



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

May 29, 2013

Joint Committee on Finance

Paper #520

Charter School Oversight Board (DPI -- Choice, Charter, and Open Enrollment)

[LFB 2013-15 Budget Summary: Page 381, #9]

CURRENT LAW

Under current law, the Common Council of the City of Milwaukee, the Chancellor of the University of Wisconsin-Milwaukee, and the Milwaukee Area Technical College are authorized to operate or contract to operate independent "2r" charter schools located within Milwaukee Public Schools (often called "2r" charter schools, after their statutory citation, section 118.40(2r) of the statutes). There is no limit on the number of charter schools that may be established by these entities, nor on the number of pupils that may be enrolled. In 2012-13, 20 charter schools (11 from UW-M and nine from the City) are operating in Milwaukee, with an enrollment of 6,989 full-time equivalent (FTE) students. In general only pupils who reside in MPS are eligible to attend these charter schools.

In addition, the Chancellor of the University of Wisconsin-Parkside is authorized to establish one charter school operating grades kindergarten through eight and enrolling a maximum of 480 pupils, located within the Racine Unified School District (RUSD). Only pupils who reside within RUSD may attend the school. In 2012-13, 469 FTE pupils are attending the school.

The Department of Public Instruction (DPI) is required to pay the operators of Milwaukee and Racine charter schools a statutorily-determined amount per pupil each year. In 2012-13, the per pupil payment amount is \$7,775. These payments are made from a separate GPR sum sufficient appropriation. By law DPI is required to proportionally reduce the general school aids for which each school district is eligible by an amount totaling the estimated payments under the charter school program. Based on the October 15, 2012, general school aids estimate prepared by DPI, using estimated charter school enrollment figures, the charter school

program aid reduction will total \$59.84 million in 2012-13. Each district's general school aids will be reduced proportionally by 1.39% to generate the \$59.84 million.

Pupils attending schools participating in the Milwaukee and Racine charter school program are not counted by any school district for purposes of revenue limits and equalization aid, and costs associated with the program are excluded from cost sharing under equalization aid. However, school district revenue limits are not affected by the charter school program reduction in general school aid, so that a school district may levy property taxes to offset the amount of revenue lost due to the reduction.

Appropriated base level funding for the program is \$62,172,500 GPR.

GOVERNOR

Create a charter school oversight board (CSOB), attached to DPI for administrative purposes, and consisting of the State Superintendent or his designee, and 10 other members. The administration estimates that 500 pupils in 2014-15 would be enrolled statewide in independent "2r" charter schools authorized under this provision. Total payments to charter schools for these pupils would equal \$3,965,500 at the per pupil amount of \$7,931 proposed under the bill for 2014-15.

Provide that the chairperson of the board would be designated by the Governor. In addition to the State Superintendent, the other 10 members of the board would be appointed for staggered, three-year terms and would consist of the following: (a) two members appointed by the Governor, at least one of whom has served on the governing board of an independent "2r", has been employed by such a charter school, or has served on the governing body of an entity authorized to contract to establish an independent charter school; (b) two members, who are not legislators, appointed by the Senate majority leader; (c) one member who is not a legislator appointed by the Senate minority leader; (d) two members who are not legislators appointed by the Speaker of the Assembly; (e) one member who is not a legislator appointed by the Assembly minority leader; (f) two members appointed by the State Superintendent who have served on the governing board of an independent "2r" charter school, have been employed by an independent "2r" charter school, or have served on the governing body of an entity authorized to contract to establish such a charter school. Specify differing terms for initial appointments to the board.

Require that the authorities responsible for appointing members of the board ensure, to the extent feasible, that members are geographically diverse and have experience and expertise in governing public and nonprofit organizations; in management and finance; in public school leadership, assessment, curriculum and instruction; in education law; and understand and are committed to the use of charter schools to strengthen public education. Provide that no member of the board could serve more than two consecutive terms. Prohibit the board from promulgating rules and specify that, for the purposes of administrative rule making, a standard or statement of policy adopted by the charter school oversight board is not considered an administrative rule.

Provide that any nonprofit, nonsectarian organization or consortium of such organizations

approved by the CSOB could become an independent charter school authorizer.

Provide that an organization or consortium approved by the CSOB to contract to establish an independent charter school would annually have to submit a report to the board with certain specified information.

Provide that any independent "2r" charter school authorizer may contract for the operation of a charter school located anywhere in this state. Delete current law provisions that restrict the location of independent charter schools to Milwaukee or Racine, and that require approval of the Board of Regents for charter schools to be established by UW-Milwaukee and UW-Parkside. Delete the current law restriction that the Chancellor of UW-Parkside may establish only one charter school and that it may enroll no more than 480 pupils. Delete the current law restriction requiring that a pupil must reside in the school district in which the charter school is located in order to attend the charter school. Also delete current law exceptions to the residency rule, applicable only to certain pupils attending Woodlands School.

Provide that a school board could prohibit a resident pupil from attending an independent "2r" charter school, unless the district's membership is at least 4,000 pupils and at least two public schools in the district were rated either "meets few expectations" or "fails to meet expectations" in the most recent school accountability report published by DPI. Provide that a pupil who wishes to attend an independent charter school, and who resides in a school district in which the school board could prohibit pupils from attending an independent "2r" charter school, would have to submit an application to the school board. Within 30 days of receiving such an application, require the school board to issue a decision allowing or prohibiting the pupil from attending the charter school. This provision would first apply on the effective date of the bill.

Specify that independent "2r" charter schools are local educational agencies (LEAs) for the purposes of the federal Elementary and Secondary Education Act and, as such, they are eligible for funding as LEAs and must comply with all requirements of LEAs under federal law.

Provide that a contract with a school board or an independent "2r" charter school authorizing entity may provide for the establishment of more than one charter school, and a charter school governing board may enter into more than one contract with a school board or independent charter school authorizing entity.

Specify that, for the purposes of the full-time open enrollment program, the definition of a charter school excludes independent "2r" charter schools.

DISCUSSION POINTS

1. The charter school oversight board (CSOB) would be an authorizer of authorizers, and any nonprofit, nonsectarian organization could apply to the board to become an independent charter school authorizer.

2. Under the bill, no staff or funding for the CSOB is provided. Under the statutes, any

division, office, council, or board attached for administrative purposes only to an independent department is a distinct unit, exercising its powers independently of the head of the department, and only management and budgeting functions are performed under the direction of the department head. Therefore, DPI would not provide support or staffing to the charter school oversight board. It would be the members of the board, who would not receive salaries, travel reimbursements, or other compensation, that would need to review, analyze, and approve or disapprove applications from organizations that wish to become "2r" charter school authorizers. Further, the CSOB would be required under the bill to approve or deny an application within 90 days of receiving it. It is unclear whether, without the benefit of dedicated staff or even office space, the CSOB would be able to meet such a deadline, to provide an adequate level of oversight to ensure that only high quality authorizers would be approved, or to ensure that unsuccessful charter schools would be improved or closed.

3. On the other hand, serving on the board could be considered a volunteer position, with each member having the qualifications and expertise necessary to review and analyze potential authorizers' applications. The board could function without office space or staff, since members of the board could consult electronically or by telephone, and schedule quarterly meetings at which to vote to approve or deny the applications received. Once an authorizer is approved, essential oversight of charter school governing boards under contract with the authorizer would be provided by the non-profit organization's board of directors.

4. An alternative would be to adopt provisions similar to those proposed under 2011 Senate Bill 22, which would have established a charter school authorizing board. Under Senate Substitute Amendment 1 to SB 22, the board would have been provided with five positions and two appropriations. Because it is unknown at this time how many independent charter school authorizers might be approved by the CSOB, it might be desirable to begin with only initial start-up funding, and permit the CSOB to request position authority if it can be justified by the number of applications and approved authorizers. Under SSA 1 to SB 22, one appropriation was provided to receive and expend all moneys received from oversight fees charged to authorize charter schools, and one appropriation was provided to receive and expend all moneys received from gifts and grants, for the purposes received. Under SSA 1 to SB 22, each authorized charter school governing board would have been required annually to pay to the charter school authorizing board a fee equal to 2% of the estimated annual operational costs of each charter school operating under the authorizing board's authority.

5. In order for the CSOB to operate in the 2013-15 biennium, before it has authorized charter schools or collected any oversight fees, it might be desirable to provide GPR funding on a one-time basis, to pay for initial travel costs and incidental expenses of the Board. For the 2015-17 biennium, the Board could submit an agency budget request to adjust the fee rate and funding levels according to the number of authorizers and charter schools operating under the board's authority.

6. Some have argued that it would be undesirable for CSOB members to be political appointees, with six members appointed by majority and minority leaders in the Assembly and Senate, two members appointed by the State Superintendent and two members appointed by the Governor. However, members of most state boards are appointed by the Governor, and many

include legislators. If it would be desirable to include other representatives, the Committee could consider including, on the CSOB or as an advisory council to the CSOB, appointees from the Wisconsin Charter Schools Association, the Wisconsin Association of School Boards, the President of the Wisconsin Technical College System or a designee, a representative of the schools of education within the University of Wisconsin System, and a representative of the Wisconsin Association of Independent Colleges and Universities.

7. Others argue that providing authority to an independent board to authorize a separate system of public charter schools might run contrary to the authority granted under the state Constitution to the State Superintendent of Public Instruction. The State Superintendent is an independent, elected officer vested with authority over the public schools in this state. In 1996, the Wisconsin Supreme Court in *Thompson v. Benson* ruled that the duties of the State Superintendent could not be reallocated or diminished by the appointment of an education commission and education secretary appointed by the Governor. It could be argued that the CSOB's authority would similarly run counter to State Superintendent's sole authority to oversee public instruction.

8. Critics argue that permitting a state-level board to open charter schools statewide could challenge control of public education by locally elected school boards. School boards have been permitted to authorize charter schools since 1993, and a total of 376 charter schools have been created through 2012-13, with 138 schools subsequently either closing for a variety of reasons, or converting to traditional public schools. There are 97 school districts that have authorized at least one charter school. In 2012-13, 238 charter schools are open, enrolling 43,500 pupils. It could be argued that, given the success of charter schools in this state, if a sufficient number of parents and teachers in a school district desire a charter school, then the local school board could be successfully petitioned to create such a school.

9. Opponents maintain that a state board that opens a charter school in an area without adequate local support ignores the democratic processes that have built and supported public education. If a school board is unresponsive to their community's concerns, arguably, the school board election process is the venue in which to remedy that concern. However, if some parents feel that their children's needs are not met in public school, then those parents have a number of options available to them under current law, including public school open enrollment, private school, virtual charter schools that are available to any state resident, or home schooling.

10. Charter school advocates assert, however, that some school boards are unwilling to authorize charter schools, despite parent support. While many school districts have authorized charter schools, the majority of districts have not. If a school board is unwilling to allow charter school proposals to move forward, advocates suggest that charter schools should have other options for authorizers, just as charter school organizers in Milwaukee are able to approach the MPS school board, the UW-Milwaukee office of charter schools, or the City of Milwaukee to find a willing authorizer.

11. On the other hand, it could be argued that the Milwaukee public school system faces a unique set of challenges, some of which are inherent to its setting in a large urban area with high rates of unemployment and poverty, and which warrant a unique approach to public education in that city. Milwaukee's specific circumstances are not present to the same degree elsewhere in the

state, even in the state's larger school districts that have been mentioned as possible sites for new "2r" charter schools. Therefore, it might not be appropriate to apply the same strategies of education reform originally designed to address the problems of a district with a large number of underperforming schools.

12. However, some have argued that the primary benefit of an expansion of the "2r" charter school program lies in offering parents additional public educational options for their children. If this is the rationale for the policy, then all families, in all school districts, could potentially benefit from the availability of additional charter schools. In that case, the Committee could modify the proposal to delete the requirement that, unless a district would have 4,000 members and two low-rated schools on the school accountability report, the school board could deny a student permission to attend a "2r" charter school. Such an alternative would allow a "2r" charter school to be located in, and enroll pupils from, any school district in the state.

13. The Committee could consider using a different approach to expanding the number of independent "2r" charter schools operating in the state. For example, one option would be to authorize any CESA to contract for the operation of one or more "2r" charter schools. CESAs are independent agencies, cover every geographic region of the state, contract to provide school districts with innovative educational services, and are currently authorized to contract for the operation of charter schools in cooperation with school boards. Providing CESAs with independent authority to authorize "2r" charter schools would appear to be consistent with the regional role of these agencies within the state's public education system.

14. However, regardless of the method of expansion, an increase in the number of pupils attending the "2r" independent charter school program could have significant property tax implications statewide. In 2012-13, the per pupil payment amount under the program is \$7,775, and would be increased by 1% annually under AB 40. These payments are made from a separate GPR sum sufficient appropriation. DOA has estimated that, if the "2r" program would be expanded via the statewide board, then enrollment in the program would increase by 500 pupils in 2014-15. However, the actual figure could be higher or lower, depending on the number of charter schools that would open or convert from school district-sponsored to CSOB-sponsored, the timing of those openings or conversions, and the decisions of individual families to enroll children in those schools.

15. If 500 pupils would enroll at the per pupil amount of \$7,931 proposed under the bill for 2014-15, then the aid reduction attributable to the program would increase by \$3,965,500. No cap on enrollment or limit on the number of schools that could be opened statewide would apply under the bill (although, under certain circumstances, a school board could prohibit a resident pupil from attending an independent charter school). Therefore, it is likely that these figures would increase over time.

16. By law DPI is required to proportionally reduce the general school aids for which each school district is eligible by an amount totaling the estimated payments under the charter school program. Based on the October 15, 2012, general school aids estimate prepared by DPI, using estimated charter school enrollment figures, the charter school program aid reduction will total \$59.84 million in 2012-13. Each district's general school aids will be reduced proportionally by 1.39% to generate the \$59.84 million. This funding is returned to the general fund, so there is no net

state fiscal effect. However, school district revenue limits are not affected by the charter school program reduction in general school aid, so that a school district may levy property taxes to offset the amount of revenue lost due to the reduction. Therefore, an increase in school district property taxes, attributable to the "2r" charter school expansion, could occur.

17. For the resident districts of pupils that would choose to enroll in a new "2r" charter school, those pupils would no longer be counted for the purposes of general aid and revenue limits. Therefore, total resources available to the resident district would decrease if these pupils would otherwise have attended that district.

ALTERNATIVES

A. Membership of the Board

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation for the membership of the charter school oversight board to add any or all of the following members:
 - a. a member appointed by the director of the Wisconsin Charter Schools Association;
 - b. two members appointed by the director of the Wisconsin Association of School Boards;
 - c. the President of the Wisconsin Technical College System or designee;
 - d. a representative of the schools of education within the University of Wisconsin System; or
 - e. a representative of the Wisconsin Association of Independent Colleges and Universities.
3. Delete provision.

B. Board Staffing

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation to permit the Charter School Oversight Board to charge an oversight fee to any organization approved to authorize "2r" charter schools, equal to the charter schools' payment from the state multiplied by 0.02. Create the following appropriations: (a) a continuing program revenue appropriation to receive and expend revenues from oversight fees; (b) a program revenue appropriation to receive and expend gifts and grants for the purposes for which they are received; and (c) a biennial general program operations GPR appropriation. Provide \$50,000 GPR in 2013-14 to fund start-up costs for the Board's operations.

ALT B2	Change to Bill Funding
GPR	\$50,000

C. Expansion of the Charter School Program

1. Approve the Governor's recommendation to provide that a school board could prohibit a resident pupil from enrolling in a "2r" charter school, unless the school district membership is at least 4,000 pupils and at least two district schools were rated "meets few expectations" or "fails to meet expectations" in the most recent school accountability report.

2. Modify the Governor's recommendation to allow pupils from any school district to attend a "2r" charter school, regardless of the district's membership or the rating of district schools on the school accountability report. This alternative would allow any pupil to attend a "2r" charter school anywhere in the state.

3. Modify the Governor's recommendation to delete the Charter School Oversight Board and, instead, provide that any of the state's 12 Cooperative Educational Service Agencies would be permitted to authorize independent "2r" charter schools. Allow pupils from any school district to attend a "2r" charter school, regardless of the district's membership or the rating of district schools on the school accountability report.

4. Delete provision. This alternative would restore current law restrictions that limit the "2r" charter school program to Milwaukee and Racine and, in general, require pupils to reside in those school districts in order to be eligible to enroll in a "2r" charter school. Reestimate the independent charter school program to delete 500 pupils in 2014-15, attributable to this provision. Total payments to charter schools would decrease by an estimated \$3,965,500 at the per pupil amount of \$7,931 proposed under the bill for 2014-15.

ALT C4	Change to Bill Funding
GPR	- \$3,965,500
Aid Reduction	<u>- 3,965,500</u>
Net GPR	\$0

Prepared by: Layla Merrifield