

1 **AN ACT** *to amend* 118.40 (2) (a), 118.40 (2m) (am) and 118.40 (3) (b); and *to create*
2 118.40 (3g) and 118.40 (3r) of the statutes; **relating to:** creating a process to request
3 that consideration be given to establishing a charter school and a process to appeal a
4 decision not to establish a charter school or not to renew a charter.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This preliminary bill draft was prepared for the Joint Legislative Council’s Special Committee on Charter Schools. It creates a process to request that consideration be given to establishing a charter school and creates a process to appeal a decision not to establish a charter school and a decision not to renew a charter.

Current Law

Establishing a Charter School. Under current law, a school board may establish a charter school and contract with a person to operate a charter school. In addition, certain entities listed in s. 118.40 (2r) (b), stats., that are independent of school boards (referred to as “(2r) authorizers”) may establish and operate or contract for the operation of charter schools. Under current law, (2r) authorizers are limited to: the common council of the city of Milwaukee, the chancellor of the University of Wisconsin (UW)–Milwaukee, the chancellor of the UW–Parkside, and the Milwaukee area technical college (MATC) district board. (The UW–Parkside is currently restricted to establishing only one charter school that is limited to 480 pupils and does not operate high school grades.)

School boards have 2 methods of establishing charter schools: (a) based on a teacher petition that contains 15 required elements under s. 118.40 (1m) (b), stats.; and (b) based on school board initiative under s. 118.40 (2m), stats. Within 30 days after receiving a teacher petition, the school board must hold a public hearing on the petition. At the hearing, the school board must consider the level of employee and parental support for the proposed charter school and the fiscal impact on the school district of establishing the charter school. The school board may, but is not required to, grant the petition. [s. 118.40 (2) (a), stats.] If the school

board grants the petition, it must contract for the operation of the charter school with the person named in the petition as the person seeking to establish the school. [s. 118.40 (3) (a), stats.] If a teacher petition is presented to the board of school directors of the Milwaukee Public Schools (MPS), the MPS board is required to grant or deny the petition within 30 days after the public hearing. If the MPS board denies a teacher petition, the person seeking to establish the charter school may, within 30 days after the denial, appeal the denial to the department of public instruction (DPI). DPI must issue a decision within 30 days after receiving the appeal. DPI's decision is final and is not subject to judicial review under ch. 227, Stats. [s. 118.40 (2) (c), stats.] Current law does not specify the criteria that DPI would use to review the MPS board's denial. Current law also does not specify any criteria a school board or (2r) authorizer must use in determining whether to establish or contract for the operation of a charter school.

This appeal process applies only to MPS and only with respect to the denial of teacher petitions. Current law does not provide an appeal process under the following scenarios: (a) a school board decides not to initiate a charter based on a request that is other than a teacher petition; (b) a (2r) authorizer decides not to initiate a charter; or (c) a school board other than the MPS board decides not to grant a teacher petition for a charter.

COMMENT: As directed at the November 28, 2006 committee meeting, this draft creates an appeal process for the first 2 scenarios but does *not* create an appeal process for the last scenario.

Nonrenewal of a Charter. Under current law, a charter school contract may not exceed 5 school years. It can be renewed for one or more terms not exceeding 5 school years. [s. 118.40 (3) (b), stats.] Current statutes do not require that a school board or (2r) authorizer follow a certain process or consider certain factors before deciding not to renew a contract. Current statutes do not provide a clear process for appeal of a decision to nonrenew a charter, although an argument could be made that ch. 68, stats. (relating to review of municipal administrative decisions), could be applied to nonrenewal decisions made by the MATC board or common council of Milwaukee (unless either has elected a different process) and that ch. 227, stats., could be applied to decisions made by the UW (2r) authorizers. Neither of these statutes would apply to nonrenewal decisions made by a school board. It is possible that, under common law, a court has discretion to hear a petition to review a nonrenewal decision.

COMMENT: Current law also provides that a charter may be revoked under certain circumstances. As directed at the November 28, 2006

committee meeting, this draft does *not* create an appeal process for revocation.

Draft Provisions

The provisions of the draft are described in the Notes following each SECTION. In addition, the draft includes Comments for committee consideration, some of which include questions (*in bold/italics print*) for the committee to answer when it discusses this draft. Alternatives for committee consideration are set forth in brackets. This draft is preliminary and subject to revision based on committee discussion.

1 **SECTION 1.** 118.40 (2) (a) of the statutes is amended to read:

2 118.40 (2) (a) Within 30 days after receiving a petition under sub. (1m), the school board
3 shall hold a public hearing on the petition. ~~At the hearing, the school board shall consider the~~
4 ~~level of employee and parental support for the establishment of the charter school described~~
5 ~~in the petition and the fiscal impact of the establishment of the charter school on the school~~
6 ~~district.~~ After the hearing, the school board may grant or deny the petition. In determining
7 whether to grant or deny the petition, the school board shall consider the level of employee
8 and parental support for the establishment of the charter school described in the petition and
9 the fiscal impact of the establishment of the charter school on the school district.

10 **SECTION 2.** 118.40 (2m) (am) of the statutes is amended to read:

11 118.40 (2m) (am) At least 30 days before entering in a contract under this subsection
12 that would convert a private school to a charter school or that would establish a charter school
13 that is not an instrumentality of the school district, the school board shall hold a public hearing
14 on the contract. ~~At the hearing,~~

15 (ar) In determining whether to enter into a contract under this subsection, the school
16 board shall consider the level of employee and parental support for the establishment of the
17 charter school and the fiscal impact of the establishment of the charter school on the school
18 district.

NOTE: SECTIONS 1 and 2 provide, respectively, that in determining whether to grant or deny a teacher petition to establish a charter school or in determining whether to enter into a contract for a school board initiative charter school, the school board must consider the level of employee and parental support for the charter school and the fiscal impact of the charter school on the school district. Under current law, these are factors a school board must consider at a hearing on a teacher petition or at a hearing to convert a private school to a charter school or establish a charter school that is not an instrumentality of the school district. However, current law does not require the school board to consider these factors in making its decision.

COMMENT: *Does the committee wish to require that any other factors be considered in making a decision, such as the need for the proposed charter school or whether appropriate alternatives are available for the population intended to be served by the charter school?*

Does the committee wish to require that a (2r) authorizer consider any factors when deciding whether to establish a charter school? Also, see the Comment following proposed s. 118.40 (3r) (e) 2., below, regarding decisions by (2r) authorizers.

1 **SECTION 3.** 118.40 (3) (b) of the statutes is amended to read:

2 118.40 (3) (b) A contract under par. (a) or under subs. (2m) or (2r) may be for any term
3 not exceeding 5 school years and may be renewed for one or more terms not exceeding 5
4 school years. The contract shall specify the amount to be paid to the charter school during each
5 school year of the contract. A school board or entity under sub. (2r) (b) may not refuse to renew
6 a contract unless the school board or entity has given written notice to the person with whom
7 the school board or entity has contracted of intent not to renew the contract at least [70] [100]
8 days prior to the expiration of the term of the contract. The notice of intent shall specify the
9 reasons for the proposed nonrenewal. If notice is not timely given, unless the person with
10 whom the school board or entity under sub. (2r) (b) has contracted agrees otherwise, the term
11 of the contract is extended for 12 months.

NOTE: Current statutes do not require a school board or (2r) authorizer to follow a certain process or consider certain factors before deciding not to renew a contract for a charter school. The draft provides that written

notice of nonrenewal, including the reasons, be given at least [70] [100] days before the expiration of the term of the contract. If this does not occur, unless the person with whom the school board or (2r) authorizer has contracted agrees otherwise, the term of the contract is extended for 12 months.

COMMENT: Either 70 days or 100 days will be inserted to accommodate the 30-day deadline for filing an appeal and the deadline of 30 or 60 days (to be selected by the committee in proposed s. 118.40 (3r) (e) 1., below) for the appellate decision. Does the committee agree with the 12-month extension as a remedy?

1 **SECTION 4.** 118.40 (3g) of the statutes is created to read:

2 118.40 **(3g)** REQUEST TO CONSIDER ESTABLISHING A CHARTER SCHOOL. (a) *Definition.* In
3 this subsection, “consider establishing a charter school” means undertake activities to
4 determine whether to establish a charter school, such as signing an application for a grant for
5 federal funds to plan a charter school, agreeing to participate in a consortium to review a
6 concept for a charter school, or assigning a committee or staff to study a concept for a charter
7 school.

8 (b) *Request to consider establishing.* A written request that a school board consider
9 establishing a charter school under sub. (2m) may be filed with the school district clerk. A
10 written request that an entity under sub. (2r) (b) consider establishing a charter school under
11 sub. (2r) may be filed with that entity. A request to consider establishing a charter school shall
12 include all of the following:

13 1. A statement of the broad goals or mission of the proposed charter school.

14 2. A statement of why the proposed charter school is needed, how it is different from
15 the schools currently available to pupils, and the population and grade levels it is intended to
16 serve.

17 3. A preliminary budget for the proposed charter school.

COMMENT: *Does the committee wish to include any other elements in this request?*

1 (c) *Meeting required.* Within 30 days after receiving a request under par. (b), the school
 2 board or entity under sub. (2r) (b) shall hold a meeting at which the issue of whether to grant
 3 or deny the request shall be considered. The school board or entity under sub. (2r) (b) may,
 4 but is not required to, hold a public hearing on the request at that meeting. With respect to an
 5 entity under sub. (2r) (b) 1. b. or c., the meeting shall be held by the board of regents of the
 6 University of Wisconsin System.

NOTE: This SECTION establishes a procedure by which a person may request that a school board or (2r) authorizer consider establishing a charter school. If such a request is made, the draft requires the school board or (2r) authorizer to hold a meeting on the request within 30 days. The meeting may, but is not required to, include a public hearing.

This provision simply requires that a meeting be held on a request to consider establishing a charter school. It does not require the school board or (2r) authorizer to issue a decision on the request and does not provide an appeal of any decision made. If the person wants a decision that can be appealed, the person must submit a request to establish a charter school under proposed s. 118.40 (3r), below, and include all of the 15 required items of information that must be in a charter, plus additional information.

COMMENT: *Is this the approach the committee wishes?*

7 **SECTION 5.** 118.40 (3r) of the statutes is created to read:

8 118.40 (3r) REQUEST TO ESTABLISH A CHARTER SCHOOL; APPEAL OF REFUSAL TO ESTABLISH
 9 A CHARTER SCHOOL OR RENEW A CHARTER. (a) *Request to establish.* A written request that a
 10 school board establish a charter school under sub. (2m) may be filed with the school district
 11 clerk. The request shall include the information specified in sub. (3g) (b) 1. to 3. and the
 12 provisions specified under sub. (1m) (b) 1. to 15. A written request that an entity under sub.
 13 (2r) (b) establish a charter school under sub. (2r) may be filed with that entity. The request
 14 shall include the information specified in sub. (3g) (b) 1. to 3., the provisions specified under

1 sub. (1m) (b) 1. to 14., and the effect of the establishment of the charter school on the liability
2 of the contracting entity under sub. (2r) (b). A request may be made under this subsection
3 without filing a request under sub. (3g).

COMMENT: The provision relating to requests to school boards differs from a request to (2r) authorizers because s. 118.40 (1m) (b) 15., stats. (effect of the establishment of a charter school on the liability of the school district), does not apply to (2r) authorizers. Rather, the effect of the establishment of the charter school on the liability of the (2r) authorizer is substituted for s. 118.40 (1m) (b) 15. in the 2nd sentence. This is modeled after language in current s. 118.40 (2r) (b) 2., stats., which makes the same substitution of language about what must be included in a contract with a (2r) authorizer.

4 (b) *Meeting required.* Within 30 days after receiving a request under par. (a), the school
5 board or entity under sub. (2r) (b) shall hold a meeting at which the issue of whether to grant
6 or deny the request shall be considered. The school board or entity under sub. (2r) (b) may,
7 but is not required to, hold a public hearing on the request at that meeting. With respect to an
8 entity under sub. (2r) (b) 1. b. or c., the meeting shall be held by the board of regents of the
9 University of Wisconsin System.

10 (c) *Decision required.* Within 30 days after the date of the meeting in par. (b), the school
11 board or entity under sub. (2r) (b) shall either grant or deny the request. A denial shall be in
12 writing and shall specify the reasons for denial.

13 (d) *Appeal rights for refusal to establish or nonrenew.* 1. If a school board or entity
14 under sub. (2r) (b) denies the request under par. (c), the person who submitted the request may,
15 within 30 days after the date the denial was issued, appeal the denial to the [charter school
16 appeals board] [division of hearings and appeals in the department of administration] [some
17 other entity specified by the committee].

COMMENT: The committee did not decide which entity the appeal should be made to. Possibilities discussed at the November 28, 2006 committee meeting for inclusion in a draft were: (a) the division of hearings and

appeals in the department of administration (DOA); or (b) a board created specifically for the purpose of hearing such appeals (for example, a charter school appeals board). If the committee decides to recommend that DOA hear the appeals, the committee should decide how the cost of an appeal is paid for (for example, by requiring the person who files the appeal to pay a fee sufficient to pay for DOA's costs). (For hearings the division of hearings and appeals currently conducts on special education appeals, DOA bills at about \$135 per hour.) The number of hours it would take to conduct an appeal under this draft is unknown but would involve time for activities such as: holding a prehearing conference to establish the issues, dealing with any motions made by the parties (including writing decisions on the motions); holding a hearing (including travel time), reviewing all documents, and drafting the decision. If a hearing took, for example, 16 hours, it is estimated that ancillary work would take at least 32 additional hours. An appropriation to DOA to receive money from the fees also should be created. If it is estimated that the workload would equal or exceed .5 full-time-equivalent positions, consideration should be given to creating additional position authorization for DOA.

If the committee decides to recommend that a board is created to hear the appeals, the committee should decide: (a) who appoints the board (for example, the state superintendent of public instruction appoints the members of the school district boundary appeals board (SDBAB)); (b) how many members should serve on the board; (c) who the members represent (for example, teachers, school board members, (2r) authorizers, or school administrators—with a distinction made between those with and those without charter schools); (d) which agency the board is attached to for administrative purposes (for example, DPI or DOA); and (e) how the operation of the board is paid for (for example, by requiring the person who files the appeal to pay a fee sufficient to pay for the costs of the board). (According to information provided by DPI, the filing fee for an appeal of a small territory reorganization decision that involves a meeting of a 3-member panel of the SDBAB is \$375. Based on an average of 2 appeals heard per meeting, the average cost would appear to be about \$250 per day per SDBAB panel member. That involves travel expenses and per diem of the members, copying costs, and postage costs. It does not include the cost of DPI staff time or the transcription costs required for an appeal of the panel decision.) If it is estimated that the workload for the agency to which [the reviewing entity] is attached in this draft would require additional positions because of the volume of appeals, consideration should be given to creating additional position authorization for that agency.

Does the committee wish that one of these entities or some other entity hear the appeals?

1 2. If a school board or entity under sub. (2r) (b) has issued a notice of intent not to renew
2 under sub. (3) (b), the person with whom the school board or entity under sub. (2r) (b)
3 contracted may, within 30 days after the date the notice of intent not to renew was issued,
4 appeal the proposed nonrenewal to the [charter school appeals board] [division of hearings and
5 appeals in the department of administration] [some other entity specified by the committee].

6 (e) *Appellate decision.* 1. The [charter school appeals board] [division of hearings and
7 appeals in the department of administration] [some other entity specified by the committee]
8 shall issue a decision no later than [30] [60] days after receiving the appeal unless all of the
9 parties agree to an extension.

COMMENT: The committee discussed but did not decide on 30 days or 60 days as a deadline for the decision. ***After taking into consideration which entity will be conducting the appeal, how many days should be inserted?***

10 2. The [charter school appeals board] [division of hearings and appeals in the
11 department of administration] [some other entity specified by the committee] shall consider
12 whether procedures were followed and whether there was a reasonable basis for the decision
13 based on the information provided in par. (a) and a consideration of the factors in sub. (2m)
14 (ar), if applicable.

COMMENT: The factors in sub. (2m) (ar) (level of employee and parental support for establishing the charter school and the fiscal impact of the proposed charter school on the school district) apply only to decisions made by a school board with respect to a school board initiative charter school. Neither current statutes nor the draft require (2r) authorizers to consider any factors in making a decision. ***Should these same or other factors apply to (2r) authorizers?***

15 3. In addition to other relief that the [charter school appeals board] [division of hearings
16 and appeals in the department of administration] [some other entity specified by the

1 committee] deems appropriate, orders of the [charter school appeals board] [division of
2 hearings and appeals in the department of administration] [some other entity specified by the
3 committee] may include the following:

4 a. For an appeal of a denial under par. (d) 1., that the school board or other entity sign
5 an application for an implementation grant or negotiate in good faith regarding the terms of
6 a contract to establish the charter school.

7 b. For an appeal regarding a notice of intent not to renew under par. (d) 2., that the school
8 board or other entity renew the contract or negotiate in good faith regarding renewal of the
9 contract with amended provisions.

COMMENT: The draft includes remedies that may be ordered. *Does the
committee wish to include these or other remedies?*

10 4. The department shall establish a program for the mediation of disputes between the
11 parties about establishing the terms of a contract under subd. 3. a. or b., which either party may
12 request be used. The mediator's compensation is the responsibility of the parties.

13 5. The decision of the [charter school appeals board] [division of hearings and appeals
14 in the department of administration] [some other entity specified by the committee] is final
15 and is not subject to judicial review under ch. 227.

NOTE: This SECTION of the draft does the following:

a. Permits a person to make a written request to a school board or (2r) authorizer to establish a charter school. The draft also specifies that it is not necessary to make a request to consider establishing a charter school under proposed s. 118.40 (3g) before a request to establish a charter school may be made.

b. Provides that a request to establish a charter school must include: (1) the information in proposed s. 118.40 (3g) (a statement of the broad goals or mission of the proposed charter school; a statement of why the proposed charter school is needed, how it is different from the schools currently available to pupils, and the population and grade levels it is intended to serve; and a preliminary budget for the proposed charter

school); and (2) the 15 required elements that must be in a teacher petition for a charter school and in a school board charter school contract. However, for a request to a (2r) entity to establish a charter school, the effect of the establishment of the charter school on the liability of the (2r) authorizer is substituted for the 15th required element since that element applies only to school boards.

c. Requires the school board or (2r) authorizer that received the request to hold a meeting within 30 days to consider whether to grant or deny the request. The draft permits, but does not require, the school board or (2r) entity to hold a public hearing on the request at that meeting. The draft provides that if the request was made to the chancellor of the UW–Milwaukee or the chancellor of the UW–Parkside, the meeting is to be held by the board of regents of the UW System. (If a request was made to the common council of the city of Milwaukee or MATC board, that entity would hold the meeting. Under current law, UW–Parkside is limited to one charter school. This draft does not remove that limit.)

d. Requires the school board or (2r) authorizer to grant or deny the request within 30 days after the date of the meeting. A denial must be in writing and specify the reasons for denial.

e. Permits the person who submitted the request to appeal a denial to [the reviewing entity to be determined by the committee] if the appeal is filed within 30 days after the date of the denial.

f. If a notice of intent not to renew is issued (as set forth in proposed s. 118.40 (3) (b), above), permits the person with whom the school board or (2r) authorizer has contracted to, within 30 days after the date the notice of intent not to renew was issued, appeal the proposed nonrenewal to [the reviewing entity].

g. Requires [the reviewing entity] to issue its decision no later than [30] [60] days after receiving the appeal unless all of the parties agree to an extension. The draft provides that [the reviewing entity] must consider whether procedures were followed and whether there was a reasonable basis for the decision based on the information provided in the request and the factors a school board is required to consider in making a decision.

h. Provides that, in addition to other relief that [the reviewing entity] deems appropriate, orders of [the reviewing entity] may include the following: (1) for an appeal of a refusal of a request to establish a charter school, that the school board or (2r) authorizer sign an application for an implementation grant or to negotiate in good faith regarding the terms of a contract to establish the charter school; and (2) for an appeal regarding a notice of intent not to renew, require renewal of

the contract or negotiation in good faith regarding renewal of a contract with amended provisions.

i. Requires DPI to establish a program for the mediation of disputes between the parties about establishing the terms of a contract in item h. which either party may request be used. The draft provides that the mediator's compensation is the responsibility of the parties.

j. Provides that the decision of [the reviewing entity] is final and is not subject to judicial review under ch. 227, stats.