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Joint Committee on Finance

Paper #522

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

[LFB 2015-17 Budget Summary: Page 359, #23]

CURRENT LAW

Under the independent "2r" charter school program, the City of Milwaukee, the University of Wisconsin-Milwaukee, and the University of Wisconsin-Parkside are authorized to operate or contract to operate charter schools. (The "2r" designation is a reference to the main statutory citation governing these schools, s. 118.40(2r) of the statutes). UW-Milwaukee can establish or contract to establish a school located anywhere in Milwaukee County or an adjacent county, while the City can charter schools located within the Milwaukee Public Schools (MPS). In 2013-14, UW-Milwaukee authorized 12 schools, while the City authorized ten. UW-Parkside is authorized to establish one charter school operating grades kindergarten through eight and enrolling a maximum of 480 pupils, which is located in the Racine Unified School District (RUSD). A pupil who resides in Milwaukee County or an adjacent county can attend any "2r" charter. Pupils attending schools participating in the "2r" charter program are not counted by any school district for purposes of revenue limits and equalization aid.

The Department of Public Instruction (DPI) pays the operators of "2r" charter schools a statutorily-determined amount per pupil each year (\$8,075 in 2014-15). These payments are funded from a sum sufficient appropriation from the general fund. The cost of the payments from that appropriation is offset by a lapse from the general school aids appropriation to the general fund in an amount equal to the estimated payments under the "2r" program. By law, DPI is required to proportionally reduce the general aid for which each district is eligible by an amount totaling the estimated payments under the program. Under the October 15, 2014, general school aids distribution, in 2014-15, general aid statewide will be reduced by a total of \$68.6 million for the "2r" program. Each district's general aid eligibility will be reduced proportionally by 1.5% to generate the total statewide amount of \$68.6 million. Under revenue limits, districts may levy

property taxes to offset the amount of revenue lost due to the "2r" aid reduction.

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 who is 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 state's statutory educational goals and expectations related to academic skills and knowledge, vocational skills, citizenship, and personal development; (e) the method by which pupil progress in attaining the state's educational goals and expectations will be measured; (f) the governance structure of the school, including the method to be followed by the school to ensure parental involvement; (g) the qualifications that must be met by individuals to be employed in 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; (n) a description of the school facilities and the types and limits of the liability insurance that the school will carry; and (o) the effect of the establishment of the charter school on the liability of the contracting entity.

A contract may include other provisions agreed to by the parties. The contract may be for any term not exceeding five school years and can be renewed for one or more terms not exceeding five school years.

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 a 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 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 is assigned one of the top two grade levels 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, that 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 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 governing board hold parent-teacher conferences at least annually; (h) a requirement that if more than one charter school is operated under the contract, the governing board report to the authorizing entity on each charter school separately; (i) a

requirement that the governing board provide the data needed by the authorizing entity for purposes of making a required annual report to the State Superintendent and Legislature; (j) a requirement that the governing board participate in any training provided by the authorizing entity; and (k) a description of all fees the authorizing entity will charge the governing board. Specify that these requirements 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.

Provide that, if an independent charter school is in operation on the effective date of the bill, and the charter school is assigned one of the top two grade levels 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 with its authorizing entity. Specify that all other provisions of the contract, other than any provision that conflicts with this provision, apply to the new school or schools, unless the parties agree to amend the existing contract or enter into a new contract.

DISCUSSION POINTS

1. Many of the contract provisions that would be newly required under the bill 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 also 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. Charter school advocates argue that the replication of high-performing charter schools should be encouraged under state charter laws. Charter schools are intended to foster the development of innovative educational practices and teaching methods as a result of being subject to fewer laws and regulations than traditional public schools. To the extent that charter schools are successful, the creation of additional schools using these practices, through a method such as that allowed under the bill, would provide additional opportunities for more pupils.

3. Based on the school accountability report published for the 2013-14 school year, the performance of four of the 23 current "2r" charter schools, all located in Milwaukee, would have qualified their operators to open additional schools. Downtown Montessori Academy (authorized by the City of Milwaukee) was rated "significantly exceeds expectations," while Bruce Guadalupe Community School, Milwaukee College Preparatory School-36th Street, and Woodlands School (all authorized by UW-Milwaukee) were rated "exceeds expectations."

4. Under the bill provision, a governing board could operate multiple charter schools, and only one of those 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. To avoid such a scenario, the Committee could specify that a governing board could open additional schools if all of the board's charter schools receive one of the top two grade levels on the school accountability report

(Alternative 2a).

5. Similarly, the threshold for allowing an operator to open additional schools could be raised so that only the operators that have met the highest standard of accountability would be allowed to do so. The Committee could modify the bill to either specify that at least one of the schools (Alternative 2b) or that all of the schools (Alternative 2c) operated by the governing board has received the highest grade level in the most recent school accountability report.

6. One section of the bill would add the provision allowing governing boards with a highly-rated "2r" charter to open additional schools to list of requirements for contracts between the governing boards of "2r" charters and their authorizers. This requirement 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. A separate bill provision would allow a person operating a highly-rated charter school in operation on the effective date of the bill to open additional schools regardless of the terms of the existing contract.

7. In general, the 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.

8. The Governor's recommendation could be interpreted as impairing the authorizers' rights by changing the terms of their existing contracts with their charter school operators. To address this concern, the Committee could choose to delete the provision allowing a person operating a highly-rated charter school in operation on the effective date of the bill to open additional schools (Alternative 3). The provision allowing governing boards to open additional schools based on the school accountability reports would then first apply to contracts entered into, renewed, or modified on the effective date of the bill.

9. It could be argued that the school accountability reports are not an appropriate measure on which to base high stakes decisions, such as whether an operator should be permitted to open additional charter schools. DPI staff have argued that the reports were designed to highlight areas of strength and weakness to help schools improve their performance, and that the reports should be modified if they are used for policy decisions. Critics have pointed to certain issues to suggest that the report card as an instrument could be improved, such as the correlations between a school's score and the demographic composition of its student population. In addition, other provisions of the bill, which are discussed in a separate issue papers, would modify the school accountability reports and pupil assessments. If those changes are adopted, it may be desirable to see how they affect the reports before basing high stakes decisions on them.

10. It could also be argued that the provisions allowing for the opening of additional charter schools based on the school accountability reports is not necessary. If these schools are successful both in terms of pupil academic achievement and the other criteria that can be used to judge charter schools, it seems likely that this would increase the likelihood of an authorizer being willing to contract for additional schools with the operator. The plans for any new charter school

could then be judged in light of the academic, organizational, and financial standards for charter schools that might not be captured by the school accountability reports.

ALTERNATIVES

1. Approve the Governor's recommendation to specify additional requirements for the contracts between the governing boards of independent "2r" charter schools and their authorizers and to allow a person operating a "2r" charter school that is in one of the top two grade levels in the most recent school accountability report to open additional schools.

2. Modify the Governor's recommendation to specify one of the following thresholds for allowing a "2r" operator to open additional schools:

a. All of the schools operated by the governing board have received one of the top two grade levels in the most recent school accountability report.

b. One of the schools operated by the governing board has received the highest grade level in the most recent school accountability report.

c. All of the schools operated by the governing board have received the highest grade level in the most recent school accountability report.

3. Modify the Governor's recommendation to delete the provision allowing a person operating a highly-rated "2r" charter school on the effective date of the bill to open additional schools, regardless of the terms of the contract with its authorizing entity. (The similar provision that would first apply to contracts entered into, renewed, or modified on the effective date of the bill would remain.)

4. Delete provision.

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