

HOUSE BILL REPORT

ESSB 5012

As Reported by House Committee On:

Education

Title: An act relating to charter schools.

Brief Description: Authorizing charter schools.

Sponsors: Senate Committee on Education (originally sponsored by Senators Johnson, Finkbeiner, Esser and Oke).

Brief History:

Committee Activity:

Education: 3/24/03, 4/3/03 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by House Committee)**

- Authorizes the operation of public charter schools managed by the board of directors of a nonprofit corporation and sponsored by a school district, or an institution of higher education, or an educational service district.

HOUSE COMMITTEE ON EDUCATION

Majority Report: Do pass as amended. Signed by 6 members: Representatives Quall, Chair; Talcott, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Anderson, Hunter and Rockefeller.

Minority Report: Do not pass. Signed by 5 members: Representatives McDermott, Vice Chair; Cox, Haigh, McMahan and Santos.

Staff: Sydney Forrester (786-7120).

Background:

Since Minnesota first authorized public charter schools in 1992, 40 states have adopted charter school enabling legislation. The United States Department of Education (USDOE) reported in November 2002, about 2,000 charter schools were operating in approximately 34 states as of summer 2001.

A public charter school is a tuition-free public school open to all students, financed by public moneys, and governed by the terms of a charter agreement between a charter sponsor and a charter applicant. The various states' laws define who is a sponsor and who is an applicant for chartering purposes. Typically, a public charter school is managed by an applicant's board of directors rather than by the local school district's board of directors, and is operated more or less independently from state laws. The charter functions as a contract governing how the school will be organized and managed, what students will be taught and expected to achieve, and how success will be measured. Charter public schools can be closed for failing to satisfy these contract terms.

The last charter school proposals in Washington were HB 2415 and Initiative 729, both proposed in 2000. House Bill 2415 passed the House Education Committee but did not pass the House Floor. In the November 2000 general election, I-729 failed 51.83 percent to 48.17 percent.

In June 2002 the USDOE announced the Charter Schools Facilities Financing Demonstration Project to assist charter schools in leveraging private and other nonfederal financing to help cover the costs of acquiring, constructing, or renovating charter school facilities. In 2002 federal funding to support charter schools reached \$200 million.

Summary of Amended Bill:

Description and Purpose of Charter Schools:

A new chapter is added to Title 28A authorizing the operation of public charter schools managed and operated by public benefit nonprofit corporations according to the terms of a contract between the nonprofit board of directors and a school district board of directors, an educational service district (ESD) board of directors, or the governing board of a public four-year institution of higher education (Institution). Charter schools are authorized for the primary purpose of providing more, high quality learning environments to assist educationally disadvantaged students and other students in meeting the state's academic standards.

A charter is a five-year contractual performance agreement between the applicant and the sponsor for operation of the school. The applicant manages and operates the school if a charter is approved. The sponsor approves the charter and has authority to revoke or renew the charter. Only a public benefit nonprofit corporation qualifying for tax exempt status under federal law may be an applicant. The nonprofit corporation may not be a religious or sectarian organization. Eligible sponsors are limited to:

- 1) School district boards of directors;
- 2) ESD boards of directors; and
- 3) Institution governing boards in consultation with an ESD board. To be eligible as a sponsor, an Institution must operate an approved teacher education program leading to

teacher certification.

A charter school is exempt from state laws and regulations except those expressly made applicable to the school by the terms of its charter, and those laws and regulations later enacted to apply to charter schools generally.

Under the terms of a charter, each charter school must:

- 1) adopt an educational program free from sectarian and religious influence and implement curricular and instructional strategies to assist educationally disadvantaged students and students from low performing schools in meeting state standards;
- 2) implement student performance standards and requirements that meet or exceed those adopted by the Academic Achievement and Accountability Commission (A+Commission);
- 3) participate in mandatory state tests, including the Iowa Tests of Basic Skills (ITBS) and the Washington Assessment of Student Learning (WASL);
- 4) follow the A+ Commission's performance improvement goals and requirements and submit an annual school performance report to its sponsor, the local school district, and parents;
- 5) employ certificated instructional staff and comply with employee background checks;
- 6) be subject to the same financial accounting and audit requirements as a school district;
- 7) be subject to regular performance audits conducted by the state legislative auditor;
- 8) comply with the open public meetings and open public records act;
- 9) comply with school board member financial disclosure requirements;
- 10) maintain a liability insurance policy of at least \$5 million;
- 11) comply with state and federal laws relating to health, safety, parents' rights, civil rights, and nondiscrimination to the same extent as those laws are applicable to school districts; and
- 12) comply with any additional requirements negotiated.

A charter school may serve one or a combination of grades K-12. It may not charge tuition or discriminate on the basis of any characteristic protected under the state Human Rights Commission's anti-discrimination statute. All students who submit a timely application must be admitted if capacity is sufficient. Charter schools created by converting an existing noncharter school to a charter school may not displace students enrolled at the time of conversion, and must be structured to provide sufficient capacity to serve all students who wish to remain enrolled after conversion and must give first priority to these students. Priority also is given to students who reside in the school district in which the charter school is located, and to siblings of currently enrolled students. If capacity is insufficient to accommodate all requests for enrollment, students must be admitted through an equitable selection process such as a lottery. The percentage of educationally disadvantaged students enrolled in the school must be equal to or greater than the percentage of such students in the noncharter public school being converted, or in the district in which the charter school is located.

Application and Approval Criteria:

Charter applications may be submitted for the purpose of establishing a new charter school or converting an existing noncharter public school to a charter public school. All charter applications first must be submitted to the board of directors of the school district in which the proposed charter school will be located. If the school district board elects not to approve the application, the applicant then may apply to an alternate sponsor.

Applications to an alternate sponsor to convert an existing noncharter school to a charter school may be made only to the board of the ESD in which the proposed school will be located. Applications to an alternate sponsor for establishing a new school may be made to either the ESD board or to an Institution governing board. A charter application must contain:

- 1) a description of the nonprofit corporation and the names, descriptions, curriculum vitae, and qualifications of the individuals who will operate the school;
- 2) the corporation's bylaws, articles of incorporation, and its most recent financial statement and balance sheet;
- 3) the mission statement for the proposed school, consistent with legislative intent;
- 4) a description of the school's educational program, including whether and how the school will assist educationally disadvantaged students and other students in meeting state standards;
- 5) a description of student performance standards and requirements, including the assessments to be used to measure performance and a plan for corrective action if student performance falls below established standards;
- 6) a description of the school's discipline and dismissal procedures;
- 7) a financial plan for the school, including a five-year projected budget of revenues and expenditures, a start-up plan, a five-year facilities plan, enrollment projections of at least 20 students, and a list of the major contracts planned for operation of the school;
- 8) the proposed financial management procedures and administrative operations;
- 9) an assessment of the school's potential legal liability, including a description of insurance coverage of at least \$5 million; and
- 10) a description of the procedures necessary to comply with federal and state laws for the health and safety of students, employees, and guests of the school.

Upon receipt of an application, a school board must decide within 45 days whether to hold one or more public hearings. If the board intends to approve the application, it must hold at least one public hearing within 75 days of receiving the application, but the board is not required to hold a hearing in order to reject an application. Within 105 days of receipt of the application, the board must either approve or reject the application. Both parties may agree to extend the deadline for up to 30 days. If the board elects not to hold a hearing, or rejects the application after one or more public hearings, it must provide written notice of the rejection, including the reasons for the rejection, to the applicant. ESD boards of directors and Institution governing boards must comply with

the same deadlines, hearing requirements, and notice requirements as school district boards if the applicant applies to an alternate sponsor. A charter application may be approved if the sponsor or alternate sponsor finds, after exercising due diligence and good faith, the applicant meets eligibility requirements and all other specified criteria.

Charter School Management and Operation:

A board of directors elected or appointed by the public benefit nonprofit corporation manages and operates the school. A charter school board is authorized to:

- 1) hire, manage, and discharge charter school employees;
- 2) enter into contracts for real property, equipment, goods, supplies, and services;
- 3) rent, lease, or own property;
- 4) accept, and administer for the benefit of the school, gifts and donations, but not gifts from sectarian or religious organizations; and
- 5) issue secured and unsecured debt, but such debt shall not create liability for the debt for the state, the charter school sponsor, the school district in which the charter school is located or any other political subdivision or agency of the state.

A charter school may not levy taxes or issue bonds and may not charge tuition, except it may charge fees for optional non-credit extracurricular events.

Number of Charters Limited:

A maximum of 70 charters may be granted, not including conversion of noncharter public schools to charter public schools. In the first and second years no more than five charters per year may be granted. In years three, four, five and six, up to 15 charters per year may be granted. If the maximum number of charters is not granted one year, the remainder is added to the number available the next year. A minimum of 60 percent of new charters approved must serve educationally disadvantaged students or students from low performing schools. Sponsors and alternate sponsors must notify the Superintendent of Public Instruction (SPI) when an application is received, when an application is approved, and when a charter is terminated. The SPI is required to notify potential sponsors when the annual allowable number of new charters has been approved. Applications for charter schools may begin on the effective date of the bill, but no charter school may begin operating until July 1, 2003.

Charter Renewal and Revocation:

After three years of operation, but no later than six months before the expiration of the charter, a charter school may apply to renew the charter. The renewal application must include specified information. A sponsor may reject the renewal application if the charter school materially violated its contract, violated any laws for which a waiver was not obtained, failed to meet generally accepted standards of fiscal management, or the charter school's students failed to meet performance standards. A sponsor must reject the application for renewal if the academic progress of the students in the charter school, as measured by the A+ Commission standards and assessments, is inferior to the average

progress of students in the district in which the charter school is located when similar student populations are compared. A sponsor must give written notice of its intent not to renew within three months of the request to renew in order to allow time for the school to correct any deficiencies.

A sponsor may revoke a charter before it has expired for the same reasons a sponsor may reject a renewal request. Revocation of a charter requires a sponsor to provide written notice of the specific violations alleged, hold a public hearing, and grant a reasonable opportunity for the school to correct any deficiencies. In cases of emergency where the health and safety of children are at risk, the notice, public hearing, and opportunity for correction are not required. A sponsor must provide a process to appeal a revocation of a charter.

Closure of a Charter School:

A charter school planning to close or anticipating revocation or nonrenewal of its charter must provide a detailed plan to the sponsor setting forth a timeline and the responsible parties for disposition of students, student records, and the school's finances and obligations.

Charter School Funding:

A charter school receives state funding on a per student basis in the same amount as is generated for other public schools, including regular apportionment, categorical, and non-basic education funds. Charter schools, however, are not eligible for small school assistance or for state matching funds for school construction.

A charter school's eligibility for levy money is governed by whether the charter is sponsored by a school district and by whether the charter was established before or after a levy was approved. A charter school sponsored by a school district may receive levy moneys from levies approved before the school was established only if the school district board determines it has sufficient voter approval and only in such amount as the district board determines. School district sponsors must include established charter schools in future levy planning.

Charter schools sponsored by an ESD board or an Institution governing board are not eligible for levy money. However, allocations to the charter school are included in the levy base of the district in which the charter school is located. A charter school sponsor may retain up to 3 percent of the charter school's state and local levy funding, if applicable, for oversight and administration costs.

Charter School Employees and Collective Bargaining:

A school district must grant a school district employee's written request for a leave of absence for up to three years to work at a charter school without any loss of seniority or retirement. The collective bargaining chapters apply to charter schools and charter school employees. The bargaining unit of charter school employees must be separate from other

units in the district, unless the charter school is a public school that has converted to a charter school. Classified employees of conversion schools remain members of the bargaining unit in the school district. Employees of charter schools will be included in the state retirement system if federal law permits.

Study of Charter Schools:

The Washington State Institute for Public Policy is directed to conduct a study of the implementation and effectiveness of charter schools, including whether and how charter schools have enhanced education reform efforts. The study also will discuss whether noncharter public schools might benefit by a similar regulatory model. A preliminary report is due to the Legislature March 1, 2006, and a final report is due September 1, 2007.

Legislative Intent:

School districts are encouraged to consider using the chartering process as an optional tool for developing school improvement plans aimed at achieving state and federal accountability goals. The ESD's and the SPI are encouraged to assist school districts in which students persistently fail to meet state standards with completing the chartering process. Assistance may include identifying eligible sponsors and assisting with the application and approval processes. To the extent permitted under federal law by the restructuring and alternative governance provisions of the No Child Left Behind Act of 2001, the SPI may require the conversion of a persistently failing or low performing noncharter public school to a charter school for the purpose of meeting state and federal student achievement and accountability requirements.

Amended Bill Compared to Engrossed Substitute Bill:

Legislative intent clarifies that charter schools are authorized for the primary purpose of providing the state with more optional tools for school improvement. All charter school applications must first be submitted to a school district sponsor before being submitted to an alternate sponsor. The ESD boards are added as an eligible alternate sponsor, and higher education institutions must act in consultation with an ESD to be eligible as an alternate sponsor. Applications to convert noncharter public schools to charter schools may be submitted only to an ESD board alternative sponsor. Sixty percent of new charter approvals must be for schools serving educationally disadvantaged students or students from low performing schools. A definition for educationally disadvantaged students is created. Charter schools are required to enroll a certain percentage of educationally disadvantaged students and to serve these students and students transferring from low performing schools. Clarification is made that charter schools shall be subject to later enacted laws and that charters must provide for, and may not prohibit, the application of later enacted laws. Provisions are added making charter schools subject to performance audits and making charter school board members subject to financial disclosure requirements. Admissions requirements are clarified to require conversion schools to provide for enrollment of students enrolled prior to conversion. Requirements

for the closure of a charter school are added, and a sponsor is prohibited from renewing a charter if certain academic performance standards are not met. The study of charter schools is expanded to include whether and how charter schools have enhanced education reform efforts, and whether noncharter public schools might benefit by a similar regulatory model.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill is permissive and not mandatory. If a school district board says "charter schools are not for us" they can reject the application without holding a hearing. When school districts determine a charter school may be effective they can hold a hearing and take comment. The only cost would be the potential enrollment of students from private schools and home-schooled students. Classroom teachers say parents are not very involved, but when parents are given choices they become very involved. Charters represent a very modest amount of competition. Other schools in the district can see what charters are doing. This is a bipartisan issue about public school choice. Not all students learn the same and not all teachers teach the same. It is not realistic to expect every student and every teacher to fit in the same public school mold. The opportunities for success far outweigh any challenges. Charter schools are about turning around high poverty throw away schools into national blue ribbon schools. Charter schools represent teacher empowerment, parental empowerment and family involvement, maximizing learning opportunities, offering flexibility and control to improve the culture of the school and the academic achievement of students. Standards-based reform includes support for charter schools. Charters are not a panacea but would free up schools to meet goals. The autonomy granted to charter schools comes connected to a high degree of accountability. Charter schools may move forward toward educational reform faster than other public schools.

(Neutral) Parent involvement should be factored in as well as a legal obligation for the sponsor to hold the school accountable.

(With concerns) Charters are a positive educational choice, but the limit on the number should be made clear. There is some potential harm to school districts and the student achievement and accountability should be clarified. School board members believe in options and flexibility but don't want an unfair burden of competition.

Testimony Against: The bill un-links public accountability of charter schools. If

statutes are limiting innovations, they should be repealed. Nonbasic education moneys already can be used for these purposes. This will take money from alternative schools already in existence. The voters have already rejected the concept of charter schools. School boards, principals, teachers, and superintendents have been following all mandates for so long but now we are told that charter schools will be successful by not having to meet the same standards. This creates an uneven playing field and unequal competition. There is no oversight by elected officials. Education reform has not been fully funded, but the Legislature still expects teachers to be successful. An American Federation of Teachers study shows that the majority of charter schools fail to raise student achievement, fall short of innovation, and sort kids by socio-economic status by not being neighborhood-based with a high transportation cost. We would like an amendment that provides to certificated staff what is provided to classified staff. Charters provide counterfeit accountability because the power of the people to replace the school board is gone. Ten separate sections of the bill violate the Washington Constitution.

Testified: (In support) Senator Johnson, prime sponsor; Senator Reardon; Dr. Yvonne Chan, Vaughn Next Century Learning Center; Don Shavley, Oakland Aspire Schools; Dawn Mason, Parents for Student Success; Steve Colmus and Jim Spady, KIPP Academy; Robin Lake, University of Washington; Harriet Walden, Family Empowerment Institute; Glen Blomgren, Christa McAuliffe Academy; Steve Mullin, Washington Round Table; Frank Dooling; and James Kelly, Seattle Urban League.

(Neutral) Carol Taylor-Cann, Washington State Parent Teacher Association.

(With concerns) David Westberg, Stationary Engineers; Lucinda Young, Washington Education Association; and Bob Butts, Office of Superintendent of Public Instruction.

(Opposed) Senator McAuliffe; Senator Rasmussen; Judy Hollar, League of Women Voters of Washington; Barbara Mertens, Washington Association of School Administrators; Chris Shardelman; Catherine Ahl, North Kitsap School Board; Bonnie Vahcic, North Kitsap Education Association; Dan Steel, Washington State School Directors Association; Wendy Rader-Konofalski, Washington Federation of Teachers, American Federation of Teachers; Maria Kirkwood, Citizens United for Responsible Education; and Lorraine Wilson, Tacoma Public Schools.