
SUBSTITUTE SENATE BILL 5012

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Education (originally sponsored by Senators Johnson, Finkbeiner, Esser and Oke)

READ FIRST TIME 02/04/03.

1 AN ACT Relating to charter schools; amending RCW 41.59.080; adding
2 a new section to chapter 41.56 RCW; adding a new section to chapter
3 41.59 RCW; adding a new chapter to Title 28A RCW; providing contingent
4 effective dates; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** INTENT. The legislature intends to
7 authorize the establishment of charter schools for the purpose of
8 providing a unique setting for learning that will improve pupil
9 achievement and provide additional public school choices for students,
10 parents, and teachers.

11 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
12 requires otherwise, the definitions in this section apply throughout
13 this chapter.

14 (1) "Applicant" means a nonprofit corporation that has submitted an
15 application to a sponsor to obtain approval to operate a charter
16 school. The nonprofit corporation must either be a public benefit
17 nonprofit corporation as defined in RCW 24.03.490, or a nonprofit
18 corporation as defined in RCW 24.03.005 that has applied for tax-exempt

1 status under section 501(c)(3) of the internal revenue code of 1986 (26
2 U.S.C. Sec. 501(c)(3)). The nonprofit corporation may not be a
3 sectarian or religious organization and must meet all of the
4 requirements for a public benefit nonprofit corporation before
5 receiving any funding under section 12 of this act.

6 (2) "Charter" means a contract between an applicant and a sponsor.
7 The charter establishes, in accordance with this chapter, the terms and
8 conditions for the management, operation, and educational program of
9 the charter school.

10 (3) "Charter school" means a public school managed by an
11 applicant's board of directors and operating independently of any
12 school district board under a charter approved in accordance with this
13 chapter.

14 (4) "Board of directors" means the board of directors of the public
15 benefit nonprofit corporation that manages and operates the charter
16 school.

17 (5) "Sponsor" means: (a) The school district in which the charter
18 school is located; (b) the state and regional universities as defined
19 in RCW 28B.10.016; or (c) The Evergreen State College. Charter schools
20 sponsored under (b) or (c) of this subsection shall be approved by the
21 governing board of the sponsoring institution or by an official or
22 agency designated by and accountable to the governing board.

23 NEW SECTION. **Sec. 3.** CHARTER SCHOOLS--POWERS. (1) The charter
24 school's board of directors may hire, manage, and discharge any charter
25 school employee in accordance with the terms of this chapter and that
26 school's charter.

27 (2) The charter school's board of directors may enter into a
28 contract with any school district, or any other public or private
29 entity, also empowered to enter into contracts, for any and all real
30 property, equipment, goods, supplies, and services, including
31 educational instructional services.

32 (3) Charter schools may rent, lease, or own property, but may not
33 acquire property by eminent domain. All charters and charter school
34 contracts with other public and private entities must include
35 provisions regarding the disposition of the property if the charter
36 school fails to open as planned, closes, or the charter is revoked or
37 not renewed. Charter schools may accept gifts and donations from other

1 governmental and private entities, excluding sectarian or religious
2 organizations. Charter schools may not accept any gifts or donations
3 the conditions of which violate this chapter.

4 (4) Neither a charter school sponsor nor the school district in
5 which the charter school is located is liable for acts or omissions of
6 a charter school, including acts or omissions related to the
7 application, the charter, the operation, and the performance of the
8 charter school.

9 (5) Charter schools may not charge tuition, levy taxes, or issue
10 bonds, however they may charge fees for optional noncredit
11 extracurricular events.

12 NEW SECTION. **Sec. 4.** LEGAL STATUS. A charter school is a public
13 school including one or more of grades kindergarten through twelve,
14 operated by a public benefit nonprofit corporation, according to the
15 terms of a renewable five-year contract granted by a sponsor.

16 NEW SECTION. **Sec. 5.** CHARTER SCHOOLS--EXEMPTIONS. (1) A charter
17 school shall operate independently of any school district board, under
18 a charter approved by a sponsor under this chapter.

19 (2) Charter schools are exempt from all state statutes and rules
20 applicable to school districts and school district boards of directors
21 except as provided in this chapter and in the school's approved
22 charter.

23 (3) A charter school's board of directors may elect to comply with
24 one or more provisions of the statutes or rules that are applicable to
25 school districts and school district board of directors.

26 (4) All approved charter schools shall:

27 (a) Comply with state and federal health, safety, and civil rights
28 laws applicable to school districts;

29 (b) Participate in nationally normed standardized achievement tests
30 as required in RCW 28A.230.190, 28A.230.193, and 28A.230.230 and the
31 elementary, middle school, and high school standards and assessment
32 examinations as required in RCW 28A.655.060;

33 (c) Employ certificated instructional staff as required in RCW
34 28A.410.010, however charter schools may hire noncertificated
35 instructional staff of unusual competence and in exceptional cases as
36 specified in RCW 28A.150.260;

1 (d) Comply with the employee record check requirements in RCW
2 28A.400.303;

3 (e) Be subject to the same financial and audit requirements as a
4 school district;

5 (f) Comply with the annual performance report under RCW
6 28A.655.110;

7 (g) Follow the performance improvement goals and requirements
8 adopted by the academic achievement and accountability commission by
9 rule under RCW 28A.655.030;

10 (h) Report at least annually to its sponsor and to parents of
11 children enrolled at the charter school on progress toward the student
12 performance goals specified in the charter; and

13 (i) Comply with the open public meetings act in chapter 42.30 RCW.

14 NEW SECTION. **Sec. 6.** ADMISSION REQUIREMENTS. (1) A charter
15 school must enroll all students who submit a timely application. If
16 capacity is insufficient to enroll all students who submit a timely
17 application, the charter school must give enrollment priority to
18 students who reside within the school district boundaries in which the
19 charter school is physically located. Priority also must be given to
20 siblings of students who are currently enrolled in the school.
21 Students must be selected through an equitable selection process, such
22 as a lottery, to fill any remaining spaces. Schools that convert to
23 charter schools must also give priority to the students who are
24 currently enrolled in school.

25 (2) A charter school may not limit admission based on race,
26 religion, ethnicity, national origin, gender, income level,
27 intellectual ability, disabling condition, proficiency in the English
28 language, or athletic ability. A charter school may limit admission to
29 students within a given age group or grade level.

30 NEW SECTION. **Sec. 7.** CHARTER APPLICATION--CHARTERING PROCESS.

31 (1) An applicant may apply to a sponsor to establish a charter school
32 as provided in this section.

33 (2) An application for a charter school may be submitted to any
34 qualified sponsor.

35 (3) The local school district board of directors must hold a public
36 hearing in the school district on the application within sixty days of

1 receipt of the application. The school board must either accept or
2 reject the application within thirty days after the hearing. The
3 thirty-day deadline for acceptance or rejection of the charter school
4 application may be extended for an additional thirty days if both
5 parties agree in writing.

6 (4) If the local school board rejects the application, the school
7 board must notify the applicant in writing of the reasons for the
8 rejection. The applicant may submit a revised application for the
9 school board's reconsideration. The school board may provide
10 assistance to improve the application. If the school board rejects the
11 application after submission of a revised application, the school board
12 must notify the applicant in writing of the reasons for the rejection.

13 (5) Sponsors other than school districts must comply with the
14 procedures in subsections (1) through (4) of this section for
15 consideration of the charter application. The sponsor is not bound by
16 the school board's findings or decision to deny the application.

17 (6) The superintendent of public instruction shall maintain copies
18 of all approved charter applications. An applicant may obtain copies
19 of those applications from the office of the superintendent of public
20 instruction.

21 NEW SECTION. **Sec. 8.** APPLICATION REQUIREMENTS. The charter
22 school application is a proposed contract and must include:

23 (1) The identification and description of the nonprofit corporation
24 submitting the application, including the names and descriptions of the
25 individuals who will operate the school;

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

28 (3) A mission statement for the proposed school, consistent with
29 the description of legislative intent in this chapter;

30 (4) A description of the school's educational program, including
31 curriculum and instructional strategies;

32 (5) A description of the school's admissions policy and marketing
33 program, including deadlines for applications or admission;

34 (6) A description of student performance standards that must meet
35 those determined under RCW 28A.655.060, and be measured according to
36 the assessment system determined under RCW 28A.655.060;

1 (7) A description of the plan for evaluating student performance
2 and the procedures for taking corrective action in the event that
3 student performance at the charter school falls below standards
4 established in its charter;

5 (8) A description of the financial plan for the school. The plan
6 shall include: (a) A proposed five-year budget of projected revenues
7 and expenditures; (b) a plan for starting the school; (c) a five-year
8 facilities plan; (d) evidence supporting student enrollment projections
9 of at least twenty students; and (e) a description of major contracts
10 planned for equipment and services, leases, improvements, purchases of
11 real property, and insurance;

12 (9) A description of the proposed financial management procedures,
13 including annual audits of the school's financial and administrative
14 operations, which shall meet or exceed generally accepted standards of
15 management and public accounting;

16 (10) An assessment of the school's potential legal liability and a
17 description of the types and limits of insurance coverage the nonprofit
18 corporation plans to obtain that are adequate. For purposes of this
19 subsection, a liability policy of between one million and five million
20 dollars is required;

21 (11) A description of the procedures to discipline and dismiss
22 students; and

23 (12) A description of procedures to assure the health and safety of
24 students, employees, and guests of the school and to comply with
25 applicable federal and state health and safety laws and regulations.

26 NEW SECTION. **Sec. 9.** APPROVAL CRITERIA. A sponsor may approve an
27 application for a charter school, if in the sponsor's reasonable
28 judgment, after exercising due diligence and good faith, the sponsor
29 finds:

30 (1) The applicant is a public benefit nonprofit corporation and the
31 individuals it proposes to manage the school are qualified to operate
32 a charter school and implement the proposed educational program;

33 (2) The mission statement is consistent with the description of
34 legislative intent and restrictions on charter school operations in
35 this chapter;

36 (3) The school's proposed educational program is free from
37 sectarian control or influence;

1 (4) The school's proposed educational program includes student
2 academic performance standards that meet those determined under RCW
3 28A.655.060 and are measured according to the assessment system
4 determined under RCW 28A.655.060;

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

9 (6) The school's educational program, including curriculum and
10 instructional strategies, has the potential to improve student
11 performance as measured under section 5 of this act;

12 (7) The school's admissions policy and marketing program is
13 consistent with state and federal law;

14 (8) The financial plan for the school is designed to reasonably
15 support the charter school's educational program based on a review of
16 the proposed five-year budget of projected revenues, expenditures, and
17 facilities;

18 (9) The school's financial and administrative operations, including
19 its annual audits, meet or exceed generally accepted standards of
20 accounting and management;

21 (10) The assessment of the school's potential legal liability, and
22 the types and limits of insurance coverage the school plans to obtain,
23 are adequate. For purposes of this subsection, a liability policy of
24 between one million and five million dollars is required;

25 (11) The procedures the school plans to follow for discipline and
26 dismissal of students are reasonable and comply with federal law;

27 (12) The procedures the school plans to follow to assure the health
28 and safety of students, employees, and guests of the school comply with
29 applicable state and federal health and safety laws and regulations;
30 and

31 (13) The public benefit nonprofit corporation has been approved or
32 conditionally approved by the internal revenue service for tax exempt
33 status under section 501(c)(3) of the internal revenue code of 1986 (26
34 U.S.C. Sec. 501(c)(3)).

35 NEW SECTION. **Sec. 10.** CHARTER AGREEMENT--AMENDMENT. (1) A
36 charter application approved by a sponsor with any changes constitutes
37 a charter.

1 (2) A charter may be amended during its term at the request of the
2 charter school board of directors and on the approval of the sponsor.

3 NEW SECTION. **Sec. 11.** CHARTER RENEWAL AND REVOCATION. (1) An
4 approved plan to establish a charter school is effective for five years
5 from the first day of operation. At the conclusion of the first three
6 years of operation, the charter school may apply to the sponsor for
7 renewal. A request for renewal must be submitted no later than six
8 months before the expiration of the charter.

9 (2) A charter school renewal application must include:

10 (a) A report on the progress of the charter school in achieving the
11 goals, student performance standards, and other terms of the charter;
12 and

13 (b) A financial statement that discloses the costs of
14 administration, instruction, and other expenditure objects and
15 activities of the charter school.

16 (3) The sponsor may reject the application for renewal if any of
17 the following occurred:

18 (a) The charter school materially violated its contract with the
19 sponsor, as set forth in the charter;

20 (b) The students enrolled in the charter school failed to meet
21 student performance standards identified in the charter;

22 (c) The charter school failed to meet generally accepted standards
23 of fiscal management; or

24 (d) The charter school violated provisions in law that have not
25 been waived in accordance with this chapter.

26 (4) A sponsor shall give written notice of its intent not to renew
27 the charter school's request for renewal to the charter school within
28 one month of the request for renewal to allow the charter school an
29 opportunity to correct identified deficiencies in its operation. At
30 the request of the board of directors of the charter school, the
31 sponsor shall review its decision for nonrenewal after the charter
32 school has corrected any identified deficiencies.

33 (5) The sponsor may revoke a previously approved charter before the
34 expiration of the term of the charter, and before application for
35 renewal, for any of the reasons specified in subsection (3) of this
36 section. Except in cases of emergency where the health and safety of
37 children are at risk, a charter may not be revoked unless the sponsor

1 first provides written notice of the specific violations alleged, a
2 public hearing, and a reasonable opportunity for the charter school to
3 correct the identified areas of concern. The sponsor of a charter
4 school shall provide for an appeal process upon a determination by the
5 sponsor that grounds exist to revoke a charter.

6 NEW SECTION. **Sec. 12.** FUNDING. (1) When the sponsor is a school
7 district:

8 (a) For purposes of funding, students in charter schools shall be
9 considered students of the sponsoring district for general fund
10 apportionment purposes. The sponsoring school district shall provide
11 funding for charter schools on a per student basis in amounts the
12 schools would have received if the students were enrolled in a
13 noncharter school in the district except that a charter school shall
14 not generate eligibility for small school assistance. Funding for
15 charter schools shall include regular apportionment, categorical, and
16 nonbasic education funds, as appropriate and shall be based on
17 enrollment and other financial information submitted by the charter
18 school to the school district as is required to determine state
19 apportionment amounts;

20 (b) Local levy moneys approved by the voters before the effective
21 date of a charter between a school district and an applicant shall not
22 be allocated to a charter school unless the sponsoring school district
23 determines it has received sufficient authority from voters to allocate
24 maintenance and operation excess tax levy money to the charter school.
25 For levies approved after the effective date of a charter, charter
26 schools shall be included in levy planning, budgets, and funding
27 distribution in the same manner as other schools in the district; and

28 (c) A charter school is eligible for state matching funds for
29 common school construction if a sponsoring school district determines
30 it has received voter approval of local capital funds for the project.

31 (2) Public schools converting to charter schools shall receive
32 funding in the same manner as other charter schools.

33 (3) If the sponsor is not a school district, students in the
34 charter school shall be considered students of the district in which
35 the charter school is located for general fund apportionment purposes.
36 The superintendent of public instruction shall provide funding for
37 charter schools on a per student basis in amounts the schools would

1 have received if the students were enrolled in a noncharter school in
2 the district except that a charter school shall not generate
3 eligibility for small school assistance. The funding shall include
4 regular apportionment, categorical, and nonbasic education funds and
5 shall be based on enrollment and other financial information submitted
6 by the charter school to the school district as is required to
7 determine state apportionment amounts.

8 (4) No local levy money may be allocated to a charter school if the
9 charter school is sponsored by a sponsor that is not a school district.

10 NEW SECTION. **Sec. 13.** ADMINISTRATION FEE. To offset costs of
11 oversight and administering the charter, a sponsor may retain up to
12 three percent of state funding and local excess levy funding, if
13 applicable, that is being driven to the charter school. Except for the
14 administration fee in this section, no other offsets or deductions are
15 allowed, whether for central administration or other off-site support
16 services, from a charter school's per-pupil share of state
17 appropriations, local levies, or other funds, unless the charter school
18 has contracted with a school district to obtain specific additional
19 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 a charter school, the school district shall grant the request.
23 The school district may require that the request for a leave be made up
24 to ninety days before the employee would otherwise have to report for
25 duty. The leave shall be granted for up to three years. If the
26 employee returns to the school district within the three-year period,
27 the employee shall be hired before the district hires anyone else with
28 fewer years of service, with respect to any position for which the
29 returning employee is certificated or otherwise qualified.

30 NEW SECTION. **Sec. 15.** STUDY OF CHARTER SCHOOLS. The Washington
31 institute for public policy shall study the implementation and
32 effectiveness of this act. The institute shall make recommendations to
33 the legislature about the effectiveness of charter schools and the
34 impact of charter schools. The institute shall also recommend changes
35 to this chapter including improvements that could be made to the

1 application and approval process. A preliminary report of the study is
2 due to the legislature by September 1, 2005, and a final report is due
3 September 1, 2007.

4 NEW SECTION. **Sec. 16.** NUMBER OF CHARTER SCHOOLS. (1) The maximum
5 number of charters that can be granted under this chapter is twenty in
6 any given year commencing July 1, 2003, for the first four years.
7 These annual allocations shall be cumulative so that if the maximum is
8 not reached in any given year the maximum shall be increased
9 accordingly for the successive years.

10 (2) A sponsor may not sponsor a charter school in a school district
11 with a student enrollment of less than three thousand students until
12 June 1, 2005.

13 (3) Prior to July 1, 2005, charter school enrollment shall be
14 limited to those students who, immediately prior to enrollment in the
15 charter school, were enrolled in a public school in Washington state,
16 except those students who are entering schools for the first time.

17 (4) For purposes of monitoring compliance with this section and
18 providing information to new charter school applicants, the
19 superintendent of public instruction shall maintain a running total of
20 the projected and actual enrollment at charter schools and the number
21 of charters granted.

22 (5) For purposes of implementing this subsection, a sponsor shall
23 notify the office of the superintendent of public instruction when it
24 receives a charter school application, when it approves a charter
25 school, and when a charter school is terminated.

26 (6) The maximum number of charter schools allowed under this
27 section does not include public schools converting to charter schools.

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

30 This chapter applies to charter schools as defined in section 2 of
31 this act and the charter school's employees included in the bargaining
32 unit. The bargaining unit of employees of charter schools must be
33 limited to the employees of the charter school and must be separate
34 from other bargaining units in the school district or educational
35 service district.

1 This section, designating charter schools as employers and charter
2 schools as members under the teachers' retirement systems, the school
3 employees' retirement systems, and the public employees' retirement
4 systems, takes effect only if the department of retirement systems
5 receives determinations from the internal revenue service and the
6 United States department of labor that such participation does not
7 jeopardize the status of these retirement systems as governmental plans
8 under the federal employees' retirement income security act and the
9 internal revenue code.

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

12 This chapter applies to collective bargaining agreements between
13 charter schools and the employees of charter schools included in the
14 bargaining unit. The bargaining unit of employees of charter schools
15 must be limited to the employees of the charter school and must be
16 separate from other bargaining units in the school district.

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

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

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

1 collective bargaining; the extent of organization among the educational
2 employees; and the desire of the educational employees; except that:

3 (1) A unit including nonsupervisory educational employees shall not
4 be considered appropriate unless it includes all such nonsupervisory
5 educational employees of the employer; and

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

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

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

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

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

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

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

37 (9) The bargaining unit for employees of charter schools as defined

1 in section 2 of this act must be limited to the employees of the
2 charter school and must be separate from other bargaining units in the
3 school district or educational service district.

4 NEW SECTION. **Sec. 20.** CAPTIONS NOT LAW. Captions used in this
5 chapter do not constitute any part of the law.

6 NEW SECTION. **Sec. 21.** Sections 1 through 16 and 20 of this act
7 constitute a new chapter in Title 28A RCW.

8 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and takes effect
11 immediately.

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

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