



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 19, 2015

Joint Committee on Finance

Paper #521

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

[LFB 2015-17 Budget Summary: Page 355, #21]

CURRENT LAW

Charter schools are currently established through one of two mechanisms. Under the first method, schools are chartered by school districts and negotiate the level of funding with the district, which must be specified in the charter school contract for each school year covered by the contract. The pupils enrolled in a district-authorized charter are included in the district's enrollment for purposes of both revenue limits and equalization aid and the contract costs are aidable under the equalization formula.

Under the second method, schools participating in the independent "2r" charter school program receive direct state funding. (The "2r" designation is a reference to the main statutory citation governing these schools, s. 118.40(2r) of the statutes). Under this program, the City of Milwaukee, the University of Wisconsin-Milwaukee, and the University of Wisconsin-Parkside are authorized to operate or contract to operate charter schools. UW-Milwaukee can establish or contract to establish a school located anywhere in Milwaukee County or an adjacent county, while the City can charter schools located within the Milwaukee Public Schools (MPS). UW-Parkside is authorized to establish one charter school operating grades kindergarten through eight and enrolling a maximum of 480 pupils, which is located in the Racine Unified School District (RUSD). The Milwaukee Area Technical College (MATC) also has the authority to establish schools located in MPS, but has not done so.

A pupil who resides in Milwaukee County or an adjacent county can attend any "2r" charter. Pupils attending schools participating in the "2r" charter program are not counted by any school district for purposes of revenue limits and equalization aid.

The Department of Public Instruction (DPI) pays the operators of "2r" charter schools a statutorily-determined amount per pupil each year (\$8,075 in 2014-15). These payments are funded from a sum sufficient appropriation from the general fund. The cost of the payments from that appropriation is offset by a lapse from the general school aids appropriation to the general fund in an amount equal to the estimated payments under the "2r" program. By law, DPI is required to proportionally reduce the general aid for which each district is eligible by an amount totaling the estimated payments under the program. Under the October 15, 2014, general school aids distribution, in 2014-15, general aid statewide will be reduced by a total of \$68.6 million for the "2r" program. Each district's general aid eligibility will be reduced proportionally by 1.5% to generate the total statewide amount of \$68.6 million. Under revenue limits, districts may levy property taxes to offset the amount of revenue lost due to the "2r" aid reduction.

GOVERNOR

Create a Charter School Oversight Board (CSOB) that would have the authority to approve independent "2r" charter school authorizers that could establish such schools statewide. The administration estimates that an additional 500 pupils would be enrolled in "2r" charter schools authorized through the Board in 2016-17. At the proposed "2r" payment of \$8,075 per pupil under the bill in that year, total payments for these pupils would equal \$4,037,500. The associated general aid reduction for school districts would increase by an equal amount that year.

Provide that the Board would be attached to DPI for administrative purposes. Specify that the Board would consist of the State Superintendent, or his or her designee, and 10 other members that 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 charter school, has been employed by an independent 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 charter school, have been employed by an independent charter school, or have served on the governing body of an entity authorized to contract to establish an independent charter school. Specify differing terms for initial appointments to the Board.

Provide that the chairperson of the Board would be designated by the Governor. Require that the authorities responsible for appointing the 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, and curriculum and instruction; and 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 Board would not be considered an administrative rule.

Provide that any nonprofit, nonsectarian organization or consortium of such organizations approved by the Charter School Oversight Board could become an independent charter school authorizer. Require that such an organization, or consortium of such organizations, in order to become a charter authorizer, submit an application to the Board that includes the following information: (a) a strategic plan for contracting with charter school governing boards that submit high-quality proposals for charter schools that meet identified educational needs and promote a diversity of educational choices; (b) a performance framework for use in supervising and evaluating charter schools that addresses pupil academic proficiency, growth in pupil academic achievement, gaps in achievement between groups of pupils, pupil attendance, the readiness of pupils for postsecondary education, the financial proficiency and sustainability of charter schools, and charter school management; (c) an assurance that the organization or consortium will ensure accountability and transparency on the part of those charter school governing boards with which it contracts; (d) a plan, including corrective action strategies, designed to improve a charter school under contract with the organization or consortium, or to close such a charter school, based on contractual performance standards; (e) a description of the types of charter schools the organization or consortium is seeking to establish, and their potential attendance areas; (f) information on the organization's or consortium's finances and other resources necessary for the Board to determine the applicant's ability to perform its functions as an authorizer; (g) a plan for entering into additional contracts in order to replicate successful charter schools; and (h) any other information requested by the Board. Require the Board to approve or deny an application within 90 days of receiving it.

Provide that an organization or consortium approved by the Charter School Oversight Board to contract to establish an independent charter school would have to annually submit a report to the Board that includes the following information: (a) an identification of each charter school operating under contract with the authorizer, each charter school that operated under contract with the authorizer but had its contract nonrenewed or revoked or that closed, and each charter school under contract with the authorizer that has not yet begun to operate; (b) the academic and financial performance of each charter school operated under contract with it; (c) the operating costs that the authorizing entity incurred under the statutory requirements for authorizers, detailed in an audited financial statement prepared in accordance with generally accepted accounting principles; and (d) the services that the authorizing entity has provided to the charter schools under contract with it and an itemized accounting of the costs of the services.

Provide that a school board could prohibit a pupil who resides in the school district from attending an independent charter school, unless the district membership is at least 4,000 pupils and at least two public schools in the district were assigned one of the bottom two grade levels 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 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.

Delete current law provisions that restrict the location of independent charter schools

based on the authorizer, 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 restrictions that the Chancellor of UW-Parkside may establish only one charter school, and that the school may enroll a maximum of 480 pupils. Provide that any independent charter school authorizer may contract for the operation of a charter school located anywhere in the state. Delete the current law residency restrictions that generally require a pupil to reside in Milwaukee County or an adjacent county in order to attend an independent charter school.

Specify that independent charter schools would be local educational agencies (LEA) for the purposes of the federal Elementary and Secondary Education Act (ESEA, also known as No Child Left Behind) and, as such, they would be eligible for funding as LEAs and must comply with all requirements of LEAs under the ESEA.

Provide that a contract with a school board or an independent 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 open enrollment program, the definition of a charter school excludes independent charter schools.

DISCUSSION POINTS

1. The Legislature first authorized the creation of charter schools in the 1993-95 biennial budget act. That act allowed for up to 20 charter schools to be established statewide by school districts, with no more than two schools per district. These restrictions were deleted in the 1995-97 budget act, allowing an unlimited number of district-authorized charters to be established. Under the 1997-99 budget act, the independent "2r" charter program was created, with authority provided to the City, UW-Milwaukee, and MATC to establish charters located in MPS. UW-Parkside was allowed to establish a "2r" charter school under the 2001-03 budget act. Under the 2013-15 budget act, UW-Milwaukee was authorized to establish a "2r" charter in Milwaukee County or an adjacent county, and allowable attendance at a "2r" charter was expanded from pupils who resided in the district in which the school was located to any pupil who resides in Milwaukee County or an adjacent county.

2. From the inception of the charter school program through the 2013-14 school year, 401 charter schools have been created. A total of 158 schools subsequently closed due to funding issues, low enrollment, failure to meet academic goals, or other issues. In 2013-14, 243 charter schools were open with a total enrollment of 45,100 pupils. A total of 36,700 pupils were enrolled in 220 charter schools authorized by 100 school districts, while 8,400 pupils were enrolled in 23 independent "2r" charters. Of those "2r" charters, 12 were authorized by UW-Milwaukee, 10 were authorized by the City, and one was authorized by UW-Parkside. According to DPI, 21 charter schools either closed or converted to regular public school status at the end of 2013-14, while 22 new charter schools opened for the 2014-15 school year. Therefore, 244 charter schools were operating in the fall of 2014.

3. The Charter School Oversight Board under the bill would not directly authorize charter schools. Instead, it would be an "authorizer of authorizers," and any nonprofit, nonsectarian organization could apply to the Board to become an independent charter school authorizer. Rather than the Legislature designating which institutions can authorize charter schools, as has been done previously, it would be delegating that power to the Board. Under the bill, the City, UW-Milwaukee, UW-Parkside, and MATC would still be able to authorize charter schools, without any of the current law restrictions on the location of the schools or pupils and, for UW-Parkside, the number or size of the schools.

4. According to the Education Commission of the States, as of June of 2014, 33 of the 42 states with charter school laws had some form of statewide authorizing body. The role and structure of these bodies varies among the states. In some states, the state department of education or board of education authorizes charter schools, while in others an independent or quasi-independent board or agency serves as an authorizer. In some states, the statewide body approves charter schools directly, while in others it provides final approval for schools approved by other entities or hears appeals if an application is denied by another entity. Some states limit the role of the statewide body to the chartering of virtual schools.

5. Charter school supporters advocate for a statewide authorizing body because such bodies are viewed as being able to focus solely on charter school authorization and oversight and allow for more consistency in chartering practices on a statewide basis. The broader jurisdiction would also allow for a charter school operator to more easily establish schools throughout the state without having to deal with multiple authorizers with a smaller scope.

6. Charter school advocates also assert that some school boards are unwilling to authorize charter schools, despite parental support. While many 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 UW-Milwaukee or the City if the MPS Board is unwilling to authorize a school.

7. Critics argue that permitting a state-level board to authorize entities to open charter schools statewide would challenge control of public education by locally-elected school boards, and that having an outside entity open a charter school in a district without adequate local support ignores the democratic processes that have built and supported public education. It could be argued that, given the number of charter schools operating in this state, if sufficient community support exists in a district for a charter school, then the local school board could be successfully petitioned to create such a school. If a school board is unresponsive to their community's concerns with respect to the authorization of charter schools, the school board election process is arguably the venue in which to address that concern.

8. It could also be argued that the CSOB would be an unelected board with the ability to affect property taxes, as an increase in the number of pupils attending the "2r" charter program through the Board would have property tax implications statewide. Under the bill, it is estimated that the expansion of the "2r" program under the Board would increase enrollment in the program by 500 pupils in 2016-17. The actual figure could be higher or lower, however, depending on the

number of charter schools that are authorized through the Board and the decisions of individual families to enroll children in those schools. Because a school district may levy property taxes to offset the amount of revenue lost due to the "2r" aid reduction, an increase in school district property taxes attributable to the "2r" charter school expansion would occur. 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.

9. Under the bill, no staff or funding for the CSOB is provided. Under the statutes, a board attached for administrative purposes only to an independent department is a distinct unit, exercising its powers, duties, and functions independently of the head of the department, with only budgeting, program coordination, and related management functions performed under the direction of the department head. Therefore, DPI would not provide support or staffing to the Board. It would be the members of the Board, who would not receive 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 the CSOB, without the benefit of dedicated staff or office space, would be able to meet such a deadline or to provide an adequate level of oversight to ensure that only high quality authorizers would be approved.

10. 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 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 nonprofit organization's board of directors.

11. The bill could be modified to provide start-up funding for the Board and an appropriation structure for ongoing operations (Alternative 2). One option would be based on 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, that board would have been provided with five positions and two appropriations. Under SSA 1 to SB 22, one appropriation was provided to receive and expend all moneys received from oversight fees charged to authorized 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.

12. In order for the CSOB to operate in the 2015-17 biennium, before it has approved any authorizers, it might be desirable to provide GPR funding on a one-time basis, to pay for initial expenses of the Board. For the 2017-19 biennium, the Board could submit an agency budget request to adjust the fee rate, funding levels, and position authority under this option according to the

number of applications received by the Board and the number of authorizers and charter schools operating under the Board's authority.

13. Under the bill, a school board could prohibit a pupil who resides in the district from attending any "2r" charter school, unless the district membership is 4,000 pupils or greater and at least two public schools in the district were assigned one of the bottom two grade levels or performance categories in the most recent school accountability report published by DPI. A pupil who resides in a district in which the school board could prohibit pupils from attending a "2r" charter would be required to submit an application to the school board, which would have to issue a decision allowing or prohibiting the pupil from attending the charter school within 30 days of receiving such the application.

14. Based on membership data used in calculating general school aids in 2014-15 and accountability data for 2013-14, nine districts met both the enrollment and performance thresholds under the bill for not being able to prohibit pupils from attending a "2r" charter. A total of 33 districts in the state meet the enrollment threshold but not the performance threshold, while nine districts meet the performance threshold but not the enrollment threshold. These districts are identified in the attachment, which also shows the number of schools in each district rated in each of the performance categories. (Schools rated under the alternative accountability process are not included in the attachment.)

15. This provision would allow most districts in the state to limit enrollment losses if additional charter schools are authorized by the Board statewide. A similar approach was taken in the initial years of the open enrollment program, during which a district was able to limit the number of pupils transferring from the district to a percentage of the district's enrollment.

16. There are a number of modifications the Committee could make to this provision. One alternative would be to require a school board to adopt a resolution specifying the criteria it will use in accepting and rejecting the applications and to adopt a subsequent resolution if it wishes to modify those criteria (Alternative 3a). A similar requirement was put in place at the start of the open enrollment program. Specifying these criteria could provide greater consistency in school board decision-making and provide additional information to parents who wish to send their children to a "2r" charter.

17. The Committee could also choose to specify that the application requirement would apply only to schools authorized under the auspices of the CSOB (Alternative 3b). Under the 2013-15 budget act, pupil eligibility to attend "2r" charters was extended to pupils in Milwaukee County or an adjacent county. Under the bill, pupils in many districts in that area would be required to apply to their school boards to attend a "2r" charter. To the extent that the goal of the bill provision creating the CSOB is to expand the "2r" program, it is arguably inconsistent to restrict the current law eligibility of certain students to attend those schools.

18. One implication of exempting pupils in certain districts from needing to apply to their school board to attend a "2r" charter is that there are certain districts in the state where there might be a greater need for educational opportunities to improve student outcomes. Rather than addressing this with an application requirement, the Committee could choose to delete that

requirement and instead specify that a CSOB-approved authorizer could only establish schools in the districts in which the application requirement would not have applied (Alternative 3c). This would arguably focus the efforts of the Board on that particular class of districts and allow for a more manageable start-up process for the Board.

19. No school district has been able to prevent a pupil from enrolling in a "2r" charter during the history of the program, however. If a benefit of an expansion of the "2r" charter school program lies in offering parents additional educational options for their children, it could be viewed as inconsistent to limit those options based on the size of the district in which the child lives or the quality of schools the child may not attend. The Committee could thus modify the bill to delete the provision application requirement (Alternative 3d). This alternative would allow a "2r" charter to enroll pupils from any school district in the state.

ALTERNATIVES

1. Approve the Governor's recommendation to create a Charter School Oversight Board that would approve independent "2r" charter school authorizers that could establish such schools statewide and provide \$4,037,500 in 2016-17 for payments for an additional 500 pupils who would be enrolled in charter schools authorized through the Board. The related general aid reduction would increase by an equal amount, resulting in no net change in general fund expenditures.

2. Modify the Governor's recommendation to require the Board to charge a fee to an approved authorizer equal to the sum of the state payments to the charter schools established by the authorizer multiplied by 0.02, and to create the following appropriations: (a) a continuing program revenue appropriation to receive and expend revenues from the fees; (b) a continuing 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 2015-16 to fund start-up costs for the Board's operations.

ALT 2	Change to Bill
GPR	\$50,000

3. Modify the Governor's recommendation regarding the application requirement (under which pupils who live in certain school districts would be required to submit an application to the school board to attend a "2r" charter and under which the board could prohibit a pupil who resides in the district from attending a "2r" charter) as follows:

a. Require school boards to adopt a resolution specifying criteria for accepting and rejecting applications for attendance at a "2r" charter school, and specify that if a school board wishes to revise its criteria, it must do so by resolution.

b. Specify that the application requirement would apply only to pupils attending a school established by a CSOB-approved authorizer.

c. Delete the application requirement provision and instead specify that an authorizer approved by the CSOB could establish charter schools only in districts with a pupil membership of at least 4,000 pupils and at least two public schools assigned one of the bottom two grade levels in the most recent school accountability report.

d. Delete the application requirement provision.

4. Delete provision. This alternative would restore current law restrictions that generally limit the independent "2r" charter school program to Milwaukee County and the adjacent counties. Under this alternative, the appropriation for the "2r" program would be reduced by \$4,037,500 in 2016-17, and the related general aid reduction would decrease by an equal amount, resulting in no net change in general fund expenditures.

ALT 4	Change to Bill
GPR	- \$4,037,500
Aid Reduction	<u>- 4,037,500</u>
Net GPR	\$0

Prepared by: Russ Kava
Attachment

ATTACHMENT

2013-14 Performance Data by Number of Schools for Selected School Districts

<u>District</u>	<u>Significantly Exceeds Expectations</u>	<u>Exceeds Expectations</u>	<u>Meets Expectations</u>	<u>Meets Few Expectations</u>	<u>Fails to Meet Expectations</u>	<u>Total</u>
Districts With Enrollment Over 4,000 and at Least Two Schools in Lowest Two Categories						
Appleton Area	5	6	19	3	0	33
Beloit	0	0	9	5	0	14
Green Bay Area	0	5	14	14	2	35
Kenosha	0	9	13	14	0	36
Madison Metropolitan	4	14	22	8	0	48
Milwaukee	0	8	22	49	55	134
Oshkosh Area	1	5	14	2	0	22
Racine	1	2	11	14	3	31
Waukesha	2	7	10	3	1	23
Other Districts With at Least Two Schools in Lowest Two Categories						
Adams-Friendship Area	0	1	2	2	0	5
Antigo	0	2	3	4	0	9
Bayfield	0	0	0	3	0	3
Bowler	0	0	0	2	0	2
Flambeau	0	0	1	2	0	3
Hayward Community	0	1	2	2	0	5
Marinette	0	0	2	3	0	5
Menominee Indian	0	0	1	2	0	3
Montello	0	0	0	2	0	2
Other Districts With Enrollment Over 4,000						
Chippewa Falls Area	0	5	3	0	0	8
D C Everest Area	1	3	6	0	0	10
Eau Claire Area	0	9	9	0	0	18
Elmbrook	7	2	0	0	0	9
Fond du Lac	1	2	11	0	0	14
Franklin Public	1	6	0	0	0	7
Hamilton	4	2	0	0	0	6
Howard-Suamico	2	4	2	0	0	8
Hudson	2	6	0	0	0	8
Janesville	1	7	9	0	0	17
Kaukauna Area	0	4	2	0	0	6
Kettle Moraine	3	4	0	0	0	7
Kimberly Area	2	5	2	0	0	9
LaCrosse	0	5	12	0	0	17
Manitowoc	0	2	7	0	0	9

<u>District</u>	<u>Significantly Exceeds Expectations</u>	<u>Exceeds Expectations</u>	<u>Meets Expectations</u>	<u>Meets Few Expectations</u>	<u>Fails to Meet Expectations</u>	<u>Total</u>
Other Districts With Enrollment Over 4,000 (continued)						
Middleton-Cross Plains	6	3	0	0	0	9
Mukwonago	3	5	0	0	0	8
Muskego-Norway	2	5	1	0	0	8
Neenah	1	7	4	0	0	12
New Berlin	1	5	0	0	0	6
Oak Creek-Franklin	1	5	3	0	0	9
Oconomowoc Area	0	3	5	0	0	8
Sheboygan Area	1	6	14	1	0	22
Stevens Point Area	0	7	5	0	0	12
Sun Prairie Area	0	9	2	0	0	11
Superior	0	4	4	0	0	8
Verona Area	1	4	4	0	0	9
Watertown	0	2	4	0	0	6
Wausau	0	12	7	0	0	19
Wauwatosa	7	6	2	0	0	15
West Allis	0	9	6	1	0	16
West Bend	0	2	8	0	0	10
Wisconsin Rapids	0	6	5	0	0	11