

HOUSE BILL REPORT

HB 2295

As Reported by House Committee On:
Education

Title: An act relating to charter schools.

Brief Description: Authorizing charter schools.

Sponsors: Representatives Quall, Talcott, Rockefeller and Anderson.

Brief History:

Committee Activity:

Education: 1/21/04, 1/29/04 [DPS].

Brief Summary of Substitute Bill

- Authorizes the creation of public charter schools for the primary purpose of providing more opportunities for educationally disadvantaged students to meet state and federal academic achievement accountability goals.

HOUSE COMMITTEE ON EDUCATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Quall, Chair; Talcott, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Anderson, Hunter, McMahan and Rockefeller.

Minority Report: Do not pass. Signed by 4 members: Representatives McDermott, Vice Chair; Cox, Haigh and Santos.

Staff: Sydney Forrester (786-7120).

Background:

In 1992, Minnesota became the first state to authorize public charter schools. Since then, 40 states and the District of Columbia have adopted charter school enabling legislation, and approximately 3,000 charter schools currently are operating nationwide.

A charter school is a tuition-free public school open to all students, financed by public

moneys, and governed by the terms of a charter between a charter sponsor and a charter applicant. The various states' laws define who is a sponsor and who is an applicant for chartering purposes. Typically, a public charter school is managed by an applicant's board of directors rather than by the local school board. The charter agreement between a school board and a charter board generally provides a greater degree of administrative flexibility than exists at other schools. The charter functions as a contract governing how the school will be organized and managed, what students will be taught and expected to achieve, and how success of the school will be measured. A typical charter agreement provides for closing a school that fails to satisfy the contract terms.

The last charter school proposals in Washington were ESSB 5012 in 2003, and HB 2415 and Initiative 729, both proposed in 2000. Engrossed Substitute Senate Bill 5012 advanced to second reading in the House, but was returned to the Senate at the end of the regular session without further House action. House Bill 2415 passed the House Education Committee but did not pass the House. In the November 2000 general election, I-729 failed 51.83 percent to 48.17 percent.

The United States Department of Education (USDOE) administers federal moneys to assist charter schools in start-up and in leveraging private and other nonfederal financing to help cover the costs of acquiring, constructing, or renovating charter school facilities. More than \$200 million in federal grant money was awarded in fall 2003 to expand charter schools and study charter school student achievement.

Summary of Substitute Bill:

Description and Purpose of Charter Schools:

A new chapter is added to Title 28A RCW authorizing charter schools for the primary purpose of providing more, high quality learning environments to assist educationally disadvantaged students and other students in meeting state and federal academic standards. A charter school may serve one or a combination of grades K-12. It may not charge tuition; may not discriminate on the basis of any characteristic; and may not limit enrollment on any basis other than age and grade level. All students who submit a timely application must be admitted if capacity is sufficient. If capacity is insufficient to accommodate all requests for enrollment, students must be admitted through an equitable selection process such as a lottery.

Number of Charters Authorized:

A charter school is labeled as either a conversion school or a new school. A conversion charter school is created by converting an existing public school in its entirety to a charter school through an agreement with the local school board. All other charter schools are new schools. Over a six-year period beginning July 1, 2004, a statewide total of 45 new charter schools, five per year in the first three years and 10 per year for the last three years, may be established with approval from a local school board, or with

approval from the Superintendent of Public Instruction (SPI) under an appeals process. If the maximum number of charters is not approved one year, the remainder is added to the number available the next year.

A majority of new charters that may be approved each year is reserved until March 31 each year for schools established for the primary purpose of serving educationally disadvantaged students and located in geographic areas likely to serve these students. In addition to new charter schools, local school boards may approve charters for the conversion of schools that have failed to make adequate yearly progress (AYP) and schools eligible for school improvement assistance. Applications for both conversions and new charter schools may begin on the effective date of the bill.

Charter Applicants, Sponsors, and Alternate Sponsors:

A charter is a five-year contractual performance agreement between an applicant and a sponsor for the operation and management of the charter school. The applicant manages and operates the school if a charter is approved. The sponsor administers the charter and provides monitoring, oversight, and support. Only a public benefit nonprofit corporation qualifying for tax exempt status under federal law may be an applicant for charter approval. The nonprofit corporation may not be a religious or sectarian organization and must apply first to the local school board for approval of a charter for establishing a new school or for converting an existing school. An applicant seeking to establish a new school may, after providing the local school board an opportunity to consider its application, file an appeal to the SPI for further review. The SPI will review the application and attempt to mediate a resolution with the school district and the applicant. If the school district rejects the application the SPI may approve an application that meets all qualifying criteria and if an educational service board is willing to act as the charter sponsor. No appeals are available for charters proposing to establish a conversion charter school.

Applicable Laws and Regulations:

A charter school is exempt from state laws and regulations except those laws expressly made applicable by the bill, those incorporated in the terms of its charter, and those laws and regulations later enacted to apply to charter schools. At a minimum, each charter school must:

- 1) Implement a quality management system and conduct annual self-assessments;
- 2) Comply with state and federal health, safety, parents' rights, civil rights, and nondiscrimination laws to the same extent as school districts;
- 3) Participate in free and reduced-priced meal programs to the same extent as is required for other public schools;
- 4) Participate in the Washington Assessment of Student Learning (WASL), the Iowa Test of Basic Skills (ITBS), and the elementary, middle school, and high school standards, requirements, and assessment examinations as required by the Academic Achievement and Accountability Commission (A+ Commission);
- 5) Employ certificated instructional staff and comply with employee record check

requirements;

- 6) Be subject to financial examinations and audits as determined by the state auditor, including annual audits for legal and fiscal compliance;
- 7) Be subject to independent performance audits conducted by a qualified contractor selected jointly by the State Auditor and the Joint Legislative Audit Review Committee commencing with the conclusion of the third year of the school's operation, and at least once every three years thereafter;
- 8) Comply with the A+ Commission annual performance report;
- 9) Follow the A+ Commission performance improvement goals and requirements;
- 10) Be subject to the accountability requirements in the No Child Left Behind Act of 2001 (NCLB), including Title I requirements;
- 11) Comply with and be subject to the requirements under the Individuals With Disabilities Education Act, as amended in 1997 (IDEA);
- 12) Report at least annually to the board of directors of the school district in which the charter school is located and to parents of children enrolled at the charter school on progress toward the student performance goals specified in the charter;
- 13) Comply with the open public meetings act and open public records requirements, including public disclosure requirements applicable to elected school boards; and
- 14) Be subject to and comply with legislation enacted after the effective date of this section governing the operation and management of charter schools.

Application and Approval Process:

Upon receipt of an application, a school board must decide within 45 days whether to hold one or more public hearings. If the board intends to approve the application, it must hold at least one public hearing within 75 days of receiving the application, but the board is not required to hold a hearing in order to reject an application. Within 105 days of receipt of the application, the board must either approve or reject the application. Both parties may agree to extend the deadline for up to 30 days. If the board elects not to hold a hearing, or rejects the application after one or more public hearings, it must provide written notice of the rejection, including the reasons for the rejection, to the applicant. An applicant seeking sponsorship of a new school may file an appeal with the SPI after a school board has rejected an application.

Approval Criteria:

A charter application may be approved only if the school board or the SPI finds, after exercising due diligence and good faith, that the applicant meets all eligibility requirements and other specified criteria. All charter applications must contain at least the following information:

- (1) The identification and description of the nonprofit corporation submitting the application, including the names, descriptions, curriculum vitae, and qualifications of the individuals who will operate the school, all of which will be subject to verification and review;
- (2) The nonprofit corporation's articles of incorporation, bylaws, and most recent financial statement and balance sheet;

- (3) A mission statement for the proposed school, including a statement of whether the proposed charter school's primary purpose is to serve educationally disadvantaged students;
- (4) A description of the school's educational program, curriculum, and instructional strategies, including but not limited to how the charter school will assist students in meeting the state's academic standards;
- (5) A description of the school's admissions policy and marketing program, including its program for community outreach to families of educationally disadvantaged students;
- (6) A description of the school's student performance standards and requirements that must meet or exceed A+ Commission standards, and be measured according to the A + Commission system;
- (7) A description of the school's plan for evaluating student performance and the procedures for taking corrective action in the event student performance at the charter school falls below standards established in its charter;
- (8) A description of the financial plan for the school, including a proposed five-year budget of projected revenues and expenditures; a plan for starting the school; a five-year facilities plan; evidence supporting student enrollment projections of at least 20 students; and a description of major contracts planned for administration, management, equipment, and services, including consulting services, leases, improvements, purchases of real property, and insurance;
- (9) A description of the proposed financial management procedures and administrative operations, which shall meet or exceed generally accepted standards of management and public accounting;
- (10) An assessment of the school's potential legal liability and a description of the types and limits of insurance coverage; a liability insurance policy of at least \$5 million is required;
- (11) A description of the procedures to discipline, suspend, and expel students;
- (12) A description of procedures to assure the health and safety of students, employees, and guests of the school and to comply with applicable federal and state health and safety laws and regulations;
- (13) A description of the school's program for parent involvement in the charter school;
- (14) Documentation sufficient to demonstrate that the charter school will have the liquid assets available to operate the school on an ongoing and sound financial basis;
- (15) A description of the quality management plan for the school, including its specific components; and
- (16) Supporting documentation for any additional requirements that are appropriate and reasonably related to the operation of a charter school that a sponsor or alternate sponsor may impose as a condition of approving the charter.

Charter School Management:

A charter school board elected or appointed by the public benefit nonprofit corporation manages and operates the school according to the terms of the charter.

A charter school board is authorized to:

- 1) Hire, manage, and discharge charter school employees;

- 2) Enter into contracts with school districts, or other public or private entities also empowered to enter into contracts, for any and all real property, equipment, goods, supplies, and services;
- 3) Rent, lease, or own property, but may not acquire property by eminent domain;
- 4) Issue secured and unsecured debt to manage cash flow, improve operations, or finance the acquisition of real property or equipment; and
- 5) Accept and administer for the benefit of the charter school and its students gifts, grants, and donations from other governmental and private entities, excluding sectarian or religious organizations.

A charter school may not:

- 1) Charge tuition, levy taxes, or issue tax-backed bonds, however it may charge fees for optional noncredit extracurricular events; or
- 2) Assign, delegate, or contract out the administration and management of a charter school to a for-profit entity.

Charter school sponsors and alternate sponsors are not liable for acts or omissions of a charter school or its charter school board, including but not limited to acts or omissions related to the application, the charter, the operation, the performance, and the closure of the charter school.

Charter School Funding:

A charter school receives state funding based on its actual full time equivalent (FTE) enrollment and on the statewide average staff mix ratio. Funding includes regular apportionment, special education, categorical, student achievement, and other non-basic education funds. Vocational education funding is provided to charter school serving grades nine through twelve. Charter schools, however, are not eligible for enhanced small school assistance moneys.

A charter school's eligibility for levy money is governed by whether or not the charter is sponsored by a school district and by whether the district-sponsored school was established before or after a levy was approved. A new charter school started before voters approved a levy and all conversion charter schools must receive levy allocations. New charter schools established after a levy is approved do not receive levy money, but are included in all future levy planning and budgets. Charter schools not sponsored by a school district are not eligible for levy moneys. Allocations to these school are included in the levy base of the district in which the charter school is located. Charter schools otherwise ineligible for levy money may receive funding within available moneys the Legislature may appropriate for such purpose. A charter school sponsor may retain up to 3 percent of the charter school's state and local levy moneys, if applicable, for oversight and administration costs

Charter Renewal and Revocation:

After three years of operation, but no later than six months before the expiration of the charter, a charter school may apply to renew its charter. The renewal application must

include specified information, including all audits information. A sponsor, however, may not approve, and must reject, the application if the academic progress of the students in the charter school, as measured by the A+ Commission standards and assessments, is inferior to the average progress of students in the district in which the charter school is located when similar student populations are compared. A sponsor may reject the application if the charter school materially violated its contract, violated any laws for which a waiver was not obtained, failed to meet generally accepted standards of fiscal management, or the charter school's students failed to meet performance standards. A sponsor must give written notice of its intent not to renew within three months of the request to renew in order to allow time for the school to correct any deficiencies.

A sponsor also may revoke a charter before it has expired for the same reasons a sponsor may reject a renewal request. A sponsor must provide written notice of an intent to revoke and must identify the specific violations alleged, hold a public hearing, and grant a reasonable opportunity for the school to correct any deficiencies. In cases of emergency where the health or safety of children is at risk, the notice, public hearing, and opportunity for correction are not required. A sponsor must provide a process to appeal a revocation of a charter. A charter school planning to close or anticipating revocation or nonrenewal of its charter must provide a detailed plan to the sponsor setting forth a timeline and the responsible parties for disposition of students, student records, and the school's finances and obligations.

Charter School Employees and Collective Bargaining:

A school district must grant a school district employee's written request for a leave of absence for up to two years. If the employee returns to the school district within two years, the employee must be hired before the district hires anyone with fewer years of statewide service to fill a position for which the employee is qualified. The bargaining units for certificated and classified employees at new charter schools must be separate from other units in the district for the first five years, after which, by majority vote, the employees can join the district bargaining unit. Employees at new charter schools will determine who represents them in bargaining with the charter school board. Certificated and classified employees at conversion charter schools must remain members of the district bargaining unit. The school district board and the bargaining representative are directed to negotiate regarding waivers specific to the operation and management of the school. If either party determines an impasse in negotiations has been reached, it may request mediation and a mediator will be appointed by the Public Employment Relations Commission.

Study of Charter Schools:

The Washington State Institute for Public Policy (WSIPP) is directed to conduct a study of the implementation and effectiveness of charter schools, including whether and how charter schools have enhanced education reform efforts. The study also will discuss whether other public schools might benefit by a similar regulatory model. A preliminary report is due to the Legislature March 1, 2007, and a final report is due September 1,

2008.

Legislative Intent:

The Legislature intends to use the information obtained from independent performance audits and from the WISPP study to demonstrate how charter school can contribute to existing reform efforts. School districts are encouraged to consider using the chartering process as an optional tool for developing school improvement plans aimed at achieving state and federal accountability goals. Educational service district boards and the SPI are encouraged to assist school districts in which students persistently fail to meet state and federal academic achievement standards with completing the charter process. To the extent permitted under federal law by the restructuring and alternative governance provisions of the NCLB, the SPI may require the conversion of a persistently failing school to a charter school for the purpose of meeting state and federal student achievement and accountability requirements.

Substitute Bill Compared to Original Bill:

It is clarified that the Legislature intends to use the data gathered from auditing and studying charter schools to demonstrate how these schools can contribute to existing education reform efforts. Alternate sponsors are limited to educational service district boards of directors. Governing boards of higher education institutions are not eligible to approve a charter. An appeals process is established for new charter school applications. Requirements are added for charter schools to adopt quality management plans and conduct annual self-assessments, and to be subject to independent performance audits every three years. The number of new charter schools authorized is reduced from 70 to 45. Timelines are established for the receipt of applications for charter schools and the SPI is directed to establish guidelines. Conversion of existing schools to charter schools is limited to schools that are failing Annual Yearly Progress (AYP) or are eligible for school improvement assistance. The original bill allowed a school district to convert any of its schools. Charter school funding is based on the schools actual FTE enrollment and the statewide average staff mix ratio. Eligibility for vocational education funding is added. A provision is added allowing, within available funds that the Legislature may appropriate for such purpose, charter schools not otherwise eligible for levy money to receive state funding. Collective bargaining provisions are revised so that both certificated and classified employees in conversion charter schools remain in the local bargaining unit. The original bill provided only for classified employees to stay in the local unit. Provisions are added requiring the local school board and the bargaining representative to negotiate about waivers specific to the operation of the conversion school, and permitting either party to request appointment of mediator.

Appropriation: None.

Fiscal Note: Requested on January 20, 2004.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The chartering process provides school districts with another tool for creating educational opportunities for all students. It allows school districts to respond to various environmental challenges in low-performing schools, and to transform these schools into high-achieving schools. The Washington Academic Achievement and Accountability Commission's annual report states charter schools should be included as an optional tool for use where traditional models are not, or will not, work.

The achievement gap has broadened, not narrowed, since Washington began its education reform efforts. In charter schools across the nation, the traditionally underserved are served. Forty-four percent of students in charter schools are African-American and Hispanic; 39 percent are eligible for free and reduced-priced lunch.

Charter schools will serve as demonstration projects and will focus on conversions of low-performing schools. The emphasis is on narrowing the achievement gap. Charter schools offer a new and better way to get the job done. The committee has studied the experiences in other states and then considered Washington's needs. This proposal is unique in the nation because it is responsive to Washington's needs and designed for Washington students.

Approximately 24,000 students in current alternative educational programs are at-risk students; a majority of these are at the high school level. Thirty percent of today's seventh graders won't graduate in four years under Washington's current system. The funding required for alternative programs often is higher because of the low student teacher ratio. The bill offers an option for converting these alternative schools to charter schools so they can stay open.

Charter schools can serve native students and all students by bringing programs to the students in their communities instead of requiring students to leave their communities. Eighty-five percent of native students attend Washington public schools, but 52 percent don't graduate from high school. This crisis is not met in the current system, even with Running Start and alternative schools.

Ninety percent of the studies done on charter schools praise these schools. No charter school law has ever been repealed. Three thousand charter schools are operating in 40 states across the nation. This is working for parents, students, and teachers. Many charter schools vastly outperform comparable Washington schools. No Washington school with disadvantaged students can match the performance of the Knowledge is Power Program (KIPP) charter school in New York.

The Legislature has a duty to react to the information on the state's low high school graduation rates. It is our democratic duty to offer the best possible opportunity for a

quality public education to serve children. Students and citizens deserve to have this option. Everyone deserves options, not just those who can afford home schooling or private schools. Washington is the only state with a population over five million that hasn't yet authorized charter schools.

The bill includes the same accountability measures as for all school districts. In addition, charter schools are required to undergo performance audits, and to adopt quality management plans. The study required under the bill will support overall education reform by looking at the contributions of charter schools and the regulatory issues related to all schools.

New charter schools will offer an opportunity to create a new culture so important to student achievement and accountability and will show the path for other schools to follow. Public school leaders are frustrated by trying to meet the requirements under NCLB with one hand tied behind their back and only antiquated tools to use. School leaders need new tools to meet today's academic goals. It will take bold, new, innovative programs to achieve the improvements necessary to make AYP.

These schools are not a panacea, but do provide another arrow in the quiver of education alternatives for raising student achievement. It would free schools from bureaucratic restraints that impede progress of growth in student achievement.

Charter schools are the kind of schools that will be closed if they don't teach children. Some of the testimony against charter schools seems to be the most compelling for charter schools. Concern that students left behind in traditional schools will be underserved means something good must be happening in charter schools. Children that our schools will not, can not, or have not served are the children that will probably go to prison. These are the children that can be served by charter schools.

Testimony Against: Charter schools are not necessary to achieve the results the proponents claim will be achieved. These options already exist through the state board. The proposal disregards previous public mandates turning down charter schools.

There is no direct public accountability and money is diverted from other public schools. It removes the democratic process from school districts and would create a trend toward privatization. It does not comply with Constitutional requirements. Schools operated under different management forms and sets laws cannot be considered general and uniform. Charter schools are a form of a voucher program and offer a false choice to parents.

The proposed substitute is an improvement over the original bill. It would be a better option to look at what is happening in charter schools and make those changes in all schools to help all students. Even with charter schools there still will be a lot of disadvantaged, low-achieving students who won't have access to charter schools, and this

bill doesn't address those that will be left. To make a real difference, take the principles in this bill and apply them to all schools and students in the state.

Charter schools are an experiment with no record of success and are not justified by the individual results of some schools. Statistics don't show that charter school students perform significantly better than students at other schools. More demonstration of charter school effectiveness is needed. Special education students usually don't enroll in charter schools and this would mean the cost would shift back to the school district.

Charter schools are counterproductive and will detract from a focus on schools. They are a major distraction from the K-12 financing crisis, and will short-change schools and cause social fragmentation where school districts are already struggling. Additional money will be required to cover the implementation of charter schools and districts would have to hire staff to review applications. Citizens want more money, smaller classes, and better pay for teachers.

Employees of new charter schools are restricted from joining the school district bargaining unit. Employees should have the right to bargain with the school district.

Charter schools nationwide are more likely to hire non-certificated teachers and have higher turnover rates. Rural and suburban districts will suffer. Charter schools would receive taxpayer money but would not have to comply with all the rules the Legislature enacted. Parents would not have access to the curriculum and the bill does not account for closure of a school in mid-year. Failure of schools will not be resolved by charter schools.

The bill is poorly written because voters had no idea the SPI would be directly overseeing our schools. Transportation is never addressed, even though these schools are supposed to serve educationally disadvantaged students. School districts would have to subsidize transportation.

The charter school model does not mesh with child development principles. These schools will produce no improved results. It will just end up creating drones for corporate establishment and providing cheap labor that will be paying back their college education with huge amounts of debt. The Legislature should change the rules we have in education, but don't spend more money and waste it on our kids.

Persons Testifying: (In support) Representative Quall, prime sponsor; W. David Shaw, Academic Achievement and Accountability Commission; Lile Holland, Washington Association for Learning Alternatives; Marcia Atkinson, taxpayer; Charles Hoff, Vice President of Federal Way School District; Judy Hartman, Office of the Governor; Jim Spady, Educational Excellence Coalition; Gina Ottoboni, citizen/former teacher; Glen Blomgren, Christa McAuliffe Academy; Linda Campbell, A Gates Foundation Initiative: Early College; Dawn Mason, former state representative, Antioch University, and Parents

for Student Success; Grant Nelson, Association of Washington Businesses; Gary Albers, CAM High School, Battle Ground; and Arlie Neskahi, United Indians of All Tribes.

(Opposed) Mary E. Bass, President of the Board of Seattle Public Schools; Theresa Cardamone, Citizens for Effective Administration of Seattle Education; Wendy Rader-Konofalski and Janice Greer, Washington Federation of Teachers; Melissa Westbrook, Seattle public schools parent; Laurie Wheeler, Washington Natural Learning Association; Warren Smith, State Board of Education; Cris Shardelman, Citizens United for Responsible Education; Judy Hollar, League of Woman Voters of Washington; Lucinda Young, Washington Education Association; Pat Griffith, citizen; Angela Toussaint, Parent Advocate; and Gay Eisenberger, American Association of University Women-Washington.

Persons Signed In To Testify But Not Testifying: (In support) Steve Mullin, Washington Roundtable.

(In support with concerns) Mary Kenfield, Washington State Parent Teacher Association; and Bob Butts, Office of the Superintendent of Public Instruction.

(Opposed) Barbara Mertens, Washington Association of School Administrators; Lorraine Wilson, Tacoma Public Schools; Dan Steele, Washington State School Directors' Association; Joyce Fiess; Deanna Chew-Freidenberg, parent; and Mark Jacobson, Ocosta School District.