



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 3

TO: MEMBERS OF THE SPECIAL COMMITTEE ON CHARTER SCHOOLS

FROM: Russ Whitesel, Senior Staff Attorney

RE: Expanding the Entities Which May Authorize Charter Schools

DATE: November 21, 2006

This Memo, prepared for the Special Committee on Charter Schools, provides a framework for a discussion of expanding the number of entities which may authorize the creation of charter schools. Specifically, the Memo provides information on the current entities that are authorized to create charter schools, and provides a brief description of the characteristics of additional entities the committee may wish to consider adding to those entities. Finally, the Memo suggests a set of questions that may need to be considered with regard to the additional authorizers.

This Memo is not intended to provide a comprehensive review of the issues relating to broadening the number of entities that can create or authorize charter schools. Rather, the Memo is intended to generate discussion and focus attention on which, if any, entities could be added to those entities which currently can create charter schools.

### **CURRENT AUTHORIZERS OF CHARTER SCHOOLS**

Currently, all public school boards are eligible to create a charter school. According to the Department of Public Instruction (DPI), of the 425 school boards, 94 school boards have created a total of 173 charter schools for the 2006-07 school year. Several entities are currently authorized to create independent charter schools under s. 118.40 (2r), Stats. (referred to as (2r) charters). Specifically, the University of Wisconsin (UW)-Milwaukee is authorized to create charter schools and as of 2006-07 has created nine charter schools. The City of Milwaukee is the only municipality authorized currently to create charter schools, and it has created five (2r) schools to date. In addition, the UW-Parkside is authorized to create one (2r) charter school and has done so. The Milwaukee Area Technical College is authorized to create a charter school but has not done so to date.

A total of 188 charter schools have been created in the state as of the 2006-07 school year, with a total enrollment of over 27,000 pupils. According to DPI, of the charter schools created, 151 of those

created by school boards have been designated as an “instrumentality” of the school district, while 22 of the charters have been designated as a “non-instrumentality” of the school district. The independent charter authorizers, described above as (2r) authorizers, have created 15 non-school board, non-instrumentality charter schools. The (2r) charter schools enroll approximately 5,000 full-time equivalent pupils in the current school year.

In reviewing the issues associated with authorizing additional entities to create charter schools, it should be noted that the per pupil payment by the state to (2r) charter schools for 2006-07 is \$7,669, and it is estimated that payments will total \$37.9 million for the school year. Payments are fully offset by a proportionate reduction in the general aids of all public school districts.

### **POSSIBLE ADDITIONAL AUTHORIZERS OF CHARTER SCHOOLS**

This section provides a brief description of the characteristics of possible entities which could be empowered to authorize the creation of one or more charter schools.

#### **UW Campuses**

Currently, as noted above, the UW-Milwaukee and UW-Parkside chancellors, with the approval of the UW Board of Regents, are authorized to create charter schools. Proposals have been made in the past to allow all baccalaureate and graduate degree granting campuses of the UW System to authorize charter schools. There are currently 13 campuses in the UW System which grant baccalaureate or graduate degrees. It has also been proposed that the UW Board of Regents be authorized to create charter schools. In the 2005-06 Legislative Session, legislation was proposed authorizing the Board of Regents to create a charter school in Dane County.

It would also be possible to grant the authority to create charter schools to the two-year (freshman-sophomore) UW System campuses and also to the UW-Extension. There are currently 13 two-year colleges in the UW System as well as a statewide extension system.

#### **Private Colleges**

It would also be possible to permit private colleges to create charter schools in the state. There are more than 35 private degree-granting colleges currently operating in Wisconsin with physical campuses. If private colleges were to be authorized, the committee may wish to consider whether chartering authority should be limited to those holding some specific formal accreditation.

#### **Wisconsin Technical Colleges**

The Technical College System Board oversees the programs provided by 16 technical college districts that cover the entire state. These districts are governed by district boards that are responsible for the direct operation of the respective schools and programs and are empowered to levy property taxes, provide facilities and equipment, employ staff, and contract for services.

The committee may wish to consider whether individual districts boards should be empowered to charter schools or whether to limit chartering to the Technical College System Board. Also, district approvals of charter schools could be made subject to the Technical College System Board approval.

### **Cooperative Educational Service Agencies**

There are currently 12 cooperative educational service agencies (CESAs) that furnish support activities to local school districts on a regional basis. It would be possible for the governing CESA boards to serve as authorizers of charter schools.

### **Counties**

It would be possible to allow any or all of the 72 counties to authorize charter schools within their boundaries. It would also be possible to limit the number of counties by population or some other characteristic.

### **Municipalities**

It would also be possible to allow municipalities to authorize charter schools. There are currently 190 cities and 400 villages in the state. If cities and villages that charter schools were limited to those with more than 10,000 population, there would be approximately 63 cities and 18 villages that met such criteria. If towns were included in the definition of municipalities, there would be an additional 12,060 such entities authorized to create charter schools. Based on current estimates, there are approximately 140 towns with a current population of over 2,500 people if the committee wanted to limit the number of towns authorized to charter schools.

### **American Indian Tribes or Tribally Controlled Colleges**

It would be possible to authorize the creation of charter schools by American Indian tribes. There are currently 11 federally recognized tribes in Wisconsin. Legislation was introduced during the 2005-06 Legislative Session to create a Tribal Charter School Authorizing Board comprised of tribal representatives and then permit the Board to contract for the establishment of charter schools. Legislation was also introduced to permit an accredited college or university on a reservation or off-reservation trust land to establish a charter school on a reservation or off-reservation trust land. That proposal would have permitted tribally controlled colleges, of which there are two in the state, to establish charter schools.

Representative Terry Musser, Chair of the Joint Legislative Council's Special Committee on State-Tribal Relations, has written to Representative Vukmir to request that the Special Committee on Charter Schools consider including, in any recommendations it may make relating to additional authorizers of independent charter schools, a provision to permit a tribe or an entity established by a tribe (such as a tribally controlled college or tribal department of education) to establish or contract for the establishment of independent charter schools on a reservation or off-reservation trust land.

### **State Agencies**

It would be possible for the Legislature to authorize the creation of charter schools by specified state agencies within the Executive Branch. It would also be possible to authorize the State Superintendent of Public Instruction to create charter schools. In addition, the committee may wish to consider creating a state board or authority that could create independent charter schools, similar to such boards in other states.

### **Nonprofit Organizations**

The Legislature could authorize certain qualified nonprofit organizations to create charter schools similar to the authority granted such organizations in Minnesota. A nonprofit organization could be defined by the committee in broad enough terms to allow creation by businesses, hospitals, and other entities that meet nonprofit criteria, or could be narrowly drafted to include only selected organizations. It is not possible to determine exactly how many businesses or entities would meet the criteria or could meet such criteria in the future.

### **POSSIBLE QUESTIONS**

Prior to drafting any legislation, a series of questions may need to be answered to clarify how any new entity authorized to create a charter school is intended to operate. It should be noted that current statutes include general provisions for school board created charter schools and for (2r) independent charter schools. It is assumed for purposes of this Memo that the additional authorizers would be creating independent charter schools.

Among the questions that could be addressed, are the following:

1. Who would specifically authorize the charter school? That is, would it be authorized by, for example, a county board for the county or would it be by the county executive officer.

For example, would the governing board be authorized to create the school or the chief officer? [City Council or Mayor; County Board or County Executive; Board of Directors or Chief Executive Officer.]

2. Would general statutes need to be modified in any way to accommodate any unique characteristics of the authorizing entity?

The committee could determine which of the provisions applicable to current (2r) charters would be appropriate and which would require modification for the specific entity. In some instances, such as allowing additional UW-campuses to charter schools, the statutes may need little or no modification. However, for other entities, the statutes may need to be substantially modified.

3. What procedures would be required to be used in creating a charter?

For example, would a public hearing be required? Also, would an application process be used to solicit proposals or would the entity only be able to initiate a charter school creation? (For a discussion of whether decisions regarding the creation, revocation, or other actions could be appealed to another level, see Memo No. 2.)

4. How many charter schools would each entity be authorized to create?

Entities could be authorized to create an unlimited number of charter schools, or entities could be limited to a specified number. For example, currently UW-Milwaukee may create an unlimited number of charter schools under s. 118.40 (2r) (b), Stats., but UW-Parkside may create only a single charter under s. 118.40 (2r) (cm), Stats.

5. Should the charter school be subject to a specified enrollment limit?

The (2r) charter schools are not statutorily limited to a specified enrollment, except for UW-Parkside, which is under a statutory limit of 480 pupils. It would also be possible to limit the chartering authority to certain grade levels.

6. What would be the attendance area for the charter school?

For example, the attendance area could be limited to those pupils residing in the school district in which the charter school is located. However, it would also be possible to allow pupils from a broader area (county; CESA; or work location) to also attend. If so authorized, there would need to be attention paid to the means by which aid reductions for school districts would be administered. It may also be necessary to include specific provisions regarding the eligibility of pupils to attend certain charter schools.

7. Will there be a need for specific treatment of employees specified by the authorizers?

For example, charter school employees could also be employees of the chartering entity, or they could be specifically excluded and treated as contract employees. One variation currently in the statutes permits, but does not require, the UW-Parkside to make that designation of employees at the time the charter is granted. [s. 118.40 (2r) (b), Stats.]

These are some of the general questions that would need to be addressed for any additional entities that are given chartering authority. Clearly, there will be other issues that will arise depending on the entities and the extent of the authority granted.

RW:jal:ksm