



Legislative Fiscal Bureau

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May 23, 2001

Joint Committee on Finance

Paper #145

Board on Education Evaluation and Accountability (DOA -- Attached Programs and DPI -- Assessments and Licensing)

[LFB 2001-03 Budget Summary: Page 74, #2 and Page 549, #4]

CURRENT LAW

Current law requires all school districts to annually administer the Wisconsin reading comprehension test (WRCT), a standardized reading test developed by DPI for 3rd grade pupils. Districts are also required to annually administer 4th, 8th and 10th grade Wisconsin knowledge and concepts exams (WKCE). A school board may choose to develop its own exam for 4th and 8th grades, and if it chooses to do so, it is required to notify DPI and provide the State Superintendent with statistical correlations of those exams with the exams adopted or approved by the State Superintendent. A school board must provide a pupil with at least two opportunities to take the 4th and 8th grade exams.

Each school district that operates a high school is required to adopt a written policy by September 1, 2002, specifying criteria for granting a high school diploma, and beginning in 2002-03, that criteria must include a high school graduation test (HSGT). The test may be administered only in grades 11 and 12, and must be offered twice each year. Beginning September 1, 2003, a high school diploma cannot be granted to any pupil unless the pupil has satisfied the school board's criteria.

A school board may determine not to administer an examination to a pupil enrolled in a special education program or a limited-English speaking pupil, and a school board may modify the format and administration of an examination for these pupils or permit a pupil to be examined in his or her native language. Additionally, school boards are required to excuse a pupil from taking the 4th, 8th or 10th grade exams or the high school graduation exam upon the request of the pupil's parent or guardian. School boards are required to establish alternative

criteria upon which to determine qualification for high school graduation if a pupil has been excused from the exam.

These provisions apply to charter schools as well.

DPI pays for printing, distributing, scoring and reporting the results of the exams. In 2000-01, DPI expected to expend approximately \$6.0 million in GPR and federal monies for printing, scoring, reporting and development costs of the exams, as well as for program operations, supplies and services associated with pupil assessment.

The State Superintendent develops and distributes a school performance report annually and arranges for an annual evaluation of the SAGE program annually.

GOVERNOR

Create a Board on Education Evaluation and Accountability (Board), attached to DOA and consisting of five members appointed for four-year terms. The members of the Board would be appointed by the Governor; Senate confirmation would not be required. Require that at least one member be experienced in education evaluation and assessment. Require that two of the initial members of the Board serve for terms expiring on May 1, 2003, and three of the initial members serve for terms expiring on May 1, 2005. Require the Board to appoint an executive director, assigned to statutory executive salary group 3, to serve at its pleasure. Specify that the executive director be part of the unclassified civil service.

Create an appropriation under DOA to fund the program operations of the Board. Transfer \$11,811,500 and 15.60 positions from DPI to DOA for this purpose in 2002-03. Of this funding, \$826,600 would be transferred from DPI's largest general program operations appropriation, \$10,859,900 from DPI's assessment appropriation and \$125,000 from the primary SAGE appropriation.

Require the Board to administer the pupil assessment program, currently administered by DPI. Require the Board, rather than DPI, to adopt or approve a 3rd grade reading test, 4th, 8th, and 10th grade knowledge and concepts exams and a high school graduation exam. Require a school board or charter school operator that chooses to develop and adopt its own 4th or 8th grade exams to notify the Board, rather than DPI, or for its own high school graduation exam, to notify the Board, rather than DPI, annually by October 1 that it intends to administer the examination in the following school year.

Require the Board to compile a school performance report. Require the Board to publish and distribute a summary of the school performance reports to the Legislature annually.

Authorize the Board to conduct a longitudinal study of the Milwaukee parental choice program if the Board receives sufficient funds from private sources to do so. If the Board conducts such a study, require that it report the results to the Legislature and the Governor.

Require the Board to take over the duties of the State Superintendent related to identifying schools that are low in performance, making recommendations regarding how the programs and operations of the schools can be improved and periodically assessing school district implementation of the plans. Require the Board, rather than the State Superintendent, to publish and distribute a list of the schools identified as low in performance to the Governor and Legislature annually.

Require the Board, rather than the State Superintendent as under current law, to study the utility of administering technology-based performance assessments to pupils.

Modify a current law requirement statistical correlation reporting requirement for the 4th and 8th grade exams to refer to the Board rather than the State Superintendent.

Transfer the responsibility to arrange for an annual evaluation of the SAGE program to the Board, and require the Board to allocate \$125,000 for that purpose from its appropriation, rather than from the SAGE appropriation.

Establish a nonstatutory provision governing the transfer of functions from DPI to the Board. Specify that this provision would apply to the following items, if they would be primarily related to the school performance report, pupil assessments, SAGE program evaluation and the 3rd grade reading test, as determined by the Secretary of DOA: (a) the assets and liabilities of DPI would become the assets and liabilities of the Board; (b) all incumbent employees holding positions in DPI would be transferred to the Board; (c) such employees would have all the statutory rights and the same status in the Board that they enjoyed in DPI immediately before the transfer and no employee transferred who has attained permanent status in class would be required to serve a probationary period; (d) all tangible personal property, including records, of DPI would be transferred to the Board; (e) all contracts entered into by DPI in effect on the effective date of this provision would remain in effect and would be transferred to the Board, which would carry out any obligations under such a contract; (f) all rules promulgated by DPI that are in effect on the effective date of this provision would be transferred to the Board and would remain in effect until amended or repealed by the Board and all orders issued by DPI that are in effect on the effective date of this provision would be transferred to the Board and would remain in effect until their specified expiration date or until modified or rescinded by the Board; and (g) any matter pending with DPI on the effective date of this provision would be transferred to the Board and all materials submitted to or actions taken by DPI with respect to the pending matter would be considered as having been submitted to or taken by the Board.

The Board's powers and duties and the transfer of functions to the Board would take effect on July 1, 2002.

DISCUSSION POINTS

1. The Wisconsin pupil assessment system is administered and coordinated by the Office of Educational Accountability within DPI. The WRCT was first given in the 1988-89 school

year. The WKCE was first administered in 1992-93 to 8th and 10th grade pupils, and to 4th grade pupils in 1995-96. The HSGT is currently being developed by DPI and will be administered to 11th and 12th grade pupils beginning in 2002-03.

2. In recent years, pupil assessment has become the focus of broader educational reforms nationwide. Pupil assessments evaluate the quality and level of pupil achievement and indicate areas for improvement, provide accountability for public investment in education, and provide information to be used by teachers and pupils in decisions relating to remediation, program placement, career paths and ranking.

3. The Governor's proposal would remove from DPI responsibility for monitoring and reporting the quality of instruction offered by public, charter and MPCP schools, as well as the results of the SAGE program, and transfer that responsibility to an independent Board, created for that purpose and attached to DOA for administrative support services.

4. Proponents of the proposal argue that pupil assessment should be the responsibility of a neutral, independent body in order to ensure that no bias enters the testing and reporting process. They suggest that DPI may not be a neutral body because the Department also serves as an advocate for schools and local educational agencies, especially within the state budget process. Monitoring these entities as well as doing advocacy work for them may cause an appearance of partiality.

5. Opponents of this proposal argue that if the policy goal of this proposal truly is to establish an independent entity to safeguard the integrity of the state's assessments, the Governor's budget proposal is open to criticism. They indicate that it is unclear to what extent the proposed five-person board could be viewed as independent, since all five members would be appointed by the Governor. These appointments further would be made without Senate confirmation. In addition, the proposed attachment of the Board for limited purposes to the Department of Administration, which is one of the agencies of state government that works most closely with the Governor, could further diminish any appearance of independence of this Board.

6. Opponents of the proposal have also argued that DPI should retain administrative and development authority over the pupil assessment system because assessments are closely tied to the creation of curriculum and academic standards. DPI staff produces curriculum guides for school districts with the goal of helping students achieve statewide academic standards. DPI staff crafted these standards in large part, with input from education professionals and other interested parties. In turn, assessments have been developed by DPI to measure pupil attainment of those standards, and curriculum is adjusted accordingly based on those results. One could argue that DPI should continue to develop curriculum, standards, and assessments in order to ensure substantive consistency of content.

7. The State Superintendent has raised concerns that this provision of the bill may be unconstitutional because it would grant supervisory power over public instruction to state officers that are not subordinate to the State Superintendent of Public Instruction. In *Thompson v. Craney*

(1996), a unanimous state Supreme Court ruled a portion of 1995 Act 27 unconstitutional. The Court determined that the state constitution vests sole authority over public instruction with the office of State Superintendent. Without a constitutional amendment, the opinion found, the Legislature could create officers with supervisory power over public instruction only if those officers were ultimately subordinate to the State Superintendent.

8. On the other hand, proponents of this provision of the bill point to a concurring opinion to *Thompson* filed by Justice Wilcox and joined by Justice Steinmetz. That concurring opinion argued that under the constitution the Legislature is granted "the innovative flexibility to identify and address issues involving reform." The concurring opinion also pointed to a precedent for creation by the Legislature of state officers that were not subordinate to the State Superintendent but that were granted some supervisory authority over public instruction. In *Burton v. State Appeal Board* (1968), the Legislature had created a board, appointed by the State Superintendent, to hear appeals of school district reorganization orders from agency school committees. The Court found that, once appointed, the Board was subordinate to no one, including the State Superintendent. The concurring opinion in *Thompson* argues that this precedent should be read to affirm the constitutionality of the Legislature's granting of supervisory power over public instruction to state officers other than, and not subordinate to, the State Superintendent. Given the history of litigation surrounding the vesting of authority in officers other than the State Superintendent, it is possible that if enacted into law this provision would come under similar judicial review to determine its constitutionality.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to create a Board on Education Evaluation and Accountability, appointed by the Governor and attached to DOA, to administer the state's pupil assessment program, arrange for an annual SAGE evaluation, and compile an annual school performance report. Create an appropriation under DOA to fund the program operations of the Board. Transfer \$11,811,500 and 15.60 positions from DPI to DOA for this purpose in 2002-03. Of this funding, \$826,600 would be transferred from DPI's largest general program operations appropriation, \$10,859,900 from DPI's assessment appropriation and \$125,000 from the primary SAGE appropriation.

2. Maintain current law.

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