

Chapter 631

S.B. No. 1454

AN ACT

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

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

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

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

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

(A) under Section 12.106; or

(B) from the disposition of property.

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

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

(1) the school's charter:

(A) has been revoked;

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- 1                    (B) has expired;
- 2                    (C) has been surrendered; or
- 3                    (D) has been abandoned; or
- 4                    (2) the school has otherwise ceased operation as a
- 5 public school.

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

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

12            (i) The agency may approve a transfer of a charter holder's  
13 remaining funds to another charter holder if the charter holder  
14 receiving the funds has not received notice of the expiration or  
15 revocation of the charter holder's charter for an open-enrollment  
16 charter school or notice of a reconstitution of the governing body  
17 of the charter holder under Section 12.1141 or 12.115.

18            (j) The commissioner may adopt rules specifying:

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

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

23            SECTION 4. Section 12.107(a), Education Code, is amended to  
24 read as follows:

25            (a) Funds received under Section 12.106 after September 1,  
26 2001, by a charter holder:

27                    (1) are considered to be public funds for all purposes

1 under state law;

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

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

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

9 (5) may not:

10 (A) be pledged or used to secure loans or bonds  
11 for any other organization, including a non-charter operation or  
12 out-of-state operation conducted by the charter holder or a related  
13 party, as defined by commissioner rule adopted under Section  
14 12.1166; or

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

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

19 (d) If the aggregate amount of all transactions between a  
20 charter holder and a related party, as defined by commissioner rule  
21 adopted under Section 12.1166, exceeds \$5,000, an audit under  
22 Subsection (a) may include the review of any real property  
23 transactions between the charter holder and the related party. If  
24 the commissioner determines that a transaction with a related party  
25 using funds received under Section 12.106 was structured in a  
26 manner that did not benefit the open-enrollment charter school or  
27 that the transaction was in excess of fair market value, the

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1 commissioner may order that the transaction be reclassified or that  
2 other action be taken as necessary to protect the school's  
3 interests. Failure to comply with the commissioner's order is a  
4 material violation of the charter.

5 SECTION 6. Subchapter D, Chapter 12, Education Code, is  
6 amended by adding Sections 12.1166, 12.1167, and 12.1168 to read as  
7 follows:

8 Sec. 12.1166. RELATED PARTY TRANSACTIONS. (a) The  
9 commissioner shall adopt a rule defining "related party" for  
10 purposes of this subchapter. The definition of "related party"  
11 must include:

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

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

16 (B) related within the third degree of  
17 consanguinity or affinity, as determined under Chapter 573,  
18 Government Code, to a board member, administrator, or officer of an  
19 open-enrollment charter school;

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

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

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

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

6        (c) In a charter holder's annual audit filed under Section  
7 44.008, the charter holder must include a list of all transactions  
8 with a related party.

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

12            (1) notify the commissioner that the school intends to  
13 enter into a transaction with a related party, as defined by  
14 commissioner rule adopted under Section 12.1166; and

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

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

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

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

25            (2) the total compensation and benefits provided by  
26 the school and any related party for each member of the governing  
27 body and each officer and administrator of the school and the

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1 related party.

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

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

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

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

11 (2) is property of this state held in trust by the  
12 charter holder for the benefit of the students of the  
13 open-enrollment charter school; and

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

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

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

20 (2) is property of this state held in trust by the  
21 charter holder for the benefit of the students of the  
22 open-enrollment charter school; and

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

25 (b-1) Subject to Subsection (b-2), while an open-enrollment  
26 charter school is in operation, the charter holder holds title to  
27 any property described by Subsection (a) or (b) and may exercise

1 complete control over the property as permitted under the law.

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

5 (1) the charter holder has received notice of:

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

9 (B) the charter's revocation under Section  
10 12.115(c);

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

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

18 (c) The commissioner shall:

19 (1) take possession and assume control of the property  
20 described by Subsection (a) of an open-enrollment charter school  
21 that ceases to operate; and

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

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

26 (1) for property purchased with state funds, shall  
27 direct the charter holder to dispose of the property through one of

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1 the following methods:

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

4 (B) transfer the property to:

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

6 (ii) a school district or open-enrollment  
7 charter school under Section 12.1282;

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

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

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

15 (c-2) The agency may approve an expenditure of remaining  
16 funds by a former charter holder for insurance or utilities for or  
17 maintenance, repairs, or improvements to property described by this  
18 section if the agency determines that the expenditure is reasonably  
19 necessary to dispose of the property or preserve the property's  
20 value.

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

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

26 Sec. 12.1281. DISPOSITION OF PROPERTY PURCHASED WITH STATE  
27 FUNDS. (a) A former charter holder of an open-enrollment charter



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1 school that has ceased to operate may retain property described by  
2 Section 12.128 if the former charter holder reimburses the state  
3 with non-state funds and the former charter holder:

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

6 (2) receives approval from the agency.

7 (b) On receiving consent from the agency under Section  
8 12.128(b-2) and a written agreement from any creditor with a  
9 security interest described by Section 12.128(e), the former  
10 charter holder may:

11 (1) sell property for fair market value; or

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

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

16 (1) for property retained by the former charter  
17 holder, the current fair market value less the amount of any debt  
18 subject to a security interest or lien described by Section  
19 12.128(e), multiplied by the percentage of state funds used to  
20 purchase the property; or

21 (2) for property sold by the former charter holder,  
22 the net sales proceeds of the property multiplied by the percentage  
23 of state funds used to purchase the property.

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

26 (1) an estimated state reimbursement amount based on  
27 the last annual financial report filed under Section 44.008

1 available at the time the former charter holder retains or sells the  
2 property; and

3 (2) a final state reimbursement amount using the  
4 former charter holder's final financial audit filed under Section  
5 44.008.

6 (e) A former charter holder retaining property under  
7 Subsection (a) or selling the property under Subsection (b)(1)  
8 shall:

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

12 (2) place in escrow with the state comptroller an  
13 amount of non-state funds equal to 110 percent of the estimated  
14 state reimbursement amount not later than:

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

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

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

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

27 (g) As soon as the agency is satisfied that the former

1 charter holder complied with Subsection (e), the agency shall file  
2 written notice of the release of the state interest in property the  
3 former charter holder retains under this section and authorize the  
4 return of any funds not used for state reimbursement to the former  
5 charter holder.

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

12 (i) Subject to the satisfaction of any security interest or  
13 lien described by Section 12.128(e), if the agency determines a  
14 former charter holder failed to comply with this section or Section  
15 12.1282, on request of the agency, the attorney general shall take  
16 any appropriate legal action to compel the former charter holder to  
17 convey title to the agency or other governmental entity authorized  
18 by the agency to maintain or dispose of property.

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

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

23 Sec. 12.1282. TRANSFER OF PROPERTY PURCHASED WITH STATE  
24 FUNDS. (a) The agency may approve the transfer of property  
25 described by Section 12.128 from an open-enrollment charter school  
26 that has ceased to operate, or may transfer property conveyed to the  
27 agency by the former charter holder under Section 12.1281, to a

1 school district or an open-enrollment charter school if:

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

4 (A) agrees to the transfer; and

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

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

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

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

17 (c) The commissioner may adopt rules necessary to  
18 administer this section, including rules establishing  
19 qualifications and priority for a school district or  
20 open-enrollment charter school to receive a transfer of property  
21 under this section.

22 (d) If the agency determines that the cost of disposing of  
23 personal property described by Section 12.128 transferred to the  
24 agency by an open-enrollment charter school that ceases to operate  
25 exceeds the return of value from the sale of the property, the  
26 agency may distribute the personal property to open-enrollment  
27 charter schools and school districts in a manner determined by the

1 commissioner.

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

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

5 (a) After the agency receives title to property described by  
6 Section 12.128, the agency may sell the property at any price  
7 acceptable to the agency.

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

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

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

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

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

24 Sec. 12.1284. CLOSURE OF CHARTER SCHOOL OPERATIONS.

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

- 1           (1) remit to the agency:
- 2                   (A) any remaining funds described by Section
- 3 12.106(h); and
- 4                   (B) any state reimbursement amounts from the sale
- 5 of property described by Section 12.128; or
- 6           (2) transfer the remaining funds to another charter
- 7 holder under Section 12.106(i).
- 8           (b) The agency shall deposit any funds received under
- 9 Subsection (a)(1) in the charter school liquidation fund.
- 10           (c) The commissioner may adopt rules necessary to
- 11 administer this section.

12           SECTION 9. Subchapter D, Chapter 12, Education Code, is

13 amended by adding Section 12.141 to read as follows:

14           Sec. 12.141. RECLAIMED FUNDS. (a) The agency shall

15 deposit funds received under Sections 12.106, 12.128, 12.1281,

16 12.1283, and 12.1284 into the charter school liquidation fund and

17 may use the funds to:

- 18                   (1) pay expenses relating to managing and closing an
- 19 open-enrollment charter school that ceases to operate, including:
- 20                           (A) maintenance of the school's student and other
- 21 records; and
- 22                           (B) the agency's personnel costs associated with
- 23 managing and closing the school;
- 24                   (2) dispose of property described by Section 12.128;
- 25 and
- 26                   (3) maintain property described by Section 12.128,
- 27 including expenses for insurance, utilities, maintenance, and

1 repairs.

2 (b) The agency may not use funds under this section until  
3 the commissioner determines if the open-enrollment charter school  
4 that ceases to operate received an overallocation of funds under  
5 Section 12.106 that must be recovered for the Foundation School  
6 Program.

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

10 (1) for use in funding a grant program established by  
11 the agency to:

12 (A) encourage high school students to enter the  
13 teaching profession; and

14 (B) assist current paraprofessionals and  
15 instructional aides in pursuing the necessary credentials to become  
16 full-time teachers; or

17 (2) to the comptroller to deposit in the charter  
18 district bond guarantee reserve fund under Section 45.0571.

19 (d) The agency may delay a transfer of funds under  
20 Subsection (c) if the excess is less than \$100,000. Funds set aside  
21 for an overallocation of funds from the Foundation School Program  
22 are not included in determining whether the amount of funds exceeds  
23 \$2 million.

24 (e) The commissioner may adopt rules necessary to implement  
25 this section.

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

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

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

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

14        SECTION 11. Section 39A.259(c), Education Code, is amended  
15 to read as follows:

16        (c) The agency [~~commissioner~~] shall use funds received by or  
17 due to the former charter holder under Section 12.106 or funds  
18 returned to the state from liquidation of [~~state~~] property  
19 described by Section 12.128 and held by a former charter holder for  
20 compensation of a member of a board of managers for an  
21 open-enrollment charter school or a campus of an open-enrollment  
22 charter school or a superintendent.

23        SECTION 12. Section 43.001(a), Education Code, is amended  
24 to read as follows:

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



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

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

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

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

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

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

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

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

22           (g) An open-enrollment charter school for which the charter  
23 has expired, been revoked, or been surrendered or an  
24 open-enrollment charter school that otherwise ceases to operate  
25 shall submit a final annual financial report to the agency. The  
26 report must verify that all state property held by the charter  
27 holder has been returned or disposed of in accordance with Section

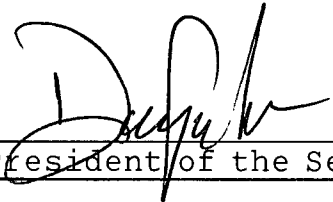
1 12.128.

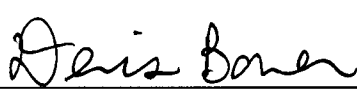
2 (h) The commissioner may adopt rules necessary to implement  
3 this section, including rules defining local funds.

4 SECTION 14. A transfer of property from an open-enrollment  
5 charter school that ceases to operate to another open-enrollment  
6 charter school that occurred before the effective date of this Act  
7 is ratified if both open-enrollment charter schools classified the  
8 property as purchased with state funds on each school's annual  
9 financial report under Section 44.008, Education Code.

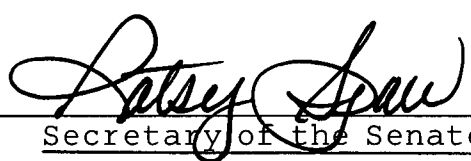
10 SECTION 15. This Act takes effect immediately if it  
11 receives a vote of two-thirds of all the members elected to each  
12 house, as provided by Section 39, Article III, Texas Constitution.  
13 If this Act does not receive the vote necessary for immediate  
14 effect, this Act takes effect September 1, 2019.

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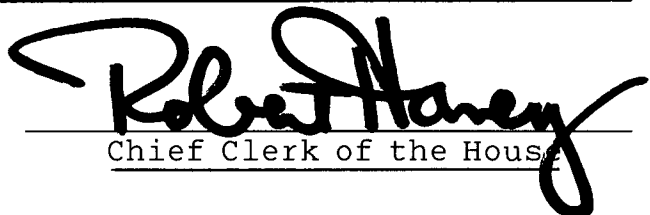
  
President of the Senate

  
Speaker of the House

I hereby certify that S.B. No. 1454 passed the Senate on May 2, 2019, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 25, 2019, by the following vote: Yeas 30, Nays 0.

  
Secretary of the Senate

I hereby certify that S.B. No. 1454 passed the House, with amendment, on May 22, 2019, by the following vote: Yeas 142, Nays 1, two present not voting.

  
Chief Clerk of the House

Approved:


6-9-2019  
Date

  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE

6:00 P.M. O'CLOCK

JUN 10 2019

  
Secretary of State