWAL~~]. (a) The commissioner shall adopt a procedure to be used
14 for modifying, placing on probation, or revoking [~~, or denying~~
15 ~~renewal of~~] the charter of an open-enrollment charter school.

16 (a-1) The commissioner shall close an open-enrollment
17 charter school under Chapter 39 if, after all information required
18 for determining a performance rating under the financial
19 accountability rating system under Subchapter I, Chapter 39, has
20 been considered, the commissioner determines that the school is
21 insolvent as defined by commissioner rule.

22 (b) The commissioner shall revoke the charter of an
23 open-enrollment charter school without a hearing if each campus
24 operated under the school's charter has been ordered closed under
25 Chapter 39 [~~procedure adopted under Subsection (a) must provide an~~
26 ~~opportunity for a hearing to the charter holder and to parents and~~
27 ~~guardians of students in the school. A hearing under this~~

1 ~~subsection must be held at the facility at which the program is~~
2 ~~operated].~~

3 (b-1) Except as provided by Subsection (b), the procedure
4 adopted under Subsection (a) for denying, revoking, or modifying
5 the charter of an open-enrollment charter school must provide for a
6 hearing on the issue to be held in the county in which the school is
7 located.

8 (c) Chapter 2001, Government Code, applies [~~does not apply~~]
9 to a hearing that is related to a modification, placement on
10 probation, or revocation[~~, or denial of renewal~~] under this
11 subchapter.

12 SECTION 9. The heading to Section 12.1161, Education Code,
13 is amended to read as follows:

14 Sec. 12.1161. EFFECT OF REVOCATION[~~, DENIAL OF RENEWAL,~~] OR
15 SURRENDER OF CHARTER.

16 SECTION 10. Section 12.1161(a), Education Code, is amended
17 to read as follows:

18 (a) If [~~Except as provided by Subsection (b), if~~] the
19 commissioner revokes [~~or denies the renewal of~~] a charter of an
20 open-enrollment charter school, or if an open-enrollment charter
21 school surrenders its charter, the school may not:

- 22 (1) continue to operate under this subchapter; or
23 (2) receive state funds under this subchapter.

24 SECTION 11. Section 12.1164(a), Education Code, is amended
25 to read as follows:

26 (a) The commissioner must notify the Teacher Retirement
27 System of Texas in writing of the revocation[~~, denial of renewal,~~]

1 or surrender of a charter under this subchapter not later than the
2 10th business day after the date of the event.

3 SECTION 12. Section 12.119(c), Education Code, is amended
4 to read as follows:

5 (c) On request, the State Board of Education shall provide
6 the information required by this section and Section 12.111(a)(6)
7 [~~12.111(8)~~] to a member of the public. The board may charge a
8 reasonable fee to cover the board's cost in providing the
9 information.

10 SECTION 13. Subchapter D, Chapter 12, Education Code, is
11 amended by adding Section 12.134:

12 Sec. 12.134. AGREEMENT BETWEEN SCHOOL DISTRICT AND
13 OPEN-ENROLLMENT CHARTER SCHOOL. A school district may, by
14 agreement, allow an open-enrollment charter school to operate at a
15 district facility.

16 SECTION 14. Section 12.156(a), Education Code, is amended
17 to read as follows:

18 (a) Except as otherwise provided by this subchapter,
19 Subchapter D applies to a college or university charter school or
20 junior college charter school as though the college or university
21 charter school or junior college charter school, as applicable,
22 were granted a charter under that subchapter.

23 SECTION 15. Section 39.1321, Education Code, is amended by
24 amending Subsection (d) and adding Subsection (e) to read as
25 follows:

26 (d) If sanctions are imposed on an open-enrollment charter
27 school under the procedures provided by this chapter, a charter

1 school is not entitled to an additional hearing relating to the
2 modification, placement on probation, or revocation[~~, or denial of~~
3 ~~renewal~~] of a charter as provided by Subchapter D, Chapter 12.

4 (e) Notwithstanding any other provision of this subchapter,
5 the commissioner shall order closure of an open-enrollment charter
6 school campus that is considered an academically unacceptable
7 campus for three consecutive school years, except that the
8 commissioner may waive that requirement if the commissioner
9 determines that, on the basis of significant improvement in student
10 performance over the preceding two school years, the campus is
11 likely to be rated as academically acceptable for the following
12 school year.

13 SECTION 16. The following provisions of the Education Code
14 are repealed:

- 15 (1) Section 12.113(b); and
16 (2) Section 12.1161(b).

17 SECTION 17. This Act applies beginning with the 2009-2010
18 school year.

19 SECTION 18. This Act does not make an appropriation. This
20 Act takes effect only if a specific appropriation for the
21 implementation of the Act is provided in a general appropriations
22 act of the 81st Legislature.

23 SECTION 19. Except as provided by Section 18 of this Act,
24 this Act takes effect immediately if it receives a vote of
25 two-thirds of all the members elected to each house, as provided by
26 Section 39, Article III, Texas Constitution. If this Act does not
27 receive the vote necessary for immediate effect, this Act takes

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION

SECTION 1. Section 12.101, Education Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) The State Board of Education, after thoroughly investigating and evaluating an applicant, may grant a charter for an open-enrollment charter school only to an applicant that meets any financial, governing, curriculum development and implementation, and operational standards adopted by the commissioner under this subchapter. The State Board of Education may not grant ~~[a total of]~~ more than 10 new ~~[215]~~ charters for an open-enrollment charter school each state fiscal year.

(b-1) A charter holder may establish one or more new open-enrollment charter school campuses under a charter without applying for authorization from the State Board of Education if:

(1) 90 percent or more of the open-enrollment charter school campuses operating under the charter have been rated as academically acceptable or higher under Subchapter D, Chapter 39, for the two preceding school years;

(2) either no campus operating under the charter has been rated as academically unacceptable for any two of the three preceding school years or such a campus has been closed;

(3) the charter holder satisfies generally accepted accounting standards of fiscal management;

(4) the charter holder provides written notice, in the time, manner, and form provided by commissioner rule.

CONFERENCE

SECTION 1. Similar to Senate version except prohibiting the State board of Education from granting more than 12 new charters instead of 10 new charters for an open-enrollment chart school each state fiscal year; and adds to subsection (b) the text, "At least two of the charters granted each year must be granted to schools that will primarily serve students with disabilities."

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

to the State Board of Education and the commissioner of the establishment of any campus under this subsection; and
(5) not later than the 90th day after the date the charter holder provides written notice under Subdivision (4), the commissioner does not provide written notice to the charter holder disapproving a new campus under this section.

No equivalent provision.

SECTION 2. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1011 to read as follows:

Sec. 12.1011. AUTHORIZATION FOR GRANT OF CHARTERS FOR SCHOOLS PRIMARILY SERVING STUDENTS WITH DISABILITIES. (a) The State Board of Education may grant under Section 12.101 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. A charter granted under this section is not considered for purposes of the limit on the number of open-enrollment charter schools imposed by Section 12.101(b).

(b) For purposes of the applicability of state and federal law, including a law prescribing requirements concerning students with disabilities, an open-enrollment charter school described by Subsection (a) is considered the same as any other school for which a charter is granted

SECTION 2. Same as Senate version.

Sec. 12.1011. AUTHORIZATION FOR GRANT OF CHARTERS FOR SCHOOLS PRIMARILY SERVING STUDENTS WITH DISABILITIES. (a)) The State Board of Education may grant under Section 12.101 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. A charter granted under this section is included for purposes of the limits on the number of open-enrollment charter schools imposed by Section 12.101(b).

(b) For purposes of the applicability of state and federal law, including a law prescribing requirements concerning students with disabilities, an open-enrollment charter school described by Subsection (a) is considered the same as any other school for which a charter is

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

under Section 12.101.

(c) To the fullest extent permitted under federal law, a parent of a student with a disability may choose to enroll the parent's child in an open-enrollment charter school described by Subsection (a) regardless of whether a disproportionate number of the school's students are students with disabilities.

(d) This section does 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.

No equivalent provision.

SECTION 3. Section 12.104, Education Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) An open-enrollment charter school is subject to:

(1) a provision of this title establishing a criminal offense; and

(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) criminal history records under Subchapter C, Chapter 22;

(C) reading instruments and accelerated reading

granted under Section 12.101.

(c) To the fullest extent permitted under federal law, a parent of a student with a disability may choose to enroll the parent's child in an open-enrollment charter school described by Subsection (a) regardless of whether a disproportionate number of the school's students are students with disabilities.

(d) This section does 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.

No equivalent provision.

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

instruction programs under Section 28.006;
(D) satisfactory performance on assessment instruments and to accelerated instruction under Section 28.0211;
(E) high school graduation under Section 28.025;
(F) special education programs under Subchapter A, Chapter 29;
(G) bilingual education under Subchapter B, Chapter 29;
(H) prekindergarten programs under Subchapter E, Chapter 29;
(I) extracurricular activities under Section 33.081;
(J) discipline management practices or behavior management techniques under Section 37.0021;
(K) health and safety under Chapter 38;
(L) public school accountability under Subchapters B, C, D, and G, Chapter 39, except as provided by Subsection (e);
(M) the requirement under Section 21.006 to report an educator's misconduct; and
(N) intensive programs of instruction under Section 28.0213.
(e) In computing dropout and completion rates for an open-enrollment charter school, the commissioner may:
(1) 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
(2) exclude students who were previously reported to the state as dropouts.

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 12.1056, Education Code, is amended to read as follows:

Sec. 12.1056. IMMUNITY FROM LIABILITY. (a)

In matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee.

(b) An open-enrollment charter school is a governmental unit as defined by Section 101.001, Civil Practice and Remedies Code, and is subject to liability only as provided by Chapter 101, Civil Practice and Remedies Code, and only in the manner that liability is provided by that chapter for a school district.

(c) An open-enrollment charter school is a local government as defined by Section 102.001, Civil Practice and Remedies Code, and a payment on a tort claim must comply with Chapter 102, Civil Practice and Remedies Code.

SECTION 2. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1058 to read as follows:

Sec. 12.1058. APPLICABILITY OF OTHER LAWS.

SENATE VERSION

SECTION 4. Same as House Version.

SECTION 5. Same as House version.

CONFERENCE

SECTION 3. Same as House version.

SECTION 4. Same as House version.

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(a) An open-enrollment charter school is considered to be:

(1) a local government for purposes of Chapter 791, Government Code;

(2) a local government for purposes of Chapter 2259, Government Code, except that an open-enrollment charter school may not issue public securities as provided by Section 2259.031(b), Government Code; and

(3) a political subdivision for purposes of Chapter 172, Local Government Code.

(b) An open-enrollment charter school may elect to extend workers' compensation benefits to employees of the school through any method available to a political subdivision under Chapter 504, Labor Code. An open-enrollment charter school that elects to extend workers' compensation benefits as permitted under this section is considered to be a political subdivision for all purposes under Chapter 504, Labor Code.

No equivalent provision.

SECTION 6. Section 12.1101, Education Code, is amended to read as follows:

Sec. 12.1101. NOTIFICATION OF CHARTER APPLICATION. The commissioner by rule shall adopt a procedure for providing notice to the following persons on receipt by the State Board of Education of an application for a charter for an open-enrollment charter school under Section 12.110 or on receipt by the board

Same as House version.

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

and the commissioner of notice of the establishment of a campus as authorized under Section 12.101(b-1):

- (1) the board of trustees of each school district from which the proposed open-enrollment charter school or campus is likely to draw students, as determined by the commissioner; and
- (2) each member of the legislature that represents the geographic area to be served by the proposed school or campus, as determined by the commissioner.

No equivalent provision.

No equivalent provision.

SECTION 5. Section 12.106, Education Code, is amended by amending Subsection (c) and adding Subsections (d), (e), (f), and (g) to read as follows:

(c) The commissioner shall [may] adopt rules to provide and account for state funding of open-enrollment charter schools under this section. A rule adopted under this section may be similar to a provision of this code that is not similar to Section 12.104(b) if the commissioner determines that the rule is related to financing of open-enrollment charter schools and is necessary or prudent to provide or account for state funds.

(d) A charter holder is entitled to receive funding under this section for an open-enrollment charter school only if the charter holder:

(1) provides information for the Public Education Information Management System (PEIMS) as required by this chapter or by commissioner rule;

(2) submits to the commissioner appropriate fiscal and

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

financial records as required by this chapter or by commissioner rule; and

(3) has submitted the most recent audit report and the report did not include an adverse opinion or disclaimer opinion.

(e) The commissioner shall suspend the funding of a charter holder that fails to comply with a rule adopted under Subsection (c) or with the provisions of Subsection (d) until the commissioner determines that the charter holder:

(1) is in compliance or has cured any noncompliance; and

(2) has adopted adequate procedures to prevent future noncompliance.

(f) The rules the commissioner adopts under Subsection (c) must require the commissioner to provide written notice to a charter holder before the suspension of funding under Subsection (e). The written notice must:

(1) notify the charter holder that the charter holder's funding may be suspended;

(2) specify the reason for which the funding may be suspended, including an explanation of any noncompliance by the charter holder with a specified rule adopted under Subsection (c);

(3) 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

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION 7. Section 12.111(a), Education Code, is amended to read as follows:

- (a) Each charter granted under this subchapter must:
- (1) describe the educational program to be offered, which must include the required curriculum as provided by Section 28.002;
 - (2) specify the period for which the charter or, consistent with Section 12.116(b-1), any charter renewal is valid;
 - (3) provide that continuation or renewal of the charter is contingent on the status of the charter as provided by Section 12.116(b-1) [acceptable student performance on assessment instruments adopted under Subchapter B, Chapter 39, and on compliance with any accountability provision specified by the charter, by a deadline or at intervals specified by the charter];
 - (4) ~~[establish the level of student performance that is considered acceptable for purposes of Subdivision (3);~~
[(5)] specify any basis, in addition to a basis specified by this subchapter, on which the charter may be placed on probation or revoked ~~[or on which renewal of the charter may be denied];~~
 - (5) [(6)] prohibit discrimination in admission policy on the basis of sex, national origin, ethnicity, religion,

(4) contain any other information the commissioner determines necessary.

(g) The commissioner may not suspend the funding of a charter holder under this section until the period specified by Subsection (f) has expired.

SECTION 6. Section 12.111(a), Education Code, is amended to read as follows:

- (a) Each charter granted under this subchapter must:
- (1) describe the educational program to be offered, which must include the required curriculum as provided by Section 28.002;
 - (2) ~~[specify the period for which the charter or any charter renewal is valid;~~
 - [(3)] provide that continuation ~~[or renewal]~~ of the charter is contingent on acceptable ~~[student]~~ performance as determined [on assessment instruments adopted] under ~~[Subchapter B,]~~ Chapter 39~~], and on compliance with any accountability provision specified by the charter, by a deadline or at intervals specified by the charter];~~
 - [(3)] [(4)] ~~establish the level of student performance that is considered acceptable for purposes of Subdivision (3);~~
[(5)] specify any basis, in addition to a basis specified by this subchapter, on which the charter may be modified, placed on probation, or revoked ~~[or on which renewal of the charter may be denied];~~
 - (4) [(6)] prohibit discrimination in admission policy on the basis of sex, national origin, ethnicity, religion,

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

disability, academic, artistic, or athletic ability, or the district the child would otherwise attend in accordance with this code, although the charter may:

(A) provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or discipline problems under Subchapter A, Chapter 37; and

(B) provide for an admission policy that requires a student to demonstrate artistic ability if the school specializes in performing arts;

(6) [~~(7)~~] specify the grade levels to be offered;

(7) [~~(8)~~] describe the governing structure of the program, including:

(A) the officer positions designated;

(B) the manner in which officers are selected and removed from office;

(C) the manner in which members of the governing body of the school are selected and removed from office;

(D) the manner in which vacancies on that governing body are filled;

(E) the term for which members of that governing body serve; and

(F) whether the terms are to be staggered;

(8) [~~(9)~~] specify the powers or duties of the governing body of the school that the governing body may delegate to an officer;

(9) [~~(10)~~] specify the manner in which the school will distribute to parents information related to the qualifications of each professional employee of the

disability, academic, artistic, or athletic ability, or the district the child would otherwise attend in accordance with this code, although the charter may:

(A) provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or discipline problems under Subchapter A, Chapter 37; and

(B) provide for an admission policy that requires a student to demonstrate artistic ability if the school specializes in performing arts;

(5) [~~(7)~~] specify the grade levels to be offered;

(6) [~~(8)~~] describe the governing structure of the program, including:

(A) the officer positions designated;

(B) the manner in which officers are selected and removed from office;

(C) the manner in which members of the governing body of the school are selected and removed from office;

(D) the manner in which vacancies on that governing body are filled;

(E) the term for which members of that governing body serve; and

(F) whether the terms are to be staggered;

(7) [~~(9)~~] specify the powers or duties of the governing body of the school that the governing body may delegate to an officer;

(8) [~~(10)~~] specify the manner in which the school will distribute to parents information related to the qualifications of each professional employee of the

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

program, including any professional or educational degree held by each employee, a statement of any certification under Subchapter B, Chapter 21, held by each employee, and any relevant experience of each employee;

(10) [~~(11)~~] describe the process by which the person providing the program will adopt an annual budget;

(11) [~~(12)~~] describe the manner in which an annual audit of the financial and programmatic operations of the program is to be conducted, including the manner in which the person providing the program will provide information necessary for the school district in which the program is located to participate, as required by this code or by State Board of Education rule, in the Public Education Information Management System (PEIMS);

(12) [~~(13)~~] describe the facilities to be used;

(13) [~~(14)~~] describe the geographical area served by the program; and

(14) [~~(15)~~] specify any type of enrollment criteria to be used.

SECTION 8. Section 12.115, Education Code, is amended to read as follows:

Sec. 12.115. BASIS FOR MODIFICATION, PLACEMENT ON PROBATION, OR REVOCATION [~~OR DENIAL OF RENEWAL~~]. (a) The commissioner may modify, place on probation, or revoke [~~or deny renewal of~~] the charter of an open-enrollment charter

program, including any professional or educational degree held by each employee, a statement of any certification under Subchapter B, Chapter 21, held by each employee, and any relevant experience of each employee;

(9) [~~(11)~~] describe the process by which the person providing the program will adopt an annual budget;

(10) [~~(12)~~] describe the manner in which an annual audit of the financial and programmatic operations of the program is to be conducted, including the manner in which the person providing the program will provide information necessary for the school district in which the program is located to participate, as required by this code or by State Board of Education rule, in the Public Education Information Management System (PEIMS);

(11) [~~(13)~~] describe the facilities to be used;

(12) [~~(14)~~] describe the geographical area served by the program; and

(13) [~~(15)~~] specify any type of enrollment criteria to be used.

SECTION 7. Section 12.115, Education Code, is amended to read as follows:

Sec. 12.115. BASIS FOR MODIFICATION, PLACEMENT ON PROBATION, OR REVOCATION [~~OR DENIAL OF RENEWAL~~]. (a) The commissioner may modify, place on probation, or revoke [~~or deny renewal of~~] the charter of an open-enrollment charter

No equivalent provision.

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

school if the commissioner determines that the charter holder:

- (1) committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;
- (2) failed to satisfy generally accepted accounting standards of fiscal management;
- (3) failed to protect the health, safety, or welfare of the students enrolled at the school; or
- (4) failed to comply with this subchapter or another applicable law or rule.

(b) The action the commissioner takes under Subsection (a) shall be based on:

- (1) the best interest of the school's students;
- (2) [;] the severity of the violation[;] and any previous violation the school has committed; and
- (3) the accreditation status of the school under Section 39.072.

No equivalent provision.

SECTION 9. Section 12.116, Education Code, is amended by adding Subsections (a-1) and (b-1) and amending Subsection (b) to read as follows:

school if the commissioner determines that the charter holder:

- (1) committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;
- (2) failed to satisfy generally accepted accounting standards of fiscal management;
- (3) failed to protect the health, safety, or welfare of the students enrolled at the school; or
- (4) failed to comply with this subchapter or another applicable law or rule.

(b) The action the commissioner takes under Subsection (a) shall be based on the best interest of the school's students, the severity of the violation, and any previous violation the school has committed.

Any action the commissioner takes under Chapter 39 concerning an open-enrollment charter school shall be taken in accordance with that chapter.

SECTION 8. Section 12.116, Education Code, is amended to read as follows:

Sec. 12.116. PROCEDURE FOR MODIFICATION, PLACEMENT ON PROBATION, OR REVOCATION, CLOSURE UNDER CHAPTER 39 [; OR DENIAL OF RENEWAL]. (a) The commissioner shall adopt a

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(a-1) The commissioner shall revoke the charter of an open-enrollment charter school in accordance with the procedure adopted under Subsection (a) 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 under Section 42.258(a).

(b) The commissioner shall revoke the charter of an open-enrollment charter school without a hearing if each campus operated under the school's charter has been ordered closed under Section 39.1324(d), (e), or (f) [procedure adopted under Subsection (a) must provide an opportunity for a hearing to the charter holder and to parents and guardians of students in the school. A hearing under this subsection must be held at the facility at which the program is operated].

(b-1) The procedure adopted under Subsection (a) for denying renewal of the charter of an open-enrollment charter school must provide that the charter automatically renews unless the school's charter is revoked under Subchapter G, Chapter 39, before the expiration of a charter term. The term for which a charter is renewed shall not be less than 10 years.

procedure to be used for modifying, placing on probation, or revoking[, or denying renewal of] the charter of an open-enrollment charter school.

(a-1) The commissioner shall close an open-enrollment charter school under Chapter 39 if, after all information required for determining a performance rating under the financial accountability rating system under Subchapter I, Chapter 39, has been considered, the commissioner determines that the school is insolvent as defined by commissioner rule.

(b) The commissioner shall revoke the charter of an open-enrollment charter school without a hearing if each campus operated under the school's charter has been ordered closed under Chapter 39 [procedure adopted under Subsection (a) must provide an opportunity for a hearing to the charter holder and to parents and guardians of students in the school. A hearing under this subsection must be held at the facility at which the program is operated].

(b-1) Except as provided by Subsection (b), the procedure adopted under Subsection (a) for denying, revoking, or modifying the charter of an open-enrollment charter school must provide for a hearing on the issue to be held in the county in which the school is located.

(c) Chapter 2001, Government Code, applies [does not apply] to a hearing that is related to a modification, placement on probation, or revocation[, or denial of

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

No equivalent provision.

~~renewal] under this subchapter.~~

SECTION 9. The heading to Section 12.1161, Education Code, is amended to read as follows:
Sec. 12.1161. EFFECT OF REVOCATION~~[, DENIAL~~
~~OF RENEWAL,]~~ OR SURRENDER OF CHARTER.

No equivalent provision.

SECTION 10. Section 12.118(a), Education Code, is amended to read as follows:

Same as House version.

(a) The commissioner shall designate an impartial organization with experience in evaluating school choice programs to conduct, under the supervision of the commissioner, an annual evaluation of open-enrollment charter schools.

No equivalent provision.

No equivalent provision.

SECTION 10. Section 12.1161(a), Education Code, is amended to read as follows:

(a) ~~If [Except as provided by Subsection (b), if]~~ the commissioner revokes ~~[or denies the renewal of]~~ a charter of an open-enrollment charter school, or if an open-enrollment charter school surrenders its charter, the school may not:

- (1) continue to operate under this subchapter; or
- (2) receive state funds under this subchapter.

No equivalent provision.

No equivalent provision.

SECTION 11. Section 12.1164(a), Education Code, is amended to read as follows:

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION 11. Section 12.119(c), Education Code, is amended to read as follows:

(c) On request, the State Board of Education shall provide the information required by this section and Section 12.111(a)(7) [~~12.111(8)~~] to a member of the public. The board may charge a reasonable fee to cover the board's cost in providing the information.

No equivalent provision.

No equivalent provision.

(a) The commissioner must notify the Teacher Retirement System of Texas in writing of the revocation[~~, denial of renewal,~~] or surrender of a charter under this subchapter not later than the 10th business day after the date of the event.

SECTION 12. Same as Senate version except, in subsection (c), refers to Section 12.111(a)(6) rather than 12.111(a)(7).

No equivalent provision.

No equivalent provision.

SECTION 13. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.134:
Sec. 12.134. AGREEMENT BETWEEN SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL. A school district may, by agreement, allow an open-enrollment charter school to operate at a district facility.

SECTION 14. Section 12.156(a), Education Code, is amended to read as follows:

(a) Except as otherwise provided by this subchapter, Subchapter D applies to a college or university charter school or junior college charter school as though the

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

No equivalent provision.

college or university charter school or junior college charter school, as applicable, were granted a charter under that subchapter.

SECTION 15. Section 39.1321, Education Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) If sanctions are imposed on an open-enrollment charter school under the procedures provided by this chapter, a charter school is not entitled to an additional hearing relating to the modification, placement on probation, or revocation~~[, or denial of renewal]~~ of a charter as provided by Subchapter D, Chapter 12.

(e) Notwithstanding any other provision of this subchapter, the commissioner shall order closure of an open-enrollment charter school campus that is considered an academically unacceptable campus for three consecutive school years, except that the commissioner may waive that 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.

No equivalent provision.

No equivalent provision.

SECTION 16. The following provisions of the Education Code are repealed:

(1) Section 12.113(b); and

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION 12. Subchapter D, Chapter 12, Education Code, is amended by adding Sections 12.134 and 12.135 to read as follows:

Sec. 12.134. COLOCATION AGREEMENT BETWEEN SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL. (a) This section applies to a school district that:

(1) leases a district facility for the operation of an open-enrollment charter school to be colocated on a district campus; and

(2) enters into an agreement with the charter school as provided by Subsection (d).

(b) The board of trustees of a school district may 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.

(c) The board of trustees of a school district that elects under Subsection (b) to have academic data combined shall annually file with the agency a copy of the lease and agreement described by Subsection (a).

(d) The agreement between the school district and the open-enrollment charter school:

(1) shall establish terms for sharing instructional or other specified resources, such as professional development;

(2) Section 12.1161(b).

Same as House version.

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(2) shall for each year specify factors for identifying a student who will be served by the charter school in the leased facilities, which may include:

(A) the student's attendance at a specified district campus or campuses;

(B) the student's need for specific academic services;

(C) the student's academic performance in previous school years; or

(D) other objective factors determined by the district and the charter school;

(3) may prohibit the charter school from enrolling students at the leased facilities other than those identified under factors designated in the agreement; and

(4) shall require the district and the charter school to adopt measures, as required by commissioner rule, such as using different numerical codes for reporting information through the Public Education Information Management System (PEIMS), so that data remains identifiable as that of the district or of the school, as applicable.

Sec. 12.135. EDUCATIONAL SERVICES AGREEMENT BETWEEN SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL. (a)

Notwithstanding Chapter 41 or 42, and in addition to any other funds to which a school district may be entitled, if the board of trustees of the district enters into an agreement under this section with an open-enrollment charter school for the charter school to provide educational services to a student enrolled in school in the

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

district, the district is entitled to receive the greater of the following amounts:

(1) the amount the charter school would receive under Section 12.106 if the student were enrolled in the charter school; or

(2) the amount to which the district is entitled under Chapters 41 and 42 for the student.

(b) The board of trustees of a school district that enters into an agreement described by Subsection (a) with an open-enrollment charter school may elect to have the state and federal funds attributable to the students educated by the charter school paid directly to the charter school. A school district that makes such an election must make an annual declaration of the election to the agency in a manner determined by the commissioner. The district remains responsible for any overallocation or audit recovery of state or federal funds as determined by the commissioner.

No equivalent provision.

SECTION 13. Sections 39.202 and 39.203, Education Code, are amended to read as follows:

Sec. 39.202. DEVELOPMENT AND IMPLEMENTATION. (a) The commissioner shall, in consultation with the comptroller, develop and implement a financial accountability rating system for school districts and open-enrollment charter schools in this state that:

(1) distinguishes among school districts and open-

Same as House version.

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

enrollment charter schools based on levels of financial performance; and

(2) includes procedures to:

(A) provide additional transparency to public education finance; and

(B) enable the commissioner and school district and open-enrollment charter school administrators to provide meaningful financial oversight and improvement.

(b) The system must include uniform indicators adopted by the commissioner by which to measure a district's or open-enrollment charter school's financial management performance.

Sec. 39.203. REPORTING. (a) The commissioner shall develop, as part of the system, a reporting procedure under which:

(1) each school district and open-enrollment charter school is required to prepare and distribute an annual financial management report; and

(2) the public is provided an opportunity to comment on the report at a hearing.

(b) The annual financial management report must include:

(1) a description of the district's or school's financial management performance based on a comparison, provided by the agency, of the district's or school's performance on the indicators adopted under Section 39.202(b) to:

(A) state-established standards; and

(B) the district's or school's previous performance on the

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

indicators; and

(2) any descriptive information required by the commissioner.

(c) The report may include:

(1) information concerning if applicable, the district's or school's:

- (A) financial allocations;
- (B) tax collections;
- (C) financial strength;
- (D) operating cost management;
- (E) personnel management;
- (F) debt management;
- (G) facility acquisition and construction management;
- (H) cash management;
- (I) budgetary planning;
- (J) overall business management;
- (K) compliance with rules; and
- (L) data quality; and

(2) any other information the board of trustees determines to be necessary or useful.

(d) The board of trustees of each school district and the governing body of each open-enrollment charter school shall hold a public hearing on the report. The board shall give notice of the hearing to, as applicable, owners of real property in the district and to parents of district students or to owners of real property in the district in which the open-enrollment charter school is located and to the parents of school students. In addition to other notice required by law, notice of the hearing must be

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

provided:

(1) to a newspaper of general circulation in the district;
and

(2) through electronic mail to media serving the district.

(e) After the hearing, the report shall be disseminated in the district or in the district in which the open-enrollment charter school is located in the manner prescribed by the commissioner.

No equivalent provision.

SECTION 14. Section 12.113(b), Education Code, is repealed.

No equivalent provision.

SECTION 15. This Act applies beginning with the 2009-2010 school year.

SECTION 17. Same as Senate version.

No equivalent provision.

SECTION 16. This Act does not make an appropriation. This Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 81st Legislature.

SECTION 18. Same as Senate version.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect

SECTION 17. Except as provided by Section 16 of this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for

SECTION 19. Same as Senate version.

House Bill 3220
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

September 1, 2009.

SENATE VERSION

immediate effect, this Act takes effect September 1, 2009, except as provided by Section 16 of this Act.

CONFERENCE

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3220** by Hancock (relating to the establishment, operation, and funding of open-enrollment charter schools.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3220, Conference Committee Report: a negative impact of (\$7,912,355) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|-------------|--|
| 2010 | (\$2,641,755) |
| 2011 | (\$5,270,600) |
| 2012 | (\$8,076,858) |
| 2013 | (\$11,047,919) |
| 2014 | (\$13,738,326) |

All Funds, Five-Year Impact:

| Fiscal Year | Probable Savings/(Cost) from General Revenue Fund 1 | Probable Savings/(Cost) from Foundation School Fund 193 | Change in Number of State Employees from FY 2009 |
|-------------|---|---|--|
| 2010 | (\$764,580) | (\$1,877,175) | 8.0 |
| 2011 | (\$765,380) | (\$4,505,220) | 8.0 |
| 2012 | (\$943,593) | (\$7,133,265) | 12.0 |
| 2013 | (\$1,286,609) | (\$9,761,310) | 16.0 |
| 2014 | (\$1,348,971) | (\$12,389,355) | 17.0 |

Fiscal Analysis

The bill would authorize the State Board of Education to grant up to 12 new charters for open-enrollment charter schools each year and would allow certain charter holders to establish new campuses without applying for authorization from the State Board of Education. The bill would require at least two of the charters granted each year to be for open-enrollment charter schools intended primarily to serve students with disabilities, including autism.

The bill would provide the authority for actions by the commissioner of education to suspend state funding and reinstate state funding that has been suspended on the basis of charter holders' compliance with certain reporting and financial management requirements. The Texas Education Agency would

incur significant cost to perform fiscal analysis and oversight as needed to make determinations concerning the suspension and reinstatement of state funding.

Methodology

It is assumed for the purpose of this estimate, that the State Board of Education would grant 12 new charters each year, consisting of the 10 traditional open-enrollment charters authorized under the bill and 2 charters for open-enrollment charter schools intended primarily to serve students with disabilities, including autism. In addition, it is assumed that the approximately 165 existing charter holders who would be authorized to establish new campuses without prior SBOE approval would open an estimated 30 new campuses each year.

To the extent that new open-enrollment charter schools and new campuses opened by existing charter holders may enroll some students who would not otherwise enroll in public school districts or existing open-enrollment charter schools, there would be fiscal implications for increased Foundation School Program (FSP) costs of approximately \$5,150 per weighted student. For the purpose of this estimate it is assumed that the average enrollment at each new charter school and each new campus opened by existing charter holders would be 200 students and that 5 percent of new enrollment would represent students who would otherwise not have enrolled in public schools or existing charter schools. Assuming that newly granted charters would most likely begin operations in FY11, FSP costs for FY10 for students who would not otherwise have enrolled in public schools or existing charters is limited to the estimated 30 expansion campuses. On this basis, an FSP cost of approximately \$1.9 million would be anticipated beginning in FY2010. These costs would continue in FY11 and subsequent years and would increase due to new enrollment at an estimated 30 additional expansion campuses and in 12 newly operating charters annually. FSP costs for students who would not otherwise have enrolled in public schools or existing charter schools are estimated to be approximately \$4.5 million in FY11, increasing to \$12.4 million in FY 14.

The Texas Education Agency would incur significant costs in functional areas associated with various administrative and oversight functions with the additional number of charter holders and campuses anticipated under the bill. Agency functions related to funding and audit/financial technical assistance for charter schools would require an additional 5 FTEs beginning in the first year of implementation. As additional charters are granted and existing charters add campuses, additional staffing increasing to 14 ftes by FY14 would be needed to support a variety of functional areas including funding, audit, accountability, assessment, accreditation, monitoring and interventions. Increased costs for staffing, operating expenses, and systems modifications are anticipated to be \$529,000 in FY10, increasing to approximately \$1.1 million by FY14.

The Agency estimates that ongoing functions related to providing associated technical assistance to charter holders concerning financial matters and performing fiscal analysis and oversight would require 3.0 additional FTEs. Estimated costs of \$235,815 for these functions in FY10 would be somewhat higher due to start-up expenditures for cubicles and office equipment. Costs for FY11 and subsequent years are estimated to be \$216,615.

Technology

One-time costs for systems modifications totaling \$240,000 are anticipated with \$90,000 incurred in FY10 and \$150,000 in FY11 for changes in the FSP payments and charter administration systems.

Local Government Impact

Fiscal implications for school districts would vary depending upon individual circumstances. School districts that experience reduced enrollment due to increased enrollment in charter schools could experience reduced revenues.

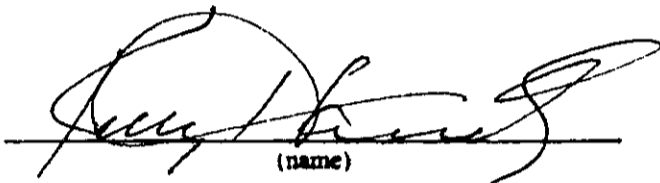
Source Agencies: 701 Central Education Agency

LBB Staff: JOB, JSp, JGM

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 3220 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.


(name)

5.30.09
(date)