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Milwaukee Parental Choice Program Auditor and Fees (DPI -- Choice and Charter)

[LFB 2009-11 Budget Summary: Page 528, #2]

CURRENT LAW

Under the Milwaukee parental choice program, state funds are used to pay for the cost of children from low-income families in the City of Milwaukee to attend, at no charge, participating private schools in the City.

A school wishing to participate in the choice program must notify the State Superintendent of its intent to participate and the number of students for which the school has space by February 1 of the school year preceding its intended participation. By August 1 before the first school year a new school participates in the program, or by May 1 if the school begins participating in the program during summer school, each school participating in the program must submit to the Department of Public Instruction (DPI): (a) a copy of the school's current certificate of occupancy issued by the City; (b) evidence of financial viability; and (c) proof that the school's administrator has participated in a fiscal management training program approved by DPI. Annually, by September 1 following a school year in which a school participated in the choice program, the school must submit to DPI: (a) an independent financial audit of the school conducted by a certified public accountant (CPA); and (b) evidence of sound fiscal practices.

The State Superintendent may issue an order barring a school from participating in the program in the current school year if he or she determines that the school has done certain things. Among these are if the school: (a) failed to provide the notice of intent to participate by February 1; (b) misrepresented information relating to the certificate of occupancy, evidence of financial viability, or proof of attendance at the fiscal management training required of new schools, or failure to provide that information by the date required; or (c) failed to provide the independent financial audit or evidence of sound fiscal practices.

GOVERNOR

Provide $71,300 in 2009-10 and $92,900 in 2010-11 and 1.0 auditor position beginning in 2009-10 in a new appropriation funded from fees paid by schools intending to participate in the choice program.

Require a school to pay an annual, nonrefundable fee to DPI with its notice of intent to participate in the program (by February 1 of the school year before a school participates in the program). Specify that failure by a school to submit the fee by that date would be included as a condition under which the State Superintendent could issue an order prohibiting a school from participating in the program in the current school year. Require DPI to set the fee at an amount no greater than the amount necessary to pay the costs of employing one full-time auditor to evaluate the financial information submitted by choice schools.

Create a continuing appropriation for all monies received from the fees, to be used by DPI to evaluate the financial information submitted to the Department by choice schools. Require DPI to promulgate emergency rules, without the finding of an emergency, by the first day of the third month after the effective date of the bill to establish the fee to be paid by choice schools. Specify that these rules would remain in effect until the effective date of the permanent rule promulgated to establish the fee, but not in excess of the period for which emergency rules can remain in effect (150 days, with up to 120 days of extensions). For the 2009-10 school year, require choice schools to pay the required fee within 30 days of the effective date of the emergency rules.

DISCUSSION POINTS

Additional Position Authority

1. Much of the current law financial accountability structure for the choice program was enacted in 2003 Act 155. Prior to that act, choice schools were subject to uniform accounting standards established by DPI and were required to annually submit an independent financial audit of the school to DPI. Choice schools also had to comply with state health and safety laws, federal nondiscrimination law and other federal regulations for both public and private schools, and state law requiring that they meet one of four standards related to academic progress, attendance, or pupil participation. Subsequent to Act 155, additional requirements were placed on choice schools in 2005 Act 125 related to accreditation and testing.

2. With the increase in program responsibilities and the number of students and schools participating in the program, DPI reallocated staff within the agency for administration of the choice program. Prior to the passage of Act 155, there were 2.0 positions in the Department administering the choice program: a school administration consultant and a financial specialist. In 2004, a position was reallocated within the Department (including a reduction in the financial specialist position) to provide a school finance auditor position related to the financial accountability requirements under Act 155. Through further internal reallocations, the Department provided

additional school administration consultant and financial specialist staffing. Choice program staffing has remained unchanged since 2005-06. The following table shows choice program staffing in DPI since 2002-03. Also shown in the table is the number of schools that participated in the program and the full-time equivalent choice pupil membership for each year.

Choice Program Staffing and Participation

	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
School Administration Consultant	1.0	1.0	1.0	1.5	1.5	1.5	1.5
School Finance Auditor	0.0	1.0	1.0	1.0	1.0	1.0	1.0
Financial Specialist	1.0	0.5	0.8	1.0	1.0	1.0	1.0
Total	2.0	2.5	2.8	3.5	3.5	3.5	3.5
Choice Schools	102	106	117	125	124	122	127
Choice Students	11,304	12,882	14,071	14,604	17,088	18,558	19,500

3. It is estimated that 20,500 pupils will attend schools in the choice program in 2009-10 and in 2010-11. With the cap on pupil enrollment in the program set at 22,500 pupils, the program could have limited additional growth in the next biennium.

4. Since the Act 155 changes, DPI has reviewed the working papers of three schools due to fraud, reviewed the financial operations of five schools due to concerns over their financial viability, and terminated one school's participation in the program due to lack of sound fiscal practices and evidence of fiscal viability. Concerns have also been noted for some schools as they have gone through multiple audits and addressed audit exceptions that have been made.

5. The Department requested the additional position because of workload concerns in having one auditor position to review the audits and budget reports required for choice schools. The auditor position in the bill would provide additional staff to work with choice schools and CPA firms on financial issues and financial training, review payments to schools and resolve issues related to underpayments or overpayments in a timely manner, and track payment eligibility for all choice students. The auditor would also review the working papers of CPA firms providing audit services to choice schools and help standardize choice audit practices, as well as assist the administrators and business managers of new schools in the business aspects of running a school.

6. Providing additional auditing staff would also result in financial information being audited sooner, which could reduce the number of schools that close mid-year. This could occur if the Department can address financial problems before they become serious, which would in turn reduce disruption for students.

7. Also, the bill would impose two new requirements regarding the independent financial audits required for choice schools. Under the bill, the CPA conducting an audit would be required to include in the audit a report on a school's compliance with the AB 75 requirements that

choice schools: (a) maintain progress records for each choice pupil while the pupil attends the school and for at least five years after the pupil ceases to attend the school; and (b) issue high school diplomas to choice pupils who complete the necessary requirements.

8. The Committee could choose to provide no additional funding or staffing related to the choice program at this time (Alternatives A3, B4, and C3). To increase staffing for choice program oversight, the Department would have the option to reallocate base funding and positions for that purpose. However, given the various across-the-board reductions to state operations appropriations in recent years, agencies' flexibility in their base budgets has diminished in recent biennia. AB 75 would make additional reductions to DPI's agency operations appropriations and include DPI in general lapse provisions for the 2009-11 biennium.

Source of Funding

9. The bill would allow DPI to set the fee for choice schools by emergency rule, with the condition that the Department set the fee at an amount no greater than the amount necessary to pay the costs of employing one full-time auditor. The Legislature would maintain oversight of the fee amount during the rule-making process.

10. As drafted, the bill includes a nonstatutory provision allowing DPI to promulgate an emergency rule to set the fee, which would remain in effect until the Department promulgates a permanent rule. The bill does not, however, establish an ongoing statutory requirement that DPI set the fee by rule. Also, the bill requires DPI to set the fee at an amount to pay the costs of an auditor, rather than to set the fee so that the total amount of fees collected from all schools covers that cost. If the Committee chooses to adopt the Governor's recommendation, the language in the bill could be clarified accordingly (Alternative B1).

11. The Committee could choose to give the Department additional flexibility by deleting the restriction in the bill that DPI set the fee at an amount no greater than the amount necessary to pay the costs of employing one auditor (Alternative B2). This would allow DPI to modify the fee in the future based on the number of schools intending to participate in the program and the workload associated with evaluating the financial information of choice schools. If the Department were to seek additional position authority from the fee in the future, the request would need to be approved by the Governor and the Committee under s. 16.505 of the statutes, or in the budget process.

12. One could argue that it would be preferable to set the fee amount in statute. This would give greater authority in setting the fee to the Legislature and the Governor through the legislative process. As part of the biennial budget process or through separate legislation, the fee could be modified as needed based on revenues to and expenditures from the new appropriation and on future DPI workload needs. The Department would still have the ability to request modifications to the fee amount and any related position and expenditure authority in its biennial agency budget request.

13. For the 2008-09 school year, 154 schools indicated their intent to participate in the choice program. Of those schools, 120 participated in the prior school year, while 34 new schools indicated their intent to participate. Of those new schools, 13 ultimately enrolled pupils for the third Friday of September count for the 2008-09 school year. To generate the revenue needed to pay the cost of the auditor position in 2010-11, based on the number of schools that ultimately enrolled pupils in the program in 2008-09, the Committee could set the fee in statute at $700 (Alternative B3).

14. Under the Governor's recommendation, choice schools would begin to pay some of the cost of administering the program. There is currently no comparable fee assessed on public schools or on schools in the Milwaukee and Racine charter school program for audit and financial work done by the Department.

15. In the DPI agency budget request, the State Superintendent requested that funding and position authority be provided from the general fund for an additional choice auditor. The Committee could chose to provide GPR for the auditor position and funding rather than from program revenue (Alternative A2, B4, and C3). This would provide the Department with additional staffing to address workload and continue to treat choice schools in the same manner as public schools and independent charter schools with respect to the source of funding for administration.

Timing of Fee Payment for New Schools

16. Under the bill, a school wishing to participate in the choice program would be required to submit the fee with its notice of intent to participate by the February 1 prior to participation in the program. This would apply to both schools continuing in the program from the prior year as well as schools indicating their intent to participate for the first time. As noted, not all new schools indicating their intent to participate in February ultimately enroll pupils in the program in the following school year.

17. It could be viewed as appropriate to require new schools to submit the fee with their intent to participate because these schools would likely need assistance with the financial accountability standards under the program and in setting up the financial structure for a new school. Requiring the fee at the initial entry point to the program could also be viewed as an indication of the seriousness of the new school in its intent to begin operations and serve children in the upcoming school year.

18. Given that a majority of new schools that indicate their intent to participate ultimately do not do so, it could be argued that it is inappropriate to require these schools to pay the fee with their intent to participate. Requiring payment of the fee at the initial stage of participation could also prove to be a barrier to participation by new choice schools.

19. The Committee could choose to delay the date by which new schools would be required to submit the fee. One option (Alternative C2) would be to require schools to submit the fee with the copy of the school's certificate of occupancy and evidence of financial viability (by

August 1 of the first school year a new school participates in the program, or by May 1 if the school begins participating for summer school). This would make it more likely that the schools paying the fee would stay in the program and be subject to all the associated financial requirements.

ALTERNATIVES

A. Source of Funding for Auditor Position

1. Approve the Governor's recommendation to provide $71,300 PR in 2009-10 and $92,900 PR in 2010-11 and 1.0 PR auditor position beginning in 2009-10 in a new appropriation funded from an annual fee.

2. Delete provision and, instead, provide $71,300 GPR in 2009-10 and $92,900 GPR in 2010-11 and 1.0 GPR auditor position beginning in 2009-10.

ALT A2	**Change to Bill** Funding	Positions
GPR	$164,200	1.00
PR	- 164,200	- 1.00
Total	$0	0.00

3. Delete provision.

ALT A3	**Change to Bill** Funding	Positions
PR	- $164,200	- 1.00

B. Amount of Fees

1. Approve the Governor's recommendation as clarified to create a statutory requirement for DPI to set the fee in rule and to require DPI to set the fee at an amount such that fee revenue in total covers the costs of one full-time auditor.

2. Modify the Governor's recommendation by statutorily requiring DPI to set the fee in rule and deleting the language requiring DPI to set the fee at an amount no greater than that necessary to cover the costs of one full-time auditor.

3. Modify the Governor's recommendation by deleting the language allowing DPI to set the fee in rule and, instead, set the fee in statute at $700.

4. Delete provision.

C. Timing of Fees

1. Approve the Governor's recommendation to require new and continuing schools to pay the fee to DPI with its notice of intent to participate (by February 1 of the school year before a school participates in the program).

2. Modify the Governor's recommendation to allow new schools to submit the fee with the certificate of occupancy and evidence of financial viability (by August 1 of the first school year a new school participates in the program, or by May 1 if the school begins participating for summer school).

3. Delete provision.

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