

# SENATE BILL REPORT

## SB 6202

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As of January 19, 2012

**Title:** An act relating to establishing alternative forms of governance for certain public schools.

**Brief Description:** Establishing alternative forms of governance for certain public schools.

**Sponsors:** Senators Tom, Litzow, Baumgartner, Kastama, Hobbs, Fain, Ericksen, Hill, Becker, Delvin, King, Hatfield, Hewitt, Sheldon, Swecker and Pflug.

**Brief History:**

**Committee Activity:** Early Learning & K-12 Education: 1/18/12.

**Brief Summary of Bill**

- Establishes the authority and process for creating and operating a limited number of state-funded public charter schools that operate independently of most state laws and rules.
- Creates the Transformation Zone District (TZD) as an office within the Office of the Superintendent of Public Instruction (OSPI) and provides a process for OSPI to contract with a Learning Management Organization (LMO) to manage and operate persistently lowest-achieving schools that have been temporarily transferred from their original school districts to the jurisdiction of the TZD.

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**SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION**

**Staff:** Susan Mielke (786-7422)

**Background:** Under current law, public schools in Washington State are publically financed, governed by elected school boards, and subject to federal and state laws and rules. Generally, public charter schools are publically financed but operate under a written contract with the charter authorizer, often independently of elected school boards and most state laws and rules. The contract, or charter, establishes the terms and conditions for the management, operation, and educational program of the school. In 1992 Minnesota became the first state to authorize public charter schools. According to the National Alliance for Public Charter Schools, 39 states and the District of Columbia have adopted charter school enabling legislation and 5,275 charter school currently operate nationwide.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Washington State has a process for annually identifying the lowest-performing schools: conducting a performance audit of the school, developing a required action plan for improvements, and implementing the plan for three years; at which time the school may be released from required action if the district has made progress. Currently, federal funds are used to implement the required action plans.

**Summary of Bill:** Two alternative forms of governance for certain public schools are addressed: (1) the authority and a process for creating and operating a limited number of state-funded public charter schools that operate independently of most state laws and rules is established; and (2) the Transformation Zone District (TZD) is created as an office within the Office of Superintendent of Public Instruction (OSPI). A process for OSPI to contract with a Learning Management Organization (LMO) to manage and operate persistently lowest-achieving schools that have been temporarily transferred from its original school district to the jurisdiction of TZD is also provided.

### Charter Schools.

*Charter Schools.* A charter school is a public school offering any program or course of study that a non-charter public school may offer, including one or more of grades K-12, operated according to the terms of a renewable five-year contract between a charter school applicant and a charter school sponsor. The charter school may be created by converting an existing non-charter public school or by creating a new charter school.

*Limited Number of Charter Schools.* A maximum of 50 charter schools may be established and not more than ten in each calendar year. A majority of charters are reserved for the primary purpose of serving educationally disadvantaged students until a date, specified by the State Board of Education (SBE), is reached each year. SBE is given additional certification and notification duties.

*Charter School Applicant.* A charter school applicant must be a public benefit nonprofit corporation or a nonprofit corporation that has applied for tax exempt status under section 501(c)(3) of the Internal Revenue Code. The applicant may not be a sectarian or religious organization.

*Charter School Authorizer.* The Washington Charter School Commission may authorize charter schools located in Washington State. If approved by SBE, a school district may authorize a charter school within the district; and Washington's public four-year colleges and universities may authorize charter schools within the state. SBE must establish a process and timeline for SBE to approve school district authorizers, which includes specified information that must be submitted by the applicant. The authorization is for six years and is renewable. The powers and duties of the authorizer are specified. SBE must establish an authorizer oversight fee within set parameters to be used by the authorizer to fulfill its duties.

SBE is responsible for overseeing the performance of all authorizers. SBE must establish timelines and a process for a special review by SBE when an authorizer's charter schools have persistently unsatisfactory performance or a pattern of well-founded complaints about the authorizer or its charter schools; for non-compliance with the charter contract;

and for revocation of a charter authorizer's authority. If an authorizer's authority is revoked then SBE must transfer each charter contract to another authorizer.

*Washington Charter School Commission (WCSC).* WCSC is established as a state agency to authorize charter schools, particularly schools designed to expand opportunities for educationally disadvantaged students. WCSC has nine members, three appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, with no more than five members of the same political party. The members must have diversity, including geographic representation; specified experience; expertise; and a commitment to charter schools. The members serve four-year terms but no more than two consecutive terms; and serve without compensation but may be reimbursed for travel expenses. Staff support for WCSC is provided by the office of the Governor until WCSC has sufficient resources to have separate staff.

*Chartering Process.* SBE must establish a timeline for charter school application submission, approval and denial. An authorizer must solicit, evaluate, and approve or deny charter applications, that address specified information. Criteria for approving an application are provided. Once the application is approved then, in accordance with a timeline and process provided, the authorizer and the charter school board must execute a five year charter contract, that include specified components, including a performance framework and targets. The authorizer must monitor the charter school's performance and compliance, and may take corrective actions, sanction, revoke, renew or non-renew the charter. Charter contract revocation, nonrenewal and renewal guidelines are provided, and require a charter school closure protocol.

*Charter School Board.* The charter application provides for the formation of a charter school board to manage and operate one or more charter schools. A charter school board may not levy taxes or issue tax-backed bonds; and may not acquire property by eminent domain. In accordance with the charter contract, the board may:

- Hire, manage, and discharge charter school employees;
- Issue diplomas and may establish additional graduation requirements;
- Receive and disburse funds;
- Enter into contracts for real property, equipment, goods, supplies, and services;
- Rent, lease, or own real property;
- Solicit and accept gifts, but not from sectarian or religious organizations; and
- Issue secured and unsecured debt. The issuance is not an obligation of the state, the charter school authorizer, the school district in which the charter school is located, or any other political subdivision or agency of the state.

*State and Federal Law.* A charter school is exempt from all state laws and rules applicable to schools except as provided in the Act and in the approved charter contract. No charter school may engage in sectarian practices. All charter schools must:

- Comply with state and federal health, safety, parents' rights, civil rights, and non-discrimination laws applicable to school districts; employee record checks requirements; the annual performance report; the Open Public Meetings Act; the Open Public Records Act; and future legislation enacted governing charter schools;

- Provide instruction in the Essential Academic Learning Requirements, participate in the statewide student assessments, and be subject to SBE's performance improvement goals;
- Employ certificated instructional staff, except in exceptional cases, (the same as public non-charter and private schools); and
- Adhere to generally accepted accounting principles and be subject to financial examinations and audits as determined by the state auditor.

*Student Admissions.* A charter school may not charge tuition or limit admission but may organize around a special emphasis, theme or concept. Children of the charter school's founders, board members, and full-time employees may get an enrollment preference up to 10 percent of the school's total enrollment. Conversion charter schools must enroll all students who wish to remain enrolled after the conversion and give siblings of current students an enrollment preference. If there is insufficient capacity to serve all students who apply to a charter school then the school must use a lottery to select students.

*Extracurricular Activities.* A charter school and its students are eligible to participate in interscholastic programs in the same manner as non-charter schools and non-charter school students. A charter school student may participate in extracurricular activities at non-charter public school if the activities are not offered by the charter school. The charter school must pay a share of the non-charter school's cost for the activity. SBE must adopt rules on uniform cost sharing and fee policies.

*Funding.* State funding for charter schools uses the statewide average staff-mix ratio, with years of certificated instructional staff service in a charter school included in calculating the years of service on the statewide salary allocation schedule. State allocations include general apportionment, special education, other categorical and non-basic education funds; but not the small school assistance factor. A charter school is eligible for state school construction assistance and to apply for state grants.

Levy funds are available only to charter schools authorized by a school district. If a local levy is approved before the start-up of a conversion charter school then it is eligible for the local levy funds but new charter schools are not. If a levy is approved after the start-up of any charter school then the school must be included in the levy and the levy process.

*Facilities.* Procedures are provided for charter schools to purchase or lease, at below fair market value, facilities or property of school districts; and facilities of institutions of higher education, or other public or private entities for use as a school building. Specified entities, including churches, may provide space within their facilities for charter schools to use.

*School District.* School districts must provide information to parents and the public about charter schools located within the district. If a student transfers from a charter school to a non-charter school then the non-charter school must accept the student's credits in the same manner as non-charter school credits.

*Annual Reports.* Each charter school authorizer must submit an annual report to SBE that includes specified components. By December 1, SBE must submit to the public,

Governor, and Legislature, an annual report on the state's charter schools. SBE report must contain specified information, including a comparison of the student performance of charter schools with non-charter schools.

#### Transformation Zone District.

*Transformation Zone District.* TZD is created as an office within OSPI to act as a statewide school district for persistently lowest-achieving schools that are temporarily transferred to TZD from the original school district. TZD must contract with a Learning Management Organization (LMO) to manage and operate a transformation zone school. TZD may not levy taxes, buy or sell real property, incur bonded indebtedness, and has no eminent domain power.

*Transformation Zone School.* A school that has been temporarily transferred from its original school district to the jurisdiction of TZD.

*Limited Number of TZD schools.* At least ten—but no more than 20—schools that meet OSPI criteria can be transferred to TZD each year.

*Learning Management Organization.* A public benefit nonprofit corporation or a nonprofit corporation that has applied for tax-exempt status under section 501(c) (3) of the Internal Revenue Code. LMO must have expertise in managing the daily operations and the academic and instructional learning environments of a school. LMO applicants must provide certain information. OSPI must contract with LMO for the management and operation of each school transferred to TZD, and the contract must not be for more than three years. The contract may be renewed based on the performance framework in the contract, which must include performance indicators, measures, and metrics. LMO may contract with others to provide goods and services to the transformation zone school. Regular public meetings between LMO and a standing parent and community advisory committee must occur.

*Transfer Process.* Beginning in January 2013, OSPI must annually recommend to SBE schools for temporary transfer to TZD. OSPI must adopt criteria for making the recommendations, including that the school is among the persistently lowest-achieving schools. A process for notice to the school district and reconsideration of the recommendation is provided. SBE must consider the recommendations at a public meeting and may modify the recommendations. The annual transfer of schools takes effect on September 1, 2012. The original school district, in cooperation with OSPI, must develop a transfer plan.

*State Laws.* OSPI and the schools transferred to its jurisdiction are exempt from all state laws and rules applicable to schools, except that they must:

- Comply with the following: state and federal health, safety, parents' rights, civil rights, and non-discrimination laws applicable to school districts; employee record checks requirements; the annual performance report; the Open Public Meetings Act; the Open Public Records Act; and future legislation enacted governing the TZD;
- Provide instruction in the Essential Academic Learning Requirements and participate in the statewide student assessments;

- Employ certificated instructional staff, except in exceptional cases (which is the same requirement for non-charter and private schools);
- Adhere to generally accepted accounting principles and be subject to financial examinations and audits as determined by the state auditor; and
- Be subject to SBE's performance improvement goals.

*Funding.* A process for state allocations for transformation schools is provided and includes general apportionment, special education, and other categorical and non-basic education funds. A charter school is eligible for federal funds.

State and federal funds apportioned to transformation zone schools must be included in the original school district's levy base. If a local levy has been approved before the transfer of the school, then the transformation zone school is eligible for its share of local levy funds. If a local levy is approved after the transfer of the school, then the school must be included in levies.

*Employees.* The original school district must notify all employees of a school that is identified to be transferred to TZD before the transfer takes place, that their employment contracts will not be renewed at the end of the school year. Employees may request a transfer to the transformation zone school or another school in the original school district. OSPI is authorized to hire employees for TZD, and LMO has the responsibility to hire, assign, evaluate, and dismiss all staff of a transformation zone school. Years of service in a transformation zone school will be included in the service calculation for the statewide salary allocation schedule.

*Students.* The original school district must notify all parents of students of a school when the school is scheduled to be transferred to TZD. Students must be permitted to transfer to another school within the original school district in accordance with district assignment policies. Students in a transformation zone school may participate in interscholastic and extracurricular activities of the original school district.

*Facilities.* A transformation zone school is entitled to use its existing facility rent free. The original school district retains ownership and remains responsible for major repairs and safety upgrades but TZD is responsible for routine maintenance of the facility. OSPI may negotiate with the original school district for payment of the school's share of overhead costs.

*Return to Original District.* A transformation school is eligible to return to its original school district when for three consecutive years it meets the performance improvement criteria established by SBE. A process for notification and for the return is provided. The return takes effect September 1, 2012.

**Appropriation:** None.

**Fiscal Note:** Requested on January 13, 2012.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Washington has a history of innovative schools and this provides just one additional option to be innovative through flexibility. For example, our public schools don't have the flexibility to pay differently than the state or district salary schedule but charters schools would be able to do so. We have many schools, and this is an option for a small, limited number of charter schools. Charter schools are in most states and are promoted by the Obama administration.

We have visited high-performing charter schools across the country, we have looked at the research, and we believe that charter schools are good for students. We have tried to craft the legislation to use the lessons already learned by charter schools in other states. As a former student at a charter school I believe that the charter school gave me hope for my future while I watched my friends attending our neighborhood school not meet their potential. I believe that every child should have access to the same level of education that I received. This bill requires the charter schools to specifically address at-risk kids. Families that have the money and the time to exercise the choices available in schools don't need charter schools but other children are trapped by geography and get stuck in a failing school. We are interested in changing our schools to improve our children's chances of being successful.

CON: Charter schools have been turned down by the people in this State three times. Successful innovation is being fostered in our schools now without moving to a charter school model and the state should fully fund and support our current schools. Our teachers, communities, and school district boards have worked collaboratively to create successful innovative schools. Charter schools will draw funding away from already underfunded public schools. There will be no transparency because the schools will operate independently from elected school boards. People say that these schools will serve educationally disadvantaged students but then the bill provides loopholes so that this will not necessarily be the case. If removing the rules and providing flexibility is good for charter schools then you should give all schools the opportunity to operate like this. Research shows that charter schools, as a whole, have no greater success than public schools. Therefore, the inflated importance given to charters as a way to improve the American education system is misguided. Generally, charter schools do not serve a high number of low-income students, special education students, or English language learners, and are more racially isolated. According to a recent survey, most principals in charter schools expect to leave the school within five years – this is problematic for management purposes and for turning around a struggling school. The bill's authorization process is very confusing and complicated. OSPI has the constitutional duty to supervise all schools, including charter schools but that is not provided for in the bill. We believe that a decision of this magnitude should go to the vote of the People.

**Persons Testifying:** PRO: Senator Tom, prime sponsor; Christopher Eide, Teachers United; Erin Gustafson, Stand for Children; Mary Olivas, student; Frank Ordway, League of Education Voters; Hope Teague, Clover Park School District; Amy Bell, WA Roundtable.

CON: Jerry Bender, Assn. of School Principals; Shawn Lewis, OSPI; Mary Fertakis, WA State School Directors Assn.; Wendy Rader-Konofalski, WA Education Assn.