



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

---

May 29, 2013

Joint Committee on Finance

Paper #521

### **Contract Provisions for Independent "2r" Charter Schools (DPI -- Choice, Charter, and Open Enrollment)**

[LFB 2013-15 Budget Summary: Page 384, #11]

---

#### **CURRENT LAW**

Independent "2r" charter schools are called "2r" charter schools because of their statutory citation, s. 118.40(2r) of the statutes. Under current law, contracts between independent "2r" charter school authorizers and the operators of such schools must include all of the following: (a) the name of the person seeking to establish the charter school; (b) the name of the person who will be in charge of the charter school and the manner in which administrative services will be provided; (c) a description of the educational program of the school; (d) the methods the school will use to enable pupils to attain the general educational goals of public schools in this state, including academic skills and knowledge, vocational skills, citizenship, and personal development; (e) the method by which pupil progress in attaining educational goals; (f) the governance structure of the school, including a method to ensure parental involvement; (g) the qualifications that must be met by individuals employed by the school; (h) the procedures that the school will follow to ensure the health and safety of the pupils; (i) the means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the school district population; (j) the requirements for admission to the school; (k) the manner in which annual audits of the financial and programmatic operations of the school will be performed; (L) the procedures for disciplining pupils; (m) 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; and (n) a description of the school facilities and the types and limits of the liability insurance that the school will carry.

#### **GOVERNOR**

Require that, in addition to the contract requirements applicable for all charter schools,

the contracts between the governing boards of independent "2r" charter schools and their authorizers include the following: (a) a requirement that the charter school governing board adhere to specified annual academic and operational performance standards developed in accordance with the performance framework of the entity with which it is contracting; (b) provisions detailing the corrective measures the charter school governing board will take if the charter school fails to meet performance standards; (c) a provision allowing the governing board of a charter school that receives a rating of "exceeds expectations" or "significantly exceeds expectations" in the most recent school accountability report published by DPI to open one or more additional charter schools and, if the charter school governing board opens one or more additional charter schools, the existing contract applies to the new school or schools unless the parties agree to amend the existing contract or enter into a new contract; (d) the methodology that will be used by the charter school governing board to monitor and verify pupil enrollment, credit accrual, and course completion; (e) a requirement that the authorizing entity have direct access to pupil data; (f) a description of the administrative relationship between the parties to the contract; (g) a requirement that the charter school governing hold parent-teacher conferences at least annually; (h) a requirement that if more than one charter school is operated under the contract, the charter school governing board reports to the authorizing entity on each charter school separately; (i) a requirement that the charter school governing board provide the data needed by the authorizing entity for purposes of making a required annual report to the State Superintendent and the Legislature; (j) a requirement that the charter school governing board participate in any training provided by the authorizing entity; and (k) a description of all fees the authorizing entity will charge the charter school governing board. Specify that these requirements 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.

Provide that, if an independent charter school is in operation on the effective date of the bill, and the charter school receives a rating of "exceeds expectations" or "significantly exceeds expectations" in the most recent school accountability report published by DPI, then the person operating the charter school may open one or more additional charter schools, regardless of the terms of the existing contract.

## **DISCUSSION POINTS**

1. Many of the contract provisions that would be newly required by AB 40 are recognized as best practices by the National Association of Charter School Authorizers, such as clearly explaining fees to be charged by the authorizer, and defining performance standards by which the school will be measured. Proponents have suggested specifying such standards in charter school contracts can both lead to higher quality charter schools overall, and can discourage operators from attempting to open poor quality charter schools.

2. The bill provides that if one charter school operated by a governing board is rated highly on the school accountability report, then the governing board must be permitted to open additional schools. Based on the school accountability report published for the 2011-12 school year, two current "2r" charter schools would qualify their operators to open additional schools. (Both Downtown Montessori and Woodlands School were rated "exceeds expectations" on the report.)

However, it has been noted that under the provision, a single governing board could operate multiple charter schools, and that only one of those charter schools would have to receive a high rating in order for the governing board to be permitted to open additional schools. One or more of the board's other charter schools could perform poorly, but the board would still qualify to open more schools. In order to avoid such a scenario, it might be desirable to specify that a governing board could not open additional schools until or unless all of the board's charter schools receive ratings of "exceeds expectations" or "significantly exceeds expectations" on the school accountability report (also known as the "school report card").

3. Additionally, the Committee could modify the proposal to require that "2r" charter school contracts include conditions that must be met in order for a school to remain open. If a "2r" charter school is poor quality, it may not be desirable to allow the school to operate for a full five years, the usual contract term. A contract could specify that certain measures of quality would need to be met each year the school is open, in order for the school to continue operating the following school year. It could be left to each authorizer to determine what those minimum requirements would be. If the "2r" charter school program would be permitted to expand statewide, as is proposed under other provisions of AB 40, it might be desirable to include additional assurances that schools in the program are of high quality. Requiring that contracts specify minimum criteria, which must either be satisfied or lead to the school's closure, would be one such assurance. It might also be desirable to require that the contract explicitly state the responsibilities of the school and the responsibilities of the authorizer in the event of a school closure.

4. The bill would require that, for independent charter schools in operation on the effective date of the bill, the person operating the charter school may open one or more additional schools, regardless of the terms of the existing contract, if the charter school receives a rating of "exceeds expectations" or "significantly exceeds expectations." In general, a state legislature may not retroactively affect the terms or execution of private contracts by acts of law. Under Article I, Section 10 of the U.S. Constitution and Article I, Section 12 of the Wisconsin Constitution, the state is prohibited from enacting any law that impairs the obligations of existing contracts. Generally, under the contract clause, the state must have a significant and legitimate purpose in order to enact such a regulation, such as remedying a broad social or economic problem. The Governor's recommendation could be interpreted as impairing the authorizers' rights by changing the terms of their existing contracts with their operators.

5. Because the school report cards are relatively new and untested as an accountability measure, it might be undesirable to base high stakes decisions, such as whether an operator should be permitted to open additional charter schools, solely on a school's score on one school report card. The report cards were designed to be used to demonstrate areas of strength and to help school improve on areas of weakness in performance. In addition, some have argued the report cards may require adjustments before they can be considered an accurate reflection of a school's overall performance. If the report cards would be used to make high stakes decisions, additional criteria or adjustments to the formulas used to construct the accountability scores might be desirable. Critics have pointed to relatively low scores assigned to some schools that would otherwise be considered to be high-performing by those in the education community as evidence that the report card as an instrument could be improved. Schools that serve disadvantaged populations of students, or that

serve grade levels that are assessed only once, for example, may not be credited appropriately for pupils' growth over the time they are enrolled in the school.

## **ALTERNATIVES**

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation by one or more of the following:
  - a. Delete the provision that would allow an existing "2r" charter school operator to open additional schools regardless of the terms of the existing contract with the authorizer;
  - b. Require that independent "2r" charter school contracts specify that in order for a governing board to be permitted to open additional charter schools, all of the charter schools operated by the board, rather than a single school, must have received ratings of "exceeds expectations" or "significantly exceeds expectations" on the most recent school accountability report published by DPI;
  - c. Require that independent "2r" charter school contracts specify minimum standards of operation and performance, which if they would not be met, would require the school to close at the end of the school year, regardless of the length of the contract;
  - d. Require that independent "2r" charter school contracts state the responsibilities of the school and the authorizer in the event of a school closure.
3. Delete provision.

Prepared by: Layla Merrifield