

FINAL BILL REPORT

E2SSB 6194

C 241 L 16
Synopsis as Enacted

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).

Senate Committee on Early Learning & K-12 Education
Senate Committee on Ways & Means
House Committee on Education

Background: Initiative 1240. In November 2012, Washington State voters approved Initiative 1240, which established a process for creating and operating a limited number of publically funded charter schools that operate provide basic education and independently of an elected school district board of directors as well as most state laws and school district policies. The first charter school began serving students in the 2014-15 school year. Nine charter schools served students in the 2015-16 school year. Seven of the schools were authorized by the Washington Charter School Commission and two were authorized by the Spokane Public School District.

Charter School Lawsuit. On September 4, 2015, the Washington Supreme Court ruled the charter school law unconstitutional and declined to reconsider the ruling on November 19, 2015. The Court found that charter schools are not common schools because they are not subject to and under the complete control of the qualified voters of the school district. The Court also found that since charter schools are not common schools, they cannot receive funds from the common school construction fund or be funded by the common school state property tax because the state constitution requires both to be used exclusively for common schools. The Court declared that because the charter school law could not be implemented without the impermissible funds the law in its entirety was unconstitutional and void.

Local School Levies. Article VII, section 2 of the Washington State Constitution requires that local school district levies be used for the support of common schools.

Prototypical School Funding Formula. In 2009, the Legislature adopted a statutory framework for a funding allocation model for public schools based on prototypical schools. The statute provides that the use of prototypical schools illustrates the level of resources needed to operate a school of a particular size with particular types and grade levels of

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students using commonly understood terms and inputs, such as class size, hours of instruction, and specified staff positions. Actual state funding allocations are adjusted from the school prototypes based on the actual number of students in each grade level at each school in the district.

Summary: Initiative 1240 is reenacted and amended to designate charter schools as public schools that are not common schools operating separately from the common school system. Charter schools are funded by the Washington Opportunity Pathways Account (WOPA). Additionally, clarifying grammar, terminology, and format changes are made.

Charter School Definition. A charter school is not a common school. It operates separately from the common school system but is a public school that is open to all children. A charter school is exempt from most state laws and rules. It may offer, tuition-free, any program or course of study that a non-charter public school may offer, including one or more K-12 grades. It is managed and operated by a Charter School Board of Directors and governed by the terms of a renewable 5-year charter contract.

Chartering Process. An authorizer must annually solicit applications to establish a charter school. An applicant submits an application that contains specified information to an authorizer. An authorizer must evaluate and approve or deny the charter application. Authorizers must give preference to applications for charter schools that are designed to enroll and serve at-risk student populations but nothing limits a charter school to serving a substantial portion of at-risk students. If the application is approved, then the authorizer and the Charter School Board must execute a five-year charter contract that contains specified components, including a student performance framework and targets. Authorizers must provide an opportunity for previously established charter schools to execute new contracts with the "same or substantially the same terms and duration." "Substantially the same terms and duration" includes contract modifications necessary to comply with applicable law.

Applicant. A charter school applicant must be a nonprofit corporation. Applicants may not be a sectarian or religious organization.

Authorizers. Two entities may be authorizers of charter schools: (1) the Washington State Charter School Commission (Commission) and (2) school district boards of directors that have received approval by the State Board of Education (SBE) to be an authorizer. Authorizer duties include approving and monitoring its authorized charter schools and may include taking corrective actions; imposing sanctions; and revoking, renewing or non-renewing a charter.

The Commission is established as an independent state agency to authorize charter schools throughout the state. The Commission has 11 members: the Superintendent of Public Instruction (SPI) or SPI's designee, the chair of the SBE or the chair's designee, three members appointed by the Governor, three appointed by the President of the Senate, and three appointed by the Speaker of the House of Representatives. The legislative appointments will be made as follows: the largest caucus in each chamber will appoint two members of the Commission and the minority caucus in each chamber will appoint one member. The leaders in the caucuses in the Senate will make the appointments for the Senate and the Speaker of the House of Representatives and leader of the minority caucus will make

the appointments for the House. No appointed member may serve more than two consecutive four-year terms. The appointing authorities must ensure the diversity of the Commission members, including representation from various geographic areas of the state, who collectively possess relevant experience and expertise and have a commitment to charter schooling. At least one member must be a parent of a public school student. The members serve without compensation but may be reimbursed for travel expenses. Commission members must file personal financial affairs statements with the Public Disclosure Commission. The Charter School Commission resides within the Office of the SPI for administrative purposes only.

If approved by the SBE, a school district board of directors may authorize charter schools within the school district. The SBE must establish a process and timeline for approving school district authorizers, which includes specified information that must be submitted by the district. The authorization lasts for six years and may be renewed.

The SBE must establish an authorizer oversight fee for authorizers to use in order to fulfill its duties. The fee is deducted from each charter school's funding distribution and cannot exceed four percent of each charter school's annual funding.

Authorizers must establish reasonable preopening requirements or conditions to monitor the start-up progress of newly approved charter schools, ensure that they are prepared to open smoothly on the date agreed, and ensure that each school meets specified requirements for school opening.

Caps and Limits. A maximum of 40 charter schools may be established over a five-year period. The five-year period begins immediately upon the signature of the authorizing legislation by the Governor. No more than eight charter schools may be established in a single year. If fewer than eight schools are established in a year, additional schools up to the difference between the number established and eight may be established in subsequent years. Schools established on or before December 1, 2015 do not count against the annual cap.

Charter School Board. The charter application provides for the formation of a charter school board to manage and operate one or more charter schools. The members of the board must file personal financial affairs statements with the Public Disclosure Commission.

The charter school board must:

- through website postings and written notice, advise families of new, ongoing, and prospective students of any ongoing litigation challenging the constitutionality of charter schools or that may require charter schools to cease operations; and
- contract for independent performance audits after the second year following the first school year of full operation and every three years thereafter. The performance audit must be conducted in accordance with United States General Accounting Office Government Auditing Standards. This performance audit does not inhibit the state Auditor's Office from conducting a performance audit of the school.

In accordance with the charter contract, the board may:

- hire, manage, and discharge charter school employees;
- establish additional graduation requirements and issue diplomas;

- receive and disburse funds;
- enter into contracts for management and operation - only with nonprofit organizations - 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, which 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.

A charter school board may not levy taxes, issue tax-backed bonds, or acquire property by eminent domain.

State and Federal Law. A charter school is exempt from all state laws and rules as well as school district policies, except those specifically in the legislation and in the approved charter contract. All charter schools must:

- comply with state and federal education, health, safety, parents' rights, civil rights, and non-discrimination laws applicable to school districts including the McKinney-Vento Act; employee record check requirements; the annual performance report; the Open Public Meetings Act; the Public Records Act; and future legislation enacted governing charter schools;
- provide a program of basic education that meets the basic education goals, and includes the essential academic learning requirements, participation in the statewide student assessment system, and be subject to the SBE's performance improvement goals;
- employ certificated instructional staff, except in exceptional cases, the same as public 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 the supervision of the SPI and the SBE, including accountability measures.

Student Admissions. A charter school is open to all children, tuition-free, and may not limit admission except by age group, grade level, or enrollment capacity. However, a charter school may organize around a special emphasis or theme, including focusing on services for particular groups of students. If student applications exceed the enrollment capacity of a charter school, then the school must grant an enrollment preference to siblings of enrolled students, with any remaining enrollments allocated through a lottery. A charter school may offer an enrollment preference for at-risk students or to children of full-time employees of the school if the employee's children reside within the state and the Commission has approved the admission policy. If a student transfers from a charter school to a non-charter school, the non-charter school must accept the student's credits in the same manner as non-charter school credits. School districts must provide information to parents and the public that charter schools within the district are an enrollment option for students.

Interscholastic and Extracurricular Programs. A charter school may participate in state- or district-sponsored interscholastic programs to the same extent as other public schools. A charter school may charge for extracurricular events and activities in the same manner as other public schools. The Washington Interscholastic Activities Association (WIAA) rules

apply to any proposal by a charter school to regulate the conduct of interschool athletic activities or other interschool extracurricular activities and the eligibility of a charter school student to participate in interscholastic activities. The WIAA rules adopted must provide that a student attending a charter school may only participate in interscholastic activities offered by the student's resident school district unless approved by a nonresident school district or the WIAA; and that a charter school must pay the full cost, minus any student participation fee, for any student who participates in interscholastic activities.

Employees. Charter school employees are hired, managed, and discharged by the Charter School Board of Directors. The employees are included in the established state employee insurance and health care systems and are included in the state retirement systems if it does not jeopardize the status of the systems as governmental plans. The state collective bargaining laws for classified and certificated charter school employees apply. The bargaining units for charter schools must be separate from other school district bargaining units. Years of service in a charter school are included in the service calculation for the statewide salary allocation schedule, but a charter school is not required to pay a particular salary.

Facilities. Charter schools are eligible for state funding for school construction but not from the common school construction fund. A charter school may purchase or lease facilities or property from a school district at fair market value and may rent from a public or private entity at fair market rent. Public libraries, community service organizations, museums, performing arts venues, theaters, and public or private colleges and universities may provide space to charter schools within their facilities. A purchase, lease, or continued rent free use of facilities requires a negotiated agreement with mutual consideration.

Annual Reports. Each charter school authorizer must submit an annual report to the SBE that includes specified components, including the academic and financial performance of each charter school overseen by the authorizer. The SBE, in collaboration with the Commission, must submit to the public, Governor, and Legislature, an annual report based on the authorizer reports. The SBE report must contain specified information, including a comparison of the student performance of charter schools with non-charter schools. After five years, the SBE, in collaboration with the Commission, must recommend whether or not the Legislature should authorize additional charter public schools.

Renewal, Nonrenewal, and Revocation. Guidelines for charter contract renewal, nonrenewal and revocation are provided. A charter contract may be non-renewed or revoked if the authorizer determines that the charter school commits a material and substantial violation of the charter contract or laws applicable to the charter school; fails to meet or make sufficient progress toward the performance expectations in the charter contract; or fails to meet generally accepted standards of fiscal management. A charter contract may also not be renewed if at the time of the renewal application the charter school's performance falls in the bottom quartile of schools on the SBE's accountability index, unless the charter school demonstrates exceptional circumstances that the authorizer finds justifiable. Before nonrenewal or revocation of a charter contract, the authorizer must develop a charter school termination protocol to ensure an orderly transition. If the nonprofit corporation operator who was the applicant for the charter school should dissolve because of the termination of

the charter contract, then the public school funds of the charter school that have been provided in the last year preceding the dissolution must be returned to the state.

Funding. Legislative intent that state funding for charter public schools be distributed equitably with state funding provided for other public schools is provided. The SPI must calculate and transmit funding for charter schools based on: the prototypical school funding, any enrichment specified in the budget, and categorical program funding. The SPI must adopt rules for distribution of the funding and to comply with federal reporting requirements. Charter public schools may receive state funding for school construction but not from the common school construction fund. Charter schools are not eligible for local school district levy funds. Allowable expenditures from the Washington Opportunity Pathways Account is expanded to include charter schools. It is specifically provided that nothing in the act entitles a charter school to retroactive payments for services provided after December 1, 2015 and before the execution of new charter contract.

Votes on Final Passage:

Senate	27	20	
House	58	39	(House amended)
Senate	26	23	(Senate concurred)

Effective: April 3, 2016