

## State Charter School Boards Comparative Analysis

Compiled by National Alliance for Public Charter Schools and Illinois Network of Charter Schools

Element	Arizona	Colorado	D.C.	Georgia	Hawaii	Idaho	South Carolina	Utah	
<b>Membership to the Charter School Board</b>	Arizona State Board for Charter Schools (ASBCS), 1994 – 11 members	Colorado Charter School Institute (CCSI), 2004 – 9 members	D.C. Public Charter School Board (PCSB), 1996 – 7 members	Georgia Charter Schools Commission, 2008 – 7 members	Charter School Review Panel, 2007 – 12 members	Idaho Public Charter School Commission, 2004 – 7 members	South Carolina Public Charter School District (SCPCSD) – 11 members	Utah State Charter School Board (USCSB), 2004 – 7 members	
<b>Appointments to the Board</b>	Board members include the state superintendent of public instruction, 8 gubernatorial appointees, and 3 nonvoting legislative appointees.	Appointed by governor (7) and state commissioner of education (2); no more than 5 may be from the same political party and each must have some identified area of expertise as outlined in the law (e.g. on a charter school board; in public administration or finance; or shaping curricula)	Appointed by the Mayor of the District of Columbia.	Appointed by the Georgia Board of Education, including 3 recommended by the governor, 2 by the president of the Senate, and 2 by the speaker of the Georgia House.	Appointed by the Hawaii Board of Education. Members must include: Two licensed teachers regularly engaged in teaching (provided that one teacher is employed at a start-up charter school, and one teacher is employed at a conversion charter school; Two educational officers (provided that one educational officer is employed at a start-up charter school, and one educational officer is employed at a conversion charter school); One member of	Appointed by the governor and must include 3 past or current school board members, 3 past or current charter school board members, and 1 at-large member.	Appointed by the governor, one by the speaker of the house, and one by the senate president, and seven by the governor based upon the recommendation of state charter association and one additional representative from association, state administrator association, state chamber of commerce, state education oversight committee, state school boards association, and state alliance of	Two appointed by the governor, one by the speaker of the house, and one by the senate president, and seven by the governor based upon the recommendation of state charter association and one additional representative from association, state administrator association, state chamber of commerce, state education oversight committee, state school boards association, and state alliance of	Appointed by the governor. They must include 3 members nominated by Utah's charter schools, 2 by the state board of education, and 2 with expertise in business and finance.

<p><b># of Charters Authorized by Board and other Authorizers</b></p>	<p>ASBCS – 322 holders, 422 sites; State Board of Education (SBE) – 26 holders, 40 sites (overseen by ASBCS);</p>	<p>CCSI – 14 School districts – 127 (2007-08)</p>	<p>PCSC oversees 56 charter schools on 81 campuses. (2007-08)</p>	<p>School districts – 67 State board of education – 4 GA passed a bill to create the GCSC in</p>	<p>CSRP – 28 (2007-08)</p>	<p>State commission – 14 School districts – 16 (2007-08)</p>	<p>All of the 29 operating charters in SC have been authorized by school districts. While the SC charter district has</p>	<p>USCSB – 48 School districts – 11 (2007-08)</p>
					<p>former member of a charter school local school board; the chair of the board of education or the chair's designee; a representative of Hawaiian culture-focused charter schools; Two representatives of the University of Hawaii who are not affiliated with charter schools; One member with a background in business or accounting who is not affiliated with charter schools; One member with a background in the building trades or real estate who is not affiliated with charter schools; A representative from the Hawaii Association of Independent Schools</p>		<p>black educator. The nine members appointed by the governor are subject to advice and consent of the senate.</p>	

	School districts – 7 holders, 7 sites (2006-07)			2008, so it hasn't authorized any charters yet. (2007-08)				authorized 7 charters, none of them have opened yet, although 5 will open in 2008-09. (2007-08)	
<b>% of All Charters in State authorized by category of authorizer</b>	SBE- 7.3% holders, 8.5% sites ASBCS- 90.7%holders, 90% sites LSDs- 2% holders, 1.5% sites (2006-2007)	CCSI - 10% School districts – 90% (2007-08)	PCSB - 100% (2007-08)	School districts – 91% State board of education – 9% (2007-08)	CSRP – 100% (2007-08)	State commission – 47% School districts – 53% (2007-08)	School districts – 100% (2007-08)	USCSB – 81% School districts – 19% (2007-08)	
<b>Initial Political Champions</b>	N/A	Rep. Terrence Carroll (D) Sen. Peter Groff (D) Rep. Keith King (R)	N/A	Rep. Jan Jones (R); Rep. Brooks Coleman (R); Rep. Ed Lindsey (R)	N/A	N/A	N/A	N/A	
<b>Start-up funding for state authorizer</b>	N/A	Received no state funding for start up. Grants of \$50,000 from the Daniels Fund and \$137,000 from the Walton Family Foundation provided the funding to begin operations.	N/A	\$200-300,000 start-up funding from the state	Received no money in the first year. \$50,000 in 2008.	N/A	Received \$750,000 from the General Assembly	N/A	
<b>Source of annual funding stream for state authorizer</b>	Annual state appropriation	3% of funding for each school authorized by CCSI	Revenue sources included \$975,000 in D.C. education budget appropriations, and \$864,582 in administrative	3% of funding for each school goes to the Commission	Collects fees from school, can be up to 2%, currently at 1.85%.	Not allowed to collect fees from its schools. Annual state appropriation.	Receives 2% from all funds for the charters it authorizes from the state.	Annual state appropriation	

FTE for state authorizer	7	13	fees collected from PCSB-authorized charter schools, totaling \$1.83 million. (FY07) 24	3	2	2	1	5
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## Charter School Draft - Questions

1. Regarding the state authorizing agency, I don't think that we can call it a commission. By definition, a commission is a body with 3 members, all of whom are appointed by the governor with senate confirmation. I think we should call it a board. I assume from the material you sent me that you would like it to be an independent board, not created in another agency. If you decide to create an independent board, you need to determine what kind of staffing it needs. For an example, you might take a look at the Educational Communications Board. It has an executive director, one deputy, 4 division administrators, and (at least) 11 professional staff, all of whom are unclassified. Other than the salary of the executive director (who is assigned to salary group 5), all salaries are set by the appointing authority.

There is a third option, however. The board could be attached to an existing department (DPI? DOA?) "for limited purposes." This means that it would be a distinct unit of that department and would perform its functions, other than budgeting, program coordination, and related management functions, independently. For example, it would have independent planning and rulemaking authority. The advantage of this option is that the board could utilize staff employed by the department to which it is attached.

2. In the draft, you suggest that 3 members of the board be appointed by the governor, 3 by the speaker of the assembly, and 3 by the president of the senate. For the latter 3 members, would you prefer the senate majority leader?
3. I was going to suggest that the body be called the Charter School (or Schools) Board, but I think that may be confusing, since many charter schools are governed by boards. How about Charter School Authorizing Board?
4. I think the board will need three appropriations. The first, a GPR appropriation, would be for general program operations (assuming that the "oversight fees", mentioned in sub. (13) of your draft, are insufficient for this purpose). Eventually, we will need to have estimates of the amounts needed. You will also need a PR appropriation so that the board can spend the oversight fees. And finally, the board will need a gifts and grants appropriation. OK?
5. On page 2 of your draft, in your amendment to 118.40 (2r) (b), you delete "and operate a charter school" and "may initiate a contract with an individual or group to operate." However, on page 3, in the treatment of par. (bm), you have left the language relating to establishing or entering into a contract to establish. I'm confused by the different treatments. Specifically, I don't understand your intent in making these changes. Is it to prohibit any of the (2r) entities from establishing a charter school on its own, without a contract with a 3rd party? If so, are there any such charter schools currently? If so, will they somehow be grandfathered in so as not to be in violation of this bill? You also delete MATC from the list of entities authorized to establish a charter school. Has MATC established or contracted for the establishment of a charter school? If so, is that charter school grandfathered in somehow?
6. On page 3, in the treatment of par. (bm), you have not specified where a CESA may establish a charter school.
7. As I understand it, you have deleted the provision that allows only pupils who reside in the school district in which a (2r) charter school is established to attend that charter school. However, you have not deleted the exception for Woodlands School, on page 3 in par. (c), which now seems to be unnecessary. Is that correct? Also, if a pupil may attend a (2r) charter school regardless of where the charter school is located, who is responsible for transporting the child to the charter school?

8. On page 5, in subd. 7., I'm confused about the fee. Is it a one-time application (or chartering) fee, or is it an annual fee to help pay oversight costs? I assume that although the language uses "may," you want the board to either charge a fee for every charter school that it authorizes or none of them, and you probably mean the former. Is that correct? The draft states that the fee is "a uniform percentage of the per-student operational funding allocated to each public charter school." I'm not sure what that means (e.g., does "each public charter school" mean each one *that the board authorizes*?), and initially, how will the board know what each public charter school's per-student funding is? Will each public charter school's funding necessarily be the same? And do you mean the amount that the state currently pays per pupil to each (2r) charter school?
9. On page 5, in sub. (3): I'm confused about these changes. I don't see why you've deleted "person." "Person" as used here refers back to 118.40 (2m) (a), which reads, "A school board may on its own initiative contract with a **person** to operate a school as a charter school." The contract must include all the provisions specified in (1m) (b). Note that in 118.40 (1m) (b) 2., the statutes require that a petition requesting a school board to establish a charter school include the name of the **person** who will be in charge of the charter school. Wouldn't it make sense for the school board to contract with that person (which of course could be any legal entity; see s. 990.01 (26))?
10. In the material added as sub. (3) (e) 3., you state that a (2r) entity may contract with an Indian tribe for the establishment of a charter school located within the tribe's reservation. But in (2r) (bm), it states that the city of Milwaukee, UW-Milwaukee, and Cardinal Stritch University may only establish a charter school located in Milwaukee, and UW-Parkside may only establish a charter school located in the Racine school district. How do you want to address this conflict?
11. At the top of page 6, the draft states that a charter school must be open to any student residing in the state and must enroll all students who wish to attend. If there are too many applicants, the school must select students through a lottery. It's unclear to me whether you intend these provisions to cover all charter schools, only charter schools authorized by a (2r) entity, or only charter schools authorized by the board. If the answer is all charter schools, including those under contract with school boards, should the Open Enrollment Program be modified so that it applies only to attendance at a public school, *other than a charter school*, located in a school district in which the pupil does not reside? If a pupil may attend any charter school in the state by applying directly to that charter school, why would the pupil apply to attend the charter school through the Open Enrollment Program? In addition, if the answer is all charter schools, I don't understand how the funding would work. Currently, a school district counts in its membership for school aid purposes all pupils attending a charter school under contract with the school board. That's because the pupil resides in the school district and the school board pays for the pupil to attend the charter school. (If the pupil is attending a nonresident school district under Open Enrollment, state aid is adjusted after the school year.) For pupils attending (2r) charter schools, the state pays the operator of the charter school. School districts do not count these pupils in their membership counts, but all school districts have their state aid reduced by a percentage of their eligible aid amount. Under this bill, how would the funding work for charter schools under contract with school boards? Would charter schools with such contracts on the date this bill becomes law be required to open their enrollments to pupils throughout the state? Who would count the pupils in membership? Who would be responsible for transporting pupils to and from the charter school? And finally, it seems to me that in order to have a lottery, you need a deadline for submitting applications. On that date, the charter school can determine if it has too many applications for the spaces available. If it does, it can proceed to accept pupils at random from the applications on hand.

12. Is par. (d), on page 6, intended to apply to all charter schools, only (2r) charter schools, or only (2r) charter schools authorized by the board? I think this paragraph raises questions with respect to any existing charter school that is not completely independent from its authorizer. This group includes many charter schools under contract with school boards. Do you intend to grandfather them in or require them to restructure? With respect to (2r) charter schools, have there been problems with such schools not being able to receive state aid, secure insurance, incur debt, or accept gifts? I think as long as these charter schools are legally independent entities, it is unnecessary to list their legal powers. Moreover, there is a danger in listing their powers: if we forget one, a court might determine that because so many of their powers *are* listed, the schools do not have legal authority to take the action that is *not* listed.

13. Does par. (e) apply to all charters, including school board authorized charters? If so, it appears to eliminate the authority of a school board to establish its own charter school. Is that correct? If so, what happens to the existing charter schools that violate this provision?

14. On page 7, par. (c) allows one contract to cover more than one charter school. Looking at s. 118.40 (1m) (b), which specifies what must be included in each contract, I'm not sure I understand how this would work. I think that some of these provisions would be different for each school. What's the problem with having a separate contract for each charter school, especially if it is clear that one person may enter into more than one contract?

15. I don't think that par. (e), at the top of page 8, will work. A charter school is a public school in many respects, but the governing body is not the state or a local government, and the employees are not government employees. It is possible to extend certain benefits to these employees, but I think federal law allows only government employees to participate in the Wisconsin Retirement System.

16. On page 9, I don't think that sub. (9) (a), (b), or (c) is needed. Nor is sub. (10) on page 10. If a power is not granted by law, it is not necessary to state that it is not granted.

17. I think sub. (11) poses a number of problems. The major problem I see is that the provision appears to allow a charter school to take property without providing just compensation. Requiring a school district to lease property to a charter school for \$1 per year, for as long as the charter school desires, may constitute an unconstitutional taking. Certainly, requiring a school district to sell its property, even at fair market value, is a taking that is governed by ch. 32, stats. Do you intend to authorize charter school governing boards to condemn unused school district property? If so, the charter school would be required to comply with the procedure specified in s. 32.06, stats. In addition, a number of issues would arise. Who would determine whether the property is unused or underutilized? If a school board intends to use the property within two or three years, when projections indicate there will be an influx of kindergarten pupils, would the property nevertheless be available for use by a charter school for as long as the charter school desires? When the school district needs the property, would it be authorized to take it back? Finally, requiring that school district property be used for other than school district purposes may constitute a violation of the public purpose doctrine, which, among other things, mandates that the unit of government that raises a tax must be the unit of government that spends the revenue.

18. Regarding sub. (13), I've asked several questions about the fee in item 8, above. In addition, in par. (b), what does it mean to state that the fee may not include certain costs? I'm not sure what this paragraph is intended to do. I'm especially puzzled by the last sentence, which is at the top of page 11. The board has no authority to issue obligations, so I don't understand why it would be using fee revenue to "fulfill authorizing obligations." I assumed the fee would help support the board's costs of authorizing charter schools, including its oversight costs.

19. I don't see the need for sub. (14) (a), on page 11. In pars. (b) and (c), what kinds of services would the board be selling? Is the requirement to charge the market rate for services necessary? Wouldn't a charter school buy elsewhere if the board's prices were above the market rate? Regarding disputes about the amount owed, how would one determine which party is the "disputing party"? And what would prevent that party, once identified, from requesting a friendly third party to make the final determination? I think a better approach might be to require that every contract between a charter school and the board include a provision requiring the parties to submit to mediation if a dispute arises concerning the cost of services. Or the draft could direct the board to promulgate rules establishing an alternative dispute resolution program for the timely resolution of such disputes.
20. In sub. (15), do you intend that the report be submitted to the legislature? In par. (a) 3., what does "transferred" mean?
21. In sub. (16), do you mean that board staff would hold a public hearing ("public forum for local residents")? Where would the public hearing be held? In the school district in which the charter school will be located? If more than one charter school is authorized, would more than one hearing be required? If a virtual charter school is authorized, where would the hearing be held?
22. On page 12, in par. (d), do you mean that an approval may be conditional in nature? If so, within how many days must the board make a final decision on approval?
23. In par. (f), to whom must the board report ("report to the state")? Is the board's decision appealable to anyone?
24. I'm not sure I understand sub. (17). Current law specifies what must be included in the contract (see s. 118.40 (3)). Does it still apply?
25. In sub. (18) (b), on page 13, wouldn't the "annual performance targets" be specified in the contract? Are there "federal, state, and commission expectations"? If so, could you refer me to them?
26. In sub. (20), on p. 13, would all other charters remain at 5-year terms? With board charters, I assume that the term would still be specified in the contract. Does the authority to vary the contract term apply to initial contracts, renewal contracts, or both?
27. On p. 14, in sub (20) (f) 3., to whom should the "public report" be issued? Or do you mean only that the report would be an open record? In par. (g), do you mean that a charter school would be entitled to an evidentiary hearing, upon request, if the board nonrenews or revokes its charter? Does this amount to a contested case hearing under ch. 227, stats.? (See the definition of "contested case" in s. 227.01 (3).) Would final decisions of the board be appealable to circuit court? In par. (i), to whom in the state do you want the board to report?
28. In sub. (21) (a), on p. 15, do you mean prior to *any* charter school closing, or prior to the closing of any charter school *authorized by the board*? How would you define "closing"? Do you mean only closings that occur during the term of a contract (i.e., not at the end of the term, or as a result of a charter school choosing not to renew a contract)? Would "closing" include a nonrenewal or revocation of a contract by the board? Would a unique protocol be developed for each charter school, or would the board promulgate rules that apply to all of its



charter schools? What would be the penalty for a charter school that closed without following the prescribed protocol? In par. (b), isn't this material covered by other laws, such as federal bankruptcy laws? Would you need exceptions for creditors who have priority liens? If the funds are insufficient to pay all creditors, which would get first priority? Would the commission administer this provision, becoming essentially a trustee in bankruptcy? Also, this purports to cover a closing for any reason, but if the school closes for reasons other than financial, I'm not sure that it makes sense to provide for the distribution of all of the school's assets.

29. I don't understand what is meant in sub. (22) (a). In par. (b), note that under current law, every individual who holds a license issued by DPI is required to undergo a criminal background check for issuance of a license and for renewal of a license, so the draft does not need to address them. Charter school governing board members who are not licensed, however, are not currently subject to this requirement. (Note that school board members are also not subject to this requirement.) If you want charter school governing board members to be checked, we need to state the consequences of failing a background check and specify what would constitute failure. Also, who would perform the background checks? Who would pay for them? Regarding par. (c), I'm not sure it's needed. These charter school employees are not employees of any school district.

30. Under current law, an individual who holds a valid teaching license but wants to teach a subject outside the scope of that license in a charter school needs to satisfy some additional requirements in order to obtain a charter school instructional staff license. In sub. (23) (a), it looks like you are changing current law so that a charter school instructional staff license would be issued to any person who holds a valid Wisconsin teaching license, without satisfying any additional requirements, and would authorize the holder to perform any instructional duty at any grade level in a charter school. Is that correct? If so, why not simply specify that a person who holds a valid teaching license may perform any instructional duty at any grade level in a charter school? In other words, why require that the individual obtain an additional license? I think taking that route would also allow par. (c) to be eliminated.

31. In sub. (23) (d), if you are trying to address a federal requirement, I don't think stating that the requirement is satisfied will necessarily achieve your goal.

32. In sub. (24), it looks like you are eliminating the requirement that the applicant's bachelor's degree be in the subject that he or she is assigned to teach or in a related field. Is that correct? Are there other changes intended by this subsection? It's difficult for me to tell because I'm not sure that the cross-reference in subd. 3. (to subd. 4.) is correct, and I'm not sure what the correct cross-reference in subd. 5. should be.

Grant, Peter

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**From:** Grant, Peter  
**Sent:** Monday, December 13, 2010 9:38 AM  
**To:** 'Dennis Conta'  
**Cc:** Todd Ziebarth; John Gee  
**Subject:** RE: Charter school draft questions

Hi Dennis,

There is one fairly important issue I neglected to mention in my list of questions that I sent you last week. In Thompson v. Cranev, 199 Wis. 2d 674 (1996), the Supreme Court decided that the duties of the State Superintendent of Public Instruction could not be reallocated or diminished by the creation of a department of education and the appointment of a secretary of education. The governor had asked the Court to uphold a law that permitted appointees of the governor to fulfill some of the duties of the state superintendent. State Superintendent Benson argued that such action would take away powers granted to the elective office in Article X, Section 1, of the Wisconsin Constitution. That section reads, in part, "The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct..."

The Court found that "the constitutional difficulty with the education provisions of 1995 Wis. Act 27 is not that it takes power away from the office of the SPI, but rather that it gives the power of supervision of public education to an 'other officer' instead of the SPI."

It seems to me that if the charter school bill authorizes an independent agency, or even an agency attached to DPI for limited purposes, to oversee a separate, publicly funded system of schools, it is giving the power of supervision of public education to an officer other than the state superintendent, and could very well be found unconstitutional if challenged.

I look forward to talking with you on Wednesday afternoon.

Peter

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**From:** Dennis Conta [mailto:dennis@dconta.com]  
**Sent:** Sunday, December 12, 2010 5:42 PM  
**To:** Grant, Peter  
**Cc:** Todd Ziebarth; John Gee  
**Subject:** Re: Charter school draft questions

Hello Peter - please call us using the number that appears below. No special calling instructions - you only need to call number directly, although I am not certain if you need to dial one (1) first.

We all look forward to our conversation,

Dennis

On 12/10/2010 5:36 PM, Todd Ziebarth wrote:

That works for me. It's 866-349-1946.

----- Original Message -----

**From:** John Gee <jgee@wicharterschools.org>  
**To:** Dennis Conta <dennis@dconta.com>  
**Cc:** Grant, Peter <Peter.Grant@legis.wisconsin.gov>; Todd Ziebarth  
**Sent:** Fri Dec 10 18:34:37 2010  
**Subject:** Re: Charter school draft questions

I think it is easier to use Todd's number as it does not require any pass

On 12/10/2010 4:16 PM, Dennis Conta wrote:

Let's then plan on the 15th at 1:30. Should John have Ingrid set

On 12/10/2010 3:59 PM, Grant, Peter wrote:

Hi Dennis,

I'd be happy to speak with you next Wednesday. Would 1:30

My direct number is 608-267-3362.

Peter

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**From:** Dennis Conta [mailto:dennis@dconta.com]  
**Sent:** Friday, December 10, 2010 3:38 PM  
**To:** Grant, Peter  
**Cc:** Todd@publiccharters.org; jgee@wicharterschools.org; S  
**Subject:** Re: Charter school draft questions

Hello Peter - we found your questions most helpful. We wo

Your work on behalf of this important educational reform

Dennis

On 12/8/2010 3:23 PM, Grant, Peter wrote:

<<Charter School Q's.doc>>  
 Dear Mr. Conta,

12/13/2010

I thought it would be a good idea to give you, Todd Ziebarth, and John Gee an idea of the kinds of questions I

Thanks,

Peter Grant

Peter Grant, Managing Attorney  
Wisconsin Legislative Reference Bureau  
608-267-3362  
[peter.grant@legis.wi.gov](mailto:peter.grant@legis.wi.gov)

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Spam <about:blank>  
Not spam <about:blank>  
Forget previous vote <about:blank>

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## Grant, Peter

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**From:** Todd Ziebarth [Todd@publiccharters.org]  
**Sent:** Wednesday, December 15, 2010 12:20 AM  
**To:** Grant, Peter; Dennis Conta; John Gee; Schulze, Connie  
**Subject:** Responses to Peter's Questions  
**Attachments:** Charter School Q's - TZ.doc; State Charter School Boards Comparative Analysis.doc

Greetings,

Attached are our responses to Peter's questions. In addition, attached is a comparative analysis of state charter boards that we compiled that might be helpful.

For the call on Wednesday, we'd like to focus on the following questions: 1, 4, 12, 13, 14, 15, 17, 27, 28, and 30. Of course, we're happy to talk about any of the other questions as well if you'd like.

Lastly, we reference a revised bill in our responses. I'm almost done with the revised bill, but I need to jump on a plane now. I'll try to send it to everyone tomorrow before the call. If I'm unable to do so, I'll be able to send it by COB on Wednesday.

Thanks.

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Todd Ziebarth  
Vice President, State Advocacy and Support  
National Alliance for Public Charter Schools  
todd@publiccharters.org  
414-288-0756 (office)  
720-252-8076 (cell)  
<http://www.publiccharters.org>

Todd Ziebanth's responses  
rec'd 12/15/10

## Charter School Draft - Questions

1. Regarding the state authorizing agency, I don't think that we can call it a commission. By definition, a commission is a body with 3 members, all of whom are appointed by the governor with senate confirmation. I think we should call it a board. I assume from the material you sent me that you would like it to be an independent board, not created in another agency. If you decide to create an independent board, you need to determine what kind of staffing it needs. For an example, you might take a look at the Educational Communications Board. It has an executive director, one deputy, 4 division administrators, and (at least) 11 professional staff, all of whom are unclassified. Other than the salary of the executive director (who is assigned to salary group 5), all salaries are set by the appointing authority.

There is a third option, however. The board could be attached to an existing department (DPI? DOA?) "for limited purposes." This means that it would be a distinct unit of that department and would perform its functions, other than budgeting, program coordination, and related management functions, independently. For example, it would have independent planning and rulemaking authority. The advantage of this option is that the board could utilize staff employed by the department to which it is attached.

We're fine with calling it a board. Our preference is for it to be an independent entity, although it would report its application decisions to DPI and submit its annual report to DPI (along with the legislature). These reporting requirements may help deal with the constitutionality issues that you raised in your e-mail. On the whole, though, we believe that the creation of the board to authorize charters will not reallocate or diminish the duties of the state superintendent of public instruction, in the same way that allowing the City of Milwaukee, UWM, UW-Parkside, or MATC to authorize charters does not reallocate or diminish the duties of the state superintendent of public instruction. However, we would like to talk more about the constitutionality issues with you on Wednesday.

In terms of staffing, we don't envision the board needing a large staff (see the comparative analysis of state charter boards that I sent to you along with this document to get a sense of how other states handle it). We're fine with the current language in the bill: "The commission shall operate with dedicated resources and staff qualified to execute the day-to-day responsibilities of public charter school authorizing."

2. In the draft, you suggest that 3 members of the board be appointed by the governor, 3 by the speaker of the assembly, and 3 by the president of the senate. For the latter 3 members, would you prefer the senate majority leader?

✓ We're fine with the senate majority leader.

3. I was going to suggest that the body be called the Charter School (or Schools) Board, but I think that may be confusing, since many charter schools are governed by boards. How about Charter School Authorizing Board?

✓ We're fine with Charter School Authorizing Board.

4. I think the board will need three appropriations. The first, a GPR appropriation, would be for general program operations (assuming that the "oversight fees", mentioned in sub. (13) of your draft, are insufficient for this purpose). Eventually, we will need to have estimates of the amounts needed. You will also need a PR appropriation so that the board can spend the oversight fees. And finally, the board will need a gifts and grants appropriation. OK?

1st year only?

Let's talk more about these potential appropriations on Wednesday. From our perspective, the board will need start-up funding of between \$200,000 and \$300,000 (which we might be able to raise privately, if necessary). It then can be sustained on the oversight fees that it will receive from the schools that it authorizes.

- 5. On page 2 of your draft, in your amendment to 118.40 (2r) (b), you delete "and operate a charter school" and "may initiate a contract with an individual or group to operate." However, on page 3, in the treatment of par. (bm), you have left the language relating to establishing or entering into a contract to establish. I'm confused by the different treatments. Specifically, I don't understand your intent in making these changes. Is it to prohibit any of the (2r) entities from establishing a charter school on its own, without a contract with a 3rd party? If so, are there any such charter schools currently? If so, will they somehow be grandfathered in so as not to be in violation of this bill? You also delete MATC from the list of entities authorized to establish a charter school. Has MATC established or contracted for the establishment of a charter school? If so, is that charter school grandfathered in somehow?

We've changed (bm) in the revised bill.

→ We've also decided to keep MATC in the bill.

- 6. On page 3, in the treatment of par. (bm), you have not specified where a CESA may establish a charter school.

We think that CESAs should be able to authorize charter schools within their boundaries and have made that change in the revised bill.

But see ans. to # 10 →

- 7. As I understand it, you have deleted the provision that allows only pupils who reside in the school district in which a (2r) charter school is established to attend that charter school. However, you have not deleted the exception for Woodlands School, on page 3 in par. (c), which now seems to be unnecessary. Is that correct? Also, if a pupil may attend a (2r) charter school regardless of where the charter school is located, who is responsible for transporting the child to the charter school?

We've deleted the exception for the Woodlands School in the revised bill.

Currently, parents are responsible for transporting their children to charter schools, although charter schools may choose to provide transportation to their students (even though they don't receive transportation funding).

- 8. On page 5, in subd. 7., I'm confused about the fee. Is it a one-time application (or chartering) fee, or is it an annual fee to help pay oversight costs? I assume that although the language uses "may," you want the board to either charge a fee for every charter school that it authorizes or none of them, and you probably mean the former. Is that correct? The draft states that the fee is "a uniform percentage of the per-student operational funding allocated to each public charter school." I'm not sure what that means (e.g., does "each public charter school" mean each one *that the board authorizes?*), and initially, how will the board know what each public charter school's per-student funding is? Will each public charter school's funding necessarily be the same? And do you mean the amount that the state currently pays per pupil to each (2r) charter school?

It is an annual fee. We want the board to charge a fee for every school that it authorizes. The board will calculate the fee by multiplying each school's estimated enrollment by 3% of the per-pupil funding that the state pays to each (2r) school.

- 9. On page 5, in sub. (3): I'm confused about these changes. I don't see why you've deleted "person." "Person" as used here refers back to 118.40 (2m) (a), which reads, "A school board

may on its own initiative contract with a **person** to operate a school as a charter school." The contract must include all the provisions specified in (1m) (b). Note that in 118.40 (1m) (b) 2., the statutes require that a petition requesting a school board to establish a charter school include the name of the **person** who will be in charge of the charter school. Wouldn't it make sense for the school board to contract with that person (which of course could be any legal entity; see s. 990.01 (26))?

We've changed it back to the original language in the revised bill.

10. In the material added as sub. (3) (e) 3., you state that a (2r) entity may contract with an Indian tribe for the establishment of a charter school located within the tribe's reservation. But in (2r) (bm), it states that the city of Milwaukee, UW-Milwaukee, and Cardinal Stritch University may only establish a charter school located in Milwaukee, and UW-Parkside may only establish a charter school located in the Racine school district. How do you want to address this conflict?

We've changed it so that the state board and CESAs may contract with an Indian tribe for the establishment of a charter school located within the tribe's reservation in the revised bill.

11. At the top of page 6, the draft states that a charter school must be open to any student residing in the state and must enroll all students who wish to attend. If there are too many applicants, the school must select students through a lottery. It's unclear to me whether you intend these provisions to cover all charter schools, only charter schools authorized by a (2r) entity, or only charter schools authorized by the board. If the answer is all charter schools, including those under contract with school boards, should the Open Enrollment Program be modified so that it applies only to attendance at a public school, *other than a charter school*, located in a school district in which the pupil does not reside? If a pupil may attend any charter school in the state by applying directly to that charter school, why would the pupil apply to attend the charter school through the Open Enrollment Program? In addition, if the answer is all charter schools, I don't understand how the funding would work. Currently, a school district counts in its membership for school aid purposes all pupils attending a charter school under contract with the school board. That's because the pupil resides in the school district and the school board pays for the pupil to attend the charter school. (If the pupil is attending a nonresident school district under Open Enrollment, state aid is adjusted after the school year.) For pupils attending (2r) charter schools, the state pays the operator of the charter school. School districts do not count these pupils in their membership counts, but all school districts have their state aid reduced by a percentage of their eligible aid amount. Under this bill, how would the funding work for charter schools under contract with school boards? Would charter schools with such contracts on the date this bill becomes law be required to open their enrollments to pupils throughout the state? Who would count the pupils in membership? Who would be responsible for transporting pupils to and from the charter school? And finally, it seems to me that in order to have a lottery, you need a deadline for submitting applications. On that date, the charter school can determine if it has too many applications for the spaces available. If it does, it can proceed to accept pupils at random from the applications on hand.

We've deleted the open enrollment language in the revised bill.

We've added some language about enrollment preferences in the revised bill.

We've added some language in the application process that requires schools to outline their enrollment processes and timelines in the revised bill.

12. Is par. (d), on page 6, intended to apply to all charter schools, only (2r) charter schools, or only (2r) charter schools authorized by the board? I think this paragraph raises questions with respect to any existing charter school that is not completely independent from its authorizer. This group includes many charter schools under contract with school boards. Do you intend

only if in best  
but one to be  
req's only CESAs can  
eff. in the  
CESA

to grandfather them in or require them to restructure? With respect to (2r) charter schools, have there been problems with such schools not being able to receive state aid, secure insurance, incur debt, or accept gifts? I think as long as these charter schools are legally independent entities, it is unnecessary to list their legal powers. Moreover, there is a danger in listing their powers: if we forget one, a court might determine that because so many of their powers *are* listed, the schools do not have legal authority to take the action that is *not* listed.

Our intent is for this language to apply to all charter schools. Our intent is for them to restructure. In the revised bill, we changed the language to read "including but not limited to."

- 13) Does par. (e) apply to all charters, including school board authorized charters? If so, it appears to eliminate the authority of a school board to establish its own charter school. Is that correct? If so, what happens to the existing charter schools that violate this provision?

Our intent is for it to apply to all charters and eliminate the authority of a school board to establish its own charter school. Perhaps we could require schools that were established in this way to restructure during renewal?

! must be sep. legal entity?

- 14) On page 7, par. (c) allows one contract to cover more than one charter school. Looking at s. 118.40 (1m) (b), which specifies what must be included in each contract, I'm not sure I understand how this would work. I think that some of these provisions would be different for each school. What's the problem with having a separate contract for each charter school, especially if it is clear that one person may enter into more than one contract?

I think a single contract can cover multiple schools, each with their own responses to the items in 118.40 (1m) (b). In addition, one person can enter into multiple contracts. We tried to write it in a way that would cover both scenarios.

- 15) I don't think that par. (e), at the top of page 8, will work. A charter school is a public school in many respects, but the governing body is not the state or a local government, and the employees are not government employees. It is possible to extend certain benefits to these employees, but I think federal law allows only government employees to participate in the Wisconsin Retirement System.

Which federal laws only allow government employees to participate in the WRS? If that's the case, can we define charter employees as government employees for the purposes of WRS only? Are there other implications in such a definition?

16. On page 9, I don't think that sub. (9) (a), (b), or (c) is needed. Nor is sub. (10) on page 10. If a power is not granted by law, it is not necessary to state that it is not granted.

We've deleted these items in the revised bill.

- 17) I think sub. (11) poses a number of problems. The major problem I see is that the provision appears to allow a charter school to take property without providing just compensation. Requiring a school district to lease property to a charter school for \$1 per year, for as long as the charter school desires, may constitute an unconstitutional taking. Certainly, requiring a school district to sell its property, even at fair market value, is a taking that is governed by ch. 32, stats. Do you intend to authorize charter school governing boards to condemn unused school district property? If so, the charter school would be required to comply with the procedure specified in s. 32.06, stats. In addition, a number of issues would arise. Who would determine whether the property is unused or underutilized? If a school board intends to use the property within two or three years, when projections indicate there will be an influx of kindergarten pupils, would the property nevertheless be available for use by a charter school for as long as the charter school desires? When the school district needs the property, would it be authorized to take it back? Finally, requiring that school district property be used for



other than school district purposes may constitute a violation of the public purpose doctrine, which, among other things, mandates that the unit of government that raises a tax must be the unit of government that spends the revenue.

→ e.g. sch. dist. # can't be used to provide material services to another sch. district. Must spend revenue to benefit taxpayers.  
Ch. school = separate legal entity + open to all.  
Still = cond. exemption  
bec. forced to rent or sell

We've changed it to fair market value in the revised bill. We suggest that the DOA would determine whether the property is unused or underutilized. Let's talk more about the public purpose doctrine on Wednesday.

18. Regarding sub. (13), I've asked several questions about the fee in item 8, above. In addition, in par. (b), what does it mean to state that the fee may not include certain costs? I'm not sure what this paragraph is intended to do. I'm especially puzzled by the last sentence, which is at the top of page 11. The board has no authority to issue obligations, so I don't understand why it would be using fee revenue to "fulfill authorizing obligations." I assumed the fee would help support the board's costs of authorizing charter schools, including its oversight costs.

We've deleted (b) in the revised bill.

19. I don't see the need for sub. (14) (a), on page 11. In pars. (b) and (c), what kinds of services would the board be selling? Is the requirement to charge the market rate for services necessary? Wouldn't a charter school buy elsewhere if the board's prices were above the market rate? Regarding disputes about the amount owed, how would one determine which party is the "disputing party"? And what would prevent that party, once identified, from requesting a friendly third party to make the final determination? I think a better approach might be to require that every contract between a charter school and the board include a provision requiring the parties to submit to mediation if a dispute arises concerning the cost of services. Or the draft could direct the board to promulgate rules establishing an alternative dispute resolution program for the timely resolution of such disputes.

We've deleted (14) in the revised bill.

20. In sub. (15), do you intend that the report be submitted to the legislature? In par. (a) 3., what does "transferred" mean?

We've changed it to legislature and DPI in the revised bill.

21. In sub. (16), do you mean that board staff would hold a public hearing ("public forum for local residents")? Yes. Where would the public hearing be held? In the school district in which the charter school will be located? Yes. If more than one charter school is authorized, would more than one hearing be required? In one of the school districts from which the school will draw students. If a virtual charter school is authorized, where would the hearing be held? In one of the school districts from which the school will draw students.

22. On page 12, in par. (d), do you mean that an approval may be conditional in nature? If so, within how many days must the board make a final decision on approval?

Yes. That specification should be established in the board's documentation of its decision.

23. In par. (f), to whom must the board report ("report to the state")? Is the board's decision appealable to anyone?

DPI. No.

24. I'm not sure I understand sub. (17). Current law specifies what must be included in the contract (see s. 118.40 (3)). Does it still apply?

We've deleted (17) in the revised bill.

25. In sub. (18) (b), on page 13, wouldn't the "annual performance targets" be specified in the contract? Are there "federal, state, and commission expectations"? If so, could you refer me to them?

Yes. We've tweaked this language in the revised bill.

26. In sub. (20), on p. 13, would all other charters remain at 5-year terms? With board charters, I assume that the term would still be specified in the contract. Does the authority to vary the contract term apply to initial contracts, renewal contracts, or both?

We've amended (3) (b) in the revised bill.

27. On p. 14, in sub (20) (f) 3., to whom should the "public report" be issued? Or do you mean only that the report would be an open record? Yes. In par. (g), do you mean that a charter school would be entitled to an evidentiary hearing, upon request, if the board nonrenews or revokes its charter? Yes. Does this amount to a contested case hearing under ch. 227, stats.? I don't know. (See the definition of "contested case" in s. 227.01 (3).) Would final decisions of the board be appealable to circuit court? No. In par. (i), to whom in the state do you want the board to report? DPI.

28. In sub. (21) (a), on p. 15, do you mean prior to *any* charter school closing, or prior to the closing of any charter school *authorized by the board*? Those authorized by the board. How would you define "closing"? Do you mean only closings that occur during the term of a contract (i.e., not at the end of the term, or as a result of a charter school choosing not to renew a contract)? Would "closing" include a nonrenewal or revocation of a contract by the board? It would include all of these scenarios. Would a unique protocol be developed for each charter school, or would the board promulgate rules that apply to all of its charter schools? They would be included in each school's contract. What would be the penalty for a charter school that closed without following the prescribed protocol? In par. (b), isn't this material covered by other laws, such as federal bankruptcy laws? Would you need exceptions for creditors who have priority liens? If the funds are insufficient to pay all creditors, which would get first priority? Would the commission administer this provision, becoming essentially a trustee in bankruptcy? Also, this purports to cover a closing for any reason, but if the school closes for reasons other than financial, I'm not sure that it makes sense to provide for the distribution of all of the school's assets. I don't know the answers to the last set of questions.

29. I don't understand what is meant in sub. (22) (a). In par. (b), note that under current law, every individual who holds a license issued by DPI is required to undergo a criminal background check for issuance of a license and for renewal of a license, so the draft does not need to address them. Charter school governing board members who are not licensed, however, are not currently subject to this requirement. (Note that school board members are also not subject to this requirement.) If you want charter school governing board members to be checked, we need to state the consequences of failing a background check and specify what would constitute failure. Also, who would perform the background checks? Who would pay for them? Regarding par. (c), I'm not sure it's needed. These charter school employees are not employees of any school district.

We've deleted (22) in the revised bill.

30. Under current law, an individual who holds a valid teaching license but wants to teach a subject outside the scope of that license in a charter school needs to satisfy some additional requirements in order to obtain a charter school instructional staff license. In sub. (23) (a), it looks like you are changing current law so that a charter school instructional staff license

would be issued to any person who holds a valid Wisconsin teaching license, without satisfying any additional requirements, and would authorize the holder to perform any instructional duty at any grade level in a charter school. Is that correct? If so, why not simply specify that a person who holds a valid teaching license may perform any instructional duty at any grade level in a charter school? In other words, why require that the individual obtain an additional license? I think taking that route would also allow par. (c) to be eliminated.

With these changes, we are suggesting that the state return to the way the law used to read on this matter. ?

31. In sub. (23) (d), if you are trying to address a federal requirement, I don't think stating that the requirement is satisfied will necessarily achieve your goal.

We think it's helpful to make this clarification in statute. *how so?*

32. In sub. (24), it looks like you are eliminating the requirement that the applicant's bachelor's degree be in the subject that he or she is assigned to teach or in a related field. Is that correct? Are there other changes intended by this subsection? It's difficult for me to tell because I'm not sure that the cross-reference in subd. 3. (to subd. 4.) is correct, and I'm not sure what the correct cross-reference in subd. 5. should be.

We've corrected the cross-references in the revised bill.

12/15/10 conf. call w/ Dennis Combs, Todd Ziebach,  
John Lee,

- ① bd. operates independently, w/ no Dept oversight or supervision - Layla,  
i.e. bd may prom. rules to implement & administer statute; Combs  
bd sets policies, etc = const. problem

staff: exec. director? deputy? staff? (unclassified?)  
[examples from other states: below 1 + 24]

- ④ 1 start up exp. - how much cost yr?  
1: fees  
1: govt

Re 118.40 (7):

If all ch schools must have gov. bd that is separate &  
distinct from sch. bd -

then none = instrumentality of sch. dist,  
+ sch. bd may not employ any personnel for the ch sch.

so RP (a)?

RP (am) i.

AM (am) 2 so none = instrumentality

RP (am) 3, + 4.

const issue state bill

authorize ch. schools  
compliance w/ K  
"best practices"

st. l. court rules

that's all. same as other (2v)s

DPI has same authority as now  
mw, accepts rules etc

bd. staffing: @ director  
staff beyond that: up to director  
unclassified positions  
authorize up to 3, 4?

2 ~~as a memo?~~ approps  
might want need GPR start-up, so 2?  
no need for start-up GPR approp, will  
get private donations

RE (2)  
ich bil ed.  
establish inst a  
non-instr.  
nothing change  
in sub. (2)

#17 (memo)  
sch. w/ lease on a ~~body~~ unit  
have a job to keep lease ~~even~~ if  
MPS -> hwm  
with change  
authorizer  
changes

~~MPS  
Per. Place bill?  
\*~~

\* 17 "unusual" property?

#28 <sup>res</sup> change

draft process for changing of the underperforming  
ch schools.

will be in K<sub>2</sub>

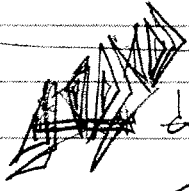
don't put in statute

#30 re license

~~to be~~ DPI has s'ed <sup>its</sup> rules  
return to orig. ch. sch. license

also: don't need to make 'em get a separate license

(see what's needed for alternative license)



~~do like open enrollment~~  
for sch. bal's

UEP works  
RE working pupils etc.

12/24 draft

Predim draft



## Grant, Peter

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**From:** Todd Ziebarth [Todd@publiccharters.org]  
**Sent:** Wednesday, December 15, 2010 8:10 PM  
**To:** 'dennis@dconta.com'; John Gee; Grant, Peter; Schulze, Connie  
**Subject:** Revised Bill  
**Attachments:** 118.40 - Amended.doc

Greetings,

Here's the revised bill. In addition to making the changes that I mentioned in the document that I sent to everyone last night and that we discussed on the call today, I added a provision on p. 5 that specifies that (2r) charters are their own local educational agencies.

Two other things. One, I didn't make any changes to the bill based upon our discussion of your question #13 and my answer to it. Let me know if you think we need to do so. Two, I didn't make any changes to the bill to reflect John's suggestion in the call today that we should allow charters that currently lease buildings from districts to stay in those buildings if they change authorizers. What's the best way to address that suggestion?

If you have any further questions about the language, please let me know. Thank you.

--

Todd Ziebarth  
Vice President, State Advocacy and Support  
National Alliance for Public Charter Schools  
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Rec'd from  
Todd Zieb  
12/16/10

**118.40 Charter schools.**

(1) NOTICE TO STATE SUPERINTENDENT. Whenever a school board intends to establish a charter school, it shall notify the state superintendent of its intention. Whenever one of the entities under sub. (2r) (b) intends to establish a charter school, it shall notify the state superintendent of its intention by February 1 of the previous school year. A notice under this subsection shall include a description of the proposed school.

(1m) PETITION. (a) A written petition requesting the school board to establish a charter school under this section may be filed with the school district clerk. The petition shall be signed by at least 10% of the teachers employed by the school district or by at least 50% of the teachers employed at one school of the school district.

(b) The petition shall include all of the following:

1. The name of the person who is seeking to establish the charter school.
2. The name of the person who will be in charge of the charter school and the manner in which administrative services will be provided.
3. A description of the educational program of the school.
4. The methods the school will use to enable pupils to attain the educational goals under s. 118.01.
5. The method by which pupil progress in attaining the educational goals under s. 118.01 will be measured.
6. The governance structure of the school, including the method to be followed by the school to ensure parental involvement.
7. Subject to sub. (7) (a) and (am) and ss. 118.19 (1) and 121.02 (1) (a) 2., the qualifications that must be met by the individuals to be employed in the school.
8. The procedures that the school will follow to ensure the health and safety of the pupils.
9. The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the school district population.
10. ~~The plans and timelines for student recruitment and enrollment, including lottery procedures.~~
11. The manner in which annual audits of the financial and programmatic operations of the school will be performed.
12. The procedures for disciplining pupils.
13. 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.
14. A description of the school facilities and the types and limits of the liability insurance that the school will carry.
15. The effect of the establishment of the charter school on the liability of the school district.

Formatted: Font: (Default) Times New Roman, 12 pt  
Deleted: The requirements for admission to the school

(2) PUBLIC HEARING; GRANTING OF PETITION. (a) Within 30 days after receiving a petition under sub. (1m) the school board shall hold a public hearing on the petition. At the hearing, the school board shall consider the level of employee and parental support for the establishment of the charter school described in the petition and the fiscal impact of the establishment of the charter school on the school district. After the hearing, the school board may grant the petition.

~~to need to include lottery procedures~~



(b) A school board may grant a petition that would result in the conversion of all of the public schools in the school district to charter schools if all of the following apply:

1. At least 50% of the teachers employed by the school district sign the petition.
2. The school board provides alternative public school attendance arrangements for pupils who do not wish to attend or are not admitted to a charter school.

(c) The school board of the school district operating under ch. 119 shall either grant or deny the petition within 30 days after the public hearing. If the school board of the school district operating under ch. 119 denies a petition, the person seeking to establish the charter school may, within 30 days after the denial, appeal the denial to the department. The department shall issue a decision within 30 days after receiving the appeal. The department's decision is final and not subject to judicial review under ch. 227.

**(2m) SCHOOL BOARD INITIATIVE.** (a) A school board may on its own initiative contract with a person to operate a school as a charter school. The contract shall include all of the provisions specified under sub. (1m) (b) and may include other provisions agreed to by the parties.

(am) At least 30 days before entering in a contract under this subsection that would convert a private school to a charter school or that would establish a charter school that is not an instrumentality of the school district, the school board shall hold a public hearing on the contract. At the hearing, the school board shall consider the level of employee and parental support for the establishment of the charter school and the fiscal impact of the establishment of the charter school on the school district.

(b) A school board may not enter into a contract under par. (a) that would result in the conversion of all of the public schools in the school district to charter schools unless the school board complies with sub. (2) (b) 2.

**(2r) OTHER INITIATIVES.** (a) In this subsection, "instructional staff" has the meaning given in the rules promulgated by the department under s. 121.02 (1) (a) 2.

(b) 1. All of the following entities may establish by charter, on behalf of their respective entities, a school as a charter school:

- a. The common council of the city of Milwaukee.
- b. The chancellor of the University of Wisconsin–Milwaukee.
- c. ~~The chancellor of the University of Wisconsin–Parkside.~~
- d. The Milwaukee area technical college district board
- e. Cardinal Stritch University.
- f. The Wisconsin charter school authorizing board.
- g. Cooperative educational service agencies.

2. A charter shall include all of the provisions specified under sub. (1m) (b) 3. to 14. A contract shall include all of the provisions specified under sub. (1m) (b) 1. to 14. and shall specify the effect of the establishment of the charter school on the liability of the contracting entity under this paragraph. The contract may include other provisions agreed to by the parties. The chancellor of the University of Wisconsin–Milwaukee or of the University of Wisconsin–Parkside may not establish or enter into a contract for the establishment of a charter school under this paragraph without the approval of the board of regents of the University of Wisconsin System.

3. If the chancellor of the University of Wisconsin–Parkside contracts for the

**Deleted:** and operate a charter school or

**Deleted:** may initiate a contract with an individual or group to operate

**Deleted:** On a pilot basis, t

establishment of a charter school, the contract shall also provide that the charter school must be operated by a governing board and that the chancellor or his or her designee must be a member of the governing board. In addition, if the contract provides that the instructional staff of the charter school shall consist of employees of the board of regents of the University of Wisconsin System, the contract shall also include provisions that do all of the following:

- a. Delegate to the governing board of the charter school the board of regents' authority to establish and adjust all compensation and fringe benefits of instructional staff, subject to the terms of any collective bargaining agreement under subch. V of ch. 111 that covers the instructional staff. In the absence of a collective bargaining agreement, the governing board may establish and adjust all compensation and fringe benefits of the instructional staff only with the approval of the chancellor of the University of Wisconsin-Parkside.
- b. Authorize the governing board of the charter school to perform specified duties for the board of regents with respect to the instructional staff. This authorization may include duties related to supervising the instructional staff, taking disciplinary actions with respect to the instructional staff, recommending new hires or layoffs, collective bargaining, claims, complaints, or benefits and records administration.

(bm) The common council of the city of Milwaukee, the chancellor of the University of Wisconsin-Milwaukee, and the Milwaukee area technical college, Cardinal Stritch University, may only enter into a contract for the establishment of a charter school located in the school district operating under ch. 119. The chancellor of the University of Wisconsin-Parkside may only enter into a contract for the establishment of a charter school located in a unified school district that is located in the county in which the University of Wisconsin-Parkside is situated or in an adjacent county. A CESA may only enter into a contract for the establishment of a charter school located within its boundaries.

(c) The chartering or contracting entity under par. (b) shall do all of the following:

- 1. Ensure that all instructional staff of charter schools under this subsection hold a license or permit to teach issued by the department.
- 2. Administer the examinations under ss. 118.30 (1r) and 121.02 (1) (r) to pupils enrolled in charter schools under this subsection.

(d) 1. a. In the 2009-10 and 2010-11 school years, from the appropriation under s. 20.255 (2) (fm), the department shall pay to the operator of the charter school an amount equal to the sum of the amount paid per pupil under this subdivision in the previous school year and the increase in the per pupil amount paid to private schools under s. 119.23 (4) (b) 2. or (bg) in the current school year as compared to the previous school year, multiplied by the number of pupils attending the charter school.

b. In the 2011-12 school year and in each school year thereafter, from the appropriation under s. 20.255 (2) (fm), the department shall pay to the operator of the charter school an amount equal to the sum of the amount paid per pupil under this subdivision in the previous school year and the per pupil revenue limit adjustment under s. 121.91 (2m) in the current school year, multiplied by the number of pupils attending the charter school.

c. The amount paid per pupil under this subdivision may not be less than the amount paid per pupil under this subdivision in the previous school year. The department shall pay 25% of the total amount in September, 25% in December, 25% in February, and 25% in June. The department shall send the check to the operator of the charter school.

**Deleted:** 4. No chartering or contracting entity under subd. 1. may establish or enter into a contract for the establishment of a virtual charter school.¶

**Deleted:** district board

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**Deleted:** (c) 1. Except as provided in subd. 3., only pupils who reside in the school district in which a charter school established under this subsection is located may attend the charter school.¶

3. A pupil may attend Woodlands School, a charter school established in the school district operating under ch. 119 under this subsection, regardless of the pupil's school district of residence, if any of the following applies:¶

a. The pupil attended Woodlands School in the 2003-04 school year and, beginning in the 2005-06 school year, in the previous school year.¶

b. A member of the pupil's family who resides in the same household as the pupil attended Woodlands School in the 2003-04 school year.¶

(cm) The chancellor of the University of Wisconsin-Parkside may establish or enter into a contract for the establishment of only one charter school under this subsection, which may not operate high school grades and which may not accommodate more than 480 pupils.¶

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2. If the chancellor of the University of Wisconsin–Parkside establishes or contracts for the establishment of a charter school under this subsection, in March the department shall pay to the unified school district in which the charter school is located, from the appropriation under s. 20.255 (2) (fm), an amount equal to the amount of school aid per pupil to which the unified school district is eligible in the current school year multiplied by the number of pupils attending the charter school who were previously enrolled in the unified school district.

(f) If the chancellor of the University of Wisconsin–Parkside establishes or contracts for the establishment of a charter school under this subsection, biennially the chancellor shall submit a report to the legislature under s. 13.172 (2). The report shall include information on the academic performance of the pupils who attend the charter school and on the success of the governance structure of the charter school.

✓ (g) The Wisconsin charter school authorizing board is an independent state agency with statewide chartering jurisdiction and authority.

x 1. The mission of the board shall be to authorize high-quality public charter schools throughout the state, particularly schools designed to expand opportunities for at-risk students.

✓ 2. The board shall consist of nine members, no more than five of whom shall be members of the same political party. Three members shall be appointed by the Governor; three members shall be appointed by the Senate Majority Leader; and three members shall be appointed by the Speaker of the House of Representatives. In making the appointments, the Governor, the Senate Majority Leader, and the Speaker of the House of Representatives shall ensure statewide geographic diversity among board members.

✓ 3. Members appointed to the board shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, public school leadership, assessment, and curriculum and instruction, and public education law. All members of the board shall have demonstrated understanding of and commitment to charter schooling as a strategy for strengthening public education.

✓ 4. To establish staggered terms of office, the initial term of office for three board members shall be four years and thereafter shall be three years; the initial term of office for another three members shall be three years and thereafter shall be three years; and the initial term of office for the last three members shall be two years and thereafter shall be two years. No member shall serve more than seven consecutive years. The initial appointments shall be made no later than September 30, 2011.

✓ 5. A member of the board may be removed for any cause that renders the member incapable or unfit to discharge the duties of the office. Whenever a vacancy on the board exists, the original appointing authority shall appoint a member for the remaining portion of the term.

✓ 6. The board is authorized to receive and expend gifts, grants, and donations of any kind from any public or private entity to carry out its purposes, subject to the terms and conditions under which they are given, provided that all such terms and conditions are permissible under law.

x 7. The board shall operate with dedicated resources and staff qualified to execute the day-to-day responsibilities of public charter school authorizing.

✓ 8. To cover its costs for authorizing public charter schools, the board may withhold a fee from each public charter school it authorizes. The oversight fee shall be drawn from and

calculated as a uniform percentage of the per-student operational funding allocated to each public charter school, not to exceed two percent of each public charter school's per-student funding in a single school year.

(3) CONTRACT. (a) If the school board grants the petition under sub. (2), the school board shall contract with the person named in the petition under sub. (1m) (b) 1. to operate the school as a charter school under this section. The contract shall include all of the provisions specified in the petition and may include other provisions agreed to by the parties.

(b) A contract under par. (a) or under subs. (2m) or (2r) may be for any term not exceeding 5 school years and may be renewed for successive five-year terms of duration, although the school board may vary the term based on the performance, demonstrated capacities, and particular circumstances of each public charter school. The school board may grant renewal with specific conditions for necessary improvements to a public charter school. The contract shall specify the amount to be paid to the charter school during each school year of the contract.

(c) 1. A school board may not enter into a contract for the establishment of a charter school located outside the school district, except as follows:

a. If 2 or more school boards enter into an agreement under s. 66.0301 to establish a charter school, the charter school shall be located within one of the school districts.

b. If one or more school boards enter into an agreement with the board of control of a cooperative educational service agency to establish a charter school, the charter school shall be located within the boundaries of the cooperative educational service agency.

c. If one or more school boards enter into an agreement with a federally recognized Indian tribe or band in this state to establish a charter school, the charter school shall be located within one of the school districts or within the boundaries of the tribe's or band's reservation.

1m. Subdivision 1. does not apply to the establishment of a virtual charter school.

2. A school board may not enter into a contract that would result in the conversion of a private, sectarian school to a charter school.

(d) A school board or an entity under sub. (2r) (b) shall give preference in awarding contracts for the operation of charter schools to those charter schools that serve children at risk, as defined in s. 118.153 (1) (a).

(e) When establishing or contracting for the establishment of a charter school under this section, a school board or entity specified under sub. (2r) (b) shall consider the principles and standards for quality charter schools established by the National Association of Charter School Authorizers.

3. The state charter school authorizing board or a CESA may enter into an agreement with a federally recognized Indian tribe or band in this state to establish a charter school located within the boundaries of the tribe's or band's reservation.

4. A charter school authorized by an entity under sub. (2r) is its own local educational agency.

(4) CHARTER SCHOOL DUTIES, RESTRICTIONS, POWERS, AND GOVERNING BOARDS. (a) *Duties.* A charter school shall do all of the following:

1. If the charter school replaces a public school in whole or in part, give preference in

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admission to any pupil who resides within the attendance area or former attendance area of that public school.

2. Be nonsectarian in its programs, admissions policies, employment practices and all other operations.

3. Enroll all students who wish to attend the school, unless the number of students exceeds the capacity of a program, class, grade level, or building. If capacity is insufficient to enroll all students who wish to attend the school, the public charter school shall select students through a lottery.

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4. A public charter school shall give enrollment preference to students enrolled in the public charter school the previous school year and to siblings of students already enrolled in the public charter school. An enrollment preference for returning students excludes those students from entering into a lottery.

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5. A public charter school may give enrollment preference to children of a public charter school's founders, governing board members, and full-time employees, so long as they constitute no more than 10% of the school's total student population.

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(b) *Restrictions.* A charter school may not do any of the following:

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1. Charge tuition, except as otherwise provided in s. 121.83(4).

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2. Except as provided in par. (c), discriminate in admission or deny participation in any program or activity on the basis of a person's sex, race, religion, national origin, ancestry, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

(c) *Single-sex schools and courses.* A school board may enter into a contract for, and an entity under sub. (2r) may establish or enter into a contract for, the establishment of a charter school that enrolls only one sex or that provides one or more courses that enroll only one sex if the school board or entity under sub. (2r) makes available to the opposite sex, under the same policies and criteria of admission, schools or courses that are comparable to each such school or course.

(d) *Powers.* A charter school shall have all the powers necessary for carrying out the terms of its charter contract including but not limited to the following powers:

1. To receive and disburse funds for school purposes;

2. To secure appropriate insurance and to enter into contracts and leases;

3. To incur debt in reasonable anticipation of the receipt of public or private funds;

4. To pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

5. To solicit and accept any gifts or grants for school purposes subject to applicable laws and the terms of its charter contract;

6. To acquire real property for use as its facility or facilities, from public or private sources; and,

7. To sue and be sued in its own name.

(e) *Governing Boards.* Each charter school shall have a governing board that is party to the charter contract with its authorizer. A majority of each governing board's members shall be non-personnel from the school. A governing board shall not contain board members and administrators from the authorizers that have approved the school.

(5) CHARTER REVOCATION. A charter may be revoked by the school board or the

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entity under sub. (2r) (b) that contracted with the charter school if the school board or, if applicable, the entity under sub. (2r) (b) finds that any of the following occurred:

- (a) The charter school violated its contract with the school board or the entity under sub. (2r) (b).
- (b) The pupils enrolled in the charter school failed to make sufficient progress toward attaining the educational goals under s. 118.01.
- (c) The charter school failed to comply with generally accepted accounting standards of fiscal management.
- (d) The charter school violated this section.

(6) PROGRAM VOLUNTARY. No pupil may be required to attend a charter school without his or her approval, if the pupil is an adult, or the approval of his or her parents or legal guardian, if the pupil is a minor.

(7) LEGAL STATUS; APPLICABILITY OF SCHOOL LAWS. (a) Except as provided in par. (am), the school board of the school district in which a charter school is located shall determine whether or not the charter school is an instrumentality of the school district. If the school board determines that the charter school is an instrumentality of the school district, the school board shall employ all personnel for the charter school. If the school board determines that the charter school is not an instrumentality of the school district, the school board may not employ any personnel for the charter school.

(am) 1. Except as provided in subds. 2. and 3., if a charter school is established under sub. (2m) and located in the school district operating under ch. 119, the school board of that school district shall determine whether or not the charter school is an instrumentality of the school district. If the school board determines that a charter school is an instrumentality of the school district, the school board shall employ all personnel for the charter school. If the school board determines that a charter school is not an instrumentality of the school district, the school board may not employ any personnel for the charter school.

2. A charter school established under sub. (2r) or a private school located in the school district operating under ch. 119 that is converted to a charter school is not an instrumentality of any school district and no school board may employ any personnel for the charter school. If the chancellor of the University of Wisconsin–Parkside contracts for the establishment of a charter school under sub. (2r), the board of regents of the University of Wisconsin System may employ instructional staff for the charter school.

3. Notwithstanding subd. 2., if the city of Milwaukee contracts with an individual or group operating for profit to operate a school as a charter school, the charter school is an instrumentality of the school district operating under ch. 119 and the board of the school district operating under ch. 119 shall employ all personnel for the charter school.

4. If a school board enters into an agreement with a federally recognized American Indian tribe or band in this state to establish a charter school under sub. (3) (c) 1. c., that school board shall determine whether the charter school is an instrumentality of the school district regardless of the location of the charter school.

(ar) Nothing in this subsection affects the rights of personnel of a charter school that is an instrumentality of a school district to engage in collective bargaining pursuant to subch. IV of ch. 111.

(b) Except as otherwise explicitly provided, chs. 115 to 121 do not apply to charter schools.

✓ (c) A charter contract may consist of one or more schools, to the extent approved by the authorizer and consistent with applicable law. Each public charter school that is part of a charter contract shall be separate and distinct from any others.

✓ (d) A single governing board may hold one or more charter contracts. Each public charter school that is part of a charter contract shall be separate and distinct from any others.

\* (e) Employees in public charter schools are eligible for participation in retirement and other benefits programs of the state, if the public charter school chooses to participate.

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**(8) VIRTUAL CHARTER SCHOOLS.** (a) *Location.* For the purposes of sub. (7) (a), (am), and (ar), a virtual charter school is considered to be located in the following school district:

1. If a school board contracts with a person to establish the virtual charter school, in the school district governed by that school board.

2. If 2 or more school boards enter into an agreement under s. 66.0301 to establish the virtual charter school, or if one or more school boards enter into an agreement with the board of control of a cooperative educational service agency to establish the virtual charter school, in the school district specified in the agreement.

(b) *Licensure.* 1. The governing body of a virtual charter school shall assign an appropriately licensed teacher for each online course offered by the virtual charter school. No person holding only a permit to teach exclusively in a charter school may teach in a virtual charter school, and no person holding both a license to teach exclusively in a charter school and a license to teach in other public schools may teach, in a virtual charter school, a subject or at a level that is not authorized by the latter license.

2. If a pupil attends a virtual charter school, any person providing educational services to the pupil in the pupil's home, other than instructional staff of the virtual charter school, is not required to hold a license or permit to teach issued by the department.

(c) *Staff duties.* In a virtual charter school, an instructional staff member is responsible for all of the following for each pupil the instructional staff member teaches:

1. Improving learning by planned instruction. 2. Diagnosing learning needs. 3. Prescribing content delivery through class activities. 4. Assessing learning. 5. Reporting outcomes to administrators and parents and guardians. 6. Evaluating the effects of instruction.

(d) *Required days and hours.* A virtual charter school shall do all of the following:

1. Provide educational services to its pupils for at least 150 days each school year.

2. Ensure that its teachers are available to provide direct pupil instruction for at least the applicable number of hours specified in s. 121.02 (1) (f) 2. each school year. No more than 10 hours in any 24-hour period may count toward the requirement under this subdivision.

3. Ensure that its teachers respond to inquiries from pupils and from parents or guardians of pupils by the end of the first school day following the day on which the inquiry is received.

(e) *Parent advisory council.* The governing body of a virtual charter school shall ensure that a parent advisory council is established for the school and that it meets on a regular basis. The governing body shall determine the selection process for members of the

parent advisory council.

(f) *Required notices.* At the beginning of each school term, the governing body of a virtual charter school shall inform the parent or guardian of each pupil attending the virtual charter school, in writing, the name of, and how to contact, each of the following persons:

1. The members of the school board that contracted for the establishment of the virtual charter school and the administrators of that school district.
2. The members of the virtual charter school's governing body, if different than the persons under subd. 1.
3. The members of the virtual charter school's parent advisory council established under par. (e).
4. The staff of the virtual charter school.

(g) *Pupil's failure to participate.* 1. Whenever a pupil attending a virtual charter school fails to respond appropriately to a school assignment or directive from instructional staff within 5 school days, the governing body of the virtual charter school shall notify the pupil's parent or guardian.

2. Subject to subd. 2m., the third time in the same semester that a pupil attending a virtual charter school fails to respond appropriately to a school assignment or directive from instructional staff within 5 school days, the governing body of the virtual charter school shall also notify the school board that contracted for the establishment of the virtual charter school, the school board of the pupil's resident school district, and the department. The school board that contracted for the establishment of the virtual charter school may transfer the pupil to his or her resident school district. If the pupil is a resident of the school district that contracted for the establishment of the virtual charter school, the school board may assign the pupil to another school or program within that school district. If the school board transfers or assigns a pupil, it shall notify the pupil's parent or guardian and the department.

2m. If the parent or guardian of a pupil attending a virtual charter school notifies the virtual charter school in writing before a school assignment or directive is given that the pupil will not be available to respond to the assignment or directive during a specified period, the school days during that period do not count for purposes of subd. 2. The virtual charter school shall require the pupil to complete any assignment missed during the period. This subdivision applies to no more than 10 school days in a school year.

3. The parent or guardian of a pupil transferred to the pupil's resident school district under subd. 2. may appeal the transfer to the department within 30 days after receipt of the notice of transfer. The department shall affirm the school board's decision unless the department finds that the decision was arbitrary or unreasonable.

(9) ACCESS TO PUBLIC SCHOOL BUILDINGS. (a) Charter schools shall have access to unused or underutilized school buildings previously built and maintained by school districts.

(b) The department of administration shall create a list of unused and underutilized buildings belonging to school districts and make the list available to charter schools and authorizers.

(c) School districts must make those buildings available to charter schools if they have been unused or underutilized by students for two (2) consecutive school years.

**Deleted:** (h) *Enrollment limit.* 1. Subject to subds. 3. and 4., beginning in the 2009-10 school year, the total number of pupils attending virtual charter schools through the open enrollment program under s. 118.51 in any school year may not exceed 5,250.¶

2. By the first Friday following the first Monday in April, the governing body of each virtual charter school shall report to the department all of the following:¶

a. The number of pupils who have initially applied and been accepted to attend the virtual charter school through the open enrollment program under s. 118.51.¶

b. The number of pupils attending the virtual charter school through the open enrollment program under s. 118.51 in the current school year who are expected to continue attending a virtual charter school through the open enrollment program under s. 118.51 in the succeeding school year.¶

c. Of the applicants reported under subd. 2. a., those who are siblings of pupils reported under subd. 2. b.¶

2m. If the department determines that the sum of the pupils reported under subd. 2. a. and b. by all virtual charter schools is no more than the limit under subd. 1., the department shall notify the virtual charter schools that all pupils reported under subd. 2. a. and b. may attend virtual charter schools in the succeeding school year. If the department determines that the sum of the pupils reported under subd. 2. a. and b. by all virtual charter schools is more than the limit under subd. 1., the department shall calculate the sum of pupils reported under subd. 2. b. by all virtual charter schools.¶

3. If the department determines under subd. 2m. that the sum of the pupils reported under subd. 2. b. by all virtual charter schools is equal to or greater than the limit allowed under subd. 1., the department shall notify the virtual charter schools that all pupils reported under subd. 2. b. and c. may attend virtual charter schools in the succeeding school year notwithstanding the limit under subd. 1., but that no other pupils reported under subd. 2. a. may do so.¶

4. If the department determines under subd. 2m. that the sum of ... [1]



- (d) If a charter school wants to use a building on the list, the school district must sign a lease at the fair market value for comparable facilities for the building or an unused portion of an underutilized building, without requiring that maintenance and operations activities be performed by the district.
- (e) The charter school may continue to lease the building at the fair market value for comparable facilities as long as it desires.
- (f) If a charter school wants to purchase a building on the list, the school district must sell the building at the fair market value for comparable facilities, without any encumbrances.

**(10) BOARD FUNDING.** (a) To cover the costs for overseeing public charter schools, each charter school authorized by the board shall remit to the board an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per-student operational funding allocated to each public charter school, not to exceed two percent of each public charter school's per-student operational funding in a single school year.

**(11) BOARD REPORTING.** (a) The board shall be required to submit to the legislature and the state department of public instruction an annual report summarizing:

- 1. The board's strategic vision for chartering and progress toward achieving that vision;
- 2. The academic and financial performance of all operating public charter schools overseen by the board;
- 3. The status of the board's public charter school portfolio, identifying all public charter schools in each of the following categories: approved (but not yet open), operating, renewed, transferred, revoked, not renewed, voluntarily closed, or never opened;
- 4. The authorizing functions provided by the board to the public charter schools under its purview, including the board's operating costs and expenses detailed in annual audited financial statements that conform with Generally Accepted Accounting Principles; and
- 5. The services purchased from the board by the public charter schools under its purview, including an itemized accounting of the actual costs of these services.

**(12) BOARD CHARTER APPLICATION DECISION-MAKING PROCESS.** (a) In reviewing and evaluating charter applications, the board shall employ procedures, practices, and criteria consistent with nationally recognized principles and standards for quality charter authorizing. The application review process shall include thorough evaluation of each written charter application, an in-person interview with the applicant group, and an opportunity in a public forum for local residents to learn about and provide input on each application.

- (b) In deciding whether to approve charter applications, the board shall:
- 1. Grant charters only to applicants that have demonstrated competence in each element of the board's application and are likely to open and operate a successful public charter school;
  - 2. Base decisions on documented evidence collected through the application review process;
  - 3. Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest or any appearance thereof.

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(c) No later than [INSERT NUMBER OF DAYS] after the filing of a charter application, the board shall decide to approve or deny the charter application. The board shall adopt by resolution all charter approval or denial decisions in an open meeting of its governing board.

(d) An approval decision may include, if appropriate, reasonable conditions that the charter applicant must meet before a charter contract may be executed.

(e) For any charter denial, the board shall clearly state, for public record, its reasons for denial. A denied applicant may subsequently re-apply to the board or apply to any other authorizer in the state.

(f) Within [INSERT NUMBER OF DAYS] of taking action to approve or deny a charter application, the board shall report to the state department of public instruction the action it has taken. The board shall provide a copy of the report to the charter applicant at the same time that the report is submitted to the state. The report shall include a copy of the board governing board's resolution setting forth the action taken and reasons for the decision and assurances as to compliance with all of the procedural requirements and application elements.

**(13) BOARD PERFORMANCE FRAMEWORK.** (a) The performance provisions within a board charter contract shall be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures and metrics that will guide the board's evaluations of each public charter school. The performance framework shall include indicators, measures and metrics for, at a minimum:

(i) Student academic proficiency;

(ii) Student academic growth;

(iii) Achievement gaps in both proficiency and growth between major student subgroups;

(iv) Attendance;

(v) Recurrent enrollment from year to year;

(vi) Postsecondary readiness (for high schools);

(vii) Financial performance and sustainability; and

(viii) Board performance and stewardship, including compliance with all applicable laws, regulations, and terms of the charter contract.

(b) Annual performance targets shall be set by each public charter school in conjunction with the board in the school's charter contract.

(c) The performance framework shall allow the inclusion of additional rigorous, valid, and reliable indicators proposed by a public charter school to augment external evaluations of its performance, provided that the board approves the quality and rigor of such school-proposed indicators.

(d) The performance framework shall require the disaggregation of all student performance data by major student subgroups (gender, race, poverty status, special education status, English Learner status, and gifted status).

(e) For each public charter school it oversees, the board shall be responsible for collecting, analyzing, and reporting all data from state assessments in accordance with the performance framework.

(f) Multiple schools operating under a single charter contract or overseen by a single governing board shall be required to report their performance as separate, individual schools, and each school shall be held independently accountable for its performance.

✓ (14) ONGOING OVERSIGHT BY BOARD. (a) The board shall continually monitor the performance and legal compliance of the public charter schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the charter contract. The board shall have the authority to conduct oversight activities that enable it to fulfill its responsibilities, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this statute, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to public charter schools.

✗ (b) The board shall annually publish and provide, as part of its annual report to the general assembly, a performance report for each public charter school it oversees, in accordance with the performance framework set forth in the charter contract. The board may require each public charter school it oversees to submit an annual report to assist it in gathering complete information about each school, consistent with the performance framework.

✓ (c) In the event that a public charter school's performance or legal compliance appears unsatisfactory, the board shall promptly notify the public charter school of the perceived problem and provide reasonable opportunity for the school to remedy the problem, unless the problem warrants revocation in which case the revocation timeframes will apply.

✓ (15) BOARD RENEWAL, NON-RENEWALS, AND REVOCATIONS. (a) A charter may be renewed for successive five-year terms of duration, although the board may vary the term based on the performance, demonstrated capacities, and particular circumstances of each public charter school. The board may grant renewal with specific conditions for necessary improvements to a public charter school.

✓ (b) No later than [INSERT DATE], the board shall issue a public charter school performance report and charter renewal application guidance to any public charter school whose charter will expire the following year. The performance report shall summarize the public charter school's performance record to date, based on the data required by the charter contract, and shall provide notice of any weaknesses or concerns perceived by the board concerning the public charter school that may jeopardize its position in seeking renewal if not timely rectified. The public charter school shall have [INSERT NUMBER OF DAYS] to respond to the performance report and submit any corrections or clarifications for the report.

✓ (c) The renewal application guidance shall, at a minimum, provide an opportunity for the public charter school to:

- ✓ 1. Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;
2. Describe improvements undertaken or planned for the school; and
3. Detail the school's plans for the next charter term.

✗ (d) The renewal application guidance shall include or refer explicitly to the criteria that will guide the board's renewal decisions, which shall be based on the performance framework set forth in the charter contract.

✓ (e) No later than [INSERT DATE], the governing board of a public charter school seeking renewal shall submit a renewal application to the board pursuant to the renewal application guidance issued by the board. The board shall rule by resolution on the

renewal application no later than [INSERT NUMBER OF DAYS] after the filing of the renewal application.

(f) In making charter renewal decisions, the board shall:

1. Ground its decisions in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;
2. Ensure that data used in making renewal decisions are available to the school and the public; and
3. Provide a public report summarizing the evidence basis for each decision.

(g) The board must develop revocation and non-renewal processes that:

1. Provide the charter holders with a timely notification of the prospect of revocation or non-renewal and of the reasons for such possible closure;
2. Allow the charter holders a reasonable amount of time in which to prepare a response;
3. Provide the charter holders with an opportunity to submit documents and give testimony challenging the rationale for closure and in support of the continuation of the school at an orderly proceeding held for that purpose;
4. Allow the charter holders access to representation by counsel and to call witnesses on their behalf;
5. Permit the recording of such proceedings; and
6. After a reasonable period for deliberation, require a final determination be made and conveyed in writing to the charter holders.

(h) If the board revokes or does not renew a charter, the board shall clearly state, in a resolution of its governing board, the reasons for the revocation or nonrenewal.

(i) Within [INSERT NUMBER OF DAYS] of taking action to renew, not renew, or revoke a charter, the board shall report to the state department of public instruction the action taken, and shall provide a copy of the report to the public charter school at the same time that the report is submitted to the state. The report shall include a copy of the board governing board's resolution setting forth the action taken and reasons for the decision and assurances as to compliance with all of the requirements set forth in this section.

**(16) BOARD SCHOOL CLOSURE AND DISSOLUTION.** (a) Prior to any public charter school closure decision, the board shall have developed a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the school and the board. In the event of a public charter school closure for any reason, the board shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol.

**(17) CHARTER SCHOOL INSTRUCTIONAL STAFF LICENSE.** (a) Except as specified under par. (b), a charter school instructional staff license may be issued to an individual who holds a valid Wisconsin teaching license issued by the department and shall have the same renewal interval and renewal requirements as the existing license. A

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licensed issued under this under this section authorizes the holder to perform any instructional duty at any grade level in a charter school established under s118.40, Stats.

(b) A charter school governing board may request of the department that a license be issued under this subsection. The individual receiving the license shall submit to the department the completed application form and a copy of the charter school governing board's written request that the charter school license be granted to the individual submitting the request.

(c) All individuals teaching in a charter school on (add date law goes into effect) shall follow the procedure outlined in par. (b) but will not be required to pay an additional license fee.

(d) All individuals holding a charter school license issued by the department shall be considered highly qualified instructional staff.

**(18) CHARTER SCHOOL INSTRUCTIONAL STAFF PERMIT.** (a) An individual who does not hold a current license or permit issued by the department to teach in a specific category and developmental level or does not hold a charter school instructional staff license may be employed as a member of the instructional staff in a charter school if he or she obtains a charter school instructional staff permit from the department. The individual receiving the instructional permit shall submit to the department the completed application form and a copy of the charter school governing board's written request that the charter school permit be granted to the individual submitting the request. A 1-year permit under this subsection may be issued if all of the following apply:

1. A charter school governing board requests the permit following a search for a qualified, licensed individual.

2. The individual receiving the permit has a bachelor's degree or has formal proof of mastery in a trade that he or she is assigned to teach.

3. Except as specified under subd. 5., the individual receiving this permit shall complete 6 credits of training or the equivalent coursework toward a teaching certification each school year that he or she is employed in a charter school. These credits shall be part of an approved teacher education program.

4. A permit holder's practice shall be coordinated, directed, and inspected by a person who is licensed by the department to teach in a charter school.

5. An individual who holds a terminal degree in his or her field and has a teaching assignment at an accredited postsecondary institution in Wisconsin or an individual who has formal proof of mastery in a trade and who has a teaching assignment at a Wisconsin Technical College is exempt from the requirement under subd. 3 and subd. 4.

(b) An individual may renew a permit under this paragraph if he or she meets the requirements under par. (a).

*if the individual is assigned to teach*

Craney

Thompson v. Benson  
199 Wis. 2d 674 (1996)

*This case illustrates the restrictions the Wisconsin Constitution places on legislative enactments and the checks and balances that exist in a three-branch system of government. Here, the Wisconsin Supreme Court stopped an attempt to take powers away from the elected state superintendent of schools and give them to gubernatorial appointees. In an opinion authored by Chief Justice Roland B. Day, the Supreme Court voided the education provisions of 1995 Wis. Act 27. Justice Jon P. Wilcox filed a concurring opinion and was joined by Justice Donald W. Steinmetz.*

In this case, the Wisconsin Supreme Court decided that the duties of the elected state superintendent of public instruction (SPI) could not be reallocated or diminished by the appointment of an education commission and education secretary.

The petitioner, Governor Tommy G. Thompson, asked the Court to uphold an action that would permit appointees of the governor to fulfill some of the duties of the SPI. The respondent, State Superintendent John T. Benson, argued that such action would take away powers granted to the elective office in Article X of the Wisconsin Constitution.\*

In deciding the case, the Court interpreted 1995 Wis. Act 27,\*\* focusing on four areas:

- the meaning of the words in the text;
- the debates over the amendment by the framers of the state Constitution;
- the context within which the amendment was written and
- the Legislature's first interpretation of the amendment.

The governor argued that the wording of Article X, Section 1, "[t]he supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct," implies that the superintendent's power is to be shared.

However, the Court, when looking at the 1847-48 constitutional convention records, found that, as the framers debated Amendment X, they "rejected the very framework proposed by 1995 Wis. Act 27." Furthermore, the "other officers," the Court found, were meant to be subordinate to the SPI.

The Court found that "the constitutional difficulty with the education provisions of 1995 Wis. Act 27 is not that it takes power away from the office of the SPI, but rather that it gives the power of supervision of public education to an 'other officer' instead of the SPI."

Justice Wilcox wrote in his concurring opinion that although he agreed that the provision was unconstitutional he disagreed with the Court's interpretation of Article X which concluded that the "other officers" were meant to be subordinate. He argued that the Court's decision reduced the Legislature's flexibility to administer future changes to Wisconsin's educational system. 12/97

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\* The 1902 amendment to Article X, Section 1, of the Wisconsin Constitution states: "The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct; and their qualifications, powers, duties, and compensation shall be prescribed by law. The state superintendent shall be chosen by the qualified electors of the state at the same time and in the same manner as members of the supreme court, . . . The term of office, time and manner of electing or appointing all other officers of supervision of public instruction shall be fixed by law."

\*\* 1995 Wis. Act 27 created the Department of Education, a new Education Commission and a new office, the Secretary of Education. This officer is appointed by the Governor and is head of the Department of Education.

## Grant, Peter

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**From:** Champagne, Rick  
**Sent:** Wednesday, December 15, 2010 11:23 AM  
**To:** Grant, Peter  
**Subject:** RE: WRS

In theory, the WRS can become disqualified for IRC purposes and all contributions made on our behalf become immediately taxable as income and the earnings on contributions do not grow on a tax-deferred basis. I always advise folks to talk to DETF about this issue and the likelihood of its happening.

In terms of defining them as state employees, the issue remains the same: it is not a state test, but rather is a federal test. Simply calling them state employees when they are not state employees doesn't get at the issue. Again, I'd advise talking to DETF.

Finally, if we include them in the WRS, the bills will be referred to Joint Survey Committee on Retirement Systems and that committee must prepare a report on the impact of the bill on the WRS. So in the end DETF will have its say; better for these people to get DETF's input now rather than later and slow the bill up.

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**From:** Grant, Peter  
**Sent:** Wednesday, December 15, 2010 11:12 AM  
**To:** Champagne, Rick  
**Subject:** RE: WRS

Thanks, Rick. Just two more questions (I have to talk to this guy this afternoon, and I'm sure he'll ask these): what happens to the plan if individuals who are not government employees become eligible under state law? And is it possible to simply define charter school employees as government employees for purposes of participating in the WRS?

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**From:** Champagne, Rick  
**Sent:** Wednesday, December 15, 2010 10:47 AM  
**To:** Grant, Peter  
**Subject:** RE: WRS

The WRS is established as a governmental plan and as a qualified plan for the purposes of the Internal Revenue Code (IRC). *See* s. 40.015 (1). Under the IRC, a governmental plan is defined as “a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.” 26 USC 414 (d).

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**From:** Grant, Peter  
**Sent:** Wednesday, December 15, 2010 10:15 AM  
**To:** Champagne, Rick  
**Subject:** WRS

In connection with a drafting request, I recently informed a lobbyist that while a charter school is a public school in many respects, the governing body is not the state or a local government and the employees are not government employees. As a result, under federal law, the employees may not participate in the WRS.

The lobbyist want to know which federal laws allow only government employees to participate in the WRS. He also inquires whether, assuming that is so, we can define charter school employees as government employees for this purpose.

Can you help?

Thanks.

**Potential Modifications and Enhancements to Wisconsin's Charter School Law**

- ✓ 1. **Expand authorizing options:** The state should amend its charter law to create a state charter school board that would have the ability to authorize charter schools throughout the state, allow CESA districts to serve as authorizers within their boundaries, and create one or more new authorizing entities in Milwaukee.
- ✓ 2. **Improve authorizing practices:** The state should amend its charter law to require charter authorizers to adhere to the principles and standards of quality authorizing developed by the National Association of Charter School Authorizers.
- ✓ 3. **Provide equitable funding:** The state should amend its charter law to ensure that students in all public charter schools receive 100% of the funds that they would receive if they enrolled in traditional public schools. (2r) schools
- ✓ 4. **Improve access to district buildings:** The state should amend its charter law to require school districts to put surplus properties on the marketplace and to give public charter schools the right of first refusal on these properties.
- ✓ 5. **Eliminate all caps on growth:** The state should amend its charter law to eliminate both of its limits on the number of public charter schools and students in the state. The first one provides that the number of students attending virtual charters may not exceed 5,250, while the second one provides that the University of Wisconsin-Parkside may only sponsor one charter school in the Racine School District that may not enroll more than 480 students.
- ✓ 6. **Expand virtual learning:** The state should amend its charter law to allow all authorizers to create virtual schools.
- ✓ 7. **Strengthen charter autonomy:** The state should amend its charter law to require ~~instrumentally~~ charter schools to be governed by fiscally and legally independent governing boards. The state should also amend its charter law to make clear that 2r charter schools are their own local educational agencies.
- ✓ 8. **Promote growth of quality charters:** The state should amend its charter law to allow for the creation of multiple schools under a single charter and for an effective governing board to oversee schools under more than one charter contract.
9. **Expand pool of teachers:** The state should amend its charter law to permit anyone who holds a valid Wisconsin teaching license to perform any instructional duty at any grade level in a charter school. i.e. if hold WI license, get to go in ch. sch. for anything
10. **Provide access to benefits programs:** The state should amend its charter law to permit public charter schools to participate on a voluntary basis in the state retirement

all law authorizers?

debate sub 1 - (12) (13) (14) (15) all charter

not in bill

OK (same) with author

non school corp non profit



and other benefit programs.

11. **Require lotteries for charter admissions:** The state should amend its charter law to require that a school's contract contain its lottery procedures.

↑  
total need  
to debate  
all this

all (21)?  
or just CSAB K's?



12/21/10

mtg - Darling, Vos, Luther, John Lee, Todd Johnson, Dennis Costa, Dave Lippman

~~OSB elig to come into local govt bld. pol. pol~~

~~see 72-5167~~

~~operated by OSB~~

~~ed. OSAB not a school to operate in OSB?~~

my concerns

- ~~com. functionality after things change~~
- ~~cost (2.7M per pupil)~~
- ~~can bal operate w/out interfering with?~~
- ~~" " " w/ only 3-4 staff members? (democratic oversight responsibilities)~~
- ~~access to dist. bldg (agreement)~~

now = \$7.15/pupil  
 10K kids = \$71.5M

RE #4

{ "John Lee suggested language  
 "make prog equitably available" to all school buses/purchasers  
 (workmaster generally favored upon!) (Lofc will get language from other states) \*

\* ~~DL~~ Darling: allow UW & tech colleges to authorize (w/out going thru UW Bd or state tech bd.)

~~Vos~~ Vos: add any <sup>accred.</sup> priv. univ. (w/ ~~univ. board~~)? UA independent

\* ~~Leg.~~ Leg. audit bureau does ~~audit~~ audit every 5 years / annual report from school bd.

ch. sch. auth. bd.	3 mem.
	3 ass.
	3 ten.

~~is fed approval to a new bd?~~

~~CHECK~~ <sup>fed</sup> does NELB <sub>act</sub> authorize DPI to close a (2r) charter school if failing?

~~add~~ funding Darling: wd. ~~not~~ minimize offset of (2r) aid i.e. reduce <sup>the</sup> sol's aid

Todd Z: could we trace the \$ back to the sol? (instead of reducing all sol's?)

some talk RE doing = charter & charter funding Δ's together

~~add~~ RE up pkts. 3 grants in 480 kids if from Pecuni  
Pecuni funding instead of eliminating payment entirely

introduction: aim for mid January

## Grant, Peter

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**From:** Todd Ziebarth [Todd@publiccharters.org]  
**Sent:** Wednesday, December 22, 2010 5:43 PM  
**To:** Grant, Peter; Schulze, Connie  
**Cc:** Dennis Conta; John Gee  
**Subject:** Follow Up  
**Attachments:** Potential Modifications and Enhancements to Wisconsin's Charter School Law - TZ.docx; 118.40 - Amended.doc

Peter and Connie,

Thank you for taking the time to meet with us yesterday. As a follow up to the meeting, please find attached two documents. The first one is a revised version of the two-pager we discussed yesterday. As you'll see, I made some tweaks to it and included some questions and comments for Peter in boldface. The second document is our most recent version of the changes that we are recommending for WI's charter school law.

As you review these documents and continue your work on this bill, please let me know of any questions or issues on which we can be helpful. The best number to reach me on for the next week or so is 720-252-8076. We very much appreciate your efforts on what we see as a potentially landmark charter school bill for Wisconsin. Happy Holidays!

--  
Todd Ziebarth  
Vice President, State Advocacy and Support  
National Alliance for Public Charter Schools  
todd@publiccharters.org  
414-288-0756 (office)  
720-252-8076 (cell)  
<http://www.publiccharters.org>

## Potential Modifications and Enhancements to Wisconsin's Charter School Law

- 1. Expand authorizing options:** The state should amend its charter law to create a state charter school board that would have the ability to authorize charter schools throughout the state, allow CESA districts to serve as authorizers within their boundaries, and allow public colleges and universities and accredited four-year private colleges and universities. [Peter: Will you add the necessary language regarding public colleges and universities and accredited four-year private colleges and universities into the bill? By the way, I removed Cardinal Stritch University from the bill that accompanied this document since we're now talking about allowing accredited four-year private colleges and universities to authorize. On the enrollment question, I added 3. under (4) on p. 5 in the bill.]
- 2. Improve authorizing practices:** The state should amend its charter law to require charter authorizers to adhere to the principles and standards of quality authorizing developed by the National Association of Charter School Authorizers. [Peter: I removed Sections 12-16 in the previous bill that I sent, and I added Sections 12 and 13 in the bill. Will you add the language about the periodic audit of authorizers?]
- 3. Provide equitable funding:** The state should amend its charter law to ensure that students in all public charter schools receive 100% of the funds that they would receive if they enrolled in traditional public schools. [Peter: Will you change the funding language so that it is consistent with what we discussed in the meeting on 12/21?]
- 4. Improve access to district buildings:** The state should amend its charter law to require school districts to make surplus properties available for sale or lease and to give public charter schools the right of first refusal on these properties.
- 5. Eliminate all caps on growth:** The state should amend its charter law to eliminate both of its limits on the number of public charter schools and students in the state. The first one provides that the number of students attending virtual charters may not exceed 5,250, while the second one provides that the University of Wisconsin-Parkside may only sponsor one charter school in the Racine School District that may not enroll more than 480 students.
- 6. Expand virtual learning:** The state should amend its charter law to allow all authorizers to create virtual schools.
- 7. Strengthen charter autonomy:** The state should amend its charter law to require charter schools to be governed by fiscally and legally independent governing boards. The state should also amend its charter law to require charter school to be non-profit education corporations and make clear that 2r charter schools are their own local

educational agencies. **[Peter: I added the non-profit corporation requirement as 4. under (4) on p. 5].**

**8. Promote growth of quality charters:** The state should amend its charter law to allow for the creation of multiple schools under a single charter and for an effective governing board to oversee schools under more than one charter contract.

**9. Expand pool of teachers:** The state should amend its charter law to permit anyone who holds a valid Wisconsin teaching license to perform any instructional duty at any grade level in a charter school. **[Peter: Do you have any remaining questions on these provisions?]**

**10. Provide access to benefits programs:** The state should amend its charter law to permit public charter schools to participate on a voluntary basis in the state retirement and other benefit programs. **[Peter: We're checking into this provision. Once we figure it out, we'll get back in touch with you.]**

**11. Require lotteries for charter admissions:** The state should amend its charter law to require that a school's contract contain its lottery procedures. **[Peter: I added this provision as (f) under (3) on p. 5 in the bill.]**

**118.40 Charter schools.**

**(1) NOTICE TO STATE SUPERINTENDENT.** Whenever a school board intends to establish a charter school, it shall notify the state superintendent of its intention. Whenever one of the entities under sub. (2r) (b) intends to establish a charter school, it shall notify the state superintendent of its intention by February 1 of the previous school year. A notice under this subsection shall include a description of the proposed school.

**(1m) PETITION.** (a) A written petition requesting the school board to establish a charter school under this section may be filed with the school district clerk. The petition shall be signed by at least 10% of the teachers employed by the school district or by at least 50% of the teachers employed at one school of the school district.

(b) The petition shall include all of the following:

1. The name of the person who is seeking to establish the charter school.
2. The name of the person who will be in charge of the charter school and the manner in which administrative services will be provided.
3. A description of the educational program of the school.
4. The methods the school will use to enable pupils to attain the educational goals under s. 118.01.
5. The method by which pupil progress in attaining the educational goals under s. 118.01 will be measured.
6. The governance structure of the school, including the method to be followed by the school to ensure parental involvement.
7. Subject to sub. (7) (a) and (am) and ss. 118.19 (1) and 121.02 (1) (a) 2., the qualifications that must be met by the individuals to be employed in the school.
8. The procedures that the school will follow to ensure the health and safety of the pupils.
9. The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the school district population.
10. The requirements for admission to the school.
11. The manner in which annual audits of the financial and programmatic operations of the school will be performed.
12. The procedures for disciplining pupils.
13. 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.
14. A description of the school facilities and the types and limits of the liability insurance that the school will carry.
15. The effect of the establishment of the charter school on the liability of the school district.

**(2) PUBLIC HEARING; GRANTING OF PETITION.** (a) Within 30 days after receiving a petition under sub. (1m) the school board shall hold a public hearing on the petition. At the hearing, the school board shall consider the level of employee and parental support for the establishment of the charter school described in the petition and the fiscal impact of the establishment of the charter school on the school district. After the hearing, the school board may grant the petition.

(b) A school board may grant a petition that would result in the conversion of all of the

public schools in the school district to charter schools if all of the following apply:

1. At least 50% of the teachers employed by the school district sign the petition.
2. The school board provides alternative public school attendance arrangements for pupils who do not wish to attend or are not admitted to a charter school.

(c) The school board of the school district operating under ch. 119 shall either grant or deny the petition within 30 days after the public hearing. If the school board of the school district operating under ch. 119 denies a petition, the person seeking to establish the charter school may, within 30 days after the denial, appeal the denial to the department. The department shall issue a decision within 30 days after receiving the appeal. The department's decision is final and not subject to judicial review under ch. 227.

**(2m) SCHOOL BOARD INITIATIVE.** (a) A school board may on its own initiative contract with a person to operate a school as a charter school. The contract shall include all of the provisions specified under sub. (1m) (b) and may include other provisions agreed to by the parties.

(am) At least 30 days before entering in a contract under this subsection that would convert a private school to a charter school or that would establish a charter school that is not an instrumentality of the school district, the school board shall hold a public hearing on the contract. At the hearing, the school board shall consider the level of employee and parental support for the establishment of the charter school and the fiscal impact of the establishment of the charter school on the school district.

(b) A school board may not enter into a contract under par. (a) that would result in the conversion of all of the public schools in the school district to charter schools unless the school board complies with sub. (2) (b) 2.

**(2r) OTHER INITIATIVES.** (a) In this subsection, "instructional staff" has the meaning given in the rules promulgated by the department under s. 121.02 (1) (a) 2.

(b) 1. All of the following entities may establish by charter, on behalf of their respective entities, a school as a charter school:

- a. The common council of the city of Milwaukee.
- b. The chancellor of the University of Wisconsin-Milwaukee.
- c. ~~The chancellor of the University of Wisconsin-Parkside.~~
- d. The Milwaukee area technical college district board
- e. The Wisconsin charter school authorizing board.
- f. Cooperative educational service agencies.

Deleted: and operate a charter school or

Deleted: may initiate a contract with an individual or group to operate

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2. A charter shall include all of the provisions specified under sub. (1m) (b) 3. to 14. A contract shall include all of the provisions specified under sub. (1m) (b) 1. to 14. and shall specify the effect of the establishment of the charter school on the liability of the contracting entity under this paragraph. The contract may include other provisions agreed to by the parties. The chancellor of the University of Wisconsin-Milwaukee or of the University of Wisconsin-Parkside may not establish or enter into a contract for the establishment of a charter school under this paragraph without the approval of the board of regents of the University of Wisconsin System.

3. If the chancellor of the University of Wisconsin-Parkside contracts for the establishment of a charter school, the contract shall also provide that the charter school must be operated by a governing board and that the chancellor or his or her designee must



be a member of the governing board. In addition, if the contract provides that the instructional staff of the charter school shall consist of employees of the board of regents of the University of Wisconsin System, the contract shall also include provisions that do all of the following:

- a. Delegate to the governing board of the charter school the board of regents' authority to establish and adjust all compensation and fringe benefits of instructional staff, subject to the terms of any collective bargaining agreement under subch. V of ch. 111 that covers the instructional staff. In the absence of a collective bargaining agreement, the governing board may establish and adjust all compensation and fringe benefits of the instructional staff only with the approval of the chancellor of the University of Wisconsin–Parkside.
- b. Authorize the governing board of the charter school to perform specified duties for the board of regents with respect to the instructional staff. This authorization may include duties related to supervising the instructional staff, taking disciplinary actions with respect to the instructional staff, recommending new hires or layoffs, collective bargaining, claims, complaints, or benefits and records administration.

(bm) The common council of the city of Milwaukee, the chancellor of the University of Wisconsin–Milwaukee, and the Milwaukee area technical college, Cardinal Stritch University, may only enter into a contract for the establishment of a charter school located in the school district operating under ch. 119. The chancellor of the University of Wisconsin–Parkside may only enter into a contract for the establishment of a charter school located in a unified school district that is located in the county in which the University of Wisconsin–Parkside is situated or in an adjacent county. A CESA may only enter into a contract for the establishment of a charter school located within its boundaries.

(c) The chartering or contracting entity under par. (b) shall do all of the following:

1. Ensure that all instructional staff of charter schools under this subsection hold a license or permit to teach issued by the department.
2. Administer the examinations under ss. 118.30 (1r) and 121.02 (1) (r) to pupils enrolled in charter schools under this subsection.

(d) 1. a. In the 2009–10 and 2010–11 school years, from the appropriation under s. 20.255 (2) (fm), the department shall pay to the operator of the charter school an amount equal to the sum of the amount paid per pupil under this subdivision in the previous school year and the increase in the per pupil amount paid to private schools under s. 119.23 (4) (b) 2. or (bg) in the current school year as compared to the previous school year, multiplied by the number of pupils attending the charter school.

b. In the 2011–12 school year and in each school year thereafter, from the appropriation under s. 20.255 (2) (fm), the department shall pay to the operator of the charter school an amount equal to the sum of the amount paid per pupil under this subdivision in the previous school year and the per pupil revenue limit adjustment under s. 121.91 (2m) in the current school year, multiplied by the number of pupils attending the charter school.

c. The amount paid per pupil under this subdivision may not be less than the amount paid per pupil under this subdivision in the previous school year. The department shall pay 25% of the total amount in September, 25% in December, 25% in February, and 25% in June. The department shall send the check to the operator of the charter school.

(f) If the chancellor of the University of Wisconsin–Parkside establishes or contracts for the establishment of a charter school under this subsection, biennially the chancellor shall

~~Deleted: 4. No chartering or contracting entity under subd. 1. may establish or enter into a contract for the establishment of a virtual charter school.¶~~

~~Deleted: district board~~

~~Deleted: establish or~~

~~Deleted: establish or~~

~~Deleted: (c) 1. Except as provided in subd. 3., only pupils who reside in the school district in which a charter school established under this subsection is located may attend the charter school.¶~~

~~3. A pupil may attend Woodlands School, a charter school established in the school district operating under ch. 119 under this subsection, regardless of the pupil's school district of residence, if any of the following applies:¶~~

~~a. The pupil attended Woodlands School in the 2003–04 school year and, beginning in the 2005–06 school year, in the previous school year.¶~~

~~b. A member of the pupil's family who resides in the same household as the pupil attended Woodlands School in the 2003–04 school year.¶~~

~~(cm) The chancellor of the University of Wisconsin–Parkside may establish or enter into a contract for the establishment of only one charter school under this subsection, which may not operate high school grades and which may not accommodate more than 480 pupils.¶~~

~~Deleted: d~~

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~~Deleted: 2. If the chancellor of the University of Wisconsin–Parkside establishes or contracts for the establishment of a charter school under this subsection, in March the department shall pay to the unified school district in which the charter school is located, from the appropriation under s. 20.255 (2) (fm), an amount equal to the amount of school aid per pupil to which the unified school district is eligible in the current school year multiplied by the number of pupils attending the charter school who were previously enrolled in the unified school district.¶~~

submit a report to the legislature under s. 13.172 (2). The report shall include information on the academic performance of the pupils who attend the charter school and on the success of the governance structure of the charter school.

(g) The Wisconsin charter school authorizing board is an independent state agency with statewide chartering jurisdiction and authority.

1. The mission of the board shall be to authorize high-quality public charter schools throughout the state, particularly schools designed to expand opportunities for at-risk students.

2. The board shall consist of nine members, no more than five of whom shall be members of the same political party. Three members shall be appointed by the Governor; three members shall be appointed by the Senate Majority Leader; and three members shall be appointed by the Speaker of the House of Representatives. In making the appointments, the Governor, the Senate Majority Leader, and the Speaker of the House of Representatives shall ensure statewide geographic diversity among board members.

3. Members appointed to the board shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, public school leadership, assessment, and curriculum and instruction, and public education law. All members of the board shall have demonstrated understanding of and commitment to charter schooling as a strategy for strengthening public education.

4. To establish staggered terms of office, the initial term of office for three board members shall be four years and thereafter shall be three years; the initial term of office for another three members shall be three years and thereafter shall be three years; and the initial term of office for the last three members shall be two years and thereafter shall be two years. No member shall serve more than seven consecutive years. The initial appointments shall be made no later than September 30, 2011.

5. A member of the board may be removed for any cause that renders the member incapable or unfit to discharge the duties of the office. Whenever a vacancy on the board exists, the original appointing authority shall appoint a member for the remaining portion of the term.

6. The board is authorized to receive and expend gifts, grants, and donations of any kind from any public or private entity to carry out its purposes, subject to the terms and conditions under which they are given, provided that all such terms and conditions are permissible under law.

7. The board shall operate with dedicated resources and staff qualified to execute the day-to-day responsibilities of public charter school authorizing.

8. To cover its costs for authorizing public charter schools, the board may withhold a fee from each public charter school it authorizes. The oversight fee shall be drawn from and calculated as a uniform percentage of the per-student operational funding allocated to each public charter school, not to exceed two percent of each public charter school's per-student funding in a single school year.

(3) CONTRACT. (a) If the school board grants the petition under sub. (2), the school board shall contract with the person named in the petition under sub. (1m) (b) 1. to operate the school as a charter school under this section. The contract shall include all of the provisions specified in the petition and may include other provisions agreed to by the parties.

(b) A contract under par. (a) or under subs. (2m) or (2r) may be for any term not exceeding 5 school years and may be renewed for successive five-year terms of duration, although the school board may vary the term based on the performance, demonstrated capacities, and particular circumstances of each public charter school. The school board may grant renewal with specific conditions for necessary improvements to a public charter school. ~~The contract shall specify the amount to be paid to the charter school during each school year of the contract.~~

Deleted: may be renewed for one or more terms not exceeding 5 school years

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(c) 1. A school board may not enter into a contract for the establishment of a charter school located outside the school district, except as follows:

a. If 2 or more school boards enter into an agreement under s. 66.0301 to establish a charter school, the charter school shall be located within one of the school districts.

b. If one or more school boards enter into an agreement with the board of control of a cooperative educational service agency to establish a charter school, the charter school shall be located within the boundaries of the cooperative educational service agency.

c. If one or more school boards enter into an agreement with a federally recognized Indian tribe or band in this state to establish a charter school, the charter school shall be located within one of the school districts or within the boundaries of the tribe's or band's reservation.

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1m. Subdivision 1. does not apply to the establishment of a virtual charter school.

2. A school board may not enter into a contract that would result in the conversion of a private, sectarian school to a charter school.

(d) A school board or an entity under sub. (2r) (b) shall give preference in awarding contracts for the operation of charter schools to those charter schools that serve children at risk, as defined in s. 118.153 (1) (a).

(e) When establishing or contracting for the establishment of a charter school under this section, a school board or entity specified under sub. (2r) (b) shall consider the principles and standards for quality charter schools established by the National Association of Charter School Authorizers.

3. The state charter school authorizing board or a CESA may enter into an agreement with a federally recognized Indian tribe or band in this state to establish a charter school located within the boundaries of the tribe's or band's reservation.

4. A charter school authorized by an entity under sub. (2r) is its own local educational agency.

(f) Any contract for a charter schools shall contain the student enrollment lottery procedures for the school.

**(4) CHARTER SCHOOL DUTIES, RESTRICTIONS, POWERS, AND GOVERNING BOARDS.** (a) *Duties.* A charter school shall do all of the following:

1. If the charter school replaces a public school in whole or in part, give preference in admission to any pupil who resides within the attendance area or former attendance area of that public school.

2. Be nonsectarian in its programs, admissions policies, employment practices and all other operations.

3. A charter school approved under sub. (2r) shall be open to any student residing in the state.

4. A charter school shall be a non-profit education organization.

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(b) *Restrictions.* A charter school may not do any of the following:

1. Charge tuition, except as otherwise provided in s. 121.83(4).
2. Except as provided in par. (c), discriminate in admission or deny participation in any program or activity on the basis of a person's sex, race, religion, national origin, ancestry, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

(c) *Single-sex schools and courses.* A school board may enter into a contract for, and an entity under sub. (2r) may establish or enter into a contract for, the establishment of a charter school that enrolls only one sex or that provides one or more courses that enroll only one sex if the school board or entity under sub. (2r) makes available to the opposite sex, under the same policies and criteria of admission, schools or courses that are comparable to each such school or course.

(d) *Powers.* A charter school shall have all the powers necessary for carrying out the terms of its charter contract including but not limited to the following powers:

1. To receive and disburse funds for school purposes;
2. To secure appropriate insurance and to enter into contracts and leases;
3. To incur debt in reasonable anticipation of the receipt of public or private funds;
4. To pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;
5. To solicit and accept any gifts or grants for school purposes subject to applicable laws and the terms of its charter contract;
6. To acquire real property for use as its facility or facilities, from public or private sources; and,
7. To sue and be sued in its own name.

(e) *Governing Boards.* Each charter school shall have a governing board that is party to the charter contract with its authorizer. A majority of each governing board's members shall be non-personnel from the school. A governing board shall not contain board members and administrators from the authorizers that have approved the school.

(5) CHARTER REVOCATION. A charter may be revoked by the school board or the entity under sub. (2r) (b) that contracted with the charter school if the school board or, if applicable, the entity under sub. (2r) (b) finds that any of the following occurred:

- (a) The charter school violated its contract with the school board or the entity under sub. (2r) (b).
- (b) The pupils enrolled in the charter school failed to make sufficient progress toward attaining the educational goals under s. 118.01.
- (c) The charter school failed to comply with generally accepted accounting standards of fiscal management.
- (d) The charter school violated this section.

(6) PROGRAM VOLUNTARY. No pupil may be required to attend a charter school without his or her approval, if the pupil is an adult, or the approval of his or her parents or legal guardian, if the pupil is a minor.

(7) LEGAL STATUS; APPLICABILITY OF SCHOOL LAWS. (a) Except as provided

in par. (am), the school board of the school district in which a charter school is located shall determine whether or not the charter school is an instrumentality of the school district. If the school board determines that the charter school is an instrumentality of the school district, the school board shall employ all personnel for the charter school. If the school board determines that the charter school is not an instrumentality of the school district, the school board may not employ any personnel for the charter school.

(am) 1. Except as provided in subds. 2. and 3., if a charter school is established under sub. (2m) and located in the school district operating under ch. 119, the school board of that school district shall determine whether or not the charter school is an instrumentality of the school district. If the school board determines that a charter school is an instrumentality of the school district, the school board shall employ all personnel for the charter school. If the school board determines that a charter school is not an instrumentality of the school district, the school board may not employ any personnel for the charter school.

2. A charter school established under sub. (2r) or a private school located in the school district operating under ch. 119 that is converted to a charter school is not an instrumentality of any school district and no school board may employ any personnel for the charter school. If the chancellor of the University of Wisconsin–Parkside contracts for the establishment of a charter school under sub. (2r), the board of regents of the University of Wisconsin System may employ instructional staff for the charter school.

3. Notwithstanding subd. 2., if the city of Milwaukee contracts with an individual or group operating for profit to operate a school as a charter school, the charter school is an instrumentality of the school district operating under ch. 119 and the board of the school district operating under ch. 119 shall employ all personnel for the charter school.

4. If a school board enters into an agreement with a federally recognized American Indian tribe or band in this state to establish a charter school under sub. (3) (c) 1. c., that school board shall determine whether the charter school is an instrumentality of the school district regardless of the location of the charter school.

(ar) Nothing in this subsection affects the rights of personnel of a charter school that is an instrumentality of a school district to engage in collective bargaining pursuant to subch. IV of ch. 111.

(b) Except as otherwise explicitly provided, chs. 115 to 121 do not apply to charter schools.

(c) A charter contract may consist of one or more schools, to the extent approved by the authorizer and consistent with applicable law. Each public charter school that is part of a charter contract shall be separate and distinct from any others.

(d) A single governing board may hold one or more charter contracts. Each public charter school that is part of a charter contract shall be separate and distinct from any others.

(e) Employees in public charter schools are eligible for participation in retirement and other benefits programs of the state, if the public charter school chooses to participate.

**(8) VIRTUAL CHARTER SCHOOLS.** (a) *Location.* For the purposes of sub. (7) (a), (am), and (ar), a virtual charter school is considered to be located in the following school district:

1. If a school board contracts with a person to establish the virtual charter school, in the school district governed by that school board.

2. If 2 or more school boards enter into an agreement under s. 66.0301 to establish the virtual charter school, or if one or more school boards enter into an agreement with the board of control of a cooperative educational service agency to establish the virtual charter school, in the school district specified in the agreement.

(b) *Licensure.* 1. The governing body of a virtual charter school shall assign an appropriately licensed teacher for each online course offered by the virtual charter school. No person holding only a permit to teach exclusively in a charter school may teach in a virtual charter school, and no person holding both a license to teach exclusively in a charter school and a license to teach in other public schools may teach, in a virtual charter school, a subject or at a level that is not authorized by the latter license.

2. If a pupil attends a virtual charter school, any person providing educational services to the pupil in the pupil's home, other than instructional staff of the virtual charter school, is not required to hold a license or permit to teach issued by the department.

(c) *Staff duties.* In a virtual charter school, an instructional staff member is responsible for all of the following for each pupil the instructional staff member teaches:

1. Improving learning by planned instruction. 2. Diagnosing learning needs. 3. Prescribing content delivery through class activities. 4. Assessing learning. 5. Reporting outcomes to administrators and parents and guardians. 6. Evaluating the effects of instruction.

(d) *Required days and hours.* A virtual charter school shall do all of the following:

1. Provide educational services to its pupils for at least 150 days each school year.  
2. Ensure that its teachers are available to provide direct pupil instruction for at least the applicable number of hours specified in s. 121.02 (1) (f) 2. each school year. No more than 10 hours in any 24-hour period may count toward the requirement under this subdivision.

3. Ensure that its teachers respond to inquiries from pupils and from parents or guardians of pupils by the end of the first school day following the day on which the inquiry is received.

(e) *Parent advisory council.* The governing body of a virtual charter school shall ensure that a parent advisory council is established for the school and that it meets on a regular basis. The governing body shall determine the selection process for members of the parent advisory council.

(f) *Required notices.* At the beginning of each school term, the governing body of a virtual charter school shall inform the parent or guardian of each pupil attending the virtual charter school, in writing, the name of, and how to contact, each of the following persons:

1. The members of the school board that contracted for the establishment of the virtual charter school and the administrators of that school district.  
2. The members of the virtual charter school's governing body, if different than the persons under subd. 1.  
3. The members of the virtual charter school's parent advisory council established under par. (e).  
4. The staff of the virtual charter school.

(g) *Pupil's failure to participate.* 1. Whenever a pupil attending a virtual charter school fails to respond appropriately to a school assignment or directive from instructional staff within 5 school days, the governing body of the virtual charter school shall notify the

pupil's parent or guardian.

2. Subject to subd. 2m., the third time in the same semester that a pupil attending a virtual charter school fails to respond appropriately to a school assignment or directive from instructional staff within 5 school days, the governing body of the virtual charter school shall also notify the school board that contracted for the establishment of the virtual charter school, the school board of the pupil's resident school district, and the department. The school board that contracted for the establishment of the virtual charter school may transfer the pupil to his or her resident school district. If the pupil is a resident of the school district that contracted for the establishment of the virtual charter school, the school board may assign the pupil to another school or program within that school district. If the school board transfers or assigns a pupil, it shall notify the pupil's parent or guardian and the department.

2m. If the parent or guardian of a pupil attending a virtual charter school notifies the virtual charter school in writing before a school assignment or directive is given that the pupil will not be available to respond to the assignment or directive during a specified period, the school days during that period do not count for purposes of subd. 2. The virtual charter school shall require the pupil to complete any assignment missed during the period. This subdivision applies to no more than 10 school days in a school year.

3. The parent or guardian of a pupil transferred to the pupil's resident school district under subd. 2. may appeal the transfer to the department within 30 days after receipt of the notice of transfer. The department shall affirm the school board's decision unless the department finds that the decision was arbitrary or unreasonable.

(9) ACCESS TO PUBLIC SCHOOL BUILDINGS. (a) Charter schools shall have access to unused or underutilized school buildings previously built and maintained by school districts.

(b) The department of administration shall create a list of unused and underutilized buildings belonging to school districts and make the list available to charter schools and authorizers.

(c) School districts must make those buildings available to charter schools if they have been unused or underutilized by students for two (2) consecutive school years.

(d) If a charter school wants to use a building on the list, the school district must sign a lease at the fair market value for comparable facilities for the building or an unused portion of an underutilized building, without requiring that maintenance and operations activities be performed by the district.

(e) The charter school may continue to lease the building at the fair market value for comparable facilities as long as it desires.

(f) If a charter school wants to purchase a building on the list, the school district must sell the building at the fair market value for comparable facilities, without any encumbrances.

(10) BOARD FUNDING. (a) To cover the costs for overseeing public charter schools, each charter school authorized by the board shall remit to the board an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per-student operational funding allocated to each public charter school, not to exceed two percent of each public charter school's per-student operational funding in a single school year.

**Deleted:** (h) *Enrollment limit.* 1. Subject to subds. 3. and 4., beginning in the 2009–10 school year, the total number of pupils attending virtual charter schools through the open enrollment program under s. 118.51 in any school year may not exceed 5,250.¶

2. By the first Friday following the first Monday in April, the governing body of each virtual charter school shall report to the department all of the following:¶

a. The number of pupils who have initially applied and been accepted to attend the virtual charter school through the open enrollment program under s. 118.51.¶

b. The number of pupils attending the virtual charter school through the open enrollment program under s. 118.51 in the cur- rent school year who are expected to continue attending a virtual charter school through the open enrollment program under s. 118.51 in the succeeding school year.¶

c. Of the applicants reported under subd. 2. a., those who are siblings of pupils reported under subd. 2. b.¶

2m. If the department determines that the sum of the pupils reported under subd. 2. a. and b. by all virtual charter schools is no more than the limit under subd. 1., the department shall notify the virtual charter schools that all pupils reported under subd. 2. a. and b. may attend virtual charter schools in the succeeding school year. If the department determines that the sum of the pupils reported under subd. 2. a. and b. by all virtual charter schools is more than the limit under subd. 1., the department shall calculate the sum of pupils reported under subd. 2. b. by all virtual charter schools.¶

3. If the department determines under subd. 2m. that the sum of the pupils reported under subd. 2. b. by all virtual charter schools is equal to or greater than the limit allowed under subd. 1., the department shall notify the virtual charter schools that all pupils reported under subd. 2. b. and c. may attend virtual charter schools in the succeeding school year notwithstanding the limit under subd. 1., but that no other pupils reported under subd. 2. a. may do so.¶

4. If the department determines under subd. 2m. that the sum of ... [1]

(11) BOARD REPORTING. (a) The board shall be required to submit to the legislature and the state department of public instruction an annual report summarizing:

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1. The board's strategic vision for chartering and progress toward achieving that vision;
2. The academic and financial performance of all operating public charter schools overseen by the board;
3. The status of the board's public charter school portfolio, identifying all public charter schools in each of the following categories: approved (but not yet open), operating, renewed, transferred, revoked, not renewed, voluntarily closed, or never opened;
4. The authorizing functions provided by the board to the public charter schools under its purview, including the board's operating costs and expenses detailed in annual audited financial statements that conform with Generally Accepted Accounting Principles; and
5. The services purchased from the board by the public charter schools under its purview, including an itemized accounting of the actual costs of these services.

(12) AUTHORIZER POWERS, DUTIES, AND LIABILITIES. (a) Authorizers are responsible for executing, in accordance with this Act, the following essential powers and duties:

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1. Soliciting and evaluating charter applications;
  2. Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices;
  3. Declining to approve weak or inadequate charter applications;
  4. Negotiating and executing sound charter contracts with each approved public charter school;
  5. Monitoring, in accordance with charter contract terms, the performance and legal compliance of public charter schools; and
  6. Determining whether each charter contract merits renewal, nonrenewal, or revocation.
- (b) An authorizing entity may delegate its duties to offices, employees, and contractors.  
(c) Regulation by authorizers shall be limited to these powers and duties, and consistent with the spirit and intent of this Act.  
(d) An authorizing entity, members of the board of an authorizer in their official capacity, and employees of an authorizer are immune from civil and criminal liability with respect to all activities related to a public charter school they authorize.

(13) PRINCIPLES AND STANDARDS FOR CHARTER AUTHORIZING. (a) All authorizers shall be required to develop and maintain chartering policies and practices consistent with the principles and standards for quality charter authorizing established by the National Association of Charter School Authorizers in all major areas of authorizing responsibility including: organizational capacity and infrastructure; soliciting and evaluating charter applications; performance contracting; ongoing public charter school oversight and evaluation; and charter renewal decision-making. Authorizers shall carry out all their duties in a manner consistent with such nationally recognized principles and standards.

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(14) CHARTER SCHOOL INSTRUCTIONAL STAFF LICENSE. (a) Except as specified under par. (b), a charter school instructional staff license may be issued to an

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individual who holds a valid Wisconsin teaching license issued by the department and shall have the same renewal interval and renewal requirements as the existing license. A license issued under this under this section authorizes the holder to perform any instructional duty at any grade level in a charter school established under s 118.40, Stats.  
(b) A charter school governing board may request of the department that a license be issued under this subsection. The individual receiving the license shall submit to the department the completed application form and a copy of the charter school governing board's written request that the charter school license be granted to the individual submitting the request.

(c) All individuals teaching in a charter school on (add date law goes into effect) shall follow the procedure outlined in par. (b) but will not be required to pay an additional license fee.

(d) All individuals holding a charter school license issued by the department shall be considered highly qualified instructional staff.

(15) CHARTER SCHOOL INSTRUCTIONAL STAFF PERMIT. (a) An individual who does not hold a current license or permit issued by the department to teach in a specific category and developmental level or does not hold a charter school instructional staff license may be employed as a member of the instructional staff in a charter school if he or she obtains a charter school instructional staff permit from the department. The individual receiving the instructional permit shall submit to the department the completed application form and a copy of the charter school governing board's written request that the charter school permit be granted to the individual submitting the request. A 1-year permit under this subsection may be issued if all of the following apply:

1. A charter school governing board requests the permit following a search for a qualified, licensed individual.

2. The individual receiving the permit has a bachelor's degree or has formal proof of mastery in a trade that he or she is assigned to teach.

3. Except as specified under subd. 5., the individual receiving this permit shall complete 6 credits of training or the equivalent coursework toward a teaching certification each school year that he or she is employed in a charter school. These credits shall be part of an approved teacher education program.

4. A permit holder's practice shall be coordinated, directed, and inspected by a person who is licensed by the department to teach in a charter school.

5. An individual who holds a terminal degree in his or her field and has a teaching assignment at an accredited postsecondary institution in Wisconsin or an individual who has formal proof of mastery in a trade and who has a teaching assignment at a Wisconsin Technical College is exempt from the requirement under subd. 3 and subd. 4.

(b) An individual may renew a permit under this paragraph if he or she meets the requirements under par. (a).

(h) *Enrollment limit.* 1. Subject to subds. 3. and 4., beginning in the 2009–10 school year, the total number of pupils attending virtual charter schools through the open enrollment program under s. 118.51 in any school year may not exceed 5,250.

2. By the first Friday following the first Monday in April, the governing body of each virtual charter school shall report to the department all of the following:

a. The number of pupils who have initially applied and been accepted to attend the virtual charter school through the open enrollment program under s. 118.51.

b. The number of pupils attending the virtual charter school through the open enrollment program under s. 118.51 in the current school year who are expected to continue attending a virtual charter school through the open enrollment program under s. 118.51 in the succeeding school year.

c. Of the applicants reported under subd. 2. a., those who are siblings of pupils reported under subd. 2. b.

2m. If the department determines that the sum of the pupils reported under subd. 2. a. and b. by all virtual charter schools is no more than the limit under subd. 1., the department shall notify the virtual charter schools that all pupils reported under subd. 2. a. and b. may attend virtual charter schools in the succeeding school year. If the department determines that the sum of the pupils reported under subd. 2. a. and b. by all virtual charter schools is more than the limit under subd. 1., the department shall calculate the sum of pupils reported under subd. 2. b. by all virtual charter schools.

3. If the department determines under subd. 2m. that the sum of the pupils reported under subd. 2. b. by all virtual charter schools is equal to or greater than the limit allowed under subd. 1., the department shall notify the virtual charter schools that all pupils reported under subd. 2. b. and c. may attend virtual charter schools in the succeeding school year notwithstanding the limit under subd. 1., but that no other pupils reported under subd. 2. a. may do so.

4. If the department determines under subd. 2m. that the sum of the pupils reported under subd. 2. b. by all virtual charter schools is less than the limit allowed under subd. 1., the department shall add to the sum the number of pupils reported under subd. 2. c. for all virtual charter schools. If the new sum is equal to or greater than the limit allowed under subd. 1., the department shall notify the virtual charter schools that all pupils reported under subd. 2. b. and c. may attend virtual charter schools in the succeeding school year notwithstanding the limit under subd. 1., but that no other pupils reported under subd. 2. a. may do so, except as provided in subd. 5. If the new sum is less than the limit allowed under subd. 1., the department shall notify the virtual charter schools that all pupils reported by the virtual charter schools under subd. 2. b. and c. may attend virtual charter schools in the succeeding school year. The department shall select pupils for the remaining available spaces on a random basis from the pupils reported by the virtual charter schools under subd. 2. a. and shall notify the virtual charter schools of the selections.

4m. In performing the calculations under subds. 2m. to 4., the department shall count a pupil who has applied to more than one virtual charter school only once.

5. The department shall maintain a waiting list for those pupils not selected at random under subd. 4. Each virtual charter school shall notify the department whenever it determines that a pupil determined to be eligible to attend the virtual charter school under subd. 4. will not be attending the virtual charter school. The department shall select

pupils on a random basis from the waiting list to fill the newly available spaces.