

ESSB 5012 - H AMD 560

By Representative McDermott

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** INTENT. The legislature intends to
4 authorize the establishment of public optional schools within the
5 general and uniform system of public schools for the primary purpose of
6 providing more, high quality learning environments to assist
7 educationally disadvantaged students and other students in meeting the
8 state's academic standards. The legislature intends for optional
9 schools to function as an integral element of the public school system
10 maintained at public expense, and to be subject to the same academic
11 standards and performance outcomes as other public schools. The
12 legislature intends to encourage school districts to consider using
13 optional schools as a tool for achieving state and federal
14 accountability goals. The legislature finds that in addition to
15 providing more, high quality public school choices for families,
16 teachers, and students, public optional schools may be a tool for the
17 improvement of schools in which significant numbers of students
18 persistently fail to meet state standards. The legislature also
19 intends to authorize the use of optional schools as a state
20 intervention strategy, consistent with the provisions of the federal no
21 child left behind act of 2001, to provide assistance to schools in
22 which significant numbers of students persistently fail to meet state
23 standards.

24 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
25 requires otherwise, the definitions in this section apply throughout
26 this chapter.

27 (1) "Alternate sponsor" means either: (a) The board of directors
28 of the educational service district in which the proposed optional
29 school will be located; or (b) the governing board of a state or

1 regional university as defined in RCW 28B.10.016 or of The Evergreen
2 State College, when such board has approved a contractual performance
3 agreement. Optional schools sponsored by an institution of higher
4 education may be approved by the governing board of the sponsoring
5 institution or by an official or agency designated by and accountable
6 to the governing board of the sponsoring institution. A contractual
7 performance agreement may be approved by an official or agency under
8 this subsection, only after the governing board has consented to such
9 approval in writing.

10 (2) "Applicant" means a nonprofit corporation that has submitted an
11 application to a sponsor or an alternate sponsor to obtain approval to
12 operate an optional school. The nonprofit corporation must be either
13 a public benefit nonprofit corporation as defined in RCW 24.03.490, or
14 a nonprofit corporation as defined in RCW 24.03.005 that has applied
15 for tax-exempt status under section 501(c)(3) of the internal revenue
16 code of 1986 (26 U.S.C. Sec. 501(c)(3)). The nonprofit corporation may
17 not be a sectarian or religious organization and must meet all of the
18 requirements for a public benefit nonprofit corporation before
19 receiving any funding under section 12 of this act.

20 (3) "Board of directors" means the board of directors appointed or
21 elected by the applicant to manage and operate the optional school.

22 (4) "Contractual performance agreement" means a contract between an
23 applicant and a sponsor or an alternate sponsor. The contractual
24 performance agreement establishes, in accordance with this chapter, the
25 terms and conditions for the management, operation, and educational
26 program of the optional school.

27 (5) "Conversion optional school" means a public school converted to
28 an optional public school through a contractual performance agreement
29 in accordance with this chapter.

30 (6) "Educationally disadvantaged students" includes students who do
31 not speak English proficiently, students with special needs, students
32 who qualify for free and reduced priced meals, students exercising
33 choice options under the federal no child left behind act of 2001, and
34 other students who may be at risk of failing to meet state and federal
35 academic performance standards.

36 (7) "Optional school" means a public school managed by an

1 applicant's board of directors and operating independently of any
2 school district board under a contractual performance agreement
3 approved in accordance with this chapter.

4 (8) "Sponsor" means the board of directors of the school district
5 in which the proposed optional school will be located, when such board
6 has approved a contractual performance agreement.

7 NEW SECTION. 3. OPTIONAL SCHOOLS--POWERS. (1) In carrying out
8 its duty to manage and operate the optional school, the board of
9 directors of an optional school may:

10 (a) Hire, manage, and discharge any optional school employee in
11 accordance with the terms of this chapter and that school's contractual
12 performance agreement;

13 (b) Enter into a contract with any school district, or any other
14 public or private entity, also empowered to enter into contracts, for
15 any and all real property, equipment, goods, supplies, and services,
16 including educational instructional services;

17 (c) Rent, lease, or own property, but may not acquire property by
18 eminent domain. All contractual performance agreements with other
19 public and private entities must include provisions regarding the
20 disposition of the property if the optional school fails to open as
21 planned, closes, or the contractual performance agreement is revoked or
22 not renewed;

23 (d) Issue secured and unsecured debt to manage cash flow, improve
24 operations, or finance the acquisition of real property or equipment.
25 Such an issuance does not constitute an obligation, either general,
26 special, or moral of the state, the optional school sponsor, the school
27 district in which the optional school is located or any other political
28 subdivision or agency of the state. Neither the full faith and credit
29 nor the taxing power of the state, the optional school sponsor, the
30 school district in which the optional school is located, or any other
31 political subdivision or agency of the state may be pledged for the
32 payment of such debt;

33 (e) Accept and administer for the benefit of the optional school
34 and its students gifts, grants, and donations from other governmental
35 and private entities, excluding sectarian or religious organizations.

1 Optional schools may not accept any gifts or donations the conditions
2 of which violate this chapter.

3 (2) An optional school may not charge tuition, levy taxes, or issue
4 tax-backed bonds, however it may charge fees for optional noncredit
5 extracurricular events.

6 (3) Neither an optional school sponsor, an alternate sponsor, nor
7 the school district in which the optional school is located is liable
8 for acts or omissions of an optional school, including but not limited
9 to acts or omissions related to the application, the contractual
10 performance agreement, the operation, the performance, and the closure
11 of the optional school.

12 NEW SECTION. **Sec. 4.** LEGAL STATUS. An optional school is a
13 public school including one or more of grades kindergarten through
14 twelve, operated by a board of directors appointed or elected by an
15 optional school applicant, according to the terms of a renewable five-
16 year contract granted by a sponsor or an alternate sponsor. An
17 optional school may offer any program or course of study that another
18 public school may offer.

19 NEW SECTION. **Sec. 5.** OPTIONAL SCHOOLS--EXEMPTIONS. (1) An
20 optional school shall operate independently of any school district
21 board, under a contractual performance agreement approved by a sponsor
22 or an alternate sponsor under this chapter.

23 (2) Optional schools are exempt from all state statutes and rules
24 applicable to school districts and school district boards of directors
25 except those statutes and rules as provided for and made applicable to
26 optional schools in accordance with this chapter and in the school's
27 approved contractual performance agreement.

28 (3) An optional school's board of directors is encouraged to
29 implement a quality management system and to conduct an annual self-
30 assessment.

31 (4) All approved optional schools shall:

32 (a) Comply with state and federal health, safety, parents' rights,
33 civil rights, and nondiscrimination laws, including, but not limited
34 to, chapter 28A.640 RCW (sexual equality) and Title IX of the education

1 amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) applicable to school
2 districts, and to the same extent as school districts;

3 (b) Participate in nationally normed standardized achievement tests
4 as required in RCW 28A.230.190, 28A.230.193, and 28A.230.230 and the
5 elementary, middle school, and high school standards, requirements, and
6 assessment examinations as required in chapter 28A.655 RCW;

7 (c) Employ certificated instructional staff as required in RCW
8 28A.410.010, however optional schools may hire noncertificated
9 instructional staff of unusual competence and in exceptional cases as
10 specified in RCW 28A.150.260;

11 (d) Comply with the employee record check requirements in RCW
12 28A.400.303;

13 (e) Be subject to the same financial and audit requirements as a
14 school district, as determined by the state auditor, including annual
15 audits for legal and fiscal compliance;

16 (f) Be subject to periodic independent performance audits conducted
17 by or at the direction of a competent state authority to the same
18 extent as other public agencies, however, an optional school is not
19 required to bear the expense of such a performance audit;

20 (g) Comply with the annual performance report under RCW
21 28A.655.110;

22 (h) Follow the performance improvement goals and requirements
23 adopted by the academic achievement and accountability commission by
24 rule under RCW 28A.655.030;

25 (i) Be subject to the accountability requirements of the federal no
26 child left behind act of 2001, including Title I requirements;

27 (j) Comply with and be subject to the requirements under the
28 individuals with disabilities education act, as amended in 1997;

29 (k) Report at least annually to the board of directors of the
30 school district in which the optional school is located, to the
31 school's alternate sponsor if the school is not sponsored by a school
32 district, and to parents of children enrolled at the optional school on
33 progress toward the student performance goals specified in the
34 contractual performance agreement;

35 (l) Comply with the open public meetings act in chapter 42.30 RCW
36 and open public records requirements in RCW 42.17.250; and

1 (m) Be subject to and comply with legislation enacted after the
2 effective date of this section governing the operation and management
3 of optional schools.

4 (5) A member of a board of directors of an optional school shall be
5 considered the equivalent of a board member of a school district for
6 the purposes of public disclosure requirements and must comply with the
7 reporting requirements in RCW 42.17.240.

8 NEW SECTION. **Sec. 6.** ADMISSION REQUIREMENTS. (1) To effectuate
9 the primary purpose for which the legislature established optional
10 schools, an optional school must be willing to enroll educationally
11 disadvantaged students and may not limit admission on any basis other
12 than age group and grade level. Consistent with the legislative intent
13 of this chapter, an optional school shall conduct timely outreach and
14 marketing efforts to educationally disadvantaged students in the school
15 district in which the optional school will be located.

16 (2) A conversion optional school must be structured to provide
17 sufficient capacity to enroll all students who wish to remain enrolled
18 in the school after its conversion to an optional school, and may not
19 displace students enrolled before its conversion. If, after enrollment
20 of these students, capacity is insufficient to enroll all other
21 students remaining who have submitted a timely application, the
22 optional school must give enrollment priority to siblings of students
23 who are currently enrolled in the school. Students selected to fill
24 any remaining spaces must be selected only through an equitable
25 selection process, such as a lottery.

26 (3) A new optional school must enroll all students who submit a
27 timely application if capacity is sufficient. If capacity is
28 insufficient to enroll all students who apply, students must be
29 selected to fill any remaining spaces only through an equitable
30 selection process, such as a lottery. Siblings of enrolled students
31 and of students selected through an equitable selection process must be
32 given priority in enrollment if requested by a parent.

33 NEW SECTION. **Sec. 7.** OPTIONAL SCHOOL APPLICATION. (1) An
34 applicant may apply to a sponsor or an alternate sponsor to establish
35 an optional school in accordance with this section.

1 (2) An application for an optional school must be submitted first
2 to the board of directors of the school district in which the proposed
3 optional school will be located, allowing for the board's consideration
4 of the application in accordance with subsections (3) and (4) of this
5 section, before the application may be submitted to an alternate
6 sponsor.

7 (3) The school district board of directors must decide, within
8 forty-five days of receipt of the application, whether to hold a public
9 hearing in the school district for the purpose of taking public comment
10 on the application and, if a hearing is to be held, must schedule such
11 a hearing within seventy-five days of receipt of the application. If
12 the school board intends to accept the application, one or more public
13 hearings must be held prior to the granting of a contractual
14 performance agreement; however a school board is not required to hold
15 a public hearing prior to rejecting an application. The school board
16 must either accept or reject the application within one hundred five
17 days after receipt of the application. The one hundred five-day
18 deadline for acceptance or rejection of the optional school application
19 may be extended for an additional thirty days if both parties agree in
20 writing.

21 (4) If the school board elects not to hold a public hearing or
22 rejects the application after holding one or more public hearings, the
23 school board must notify the applicant in writing of the reasons for
24 that decision. The applicant may submit a revised application for the
25 school board's reconsideration and the school board may provide
26 assistance to improve the application. If the school board rejects the
27 application after submission of a revised application, the school board
28 must notify the applicant in writing of the reasons for the rejection.

29 (5) Applications for the conversion of a public school to an
30 optional public school may not be submitted to an alternate sponsor
31 without the prior consent of the school district board of directors.
32 At the request of the applicant, the sponsor, or the alternate sponsor,
33 the superintendent of public instruction may review the contractual
34 performance agreement and provide technical assistance.

35 (6) Alternate sponsors must comply with the procedures in
36 subsections (1) through (4) of this section for consideration of the

1 contractual performance agreement. An alternate sponsor is not bound
2 by a school district's or another alternate sponsor's findings or
3 decision to deny the application.

4 (7) The superintendent of public instruction shall maintain copies
5 of all approved contractual performance agreements. An applicant may
6 obtain copies of those applications from the office of the
7 superintendent of public instruction.

8 (8) Educational service districts and the superintendent of public
9 instruction are encouraged to assist schools and school districts in
10 which significant numbers of students persistently fail to meet state
11 standards with completing the conversion process. Assistance from an
12 educational service district or from the superintendent of public
13 instruction may include, but is not limited to, identifying potential
14 eligible applicants and assisting with the optional school application
15 and approval processes.

16 (9) Consistent with the corrective action provisions in the federal
17 no child left behind act of 2001, the superintendent of public
18 instruction may use the conversion process as an intervention strategy
19 for the purpose of meeting federal student achievement and
20 accountability requirements. The superintendent may require a local
21 school district board of directors to convert a public school to an
22 optional public school or, if the superintendent determines it would be
23 more appropriate, may require a local school district board of
24 directors to consent to conversion of the school to an optional school
25 by the board of directors of the local educational service district.

26 NEW SECTION. **Sec. 8.** APPLICATION REQUIREMENTS. The optional
27 school application is a proposed contract and must include:

28 (1) The identification and description of the nonprofit corporation
29 submitting the application, including the names, descriptions,
30 curriculum vitae, and qualifications, which shall be subject to
31 verification and review, of the individuals who will operate the
32 school;

33 (2) The nonprofit corporation's proposed articles of incorporation,
34 bylaws, and most recent financial statement and balance sheet;

35 (3) A mission statement for the proposed school, consistent with

1 the description of legislative intent in this chapter, including a
2 statement of whether the proposed optional school's primary purpose is
3 to serve educationally disadvantaged students;

4 (4) A description of the school's educational program, curriculum,
5 and instructional strategies, including but not limited to how the
6 optional school will assist its students, including educationally
7 disadvantaged students, in meeting the state's academic standards;

8 (5) A description of the school's admissions policy and marketing
9 program, and its deadlines for applications and admissions, including
10 its program for community outreach to families of educationally
11 disadvantaged students;

12 (6) A description of the school's student performance standards and
13 requirements that must meet those determined under chapter 28A.655 RCW,
14 and be measured according to the assessment system determined under
15 chapter 28A.655 RCW;

16 (7) A description of the school's plan for evaluating student
17 performance and the procedures for taking corrective action in the
18 event that student performance at the optional school falls below
19 standards established in its contractual performance agreement;

20 (8) A description of the financial plan for the school. The plan
21 shall include: (a) A proposed five-year budget of projected revenues
22 and expenditures; (b) a plan for starting the school; (c) a five-year
23 facilities plan; (d) evidence supporting student enrollment projections
24 of at least twenty students; and (e) a description of major contracts
25 planned for administration, management, equipment, and services,
26 including consulting services, leases, improvements, purchases of real
27 property, and insurance;

28 (9) A description of the proposed financial management procedures
29 and administrative operations, which shall meet or exceed generally
30 accepted standards of management and public accounting;

31 (10) An assessment of the school's potential legal liability and a
32 description of the types and limits of insurance coverage the nonprofit
33 corporation plans to obtain. For purposes of this subsection, a
34 liability insurance policy of five million dollars is required;

35 (11) A description of the procedures to discipline, suspend, and
36 expel students;

1 (12) A description of procedures to assure the health and safety of
2 students, employees, and guests of the school and to comply with
3 applicable federal and state health and safety laws and regulations;

4 (13) A description of the school's program for parent involvement
5 in the optional school; and

6 (14) The supporting documentation for any additional requirements
7 a sponsor or alternate sponsor may impose as a condition of approving
8 the contractual performance agreement, including but not limited to the
9 posting of a security bond.

10 NEW SECTION. **Sec. 9.** APPROVAL CRITERIA. A sponsor or alternate
11 sponsor may approve an application for an optional school, if in the
12 sponsor's or alternate sponsor's reasonable judgment, after exercising
13 due diligence and good faith, the sponsor or alternate sponsor finds:

14 (1) The applicant is an eligible public benefit nonprofit
15 corporation and the individuals it proposes to manage and operate the
16 school are qualified to operate an optional school and implement the
17 proposed educational program that is free from religious or sectarian
18 influence;

19 (2) The public benefit nonprofit corporation has been approved or
20 conditionally approved by the internal revenue service for tax exempt
21 status under section 501(c)(3) of the internal revenue code of 1986 (26
22 U.S.C. Sec. 501(c)(3));

23 (3) The mission statement is consistent with the description of
24 legislative intent and restrictions on optional school operations in
25 this chapter. The sponsor or alternate sponsor must make a finding of
26 whether or not the optional school's primary purpose is to serve
27 educationally disadvantaged students;

28 (4) The school's educational program, including its curriculum and
29 instructional strategies, is likely to assist its students, including
30 its educationally disadvantaged students, in meeting the state's
31 academic standards;

32 (5) The school's admissions policy and marketing program is
33 consistent with state and federal law, and includes community outreach
34 to families of educationally disadvantaged students;

35 (6) The school's proposed educational program includes student

1 academic performance standards and requirements that meet those
2 determined under chapter 28A.655 RCW and are measured according to the
3 assessment system determined under chapter 28A.655 RCW;

4 (7) The application includes a viable plan for evaluating pupil
5 performance and procedures for taking appropriate corrective action in
6 the event that pupil performance at the optional school falls below
7 standards established in its contractual performance agreement;

8 (8) The financial plan for the school is designed to reasonably
9 support the optional school's educational program based on a review of
10 the proposed five-year budget of projected revenues, expenditures, and
11 facilities;

12 (9) The school's financial and administrative operations, including
13 its audits, meet or exceed generally accepted standards of accounting
14 and management;

15 (10) The assessment of the school's potential legal liability, and
16 the types and limits of insurance coverage the school plans to obtain,
17 are adequate. For purposes of this subsection, a liability insurance
18 policy of five million dollars is required;

19 (11) The procedures the school plans to follow for discipline,
20 suspension, and expulsion of students are reasonable and comply with
21 state and federal law;

22 (12) The procedures the school plans to follow to assure the health
23 and safety of students, employees, and guests of the school comply with
24 applicable state and federal health and safety laws and regulations;

25 (13) The school has developed a program for parent involvement in
26 the optional school; and

27 (14) The applicant has provided sufficient documentation
28 demonstrating it has met additional requirements for approval of the
29 contractual performance agreement, including but not limited to the
30 posting of a security bond.

31 NEW SECTION. **Sec. 10.** CONTRACTUAL PERFORMANCE AGREEMENT--
32 AMENDMENT. (1) A contractual performance agreement approved by a
33 sponsor or an alternate sponsor with any changes or additions,
34 including performance standards or benchmarks established by the
35 sponsor, and signed by an authorized representative of the applicant
36 and the sponsor or alternate sponsor, constitutes a contractual

1 performance agreement. A contractual performance agreement for the
2 conversion of a public school must include provisions for the
3 disposition, including assignment or reassignment, of the employees of
4 the school prior to its conversion and after conversion.

5 (2) A contractual performance agreement may be amended during its
6 term at the request of the optional school board of directors and on
7 the approval of the sponsor or alternate sponsor.

8 (3) A contractual performance agreement may not prohibit and must
9 provide for application of laws applicable to optional schools or to
10 optional school boards of directors enacted after the effective date of
11 this section.

12 NEW SECTION. **Sec. 11.** OPTIONAL SCHOOL RENEWAL AND REVOCATION.

13 (1) An approved plan to establish an optional school is effective for
14 five years from the first day of operation. At the conclusion of the
15 first three years of operation, the optional school may apply to the
16 original sponsor or alternate sponsor for renewal. A request for
17 renewal must be submitted no later than six months before the
18 expiration of the contractual performance agreement.

19 (2) An optional school renewal application must include:

20 (a) A report on the progress of the optional school in achieving
21 the goals; student performance standards, including the student
22 performance standards adopted by rule by the academic achievement and
23 accountability commission in accordance with RCW 28A.655.030; the
24 number and percentage of educationally disadvantaged students served;
25 and other terms of the contractual performance agreement;

26 (b) A financial statement that discloses the costs of
27 administration, instruction, and other expenditure objects and
28 activities of the optional school; and

29 (c) All audit information from independent sources regarding the
30 optional school, if available.

31 (3) The sponsor or alternate sponsor shall reject the application
32 for renewal if the academic progress of students in the optional
33 school, as measured by the standards and assessments in chapter 28A.655
34 RCW, is inferior, for the most recent two consecutive years, to the
35 average progress of students in the district in which the optional
36 school is located when similar student populations are compared.

1 (4) The sponsor or alternate sponsor may reject the application for
2 renewal if any of the following occurred:

3 (a) The optional school materially violated its contractual
4 performance agreement with the sponsor or alternate sponsor;

5 (b) The students enrolled in the optional school failed to meet
6 student performance standards identified in the contractual performance
7 agreement, including the student performance standards adopted by rule
8 by the academic achievement and accountability commission in accordance
9 with RCW 28A.655.030;

10 (c) The optional school failed to meet generally accepted standards
11 of fiscal management; or

12 (d) The optional school violated provisions in law that have not
13 been waived in accordance with this chapter.

14 (5) A sponsor or alternate sponsor shall give written notice of its
15 intent not to renew the optional school's request for renewal to the
16 optional school within three months of the request for renewal to allow
17 the optional school an opportunity to correct identified deficiencies
18 in its operation. At the request of the board of directors of the
19 optional school, the sponsor or alternate sponsor shall review its
20 decision for nonrenewal within forty-five days of receiving a request
21 for review and supporting documentation sufficient to demonstrate that
22 any deficiencies have been corrected from the board of directors of the
23 optional school.

24 (6)(a) The sponsor or alternate sponsor may revoke a previously
25 approved contractual performance agreement before the expiration of the
26 term of the contractual performance agreement, and before application
27 for renewal, if any of the following occurred:

28 (i) The optional school materially violated its contractual
29 performance agreement with the sponsor or alternate sponsor;

30 (ii) The optional school failed to meet generally accepted
31 standards of fiscal management; or

32 (iii) The optional school violated provisions in law that have not
33 been waived in accordance with this chapter.

34 (b) Except in cases of emergency where the health and safety of
35 children are at risk, a contractual performance agreement may not be
36 revoked unless the sponsor or alternate sponsor first provides:

1 (i) Written notice to the optional school of the specific
2 violations alleged;

3 (ii) One or more public hearings in the school district in which
4 the optional school is located; and

5 (iii) A reasonable opportunity and a sufficient period of time for
6 the optional school to correct the identified deficiencies.

7 (c) If, after following the procedures in (b) of this subsection,
8 the sponsor or alternate sponsor determines that revocation of the
9 contractual performance agreement is necessary to further the intent of
10 this chapter, the sponsor or alternate sponsor may revoke the
11 contractual performance agreement. The sponsor or alternate sponsor
12 shall provide for an appeal process upon such a determination.

13 (d) If a sponsor or alternate sponsor elects to revoke the
14 contractual performance agreement, the sponsor or alternate sponsor,
15 upon a request by the optional school, shall provide technical
16 assistance to the optional school in completing the plan required and
17 carrying out the tasks identified in subsection (7) of this section.

18 (7) An optional school planning to close or anticipating revocation
19 or nonrenewal of its contractual performance agreement shall provide a
20 plan setting forth a timeline and the responsible parties for
21 disposition of students and student records and disposition of
22 finances.

23 (a) Immediately following the decision to close a school, the
24 school must:

25 (i) Submit to the sponsor or alternate sponsor a list of parent
26 addresses and proof that the school has communicated the impending
27 closure of the school to all parents and staff;

28 (ii) Assign staff responsible for transition of student records and
29 for providing assistance to students and parents in transferring from
30 the optional school to the district public, private, or home school
31 chosen by the family;

32 (iii) Provide the names and contact information for staff
33 responsible for transfer of student records, as well as the projected
34 transition tasks and timelines to the sponsor or alternate sponsor, and
35 upon completion of student transition, provide a list of students and
36 a brief description of the disposition of their student records to the
37 sponsor or alternate sponsor.

1 (b) Prior to closing the optional school the optional school board
2 of directors shall:

3 (i) Identify a trustee who will, through the process of closing the
4 school and for a term of ten years thereafter, assume responsibility
5 for school and student records, and notify the sponsor or alternate
6 sponsor of the name and contact information for the trustee;

7 (ii) Determine the amount of anticipated revenue due to the school
8 as well as anticipated liabilities, and provide a complete asset and
9 liability report to the sponsor or alternate sponsor;

10 (iii) Create a current and projected payroll and payroll benefits
11 commitment;

12 (iv) List each employee, job, and the funds necessary to complete
13 the educational calendar balance of the year, the transition of
14 students and records, and the administrative close-down tasks;

15 (v) Determine the total moneys required to complete contracts;

16 (vi) Schedule an audit and set aside funds to cover costs; and

17 (vii) Provide the sponsor or alternate sponsor with a plan for the
18 closure of the school and final disposition of all property owned by
19 the optional school.

20 NEW SECTION. **Sec. 12. FUNDING.** (1) For optional schools
21 sponsored by a school district:

22 (a) For purposes of funding, students in optional schools shall be
23 considered students of the sponsoring district for state apportionment
24 purposes. Without violating section 13 of this act, the sponsoring
25 school district shall provide prompt and timely funding for optional
26 schools in amounts the schools would have generated if the students
27 were enrolled in a nonoptional public school in the district except
28 that an optional school shall not generate eligibility for small school
29 assistance. Funding for optional schools shall include regular
30 apportionment, categorical, student achievement, and nonbasic education
31 moneys, as appropriate and shall be based on enrollment, staffing, and
32 other financial information submitted by the optional school to the
33 school district as required to determine state apportionment amounts;

34 (b) Local levy moneys approved by the voters before the effective
35 date of a contractual performance agreement between a school district
36 and an applicant shall not be allocated to a new optional school;

1 however, the school district shall allocate levy moneys to a conversion
2 optional school. For levies approved after the effective date of a
3 contractual performance agreement, optional schools shall be included
4 in levy planning, budgets, and funding distribution in the same manner
5 as other district-sponsored public schools in the district; and

6 (c) An optional school is eligible for state matching funds for
7 common school construction if a sponsoring school district determines
8 it has received voter approval of local capital funds for the project.

9 (2) For optional schools sponsored by an educational service
10 district or an institution of higher education:

11 (a) For purposes of funding, the optional school shall be
12 considered a separate school district for state apportionment purposes
13 only. Without violating section 13 of this act, the superintendent of
14 public instruction shall provide prompt and timely funding for optional
15 schools through the apportionment funding formulas in amounts the
16 schools would have generated if the students were enrolled in a school
17 district except that an optional school shall not generate eligibility
18 for small school assistance. The funding shall include regular
19 apportionment, categorical, student achievement, and nonbasic education
20 moneys and shall be based on enrollment, staffing, and other financial
21 information submitted by the optional school to the superintendent of
22 public instruction, as required to determine state apportionment
23 amounts. Those allocations to optional schools that are included in
24 RCW 84.52.0531(3) (a) through (c) shall be included in the levy base of
25 the district in which the optional school is located.

26 (b) No local levy money may be allocated to an optional school if
27 the optional school is sponsored by an educational service district or
28 an institution of higher education.

29 (3) To be eligible to receive state categorical program funding, an
30 optional school must serve students who would be eligible for program
31 funding if served by the school district.

32 (4) Sponsors and alternate sponsors shall submit, by November 1st
33 of each year, to the office of the superintendent of public instruction
34 annual year-end financial information, as prescribed by the
35 superintendent, for each optional school sponsored in the previous
36 school year.

1 (5) A conversion optional school shall be entitled to the continued
2 rent-free use of its existing facility, regardless of whether the
3 conversion school is sponsored by the local school district, or by an
4 alternate sponsor if the district has consented to such alternate
5 sponsorship. The district shall remain responsible for major repairs
6 and safety upgrades that may be required for the continued use of the
7 facility as a public school. The optional school shall be responsible
8 for routine maintenance of the facility, including but not limited to
9 cleaning, painting, gardening, and landscaping.

10 NEW SECTION. **Sec. 13.** ADMINISTRATION FEE. To offset costs of
11 oversight and administering the contractual performance agreement, a
12 sponsor or an alternate sponsor may retain three percent of state
13 funding and local excess levy funding, if applicable, that is being
14 driven to the optional school. Except for the administration fee in
15 this section, no other offsets or deductions are allowed, whether for
16 central administration or other off-site support services, from an
17 optional school's per-pupil share of state appropriations, local
18 levies, or other funds, unless the optional school has contracted with
19 a school district to obtain specific additional services.

20 NEW SECTION. **Sec. 14.** LEAVES OF ABSENCE. If a school district
21 employee makes a written request for an extended leave of absence to
22 work at an optional school, the school district shall grant the
23 request. The school district may require that the request for a leave
24 be made up to ninety days before the employee would otherwise have to
25 report for duty. The leave shall be granted for up to three years. If
26 the employee returns to the school district within the three-year
27 period, the employee shall be hired before the district hires anyone
28 else with fewer years of service, with respect to any position for
29 which the returning employee is certificated or otherwise qualified.

30 NEW SECTION. **Sec. 15.** STUDY OF OPTIONAL SCHOOLS. Subject to
31 funding, the Washington institute for public policy shall study the
32 implementation and effectiveness of this act. The institute shall
33 report to the legislature on the effectiveness of optional schools in
34 raising student achievement and the impact of optional schools. The

1 institute also shall examine and discuss whether and how optional
2 schools have enhanced education reform efforts and recommend whether
3 relaxing or eliminating certain regulatory requirements for other
4 public schools could result in improved school performance at those
5 schools. The institute shall recommend changes to this chapter
6 including improvements that could be made to the application and
7 approval process. A preliminary report of the study is due to the
8 legislature by March 1, 2006, and a final report is due September 1,
9 2007.

10 NEW SECTION. **Sec. 16.** NUMBER OF OPTIONAL SCHOOLS. (1)
11 Applications for optional schools may begin on the effective date of
12 this section. The maximum number of new optional schools that may be
13 established under a contractual performance agreement approved in
14 accordance with this chapter is:

15 (a) In the first year commencing July 1, 2003, and in the second
16 year commencing July 1, 2004, not more than five per year; and

17 (b) In each of the next four years, commencing July 1st of each
18 year beginning in 2005 and ending in 2008, not more than fifteen per
19 year.

20 (2) These annual allocations shall be cumulative so that if the
21 maximum number of allowable new contractual performance agreements is
22 not reached in any given year the maximums shall be increased
23 accordingly for the successive years.

24 (3) Consistent with the legislative intent of this chapter, a
25 majority of the annual allowable new optional schools that may be
26 established under subsection (1) of this section shall be reserved
27 until the 31st day after the effective date of this section, and until
28 April 1st of each year beginning in 2004 and ending in 2008, for the
29 implementation of optional schools established for the primary purpose
30 of serving educationally disadvantaged students, and that are located
31 in, or accessible to students who live in, geographic areas in which a
32 large proportion of the students have difficulty meeting state academic
33 content and student achievement standards, or geographic areas,
34 including urban and rural areas, in which a large proportion or number
35 of public schools have been identified for improvement, corrective

1 action, or restructuring under the federal no child left behind act of
2 2001.

3 (4) Sponsors and alternate sponsors shall promptly notify the
4 superintendent of public instruction when a contractual performance
5 agreement is approved, and shall indicate whether the optional school's
6 primary purpose is to serve educationally disadvantaged students. In
7 order to ensure compliance with the annual limits for the establishment
8 of new optional schools, authorization from the superintendent of
9 public instruction must be obtained before implementing an approved
10 contractual performance agreement for a new school. If the maximum
11 number of new contractual performance agreements under subsections (1)
12 and (3) of this section has not been reached when the sponsor notifies
13 the superintendent of the approval, the superintendent shall authorize
14 the implementation of the approved contractual performance agreement
15 and the establishment of the school. If the contractual performance
16 agreements reserved under subsection (3) of this section are not
17 authorized within thirty days of the effective date of this section, or
18 by March 31st of each year thereafter and ending in 2008, the
19 superintendent of public instruction shall notify the sponsors and
20 alternate sponsors of any other approved contractual performance
21 agreements for which authorization has not been granted, and shall
22 authorize the implementation of those contractual performance
23 agreements within the annual limits, regardless of whether those
24 contractual performance agreements meet the requirements of subsection
25 (3) of this section.

26 (5) The superintendent of public instruction shall notify eligible
27 sponsors and eligible alternate sponsors when the maximum allowable
28 number of new contractual performance agreements is approved each year.
29 If the maximum number is not reached by the 31st day after the
30 effective date of this section, or by March 31st of each year
31 thereafter, the superintendent shall report on the number of
32 contractual performance agreements approved.

33 (6) If the superintendent receives simultaneous notification of
34 approved contractual performance agreements that exceed the annual
35 allowable limits in subsections (1) and (3) of this section, the
36 superintendent shall select approved contractual performance agreements

1 for authorization under subsection (4) of this section through a
2 lottery process, and shall assign implementation dates accordingly.

3 (7) The maximum number of optional schools allowed under this
4 section does not include public schools converting to optional public
5 schools; however, conversion optional schools shall be considered
6 optional schools for the purpose of notice to the superintendent of
7 public instruction required under subsection (4) of this section.

8 NEW SECTION. **Sec. 17.** A new section is added to chapter 41.56 RCW
9 to read as follows:

10 This section applies to optional schools as defined in section 2 of
11 this act and the optional school's employees included in the bargaining
12 unit. The bargaining unit of employees of optional schools must be
13 limited to the employees of the optional school and must be separate
14 from other bargaining units in the school district or educational
15 service district unless the optional school is a public school that has
16 converted to an optional school. The employees of public schools that
17 have converted to an optional school shall remain members of the
18 bargaining units in the school district.

19 This section, designating optional schools as employers and
20 optional school employees as members under the teachers' retirement
21 systems, the school employees' retirement systems, and the public
22 employees' retirement systems, applies only if the department of
23 retirement systems receives determinations from the internal revenue
24 service and the United States department of labor that such
25 participation does not jeopardize the status of these retirement
26 systems as governmental plans under the federal employees' retirement
27 income security act and the internal revenue code.

28 NEW SECTION. **Sec. 18.** A new section is added to chapter 41.59 RCW
29 to read as follows:

30 (1) This section applies to collective bargaining agreements
31 between optional schools and the employees of optional schools included
32 in the bargaining unit.

33 (a) The bargaining unit of employees of conversion optional schools
34 must be limited to the employees of the optional school and must be
35 separate from other bargaining units in the school district or

1 educational service district for at least the first five years of
2 operation of the optional school, after which the employees of a
3 conversion optional school may indicate by a majority vote they desire
4 to become members of the bargaining unit in the school district in
5 which the optional school is located.

6 (b) The bargaining unit of employees of new optional schools must
7 be limited to the employees of the optional school and must be separate
8 from other bargaining units in the school district or educational
9 service district for at least the first five years of operation of the
10 optional school, after which the employees of a new optional school may
11 indicate by a majority vote they desire to become members of the
12 bargaining unit in the school district in which the optional school is
13 located.

14 (2) This section, designating optional schools as employers and
15 optional school employees as members under the teachers' retirement
16 systems, the school employees' retirement systems, and the public
17 employees' retirement systems, takes effect only if the department of
18 retirement systems receives determinations from the internal revenue
19 service and the United States department of labor that such
20 participation does not jeopardize the status of these retirement
21 systems as governmental plans under the federal employees' retirement
22 income security act and the internal revenue code.

23 **Sec. 19.** RCW 41.59.080 and 1998 c 244 s 11 are each amended to
24 read as follows:

25 The commission, upon proper application for certification as an
26 exclusive bargaining representative or upon petition for change of unit
27 definition by the employer or any employee organization within the time
28 limits specified in RCW 41.59.070(3), and after hearing upon reasonable
29 notice, shall determine the unit appropriate for the purpose of
30 collective bargaining. In determining, modifying or combining the
31 bargaining unit, the commission shall consider the duties, skills, and
32 working conditions of the educational employees; the history of
33 collective bargaining; the extent of organization among the educational
34 employees; and the desire of the educational employees; except that:

35 (1) A unit including nonsupervisory educational employees shall not

1 be considered appropriate unless it includes all such nonsupervisory
2 educational employees of the employer; and

3 (2) A unit that includes only supervisors may be considered
4 appropriate if a majority of the employees in such category indicate by
5 vote that they desire to be included in such a unit; and

6 (3) A unit that includes only principals and assistant principals
7 may be considered appropriate if a majority of such employees indicate
8 by vote that they desire to be included in such a unit; and

9 (4) A unit that includes both principals and assistant principals
10 and other supervisory employees may be considered appropriate if a
11 majority of the employees in each category indicate by vote that they
12 desire to be included in such a unit; and

13 (5) A unit that includes supervisors and/or principals and
14 assistant principals and nonsupervisory educational employees may be
15 considered appropriate if a majority of the employees in each category
16 indicate by vote that they desire to be included in such a unit; and

17 (6) A unit that includes only employees in vocational-technical
18 institutes or occupational skill centers may be considered to
19 constitute an appropriate bargaining unit if the history of bargaining
20 in any such school district so justifies; and

21 (7) Notwithstanding the definition of collective bargaining, a unit
22 that contains only supervisors and/or principals and assistant
23 principals shall be limited in scope of bargaining to compensation,
24 hours of work, and the number of days of work in the annual employment
25 contracts; and

26 (8) The bargaining unit of certificated employees of school
27 districts, educational service districts, or institutions of higher
28 education that are education providers under chapter 28A.193 RCW must
29 be limited to the employees working as education providers to juveniles
30 in each adult correctional facility maintained by the department of
31 corrections and must be separate from other bargaining units in school
32 districts, educational service districts, or institutions of higher
33 education; and

34 (9) Except as provided in sections 17 and 18 of this act, the
35 bargaining unit for employees of optional schools as defined in section
36 2 of this act must be limited to the employees of the optional school

1 and must be separate from other bargaining units in the school district
2 or educational service district.

3 **Sec. 20.** RCW 28A.150.010 and 1969 ex.s. c 223 s 28A.01.055 are
4 each amended to read as follows:

5 Public schools shall mean the common schools as referred to in
6 Article IX of the state Constitution and those schools and institutions
7 of learning having a curriculum below the college or university level
8 as now or may be established by law and maintained at public expense,
9 including optional schools under chapter 28A.-- RCW (sections 1 through
10 16 and 21 of this act).

11 NEW SECTION. **Sec. 21.** CAPTIONS NOT LAW. Captions used in this
12 chapter do not constitute any part of the law.

13 NEW SECTION. **Sec.22.** Sections 1 through 16 and 21 of this act
14 constitute a new chapter in Title 28A RCW.

15 NEW SECTION. **Sec. 23.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected."

19 Correct the title.

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