



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

October 26, 2011

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Substitute Amendment 1 to Senate Bill 22: Charter School Expansion

Senate Bill 22 was introduced February 23, 2011, and referred to the Senate Committee on Education. Senate Substitute Amendment 1, as amended by Senate Amendment 5, was adopted and passage as amended was recommended by the Committee on Education on June 10, 2011, on a vote of 4 to 3. On September 12, 2011, SSA 1 to SB 22 was referred to the Joint Committee on Finance.

The substitute amendment would expand the independent charter school program statewide. Commonly referred to as the "2r" charter school program in reference to the program's statutory citation, these schools currently operate only in Milwaukee and Racine. SSA 1 to SB 22 would create the charter school authorizing board, an independent board with an executive director, which would be authorized as a statewide charter school sponsor under the current independent charter school statutes. The following sections of this memorandum describe current law relating to charter schools, summarize the provisions of the substitute amendment, and discuss the fiscal effects of the substitute amendment.

### **CURRENT LAW**

Under current law, a school board may establish or contract for the establishment of a charter school, which is exempt from most of the provisions of Chapters 115 through 121 of the statutes, which govern public elementary and secondary schools. The City of Milwaukee, Milwaukee Area Technical College (MATC), and the University of Wisconsin-Milwaukee are permitted to establish or contract for the establishment of independent charter schools located in Milwaukee Public Schools, commonly known as "2r" charter schools after their statutory citation. With the exception of special provisions for Woodlands School pupils who attended the school prior to its conversion to a charter school, only pupils who reside within Milwaukee Public Schools (MPS) may attend

these charter schools. In 2010-11, the City operated five charter schools, and UW-M operated 12 charter schools. MATC has not chosen to sponsor a school to date.

UW-Parkside is permitted to establish one school, which is located in the Racine Unified School District (RUSD), and is limited to enrolling no more than 480 pupils in grades K-8. Only pupils who reside within RUSD may attend the charter school.

## **SUMMARY OF BILL**

SSA 1 to SB 22 would expand the independent charter school program statewide by extending authority to sponsor independent "2r" charter schools to cooperative educational service agencies (CESAs) and to a statewide charter school authorizing board (CSAB) that would be created under the substitute amendment. Under SSA 1 to SB 22, charter schools could no longer be established and operated directly by "2r" sponsors. Instead, "2r" sponsors would be required to contract with an operator for the charter school in all cases. SSA 1 would specify that for CSAB, those operators would be required to be nonprofit corporations; this limitation would not apply to other authorizers of "2r" charters. SSA 1 to SB 22 would delete the current law provision that limits eligibility for "2r" charter schools to pupils residing in the same school district in which the "2r" charter school is located. In addition, current law that limits the University of Wisconsin-Parkside to contracting for the operation of one charter school, and the 480 pupil enrollment limit that currently applies to that charter school, would be repealed.

Under current law, "2r" authorizers are not permitted to sponsor virtual charter schools, so that only school districts may sponsor virtual charter schools. SSA 1 to SB 22 would permit CESAs, in addition to school boards, to contract for the operation of virtual charter schools. However, students would enroll directly in the CESA virtual school and the CESA virtual school would receive the same direct state aid payment per pupil made to all other "2r" charter schools. Open enrollment to school district-sponsored virtual schools would still be permitted. Under Act 32, a prior law limit on enrollment in virtual charter schools through open enrollment was repealed. SSA 1 to SB 22 would also repeal this enrollment limit, which is no longer necessary given the changes enacted under Act 32.

SSA 1 to SB 22 would create a new statewide "2r" chartering entity, the independent charter school authorizing board (CSAB), comprised of the State Superintendent and eight other members, with three-year terms, including: (a) six members appointed by the Governor; and (b) two members appointed by the State Superintendent from a list of nominees submitted jointly by the Wisconsin Association of School Boards and the Wisconsin Association of School District Administrators. The appointing authorities would be required to ensure to the extent feasible that members appointed to the CSAB are geographically diverse and have experience and expertise in governing public and nonprofit organizations; in management and finance; in public school leadership, assessment, and curriculum and instruction; and in education law; and understand and are committed to the use of charter schools to strengthen public education. No member of the CSAB would be permitted to serve more than two consecutive terms. The substitute amendment would

specify initial terms with expiration dates of May 1, 2013, 2014, or 2015, to establish staggered terms for Board members. The CSAB would not be granted authority to promulgate administrative rules.

The CSAB would be provided with an executive director and four unclassified professional staff, along with two appropriations. Additional positions could be authorized by the Joint Committee on Finance under the current law s. 16.505 process. One appropriation would be provided in order to receive and expend all moneys received from oversight fees from CSAB-authorized charter schools, and one appropriation would receive and expend all moneys received as gifts and grants for the purposes received. For charter school governing boards that contract with the CSAB, each governing board would annually pay to the CSAB a fee equal to the amount determined by multiplying the operational costs of all charter schools that it operated under the CSAB in the previous year by 0.02. In order to determine the fee payable in the first school year of operation, the charter school governing board would estimate its total operational costs in that year.

Under SSA 1 to SB 22, the CSAB may contract only with the governing board of a nonprofit corporation for the operation of a charter school. If a nonprofit corporation wishes to contract with the CSAB to operate a charter school, it must submit, by July 1, an application concurrently to the CSAB and the school board of the school district in which the corporation wishes to locate the charter school. By October 1, the school board must either enter into a contract with the governing board of the nonprofit corporation to operate a charter school as an instrumentality of the school district or refer the application to the CSAB, unless the school board and the governing body of the nonprofit jointly request an additional 30 days. The CSAB must review an application referred to it by February 1 and either enter into a contract with the governing body of the nonprofit corporation to operate a charter school or deny the application. SSA 1 to SB 22 provides that a contract with the CSAB may only authorize the establishment of charter schools located in one school district or in the territory of one CESA. The CSAB may have in effect up to the following number of contracts for the operation of charter schools in the following school years: (a) in 2012-13, five contracts; (b) in 2013-14, 10 contracts; (c) in 2014-15, 15 contracts; (d) in 2015-16, 20 contracts; (e) in 2016-17, 25 contracts; and (f) in 2017-18 and subsequent years, any number.

For charter schools under contract with either a CESA or the CSAB under SSA 1 to SB 22, annually DPI would determine the number of resident pupils for each school district attending such a charter school. The resident district would count those pupils for purposes of revenue limits and state general aid. DPI would be required to reduce each school district's state general school aid payment by an amount equal to the number of resident pupils attending those charter schools, multiplied by the "2r" charter payment amount. If the general school aid payment to the district is insufficient to cover the reduction, DPI must reduce other state aid payments to the district by the remaining amount. The district would not be permitted to levy property taxes to replace the lost aid. If a pupil attends the charter school for less than a full school term, the aid reduction must be prorated.

This aid reduction approach is similar to the mechanism employed under the open enrollment program, which allows pupils to attend public school districts outside their districts of residence. In this way, the substitute amendment could avoid a further reduction in general schools aids paid to all school districts, which would result if these newly authorized "2r" charter schools would be funded using the current law "2r" financing mechanism. Instead, only the districts that lose resident pupils to the new charter school would see an aid reduction related to those pupils. However, a technical amendment to the substitute amendment, to exclude the amounts reduced from resident school districts' aid payments from the overall statewide aid reduction, would be required to accomplish the intent of this provision.

SSA 1 to SB 22 would add any charter schools authorized by a school board or "2r" entity, including a CESA or the CSAB, to the definition of an "employer" for the purposes of the public employee trust fund and the Wisconsin Retirement System (WRS). Therefore, such a charter school could choose to participate in the WRS to provide state retirement benefits to its employees. The substitute amendment would also provide that, if a WRS-participating charter school is terminated because of consolidation or for any other reason, and there is no successor employer to assume any outstanding obligation for employer retirement contributions for participating employees, the outstanding obligation would be the responsibility of the school board or entity that contracted for the establishment of the charter school. If a charter school does participate in the WRS, the charter school could also provide to its employees a health care coverage plan offered to local government employees by the state's Group Insurance Board.

The substitute amendment would require that DPI promulgate rules to establish a charter school teaching license that allows the licensee to teach multiple subjects in a charter school. SSA 1 would specify that the rules require the applicant for such a license to demonstrate competence in each subject that he or she wishes to teach and that the rules must provide the applicant several means of doing so.

SSA 1 to SB 22 would permit a school board to convert all schools in the district to charter schools. It would delete the current law requirements that a petition must first be signed by 50% of the teachers employed by the district. The substitute amendment would also delete the requirement that, if all schools in the district are converted to the charter schools, that the school board must provide alternative public school attendance arrangements for pupils who do not wish to attend or are not admitted to a charter school. Except in that circumstance, no pupil may be required to attend a charter school without his or her approval or the approval of his or her parent or guardian.

Under SSA 1 to SB 22, a charter school must accept pupils at random if the capacity of the school is insufficient to accept all pupils who apply. In addition, a charter school must give preference in enrollment to pupils who were enrolled in the charter school in the previous school year and to siblings of pupils who are enrolled in the charter school. A charter school may give preference in enrollment to the children of the charter school's founders, governing board members, and full-time employees, but the total number of such children given preference may constitute no more than 10% of the charter school's total enrollment.

Under SSA 1 to SB 22, a charter school authorizer would have the following duties: (a) solicit and evaluate charter school applications; (b) when contracting for the establishment of a charter school, adhere to the principles and standards for quality charter schools established by the National Association of Charter School Authorizers; (c) give preference in awarding contracts for the operation of charter schools to those charter schools that serve children-at-risk; (d) approve only high quality charter school applications that meet identified educational needs and promote a diversity of educational choices; and (e) in accordance with the terms of each charter school contract, monitor the performance and compliance with charter school law of each charter school with which it contracts. A contract for the establishment of a charter school, under any authorizing entity, may provide for the establishment of more than one charter school, and a charter school governing board may enter into more than one contract with a school board or a "2r" authorizing entity.

Charter school authorizers would also be required annually to submit to the State Superintendent and to the Legislature a report that includes all of the following: (a) an identification of each charter school operating under contract with the school board or "2r" authorizer, each charter school that operated under a contract with the authorizer but had its contract non-renewed or revoked, or that closed, and each charter school under contract with the authorizer that has not yet begun to operate; (b) the academic and financial performance of each charter school operated under contract with the authorizer; and (c) the operating costs of the authorizer incurred under the provisions specifying charter school authorizers' duties. Senate Amendment 5 to SSA 1 to SB 22 would specify that the authorizers' operating costs, as specifically related to their duties as authorizers, must be detailed in an audited financial statement prepared in accordance with generally accepted accounting principles. In addition, SA 5 would require that the authorizers' report also include the services that are provided to charter schools by the authorizing school board or "2r" entity, and an itemized accounting of the costs of those services.

The substitute amendment would require that each charter school be governed by a governing board that is a party to the contract with the authorizing entity. No more than a minority of the governing board's members may be staff of the charter school or of the school district in which the charter school is located. Subject to the terms of its contract, a charter school governing board would have all powers necessary to carry out the terms of its contract, including the power: (a) to receive and disburse funds for school purposes; (b) to secure appropriate insurance; (c) to enter into contracts, including contracts with a UW institution or college campus, technical college district board, or private college or university, for technical or financial assistance, academic support, curriculum review, or other services; (d) to incur debt in reasonable anticipation of the receipt of funds; (e) to pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit; (f) to solicit and accept gifts or grants for school purposes; (g) to acquire real property for its use; and (h) to sue and be sued in its own name.

In general, changes to charter school duties and contracts would first apply to a contract for the establishment of a charter school that is entered into, renewed, or modified on the effective date of the bill.

SSA 1 to SB 22 would repeal current law authority for Milwaukee Public Schools to contract with a for-profit entity to operate a charter school. Annually by August 1, the City of Milwaukee Common Council would be required to report to DPI, the CSAB, and the Legislature all of the following: (a) all instances in the previous school year in which a person expressed interest in purchasing or leasing any city-owned property used for school purposes to a city official or employee, and, if the property was not sold or leased, the report must indicate the reason; and (b) all sales of city-owned property used for school purposes that occurred in the previous school year and all leases of such property that were entered into in the previous school year. For any lease of city-owned property used for school purposes that is in effect on January 1, 2011, between the MPS school board and a non-instrumentality charter school, when the lease is extended, modified, or renewed, the Common Council must be made party to the lease and may negotiate with the charter school to modify the terms of the lease if the Common Council adopts a resolution to do so.

SSA 1 to SB 22 provides that if a school board leases a building to the governing body of a charter school, the lease may not include a provision specifying that it terminates if the lessee enters into a contract with a "2r" entity to operate a charter school. This provision first applies to a lease entered into, renewed, or modified on the effective date of the bill.

Finally, SSA 1 to SB 22 would specify that a "2r" charter school would be a local educational agency for the purposes of federal law, and as such would be eligible for funding as a local educational agency and must comply with all federal requirements.

## **FISCAL EFFECT**

Under prior law, DPI was required to pay to the Racine Unified School District an amount equal to its gross equalization aid per pupil multiplied by the number of pupils attending the charter school who were previously enrolled in the District. In 2010-11, Racine Unified was eligible to receive gross equalization aid per member equal to \$6,065. An estimated 217 pupils previously enrolled in Racine Unified were attending the UW-Parkside charter school. Therefore, Racine Unified received \$1.32 million in 2010-11 for these pupils. This aid is outside of the district's revenue limit.

However, under 2011 Act 32, the separate aid payment to Racine Unified was limited to \$1,000,000 in 2011-12 and \$750,000 in 2012-13. No aid may be paid to Racine Unified under this provision after 2012-13. In contrast, under SSA 1 to SB 22, the Racine Unified payment would be phased out by limiting the payment to the number of pupils attending the charter school who were previously enrolled in Racine Unified and who attended the charter school in the 2010-11 school year. Therefore, SSA 1 to SB 22 should be amended to reconcile its provisions with the changes made under Act 32.

The "2r" per pupil payment amount for 2011-12 is \$7,775 per pupil. The current law "2r" pupils in Milwaukee and Racine are not counted by any school district for the purposes of revenue limits and aid membership. There are an estimated 7,800 full-time equivalent pupils attending "2r"

charter schools in 2011-12, including pupils attending the charter school operated by UW-Parkside. Each year, funding equal to the estimated payment for these charter schools is reduced proportionally from the general school aids paid to all school districts in the state. In 2011-12, it is projected that this estimated \$61.6 million reduction will represent a 1.4% decrease in the general school aids received by all districts. A school district's revenue limit calculation is not affected by the "2r" charter school reduction in aid. Thus, a school district can increase its property tax levy to offset the aid loss related to this program.

Under prior law, the offsetting reduction in school aids would have been capped at the amount of reduction taken in 2010-11, which would have continued to be taken each year going forward. Under that provision, beginning in 2011-12, expenditures above the 2010-11 reduction amount would have been funded directly from the general fund, with state general purpose revenue (GPR). However, 2011 Act 32 deleted these provisions, meaning that the entire amount expended for "2r" charter schools sponsored by "2r" authorizers continues to be taken as a reduction in general school aids for all districts, in order to fully offset the cost to the general fund. SSA 1 to SB 22 would also delete those prior law provisions to cap the reduction amount, which is no longer necessary given the changes enacted under Act 32 and would therefore not be considered a fiscal effect attributable to SSA 1 to SB 22.

However, because SSA 1 to SB 22 specifically deletes the residency restrictions applicable to the current law "2r" charter schools, and deletes the enrollment limit applicable to the "2r" charter school located in Racine, it can be assumed that enrollment will increase in those schools, although the extent of that increase is unknown at this time. Such an enrollment increase would in turn increase the costs related to the "2r" program and increase the corresponding aid loss to all school districts related to the program. It is not possible to estimate the fiscal effect of these changes at this time. However, for every additional pupil that enrolls in the currently authorized Milwaukee and Racine "2r" charter schools, the aid reduction taken for all school districts would increase by \$7,775.

For charter schools under contract with either a CESA or the CSAB under SSA 1 to SB 22, annually DPI would determine the number of resident pupils for each school district attending such a charter school. As under current law for "2r" charter school pupils, per pupil payments to charter school operators would be made from the existing GPR sum sufficient appropriation established for this purpose. The resident district would count those pupils for purposes of revenue limits and state general aid. To offset the GPR cost of these charter school payments, DPI would be required to reduce each school district's state general school aid payment by an amount equal to the number of resident pupils attending those charter schools, multiplied by the "2r" charter payment amount. If the general school aid payment to the district is insufficient to cover the reduction, DPI must reduce other state aid payments to the district by the remaining amount. If the amount of general aid and other state aid received by the district is insufficient to cover the payment to the "2r" charter school, then the remaining per pupil cost would be borne by the general fund. If a pupil attends the charter school for less than a full school term, the aid reduction would be prorated, although this proration

could differ from the payment made to the operator, which is based on the September and January count dates.

This aid reduction approach is similar to the mechanism employed under the open enrollment program, which allows pupils to attend public school districts outside their districts of residence. In this way, the substitute amendment would avoid a further reduction in general school aids paid to all school districts, which would have resulted if these newly authorized "2r" charter schools would be funded using the current law "2r" financing mechanism. However, it should be noted that the "2r" per pupil payment amount (\$7,775 in 2011-12 and 2012-13) is somewhat higher than the open enrollment transfer amount (an estimated \$6,748 per pupil in 2011-12). In addition, under open enrollment, if a school district's general and other state aid is in sufficient to cover the net transfer payment for pupils leaving the district, then the balance is paid from the state tuition payments appropriation, which is also funded with GPR. In any case, the district would not be permitted to levy property taxes to replace the lost aid.

The fiscal effect of these provisions would be at the individual school district level, largely depending on where these new charter schools would be located, and how many resident pupils would leave the district to enroll in a "2r" charter school. As charter schools are not required to provide transportation for their pupils, presumably the school district in which the charter school is located, and perhaps nearby school districts or private schools, would lose enrollment to the new charter school. However, school districts would not necessarily see a reduction in staffing or costs, because pupils leaving could be spread across multiple grades and campuses. The aid loss to a resident district would be somewhat mitigated, however, because the district would be permitted to count the "2r" pupils for purposes of revenue limits and state aid. In 2010-11, average per pupil base revenue limit authority was \$10,100, although changes enacted under Act 32 would reduce revenue limit authority by 5.5% in 2011-12 and provide a \$50 per pupil adjustment for most districts in 2012-13. Those changes could bring the average base per pupil revenue limit authority to approximately \$9,595 in 2012-13, still \$1,820 higher than the "2r" charter payment set to apply for that year. Again, it is not possible to estimate the fiscal effect of these changes at this time, because it is unknown: (a) how many new "2r" charter schools would actually be authorized and opened, either in 2012-13 or subsequent school years; (b) how many pupils would enroll in such schools, as it would depend on the decisions of individual pupils and families; or (c) in which school districts the new "2r" charter schools might be located.

Finally, SSA 1 to SB 22 would specify that a "2r" charter school would be a local educational agency for the purposes of federal law, and as such would be eligible for funding as a local educational agency and must comply with all federal requirements. According to staff for DPI, if additional charter schools are established, there would be more eligible applicants for funding under Title I, a major source of federal education funding, which could have implications for the distribution of these funds among current recipients.

Prepared by: Layla Merrifield