

HOUSE BILL REPORT

E2SSB 6194

As Passed House - Amended:

March 9, 2016

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.

Floor Activity:

Passed House - Amended: 3/9/16, 58-39.

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

- Reestablishes a charter schools system in statute, with charter schools created separately from the common school system, and funded with revenues from the Washington Opportunity Pathways Account.
- Makes numerous modifications to court-invalidated charter school statutes, including prohibiting local school levy funds from being used for charter schools, prohibiting the conversion of common schools into 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.

HOUSE COMMITTEE ON EDUCATION

Staff: Ethan Moreno (786-7386).

Background:

Initiative Measure No. 1240 Adoption and Invalidation.

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 6 to 3 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. No more than five Commission members could be members of the same political party. 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.

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.

Washington State Public Disclosure Commission, Personal Financial Affairs Statement.

The five-member Washington State Public Disclosure Commission (PDC) is charged with ensuring that the provisions of Washington's campaign disclosure and contribution laws are met. Persons holding state or local elected office, candidates for these offices, and appointed state officials are required annually file with the PDC a personal financial affairs statement. Each statement must include certain financial information about the filer, the filer's spouse or registered domestic partner, and the filer's dependent children and other dependent relatives that lived with the filer during the reporting period.

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, operated separately from the common school system as an alternative to traditional common schools,

and may not be established through the conversion of a common school. 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, and these board members must file personal financial affairs statements with the PDC. Charter schools, whose establishment may be authorized statewide by the Washington State Charter Commission (State 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 Commission is reconstituted as the 11-member 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 or the Chair's designee, are added to the State Commission, and a provision specifying that no more than five Commission members may be of the same political party is deleted. Initial appointments to the State Commission must be made by July 1, 2016, and members must file personal financial affairs statements with the PDC.

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:

- discontinuing the permitted use of local school levy revenues for charter schools;
- specifying that the five-year period during which up to 40 charter schools may be established commences with the effective date of the bill;
- specifying that the annual charter school establishment cap of eight schools per year, subject to specified provisions, does not apply to new charter school contracts executed with parties to previous charter school-related contracts;
- requiring charter school boards to contract for independent performance audits and to advise current or prospective student families of ongoing litigation challenging the constitutionality of charter schools or that may require charter schools to cease operations;
- specifying that, in the event capacity is insufficient to enroll all students who apply to a charter school, a charter school may offer a weighted enrollment preference for at-risk students or to qualifying children of full-time employees;
- specifying that charter schools, for purposes of school construction funding, are eligible for state funding, rather than matching funding, but that state construction appropriations may not be made from the Common School Construction Fund;
- specifying that 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

- relocating the office of the State Commission from the Office of the Governor to the OSPI.

New Funding Provisions for Charter Schools.

New funding provisions for charter schools are established, and the Legislature expressly indicates its intent that state funding for charter schools be distributed equitably with state funding provided for other public schools. 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 in accordance with specified provisions. Funding must be provided to charter schools for all basic education programs for which the charter school has eligible students. A provision allowing for categorical funding moneys to be distributed and expended as provided in the charter contract is removed. Additionally, charter school boards remain eligible to apply for grants from public and private entities, but a provision specifically authorizing charter schools to apply for state grants on the same basis as a school district is removed.

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

The OSPI is required to adopt rules necessary for the distribution of funding to charter schools and to comply with federal reporting requirements.

Reestablishment of Certain Charter Contracts.

Contract reestablishment provisions related to charter schools are provided. The SBE and each authorizer is directed to take reasonable and necessary steps to provide parties to contracts entered into under or in accordance with Initiative 1240 that were in effect or that had been executed on or before December 1, 2015, with an opportunity to execute new 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 reenacted without modification.

Appropriation: None.

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; Jadyann 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