

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

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December 29, 2010

Senator Darling:

This is a preliminary draft. Please note the following:

1. The draft does not extend participation in the WRS to charter school employees. As I mentioned during the conference call and at our meeting, participation by nongovernmental employees in the WRS presents serious problems.
2. The draft will need an initial applicability section to make it clear that it does not affect existing charter school contracts.
3. The draft does not state that a person holding a charter school instructional license is a "highly qualified teacher" (HQT). The federal No Child Left Behind Act requires that all K-12 public school teachers of core academic subjects meet the HQT requirements of the federal act. In general, one must hold at least a bachelor's degree, be appropriately licensed for the assignment, and demonstrate subject matter competence in the subject taught. Because the requirement is in federal law, the federal Department of Education must determine whether a state is in compliance. Including in state law a provision stating that Wisconsin is in compliance with federal law has no legal effect on that determination.
4. As we discussed during the conference call and at the meeting, the bill, if enacted, may invite a constitutional challenge based on article X, section 1, of the Wisconsin Constitution. In Thompson v. Craney, 199 Wis. 2d 674 (1996), the Wisconsin Supreme Court determined that the power of supervising public education could not constitutionally be given to anyone other than the state superintendent. In this bill draft, oversight of the schools under contract with the Charter School Authorizing Board is given to the Charter School Authorizing Board. While one could argue that this is no different from the existing situation with regard to the independent (2r) charter schools, the existing situation may be unconstitutional as well; it simply has not been challenged. In addition, with a new state authorizing board contracting with scores of charter schools that may educate thousands of pupils, the (2r) charter schools may begin to look like a separate public school system operating with no supervision by the state superintendent.
5. The draft provides the Charter School Authorizing Board with an executive director (assigned to executive salary group 5) and 4 professional staff members in the unclassified service whose salaries are set by the executive director. OK?

6. Note that the Charter School Authorizing Board, as created in this draft, does not have rule-making authority. While this was done to strengthen the argument that the bill is constitutional, I'm not convinced that the board will be able to operate without adopting various standards and policies generally applicable to the charter schools it oversees or that are necessary to govern the board's organization or procedures.

7. The draft allows each UW institution, each UW college campus (the 2-year colleges), each technical college district board, and each private college that is a member of the Wisconsin Association of Independent Colleges and Universities to contract for the establishment of charter schools. Note that under current law, UW-Milwaukee and Milwaukee Area Technical College may only contract for the establishment of charter schools located in the city of Milwaukee, and UW-Parkside may only contract for the establishment of a charter school in Kenosha County or in an adjacent county. This draft does not eliminate these limitations, but does not establish any new limitations for the added authorizers. OK?

8. The draft authorizes charter schools to condemn unused and underutilized school district property. Let me know if you'd like to eliminate or modify this provision.

9. The draft does not provide that the operator of a (2r) charter school is a "local educational agency." Current law already provides that the operator of a (2r) charter school is a local educational agency. See s. 115.775 (1), stats. Although the provision is located in the statutory subchapter relating to children with disabilities, its effect is not limited to laws relating to children with disabilities.

10. I was somewhat confused by the instructions relating to the requirements for a charter school instructional staff license and a charter school instructional staff permit. Please let me know if I did not capture your intent.

11. Section 118.40 (9) (e) 3., as created in this draft, requires the board to include in a report the services it has provided to charter schools under contract with it. Do you want to describe the services that the board is authorized to provide?

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