



WISCONSIN LEGISLATIVE COUNCIL

CHARTER SCHOOLS

225 Northwest
State Capitol, Madison

November 28, 2006
10:00 a.m. – 2:30 p.m.

[The following is a summary of the November 28, 2006 meeting of the Special Committee on Charter Schools. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Vukmir called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Leah Vukmir, Chair; Reps. Scott Newcomer and Christine Sinicki; Sens. Alberta Darling and Ted Kanavas; and Public Members Diane Barkmeier, Bill Baumgart, Philip Ertl, Craig Jefson, Noelle Mudrak, Rachel Schultz, Ben Vogel, and Cindy Zautcke.

COMMITTEE MEMBERS EXCUSED: Public Members Howard Fuller, Barbara Horton, and Sandra Mills.

COUNCIL STAFF PRESENT: Joyce L. Kiel and Russ Whitesel, Senior Staff Attorneys.

APPEARANCES: John Vincent, Administrator, Division of Trust Finance and Employer Services; and Bob Conlin, Director, Legislation, Communications, and Planning, Department of Employee Trust Funds.

Approval of the Special Committee's October 17, 2006 Minutes

Chair Vukmir asked if there were any additions or corrections to the minutes. Public Member Baumgart expressed concern that provisions in the minutes indicating that the committee had requested staff to prepare a bill draft or options memorandum on an issue incorrectly suggested that the committee had taken a position on the issue. He asked that the

minutes of the November 28, 2006 meeting reflect that the committee had not yet reached any conclusions as to changes in the charter school statutes. With this clarification, the committee approved the minutes by unanimous consent.

Presentations by Invited Speakers

[Note: The documents referred to by the speakers are posted on the committee's Internet site.]

John Vincent, Administrator, Division of Trust Finance and Employer Services; and Bob Conlin, Director, Legislation, Communications, and Planning, Department of Employee Trust Funds.

Chair Vukmir asked the representatives from DETF to provide background information on expansion of participation in the Wisconsin Retirement System (WRS) to charter school employees. Mr. Conlin briefly described the level of participation in the current program. He indicated that approximately 27% of the participants are state employees with 73% being local employees. He also provided information on the number of active employees and the number of retirees. Mr. Vincent provided information on the operation of the retirement program. He indicated that DETF was taking no position on expanding the number of participants in the program and that the primary responsibility of DETF was to assure the integrity of the program and assure that the WRS remains a qualified governmental plan.

Mr. Vincent stated that, with respect to charter schools in Wisconsin, both federal and state law currently require that an employer participating in a qualified governmental plan, such as the WRS, be the state or a subdivision of the state or be an instrumentality of such. He stated that federal law provides guidance on what constitutes an instrumentality and provided a brief description of the current three-part test used to make that determination. Mr. Vincent stated that the entity or entities that create a new entity must have the power to do so under the Wisconsin statutes. Further, the resulting entity must be an independent legal entity with certain powers considered characteristic of an independent legal entity. Finally the entity must perform a governmental function.

Mr. Vincent gave as examples of governmental functions police and fire protection, education, sanitation, and flood control. Mr. Vincent noted that if an organization is essentially under private ownership and control, it would not be considered an instrumentality. Mr. Vincent explained to the committee that some charter schools were set up to be "noninstrumentalities" and, thus, do not currently qualify for participation in the WRS. Further, he noted that if the WRS loses its status as a qualified governmental plan for any reason, it becomes subject to the federal Employee Retirement Income Security Act (ERISA) enacted by Congress, rather than state statutes.

Mr. Vincent also stated that current statutes require all eligible employees of a participating employer to be covered in the WRS. He suggested this would be an item to be considered in determining whether to expand eligibility to participate in the WRS. He also suggested that the committee consider whether employers would be allowed to withdraw from the WRS (currently they cannot) and whether they would be treated as a state employer or local employer since those two classifications differ in their benefit levels. He also suggested that the committee consider what mechanism will guarantee payment of obligations to the WRS and whether the new entities would be

required to obtain an IRS ruling that they are an instrumentality of the state or subdivision of the state prior to joining the WRS. Finally, Mr. Vincent explained that the contribution rates for general employees, including teachers, are 10.6% of payroll for teachers and general employees, which includes 5% participant rate level that is generally assumed by the employer. He also indicated that when eligible employers decide to participate, they may decide whether to fund all or part of prior creditable service.

In response to a question regarding the IRS approval, Mr. Conlin responded that Minnesota received a letter in 2003 regarding its charter school employees that was neither positive nor negative with regard to the participation of charter schools and their employees in the Minnesota pension plan. After further discussion, DETF staff was asked to obtain a copy of this ruling regarding Minnesota.

Chair Vukmir indicated that the decision with regard to participation in the WRS by charter school employees was somewhat more complex than many would have thought. Senator Kanavas indicated that it would be helpful to obtain a copy of the Minnesota letter regarding charter school employees to better determine the IRS position. Mr. Conlin agreed that participation in state retirement plans was not a settled area at the moment.

In response to a question regarding eligibility of schools in Milwaukee County, Mr. Vincent explained that the City of Milwaukee and Milwaukee County have separate retirement systems from the WRS.

After further discussion, it was suggested that it would be useful to have approximate numbers of employees currently working in noninstrumentality charter schools. It was agreed that the staff, in connection with the Department of Public Instruction (DPI), would attempt to get this information prior to the next committee meeting. The committee did not reach any final conclusion with regard to participation by charter school entities in the WRS.

Committee Discussion of Memo No. 3, *Expanding the Entities Which May Authorize Charter Schools*

Chair Vukmir suggested that the committee first consider Memo No. 3 regarding expansion of the entities which may authorize charter schools prior to the discussion of whether to create an appeal process for denial, renewal, and revocation of a charter.

Mr. Whitesel reviewed Memo No. 3 and explained that the Memo was developed to provide a framework for discussion of expanding the number of entities which may authorize the establishment of charter schools. He stated that the Memo provides information on the current entities that are authorized to establish charter schools and also provides a brief description of the characteristics of entities the committee may wish to consider adding. Finally, the Memo suggests a series of questions that may need to be considered with regard to any additional authorizers. Mr. Whitesel cautioned the committee that the Memo was not intended to provide a comprehensive review of the issues relating to broadening the number of entities that can establish charter schools. He explained that the Memo is intended to generate discussion and focus attention on which, if any, entities could be added to those entities which currently can establish charter schools.

Mr. Whitesel provided information on current authorizers of charter schools, including school boards and specified entities that are currently authorized to establish independent charter schools under

s. 118.40 (2r), Stats. These independent charter schools are commonly referred to as (2r) charter schools. Mr. Whitesel noted that the per pupil payment by the state to (2r) charter schools for school year 2006-07 is \$7,669 and that it is estimated that payments will total \$37.9 million for the current school year. He noted that payments to (2r) charter schools are fully offset by a proportionate reduction in the general aids of all public school districts. Following this description, Mr. Whitesel reviewed the possible additional authorizers of charter schools, including the following:

- University of Wisconsin (UW) campuses.
- Private colleges.
- Wisconsin technical colleges.
- Cooperative educational service agencies (CESAs).
- Counties.
- Municipalities.
- American Indian tribes or tribally controlled colleges.
- State agencies.
- Nonprofit organizations.

Following this review, a series of questions contained in the Memo were also briefly described.

Chair Vukmir indicated that her preference would be to limit, to some extent, the focus of the committee to reflect the realities of the current political situation following the November election. She suggested that the committee focus on recommendations which can be reached in a consensus manner.

During the committee discussion, a question was raised as to whether there is a demand for additional entities to establish charter schools beyond the current level. Several members suggested that the request for expansion was not coming from public entities but from people wishing to create more charter schools. Public Member Cindy Zautcke indicated that she had gotten a number of requests to allow creation of charter schools where the local school board was unwilling to approve such schools. She indicated she would attempt to provide a list of the entities that had made such an attempt, but she acknowledged that there was no formal list available of those entities. Chair Vukmir suggested that there was a public purpose served by creating an atmosphere of innovation for charter schools that could be further enhanced by allowing more chartering entities. Several comments were made regarding the importance of school district involvement in the creation of charter schools. In addition, several members suggested that creating options beyond school district chartering could lead to more innovation and more options for people seeking to create charter schools.

The committee discussed at some length the need for oversight and concerns about student achievement. Chair Vukmir suggested that the committee focus specifically on enabling additional entities to create charter schools. In response to a suggestion that a state board be created to authorize

charter schools, Chair Vukmir indicated her preference to create individual authorizing entities rather than to create a state entity.

With regard to including American Indian tribes or tribally controlled colleges as additional authorizers, Chair Vukmir said that she was disinclined to do so as it was her impression from hearing remarks about bills introduced in the current legislative session related to this that the tribes had little interest in being included. After further discussion, it was suggested that the new authorization be focused on entities that had a connection with the educational sector. Several members expressed a preference for limiting the number of entities that could establish charter schools or not adding to the current list of authorizers.

After further discussion regarding the benefits that could be derived from additional charter schools, staff was asked to draft a statutory proposal for the committee's consideration focusing on authorizing entities from the list with educational ties to enable them to create (2r) charter schools. It was generally agreed that the committee would then review that draft and make a determination as to which specific entities, if any, would be authorized to establish new charter schools. Chair Vukmir asked that the additional authorizers be given similar powers to those entities currently authorized to create (2r) charter schools. She also asked that staff provide, where appropriate, options for the committee's consideration with regard to the number of schools, level of enrollment, and other relevant options.

Mr. Whitesel summarized that, pursuant to this request, a preliminary bill draft would be prepared to authorize creation of independent charter schools by UW campuses, including two-year campuses, private colleges that are currently accredited by some nationally recognized entity, technical colleges, and CESAs. The committee asked that the private colleges included in the entities authorized be enumerated in a list for committee review.

Chair Vukmir asked Joyce Kiel to describe the contents of Memo No. 2. Ms. Kiel briefly reviewed Memo No. 2 regarding the creation of an appeal process for denial, non-renewal, and revocation of a charter. In her description, Ms. Kiel described current law relating to the process for establishing a charter, non-renewal of a charter, and revocation of a charter. She also indicated that the Memo contained questions and options relating to each of these actions. She indicated if the committee wished to create an appeals process for refusal to initiate a charter, the statutes would have to be amended to create a process to request a charter (other than the teacher petition process) in order to have a specific incident (that is, denial of the request) that was being appealed.

Ms. Kiel also reviewed information provided by DPI regarding actions taken by school boards on new charter school petitions or proposals.

Several members suggested that the request process be kept as simple as possible. It was suggested that a preliminary bill draft could involve an initial optional step of permitting an entity seeking to create a charter to make a request to a school board by presenting a proposed mission and purpose of the charter school, who it would serve, and a preliminary budget. However, in order to be eligible for an appeal, it was suggested that a more formal request would have to be made. It was suggested that the more formal request include the 15 required elements currently required of teacher petitions as set forth in s. 118.40 (1m) Stats., and several members suggested that additional elements relating to the mission and purpose as well as the budget for the charter school be included. If this

request is refused, then the requestors would be given the right to appeal. In reviewing the questions on denial of a charter, Ms. Kiel pointed out that there would be a need for a record to be made at the school board level in order for there to be a review of that decision in the appeals process.

It was generally agreed that the bill draft should provide for a public meeting to be held by the school board within 30 days of receiving a request for either an initial proposal or for the more formal proposal but without requiring a public hearing. The committee also requested that the draft require the school board to specify in writing its reasons for denial and to also include in its decision-making process the level of employee and parental support for the proposed charter as well as the fiscal impact on the school district of establishing the charter schools, rather than considering those factors at a hearing as required in current law.

The committee also determined not to establish a process whereby an aggrieved person must request the school board to review its decision before an appeal is taken. It was agreed that any appeal would be taken by the person or group making the request. For drafting purposes, the committee agreed to use a 30-day deadline for requesting an appeal in order to match the 30-day deadline applicable for Milwaukee Public Schools (MPS) teacher petition appeals.

On the topic of who an appeal of a denial should be made to, there did not seem to be interest in selecting DPI as the reviewing entity. The committee had an extended discussion regarding various options, focusing on two major options. One option would be to have a hearing examiner in the Division of Hearings and Appeals of the Department of Administration (DOA) assigned to hear the appeals. The second option considered was to model an appeals board after the current School District Boundary Appeals Board (SDBAB) that reviews certain school district reorganization proposals. It was noted that the cost of these reviews might be substantially different, with the DOA cost approaching \$3,000 to \$4,000 a day as compared to the SDBAB costing in the neighborhood of \$350 per review. After further discussion, it was agreed to have staff draft the appeal process with two options, one with the appeals being taken to DOA through the Division of Hearings and Appeals, and the other to allow the appeal to a group similar to the SDBAB.

It was also suggested that the review standards in the draft provide different options for further consideration. These could include either a review of the process used or a review for the basis for the decision.

With regard to the remedies that could be ordered after an appeal, the committee asked that staff review possible options and include them in the draft presented to the committee at the next meeting.

With respect to judicial review, the committee determined that there should be no judicial review under ch. 227, Stats. The committee also determined that the process should not provide for a referendum or review at the school district annual meeting or a vote by the electorate.

With regard to teacher petition denials, the committee did not request that current law (which provides an appeal to DPI if the MPS Board, denies a teacher petition for a charter school) be expanded to cover teacher petitions denied by other school boards.

It was also agreed that the draft apply the appeal process to denials by (2r) authorizers.

The committee also considered the possible appeal provisions that would apply to non-renewal of a charter. Following discussion, the committee asked that the bill draft provide that a school board or (2r) authorizer give written notice of intent not to renew in writing, prior to the non-renewal. The committee asked that the draft be developed to require a public meeting of the school board, if requested in writing by the entity, in order to have the item placed on a school board agenda. For drafting purposes, it was decided that there should be a provision for that meeting to be held within 30 days of that request. Ms. Kiel indicated that for drafting purposes she would review the interval dates and provide for consistency within the draft regarding the deadline for sending the notice of intent not to renew.

With regard to appeal of revocation of a charter, the committee made a preliminary decision not to allow an appeal for revocation, thus retaining current law.

Chair Vukmir clarified that the drafts that will be prepared for the committee are only preliminary drafts and are not final decisions as to the committee's recommendation. She asked that the members come prepared to discuss the drafts in detail so that decisions can be made at the next meeting.

Plans for Future Meetings

The next meeting of the Special Committee will be *Tuesday, December 19, 2006, at 10:00 a.m., in Room 225 Northwest, State Capitol.*

Adjournment

The committee adjourned at 2:30 p.m.

RW:JLK:ksm