



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #522

### **Contract Requirements for School District Sponsored Charter Schools (DPI -- Choice, Charter, and Open Enrollment)**

[LFB 2013-15 Budget Summary: Page 386, #14]

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#### **CURRENT LAW**

Under current law, contracts between school boards and operators of district-sponsored charter schools must include all of the following: (a) the name of the person seeking to establish the charter school; (b) the name of the person who will be in charge of the charter school and the manner in which administrative services will be provided; (c) a description of the educational program of the school; (d) the methods the school will use to enable pupils to attain the general educational goals of public schools in this state, including academic skills and knowledge, vocational skills, citizenship, and personal development; (e) the method by which pupil progress in attaining educational goals; (f) the governance structure of the school, including a method to ensure parental involvement; (g) the qualifications that must be met by individuals employed by the school; (h) the procedures that the school will follow to ensure the health and safety of the pupils; (i) the means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the school district population; (j) the requirements for admission to the school; (k) the manner in which annual audits of the financial and programmatic operations of the school will be performed; (L) the procedures for disciplining pupils; (m) the public school alternatives for pupils who reside in the school district and do not wish to attend or are not admitted to the charter school; (n) a description of the school facilities and the types and limits of the liability insurance that the school will carry; and (o) the effect of the establishment of the charter school on the liability of the school district.

#### **GOVERNOR**

Provide that, for contracts between school boards and operators of their charter schools, the contract would have to: (a) specify the amount the school board will pay to the operator for

each resident pupil attending the charter school, and provide an amount that is commensurate with the average per pupil cost of the school district; (b) grant the operator sole discretion over the charter school's budget, curriculum, and professional development, and over the hiring of personnel and personnel policies for the charter school, except where a decision in any of these areas affects the health or safety of pupils or staff, as determined by the school board; and (c) not impose on the operator any requirement in Chapters 115 to 121 of the statutes that does not otherwise explicitly apply to charter schools. Provide that these provisions would first apply to contracts entered into, modified, extended, or renewed on the effective date of the bill.

## **DISCUSSION POINTS**

1. The administration has requested that, with regard to the amount that a school board would have to pay its charter school, the word "commensurate" be changed to "comparable," so that the charter payment amount would be comparable to the average per pupil cost for the school district. It is not clear how this provision would be interpreted. The average per pupil cost for a school district in a given year is a defined amount, derived through a simple mathematical calculation. Therefore, it might be desirable to specify that a contract between a board and their charter school operator would specify an amount equal to the average per pupil cost of the district, rather than "comparable," which is more ambiguous and could therefore lead to disagreements between school boards and operators who interpret the provision differently.

2. AB 40 does not specify any costs that should be excluded from the average per pupil cost calculation. Therefore, it could be broadly construed to include all costs incurred by the district, such as debt service, community services, or other costs that are not necessarily part of a charter school's operations or costs. Administration such as payroll and benefits management and food service costs, for example, are not necessarily related to a charter school's core mission, and might be more economically managed by central administrative staff. Alternatively, if a charter school focusing on sustainable environmental practices, for example, would prefer to operate its own food service, that cost could be included as part of the contract negotiations under current law. If a school board is forced to pay a charter school operator a certain amount per pupil that is not necessarily related to the costs inherent to operating that charter school, it is possible that a school board might find it either too costly, or wasteful of taxpayer dollars, to authorize a charter school. On the other hand, if a board were unable to negotiate the per pupil funding level with the school, a board could choose to increase chargeback fees to the school to provide central services, which might otherwise not be necessary.

3. In the past, charter school operators and school boards have negotiated the per pupil funding amount, and mutually agreed that on the level of funding that would be provided. Opponents have argued that a contract payment that must be comparable to the district's average cost per pupil could have a dampening effect on charter sponsoring activity by school boards, because it provides less flexibility for local officials to determine how to fund charter schools. For example, some charter schools might have unusually high per pupil costs, due to initial capital improvements, a technology focus that requires expensive equipment, or for charter high schools, which might be more costly on average than elementary schools. On the other hand, some charter schools may be less expensive to operate. School districts, for example, are obligated, with certain

limited exceptions, to provide pupil transportation for public and private school students who reside more than two miles from school, whereas a charter school would not incur those costs.

4. On the other hand, proponents have argued that it is difficult for charter school operators to negotiate from a position of strength, if the school board is the only authorizer available to the school, and the board sets budgeting priorities for the district as a whole. In addition, revenue limit authority was decreased in the 2011-13 biennium, and no per pupil adjustment would be provided to school districts in the 2013-15 biennium under the bill as proposed. In such an environment of constrained resources, a charter school operator might find it difficult to negotiate for adequate revenue.

5. The Department of Public Instruction (DPI) compiles audited school district cost data each year. Data for 2011-12 was available from DPI in April, 2013. Total statewide cost per pupil in 2011-12 was \$12,375, including \$499 per pupil for transportation, \$788 for facility costs, and \$573 for food and community service costs. After deducting transportation, facility and food and community service costs, the remaining statewide average cost per pupil totaled \$10,515 in 2011-12. One alternative the Committee could consider would be to require the contract between the school district and the charter school operator include a payment at least equal to the prior year school district cost per pupil. A second option would be to specify that a charter contract would have to provide for the payment to the operator of at least the prior year school district cost per pupil, excluding transportation, facility, and food and community service costs.

6. Best practices suggested by the National Association of Charter School Authorizers recommend a high degree of autonomy be provided to charter schools, in order to allow them flexibility to experiment to find success in educating pupils. However, it is unclear whether that flexibility needs to extend to personnel policies of the district. If a charter school is an instrumentality of the school board, then personnel are paid by the district, the district provides human resources services to the school, and school staff participate in the Wisconsin Retirement System. It could be argued that instrumentality charter school personnel should likewise be required to follow district personnel policies. If a charter school is a non-instrumentality of the school board, then the school pays the personnel, constructs its own employee fringe benefit plan, and establishes its own personnel policies. Therefore, a charter school organizer can choose to seek non-instrumentality status if a greater degree of autonomy is desirable.

7. Similarly, it is unclear that a charter school should be exempt from statutory requirements that otherwise apply to public schools, regardless of the views of its school district. AB 40 would specify that a contract could not impose any requirements specified in Chapters 115 to 121 of the statutes, which govern K-12 public schools. The charter school law states that charter schools are exempted from those chapters, unless the statute explicitly states that charter schools are included. Typically, a charter school operator would negotiate with the school board whether the school would be subject to any additional K-12 education statutory provisions. If it would not interfere with the school's mission, it might be helpful in crafting contract language and clearly specifying expectations for the school, if the parties could cite the statutes. This provision could reduce the flexibility of charter school contracting practices, by excluding broad matters as subjects of negotiation.

## **ALTERNATIVES**

### **A. Required Payment**

1. Approve the Governor's recommendation, with the requested modification that a school board would provide an amount that is comparable (rather than commensurate) with the average per pupil cost of the school district.

2. Modify the Governor's recommendation to provide that a charter school contract specify an amount that is at least equal to the prior year per pupil cost of the school district.

3. Modify the Governor's recommendation to provide that a charter school contract specify an amount that is at least equal to the prior year per pupil cost of the school district, excluding costs related to transportation, facility costs, and food service and community services.

4. Delete provision.

### **B. Personnel Policies**

1. Adopt the Governor's recommendation.

2. Delete the proposed requirement that, for instrumentality charter schools, the contract grant the charter school operator sole discretion over personnel policies.

3. Delete provision.

### **C. Contract Cannot Include Chapter 115 to 121 Requirements**

1. Adopt the Governor's recommendation.

2. Delete the proposed requirement that a contract could not impose on the charter school any requirements specified in Chapters 115 to 121 of the statutes that are not explicitly applied to charter schools. Under this alternative, the school board and charter school operator could continue to negotiate such requirements.

3. Delete provision.

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