

SENATE BILL REPORT

E2SSB 6194

As Amended by House, 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: Early Learning & K-12 Education: 1/12/16, 1/14/16 [DPS-WM, DNP, w/oRec].

Ways & Means: 1/18/16, 1/19/16 [DP2S, DNP, w/oRec].

Passed Senate: 1/20/16, 27-20.

Passed House: 3/09/16, 58-39.

Brief Summary of Engrossed Second Substitute Bill

- Reenacts and amends Initiative 1240 provisions to authorize charter schools and address the Washington Supreme Court's concerns of non-common school status and funding source.
- Specifies funding for other education programs that are not associated with a school district.
- Makes clarifying grammar, terminology, and format changes.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: That Substitute Senate Bill No. 6194 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Litzow, Chair; Dammeier, Vice Chair; Fain, Hill, Mullet and Rivers.

Minority Report: Do not pass.

Signed by Senator McAuliffe, Ranking Member.

Minority Report: That it be referred without recommendation.

Signed by Senators Billig and Rolfes.

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.

Staff: Susan Mielke (786-7422)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6194 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Bailey, Becker, Brown, Hewitt, O'Ban, Padden, Parlette, Schoesler and Warnick.

Minority Report: Do not pass.

Signed by Senators Hargrove, Ranking Member; Conway, Hasegawa and Nelson.

Minority Report: That it be referred without recommendation.

Signed by Senators Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Billig, Darneille, Pedersen and Rolfes.

Staff: Lorrell Noahr (786-7708)

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 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 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 under the state constitution both are 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.

Summary of Engrossed Second Substitute Bill: Initiative 1240 is reenacted and amended to designate charter schools as schools which are not common schools which operate separately from the common school system. Charter schools are funded by the Washington Opportunity Pathways Account (WOPA). Funding for other education programs that are not associated with a school district are also provided by 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 and 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 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 re-execute the 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: the Washington State Charter School Commission (Commission) and 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), the chair of the SBE, 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 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 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. The Commission resides within the Office of the Superintendent of Public Instruction 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.

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 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 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. 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;
- 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.

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 health, safety, parents' rights, civil rights, and non-discrimination laws applicable to school districts; 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 basic education in the essential academic learning requirements, participate 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 Superintendent of Public Instruction 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 capacity of a charter school, then the school must grant an enrollment preference to at-risk students and siblings of enrolled students, with any remaining enrollments allocated through a lottery. Conversion charter schools must enroll all students who wish to remain enrolled after the conversion. 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 & Extracurricular Programs. Charter schools may participate in state- or district-sponsored interscholastic programs to the same extent as other public schools; and may charge for extracurricular events and activities in the same manner as other public schools.

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 conversion schools may continue to use its existing facility rent free. Conversion schools are responsible for routine maintenance of their facility and the district is responsible for major repairs and safety upgrades. 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.

Funding. Funding for charter schools is provided from the Washington Opportunities Pathways Account. Legislative intent that state funding for charter public schools be equitable to the state funding received by other public schools is provided and includes: the prototypical school funding, any enrichment specified in the budget, and categorical program funding. OSPI must adopt rules for distribution of the funding. 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 levy funds. The Office of the Superintendent of Public Instruction is directed to reimburse charter schools for any loss of state revenue during the 2015-16 school year to the extent that: (1) the charter school was initially authorized under chapter 28A.710 RCW; (2) the school was providing public school services after December 1, 2015; and (3) the loss of state revenue was the direct result of the State Supreme Court decision in *League of Women Voters, et al., v. Washington*, Cause No. 98714-0.

Other K-12 Educational Programs Not in Common Schools. The following educational programs are funded out of the Washington Education Pathways Account:

- *Washington National Guard Youth Challenge Program.* The program operates through a cooperative agreement with the federal National Guard Bureau and the Military Department through the federal National Guard Youth ChalleNGe Program. The Military Department sets the school year, curriculum, and assessment. The program must adhere to National Guard Youth ChalleNGe Program requirements to receive federal funds. Students must apply and the Military Department determines who is admitted. The program is tuition-free. All courses are approved by SPI. Academic instruction for high school credit is provided by Bremerton School District through contract with the Military Department. The program receives general apportionment funds on the same basis as other common schools and receives federal funds through the National Guard Youth ChalleNGe Program grant.
- *Early Entrance Program at UW for highly capable students.* This program is operated under contract with SPI and the University of Washington. The University sets school curriculum. Students must apply and the University determines who is admitted. The school is open to the public but enrollment is limited to 30 students in the transition school each year. Students receive college credit and must pay tuition of \$15,000 per year plus \$2,100 if the student takes classes during the spring quarter. In addition to tuition, the University directly receives general apportionment on the same basis as common schools based on the student's district of residence.
- *The educational program for juveniles in detention centers.* The responsibilities for this State program are assigned to SPI and the Department of Corrections (DOC). The DOC contracts with an educational provider for daily operations and instruction. The contract may be with a school district, educational service district, or private non-school district entity. Currently all contracts are with local school districts.

- *Education Centers.* An Education Center is a for-profit or nonprofit private school that teaches basic academic skills, as well as student achievement motivation and employment orientation. The centers diagnose individual educational abilities, determine individual goals and courses of instruction, and evaluate each client's progress. SBE certifies the centers, which are reimbursed by SPI for common school dropouts that meet specified criteria. Education Centers have not been funded by the state since 1998 but are still in statute.
- *Community learning center program.* This program supports the creation of community learning centers that provide academic enrichment opportunities during non-school hours for children, particularly students who attend high-poverty and low-performing schools. SPI oversees the administration of the federal grant program. A state grant program was created in 2007. Subject to funds appropriated for this purpose, public and private organizations, in addition to school districts, are eligible to receive grants.
- *Tribal compact schools.* These schools are initiated by the governing body of a federally recognized Tribe or a governing body of a school funded by the federal Bureau of Indian Affairs. Schools are operated according to a compact entered into between SPI and the Tribe. After compact approval by the state, the tribal school becomes its own school district. Tribal compact schools are to receive general apportionment funds and other categorical funds as calculated for other school districts.

Appropriation: \$18 million from the Washington Opportunity Pathways Account to fund charter schools.

\$18 million from the General Fund to the Office of Financial Management for allocation to the state need program, college bound program, and early childhood education and assistance program.

\$826,000 from the Washington Opportunities Pathways Account for the Commission to fulfill its duties.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Early Learning & K-12 Education): PRO: This bill is necessary to uphold the will of the people and to end the turmoil that the Court decision has caused all the charter school students and their families. The bill is loyal to the initiative while fixing the issues raised by the Court. The one size of traditional schools do not fit all the needs of our students. Charter schools are one part of a solution to provide all students with a high quality education, alternative learning environments, and ensure an educated workforce. We need to continue to innovate so our students can continue to compete in today's economy. The Superintendent of Public Instruction adopted emergency rules to extend the Alternative Learning Experiences to the students in the charter schools so that they could continue their education. But that "fix" is only for this school year. Charter schools are changing student lives by helping students be successful in their education and making them confident in whatever they choose to do,

including college. The teachers care, value, respect, and understand the students. Students are excited to learn in charter schools.

CON: This bill is unconstitutional because the constitution requires that the Superintendent of Public Instruction have supervision over all matters pertaining to public schools and because it takes direct control of our schools away from voter-elected school boards. There is no when the school closes. Charter schools are the first step toward privatization of our educational system. The current law provides flexibility for all school districts to have innovative schools. The focus of the Legislature in this short session should be on getting out of contempt of court by developing a plan and the necessary revenue to fulfill the state's constitutional duty to amply fund public schools for all of the one million students without diverting taxpayer dollars to privatized charter schools. It doesn't matter how the money is laundered, it is still public money and demands accountability through elected officials.

Persons Testifying on Original Bill (Early Learning & K-12 Education): PRO: Senator Litzow, prime sponsor; Bree Dusseault, Green Dot Public Schools Washington; Shirlene Wilson, parent, Rainier Prep student; Sicily Johnson, student, Destiny Middle School; Tatiana Cueva, student, Summit Olympus School; Star Ortega, student, Summit Olympus; Jackie Reyes, student, Destiny Middle School; Danielle Davies; Melissa Palithorp, parent, Summit Sierra; Brenda McDonalds Pride Prep; Brenda McDonalds Pride Prep; Jeffery Bunch, parent, Spokane International Academy; Shawn Lewis, Spokane Public Schools; Neil Strege, Washington Roundtable; Amy Anderson, AWB; Liv Finne, Washington Policy Center.

CON: Randy Dorn, Superintendent of Public Instruction; Lucinda Young, WEA; David Spring, Coalition to Protect our Public Schools; Steve Nesich, Washington Voters for Public Education; Melissa Westbrook, Seattle Schools Community Forum Blog; Pat Griffith, League of Women Voters of Washington; Cris Shardelman; Dan Steele, WASA; Alan Burke, WSSDA.

Staff Summary of Public Testimony on First Substitute Bill (Ways & Means): PRO: Charter schools provide option and choice for students and families. They should be an option to school boards wanting to provide additional opportunities to their students without replicating programs already provided. This should not be considered a loss of funding for districts, but instead a shift of resources. Charter schools can compliment the public schools available. The state's charter school programs have shown gains for student testing below average in reading and math within the first few months of the school year. Charter schools create supportive environments that makes students excited to learn and build the confidence they need to succeed. Additional educational choices provide students with an alternative pathway toward secondary education and increase the pipeline of qualified workers in the workforce.

CON: Moving the funds to the Washington Opportunity Pathway Account is still using public money for charter schools. Charters should be authorized and accountable to local school boards. The legislature should instead concentrate on the requirements in the State Supreme Court's McCleary ruling and develop a plan to fully fund schools.

Persons Testifying on First Substitute Bill (Ways & Means): PRO: Shawn Lewis, Spokane Public Schools; Brian Jeffries, Washington Round Table; Ryan Brown, Fluid

Motion; Amy Anderson, AWB; Maggie O'Sullivan, Principal; Roland Bradley, Grandfather of Excel Student; Sumayo Hassan, Student; Natalie Hester, Parent of Student; Shirline Wilson, Parent of Student; Rosebell Komugisha, Teacher - Green Dot Destiny; Jadyann Isabell, Student - Summit Sierra; Anjel Jordan, Student - Destiny; Jaime Morin, Teacher - Desitny; Bill Kiolbasa, CFO - Washington State Charter Schools Association; John Levi, Staff - Summit Olympus; Melissa Pailthorp, Parent - Summit Sierra; Brianna Dusseault, Green Dot Washington State, Executive Director; Natasha Lemke, Parent.

CON: Dan Steele, WA Assn of School Administrators; Lucinda Young, Washington Education Association; Dan Grimm, Superintendent of Public Instruction.

Persons Signed In To Testify But Not Testifying: No one.

House Amendment(s): H-4714.2 Striking Amendment:

- Restores provisions requiring that legislative appointees, rather than legislators, serve on the Commission;
- Removes provisions authorizing the conversion of public common schools into charter schools;
- Removes the provision directing OSPI to reimburse qualifying charter schools for any loss of state revenue during the 2015-16 school year as a result of the Supreme Court's invalidation of charter school laws;
- Specifies that charter schools are not entitled to retroactive payments under the act for services that were rendered after December 1, 2015, and before the execution of new charter school contracts;
- Removes the appropriation sections;
- Modifies provisions governing actions that the SBE and each authorizer must take to execute new charter school contracts;
- Changes the funding language for charter schools and obligates OSPI to adopt rules for the distribution of funding to charter schools and to comply with federal reporting requirements;
- Maintains the enrollment preference for siblings of charter school students when capacity is insufficient but removes the enrollment preference for at-risk students. Permits a charter school to offer a weighted enrollment preference for at-risk students or 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.
- Removes all provisions related to other educational programs not under the control of school district boards of directors.

H AMD 963:

- Restores provisions requiring that legislative appointees, rather than legislators, serve on the Commission.
- Adds that the SBE chair may appoint a designee to serve on the Commission instead of the chair.
- Removes a provision specifying that no more than five Commission members may be of the same political party.

H AMD 970:

- Requires authorizers to 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.

H AMD 969:

- Requires that members of the Washington state Charter School Commission and members of charter school boards file personal financial affairs statements with the Public Disclosure Commission.

H AMD 948:

- Adds the McKinney-Vento Act to the list of federal acts that charter schools must comply with.

H AMD 970:

- Requires charter school boards, through web site postings and written notice, to 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.

H AMD 967:

- Requires charter school boards to contract for independent performance audits after the second year following the first school year of full operation and every three years thereafter. Specifies that the performance audit must be conducted in accordance with United States General Accounting Office Government Auditing Standards. Provides that a performance audit in compliance with this section does not inhibit the state Auditor's Office from conducting a performance audit of the school.

H AMD 958:

- Provides that the following provisions are subject to rules adopted by the Washington Interscholastic Activities Association (WIAA):
 - A proposal by a charter school to regulate the conduct of interschool athletic activities or other interschool extracurricular activities (interscholastic activities); and
 - The eligibility of a charter school student to participate in interscholastic activities.
- Specifies that the 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
 - It is the responsibility of the charter school to pay the full cost, minus any student participation fee, for any student who participates in interscholastic activities.

H AMD 947:

- Maintains the specified intent that state funding for charter schools be distributed equitably with state funding provided for other public schools.
- Clarifies that state funding for charter schools must be allocated under the prototypical school formula using a statewide average staff mix factor for certificated instructional staff.