

# HOUSE BILL REPORT

## E2SSB 6194

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As of Second Reading

**Title:** An act relating to public schools that are not common schools.

**Brief Description:** Concerning public schools that are not common schools.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Litzow, Mullet, Fain, Hobbs, Becker, Rivers, O'Ban, Dammeier, Angel, Hill, Bailey, Sheldon, Miloscia, Braun, Baumgartner and King).

**Brief History:**

**Committee Activity:**

Education: 2/19/16.

**Brief Summary of Engrossed Second Substitute Bill**

- Reestablishes a charter school system framework in statute, with charter schools created and funded separately from the common school system.
- Makes numerous modifications to court-invalidated charter school statutes, including prohibiting local school levy funds from being used for charter schools, and adding the Superintendent of Public Instruction and the Chair of the State Board of Education to the membership of the Washington State Charter Commission.
- Specifies that charter schools and certain educational programs that are outside the common school system (including the National Guard Youth Challenge Program, the Early Entrance Program at the University of Washington for highly capable students, the educational program for juvenile inmates, and tribal compact schools) must be funded with revenues from the Washington Opportunity Pathways Account.

**Staff:** Ethan Moreno (786-7386).

**Background:**

**I. Charter Schools - Establishment, Invalidation, and General Provisions.**

Initiative Measure No. 1240 Adoption and Invalidation.

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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.*

In November 2012 Washington voters approved Initiative Measure No. 1240 (Initiative 1240). The initiative authorized the establishment of charter schools as public schools that operate according to the terms of a charter contract and that are governed by an appointed or selected charter school board. Initiative 1240 directed that charter schools be tuition-free and open to all children, and it authorized charter schools to offer any program or course of study that other public schools may offer. Initiative 1240 designated charter schools as "common schools."

Initiative 1240 called for charter schools to be funded through allocations provided by the Superintendent of Public Instruction (SPI), and authorized the establishment of up to 40 charter schools, either through the establishment of new schools or the conversion of existing public schools, over a five-year period and generally at a rate of eight or fewer schools per year. At the beginning of the 2015-16 school year, nine charter schools had been established and were operating in Washington.

On September 4, 2015, the state Supreme Court, in *League of Women Voters of Washington et al. v. State of Washington*, invalidated Initiative 1240 in its entirety. The six-to-three ruling was based on the court's conclusion that charter schools were not common schools. In reaching its decision, the court reasoned that because charter schools are not subject to the control of a locally elected school board, charter schools are not "common schools" as that term is used in the Constitution.

Based on this determination, the court ruled that the Legislature may not appropriate funding for charter schools from sources that are constitutionally dedicated to common schools. The majority reasoned that all funding the state appropriates for K-12 schools from the State General Fund is dedicated to common schools. Similarly, the court held that charter schools may not receive funding from the Common School Construction Fund because that fund is constitutionally restricted to common schools. Upon concluding that the funding scheme for Initiative 1240 was unconstitutional, and that the funding scheme could not be severed from other provisions of the initiative, the court rendered the entire initiative unconstitutional.

#### Charter Schools - General Provisions of Invalidated Statutes.

As provided in Initiative 1240, charter schools had specific governance exemptions established in statute and were generally exempt from all state statutes and rules applicable to school districts and school district boards of directors. Charter schools were also exempt from all school district policies except those made applicable in the school's charter contract. Charter contracts, which may have a maximum term of five years, were required to include an agreement to provide educational services that meet basic education standards, and must satisfy other specified requirements.

The invalidated statutes provided that two types of entities could authorize the establishment of charter schools: the Washington Charter School Commission (Commission); or a local school board that applies and is authorized by the State Board of Education (SBE) to be an authorizer. Local school boards could authorize charter schools only within school district boundaries, while the Commission could authorize schools throughout the state.

The Commission created by Initiative 1240 included nine members, with three appointed by the Governor, three by the President of the Senate, and three by the Speaker of the House of

Representatives. The voided statutes specified that operational and staff support for the Commission was to be provided by the Governor's Office until the Commission has sufficient resources to hire or contract for separate staff support. The offices of the Commission, for administrative purposes only, were directed by statute to reside within the Governor's Office.

Under the provisions of the invalidated statutes, charter schools, subject to certain requirements and limitations, were eligible to receive local levy funds from the applicable school district. Charter schools were also eligible for state matching funds for common school construction and to apply for state grants on the same basis as a school district.

## **II. Public School Programs Outside the Common School System.**

### Educational Programs Outside the State's Common School System.

In addition to common schools that provide the state's program of basic education, Washington has a number of educational programs for students that are outside the state's common school system. Examples of these programs include:

- *the National Guard Youth Challenge Program*- a program of the Military Department for students earning high school graduation credit;
- *the Early Entrance Program or Transition School Program*- a program for the education of highly capable students who are admitted to or enrolled at the University of Washington;
- *education programs for juvenile inmates of the Department of Corrections (DOC)*- programs for inmates that are provided by school districts, Educational Service Districts, and other educational providers;
- *education center programs*- privately operated programs that are certified by the SPI and are devoted to teaching basic academic skills to eligible persons who have dropped out of common schools;
- *the Washington Community Learning Center Program*- a grant program administered by the Office of the Superintendent of Public Instruction (OSPI) that promotes public or privately operated community learning centers that provide students with tutoring and educational enrichment when school is not in session; and
- *state-tribal education compact programs*- negotiated programs between the SPI and the governing body of a tribe or a school that is funded by the Federal Bureau of Indian Affairs for the purpose of providing educational programs to students between kindergarten and grade 12.

## **III. Washington Opportunity Pathways Account**

### Washington Opportunity Pathways Account.

State lottery revenues are deposited in the Washington Opportunity Pathways Account (WOPA). The Legislature may appropriate from the WOPA for specific higher education and early learning programs, including:

- the Early Childhood Education and Assistance Program;
- state work-study programs;
- the State Need Grant program; and
- the College Bound Scholarship program.

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## Summary of Bill:

### **I. Establishment of Charter Schools as Public Schools Outside the Common School System.**

#### Reestablishment of Charter School Provisions.

A statutory framework for the creation, governance, operation, and funding of charter schools is reestablished by amending and reenacting charter school statutes that were invalidated in 2015 by the Washington Supreme Court in *League of Women Voters of Washington et al. v. State of Washington*. As amended and reenacted, the statutes establish operational, governance, and funding provisions for charter schools that are separate from those employed for the common school system.

Charter schools or charter public schools, which are no longer identified as common schools, may be established as public schools that operate according to the terms of a charter contract that establishes the roles, powers, responsibilities, and performance expectations of the parties to the contract. Charter schools must be tuition-free and open to all children, and operated separately from the common school system as an alternative to traditional common schools. Charter schools remain subject to a charter school board, a board of directors appointed or selected under the terms of a charter application to manage and operate a charter school. Charter schools, whose establishment may be authorized statewide by the Washington State Charter Commission or locally within a school district by the applicable district board of directors, may offer any program or course of study that any other public school may offer. Additionally, charter schools remain subject to a list of specifically delineated laws, and charter schools retain specific statutory and rule exemptions established in Initiative 1240.

The nine-member Washington Charter School Commission is reconstituted as the 11-member Washington State Charter School Commission (State Commission). Appointment, qualification, and term length provisions established in Initiative 1240 are generally retained, but the SPI or the SPI's designee, and the Chair of the SBE are added to the State Commission, and legislators, rather than legislative appointees, serve on the State Commission. Initial appointments to the State Commission must be made by July 1, 2016.

The SBE continues to administer the annual application and approval process and timelines for school districts seeking approval to become charter school authorizers. The initial application and approval process and timelines must be established by the SBE no later than July 1, 2016.

### **II. Modifications to Invalidated Charter School Statutes.**

#### Principal Modifications to I-1240 Charter School Statutes.

Numerous changes are made to the originally enacted charter school statutes. In addition to those noted above, the principal modifications include:

- local school levy revenues may not be used for charter schools;

- the five-year period during which up to 40 charter schools may be established commences with the effective date of the bill;
- the annual charter school establishment cap of eight schools per year does not apply to charter school contracts that are re-executed in accordance with specified provisions; and
- the office of the State Commission is relocated from the Office of the Governor to the OSPI;
- for purposes of school construction funding, charter schools are eligible for state funding, rather than matching funding, but state construction appropriations may not be made from the Common School Construction Fund;
- charter schools have the right of first refusal to purchase or lease qualifying school district property at fair market value, rather than at or below fair market value, by negotiated agreement with mutual consideration; and
- conversion charter schools may continue to use a school district facility for providing educational services under a charter contract, but the use must be by negotiated agreement with mutual consideration, and a requirement for rent-free use is removed.

#### New Funding Provisions for Charter Schools.

New funding provisions for charter schools are established. In accordance with funding distribution provisions summarized below, the Legislature is directed to biennially appropriate from the WOPA amounts to support charter schools during the ensuing biennium.

Each month, the SPI must separately calculate and distribute funding to charter schools on the same basis as funding is allocated to school districts, including general apportionment, special education, categorical, and other state formula-based enrichments to basic education other than Local Effort Assistance. Categorical funding must be distributed to charter schools based on the same funding criteria used for other public schools, and the moneys distributed must be expended as provided in the charter contract. Additionally, charter schools remain eligible to apply for state grants on the same basis as a school district.

Distributions for pupil transportation must be calculated on a per student basis based on the allocation for the previous school year to the school district in which the charter school is located.

#### Reimbursements to Charter Schools.

The OSPI is directed to reimburse charter schools for any loss of state revenue during the 2015-16 school year to the extent that:

- the charter school was initially authorized under charter school statutes;
- the charter school was providing public school services after December 1, 2015, and
- the loss of state revenue was the direct result of the state supreme court decision in *League of Women Voters, et al., v. State of Washington*, Case No. 89714-0.

#### Re-Execution of Charter Contracts.

Contract re-execution provisions related to charter schools are established. The SBE and each authorizer is directed to take all reasonable and necessary steps to provide parties to contracts entered into under or in accordance with Initiative 1240 that were in effect on December 1, 2015, with an opportunity to re-execute the contracts with the same terms and duration or substantially the same terms and duration as were in effect on December 1, 2015.

### Re-Adoption of Personnel Provisions.

Provisions designating charter schools, subject to certain requirements, as employers, and charter school employees as members of the Teachers' Retirement System, the Washington School Employees' Retirement System, and the Washington Public Employees' Retirement System are re-enacted without modification. Personnel provisions relating to services of the Washington State Health Care Authority, collective bargaining, and the rights and obligations of educational employees are also re-enacted without modification.

### **III. New Funding Provisions for Selected Education Programs.**

#### Funding for Educational Programs Outside the Common School System.

Delineated public education programs outside the state's common school system must be funded from the WOPA. These programs are:

- the National Guard Youth Challenge Program;
- the Early Entrance Program or Transition School Program at the University of Washington;
- education programs for juvenile inmates of the DOC;
- education center programs;
- the Washington Community Learning Center Program; and
- state-tribal education compact programs.

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**Appropriation:** The sum of \$18 million from the Washington Opportunity Pathways Account to fund charter schools. The sum of \$18 million from the General Fund to the Office of Financial Management for allocation to the State Need Grant and College Bound Scholarship Programs, and the Early Childhood Education and Assistance Program. The sum of \$826,000 from the Washington Opportunities Pathways Account for the State Commission to fulfill its duties.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

#### **Staff Summary of Public Testimony:**

Please refer to the February 19, 2016, hearing recordings.

**Persons Testifying:** (In support) Representative Magendanz; Representative Springer; Brenda McDonald, PRIDE Prep; Ed Pacheco; Alice Lara; Katie Wilton and Tatiana Cueva, Summit Olympus; Jen Wickens, Summit Public Schools; Adel Sefrioui, Ashley Lopez, and Heskiyas Wondaferew, Excel; Shirline Wilson, Rainer Prep; Jadyynn Isabell, Sierra Schools; and Melissa Palithorp, Summit Sierra.

(Opposed) Marcie Maxwell; Catherine Ahl and Pat Griffith, League of Women Voters; Melissa Westbrook, Seattle Schools Community Forum; David Spring, Coalition to Protect

Our Schools; Kathleen Smith; Lucinda Young, Washington Education Association; and Dora Shardelman.

**Persons Signed In To Testify But Not Testifying:** Fredolyn Millendez; Rosebell Komugisha; Hong-Nhi Do; Bree Dusseault; Roland Bradley; Jessica Garcia; Amouret Lara; and Shawn Lewis