

HOUSE BILL REPORT

ESHB 1744

As Passed House:

March 6, 2023

Title: An act relating to clarifying the responsibilities and accountability for the effective delivery and oversight of public education services to charter school students.

Brief Description: Clarifying the responsibilities and accountability for the effective delivery and oversight of public education services to charter school students.

Sponsors: House Committee on Education (originally sponsored by Representatives Rude, Santos, Schmidt and Pollet).

Brief History:

Committee Activity:

Education: 2/9/23, 2/16/23 [DPS].

Floor Activity:

Passed House: 3/6/23, 95-0.

Brief Summary of Engrossed Substitute Bill

- Makes various changes to provisions governing the administration and oversight of charter schools, including new and modified duties for charter schools, charter school boards, charter school authorizers, the Charter School Commission, and the State Board of Education.

HOUSE COMMITTEE ON EDUCATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Santos, Chair; Shavers, Vice Chair; Rude, Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Bergquist, Callan, Eslick, Harris, McClintock, Ortiz-Self, Pollet, Sandlin, Steele, Stonier and Timmons.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Ethan Moreno (786-7386).

Background:

Overview.

Washington's charter school system was established in 2013 after voter approval of Initiative 1240. In 2016 the Legislature enacted a modified charter school system after the Washington Supreme Court invalidated all charter school statutes.

Charter schools are privately run public schools that operate according to the terms of renewable five-year charter contracts that establish the roles, powers, responsibilities, and performance expectations of the parties to the contracts. Charter schools are alternatives to traditional public schools and are operated and funded separately from the traditional public school system. Charter schools are required by law to be tuition-free and open to all children and may offer any program or course of study that any other public school may offer.

Charter schools cannot be funded from state revenue sources dedicated to traditional public schools (although they are funded at a comparable level by the state), and they cannot access local school levy revenues approved by voters.

The management and operation of each charter school occurs through a charter school board, the board of directors appointed or selected under the terms of the charter application. Charter school boards have numerous powers and obligations established in statute, including the authority to employ personnel, enter into contracts, and issue diplomas to students that meet state high school graduation requirements.

Except as provided otherwise, charter schools are subject to the supervision of the Superintendent of Public Instruction (SPI) and the State Board of Education (SBE), including accountability measures, to the same extent as other public schools

Sixteen charter schools currently operate in Washington and two more are slated to open in the fall of 2023. Five previously operational charter schools have closed and one reverted to a private school.

Washington State Charter School Commission.

The eleven-member Washington State Charter School Commission (Commission) is charged with assisting in the establishment and oversight of charter schools. Its stated mission is to authorize high quality charter public schools throughout the state, especially schools that are designed to expand opportunities for at-risk students, and to ensure the highest standards of accountability and oversight for these schools.

The Commission consists of appointed and non-appointed members. The SPI and the Chair of the SBE (or their designees) are the non-appointed members, with three members each

appointed by the Governor, caucus leaders of the Senate, and caucus leaders of the House.

Establishment and Operations.

While charter schools are subject to numerous statutory provisions governing their establishment, operation, and oversight, they are exempted from most statutory and rule-based requirements governing traditional public schools.

The statutory period for establishing additional charter schools concluded April 3, 2021. During the establishment period, charter schools could be authorized by the Commission or by a school district board of directors if the proposed school was within their district boundaries and the board of directors was approved by the SBE as a charter school authorizer.

Charter school authorizers have numerous responsibilities prescribed in statute, including:

- soliciting and evaluating charter applications;
- approving charter applications that meet identified educational needs and promote a diversity of educational choices;
- negotiating and executing charter contracts with each authorized charter school;
- monitoring, in accordance with charter contract terms, the performance and legal compliance of charter schools, including, without limitation, education and academic performance goals and student achievement;
- determining whether each charter contract merits renewal, nonrenewal, or revocation; and
- revoking or refusing to renew charter contracts if the authorizer determines that the charter school failed to comply with legal requirements.

Authorizers must continually monitor the performance and legal compliance of the charter schools under its jurisdiction, including collecting and analyzing data to support ongoing evaluation according to the performance framework in the charter contract. Authorizers may conduct or require oversight activities, including conducting appropriate inquiries and investigations, provided those activities are consistent with the intent of charter school laws, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to charter schools.

If a charter school's performance or legal compliance appears unsatisfactory, the authorizer must promptly notify the school of the perceived problem and provide reasonable opportunity for the school to remedy the problem.

Audit Requirements.

Charter schools are subject to audit requirements. Each charter school board must contract for an independent performance audit of their school. These audits must be conducted the second year immediately following the school's first full school year of operation and subsequently every three years. Charter schools also must adhere to generally accepted accounting principles and be subject to financial examinations and audits of the State

Auditor, including annual audits for legal and fiscal compliance.

Authorizer Oversight by the State Board of Education.

The SBE is responsible for overseeing the performance and effectiveness of all school district boards of directors that have been granted charter school authorization authority by the SBE. A special review of the authorizer by the SBE may be triggered by a persistently unsatisfactory performance of an authorizer's portfolio of charter schools, a pattern of well-founded complaints about the authorizer or its charter schools, or other objective circumstances.

In reviewing or evaluating the performance of authorizers, the SBE must apply nationally recognized principles and standards for quality charter authorizing. Evidence of material or persistent failure by an authorizer to carry out its duties in accordance with these principles and standards constitutes grounds for revocation of the authorizing contract by the SBE.

If the SBE finds that an authorizer is not in compliance with a charter contract, its authorizing contract, or the authorizer duties, the SBE must notify the authorizer in writing of the identified problems, and the authorizer must have reasonable opportunity to respond and remedy the problems.

If an authorizer persists in violating a material provision of a charter contract or its authorizing contract, or fails to remedy other identified authorizing problems, the SBE may initiate a process to revoke the authorizer's chartering authority unless the authorizer demonstrates a timely and satisfactory remedy for the violation or deficiencies.

Summary of Engrossed Substitute Bill:

Numerous changes are made to provisions governing the administration and oversight of charter schools, including new and modified duties for charter schools, charter school boards, charter school authorizers, the Commission, and the SBE. A summary of the changes, by entity type, is provided below.

Charter Schools.

Beginning November 1, 2023, and annually thereafter, charter schools must report the employment of all noncertificated instructional staff hired in accordance with a provision permitting the hiring of noncertificated instructional staff of unusual competence and in exceptional cases. The report must address the current and preceding school year and be submitted to the executive director of the Commission and the SBE for inclusion in its annual report on the performance of the state's charter schools.

Each charter school must prominently post and maintain on its website information about the school's process and instructions for submitting complaints about the operation and administration of the charter school by its enrolled students and their parents. This information must include a designated point of contact at the charter school and a link to the

online complaint system required of the Commission.

Charter schools are expressly made subject to the Washington Achievement index developed by the SBE to the same extent as other public schools.

Charter School Boards.

Each charter school board is directed to ensure that its members and administrative staff receive annual training to support the effective operation and oversight of the charter school, including compliance with requirements governing the employment of properly credentialed instructional staff, compliance with the requirements of the Open Public Meetings Act and the Public Records Act, and the permitted uses of public funds.

Provisions governing audit requirements for charter school boards are modified. Charter school boards must obtain an accountability audit for their schools instead of contracting for an independent performance audit. The accountability audits must occur after the school's first full year of operation and subsequently at least every three years.

The Washington State Charter School Commission.

The Commission's statutory mission is amended to require it to hold charter school boards accountable for: ensuring that students of charter schools have opportunities for academic success; and exercising effective educational, operational, and financial oversight of charter schools.

Beginning with the 2023-24 school year, and subject to funding provisions, the Commission is directed to promote the effective administration and operation of charter schools through the provision of technical assistance to requesting charter schools, charter school boards, or both. The principal objective of the technical assistance, a defined term, which may be provided by commission staff or through a contractor, must be to support charter schools and charter school boards in achieving and maintaining compliance with requirements governing charter schools.

In responding to requests for technical assistance, the Commission must prioritize the provision of assistance to charter schools that have been in operation for three or fewer school years. Additionally, the technical assistance is unrelated to, and does not affect or otherwise modify, duties of the Commission in its role as an authorizer.

By November 1, 2023, the Commission must establish and maintain on its website an online system for students who attend charter schools, and the parents of those students, to submit complaints about the operation and administration of one or more charter schools, including complaints about the provision of education services and complaints alleging noncompliance with requirements governing charter schools.

The Commission must adopt rules for the online complaint system and must acknowledge the receipt of each received complaint within 10 business days. The Commission, in a

timely manner, must also perform any inquiries or other actions it deems necessary and appropriate to respond to each received complaint.

Charter School Authorizers.

Authorizers' duties are expanded to require them to:

- hold the charter school board of each authorized charter school accountable for: ensuring that students in the charter school have opportunities for academic success; and exercising effective educational, operational, and financial oversight of the charter school; and
- ensure that charter school boards comply with the annual training requirements to support the effective operation and oversight of charter schools.

In deciding whether to approve an application, authorizers must grant charters only to applicants that have met specified requirements and are likely to open, operate, and ensure the financial viability of a successful charter public school.

In making charter renewal decisions, authorizers must hold the charter school board accountable for: ensuring that students of the charter school have opportunities for academic success; and exercising effective educational, operational, and financial oversight of the charter school.

The authority of authorizers to conduct or require oversight activities that enable them to fulfill their responsibilities is modified by removing specified limitations on that authority, such as maintaining consistency with the intent of charter school laws. Examples of permitted reasons for conducting or requiring oversight activities include:

- the persistent unsatisfactory performance of a charter school;
- a pattern of well-founded complaints about a charter school; or
- other objective circumstances.

State Board of Education.

The responsibility of the SBE for overseeing the performance and effectiveness of authorizers is extended to include the Commission. The list of factors that may trigger a special review of authorizers, including the Commission, by the SBE is expanded to include a high percentage of charter school closures during the preceding 10-year period.

If the Commission is the subject of the special review, the SBE has one year from the initiation of its review to complete the review and provide a report with findings and recommendations, including any recommendations for statutory revisions it deems necessary, to the Governor, the SPI, and the appropriate committees of the Legislature.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 8, 2023.

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

Staff Summary of Public Testimony:

(In support) Charter schools are part of the public education system. The SBE has noted that charter schools are serving students effectively. There have been some issues with the operation of charters, and the Legislature should provide the resources and establish the needed accountability for ensuring that charter schools can operate effectively and properly.

The bill should be amended to include a specific compliance reference for the transitional bilingual instruction program.

(Opposed) Passing this bill would effectively repeal the charter school law by taking away the independence of the charter schools. The state wants charter schools to fail and denies them access to funding. Despite these attacks, charter schools are succeeding and enrollment is up. Parents love charter schools.

(Other) The proposed oversight duties for the SBE should be clarified if the intent of the legislation is to have the SBE oversee the Commission in its role as an authorizer and not the Commission as an agency.

Charter schools are a small portion of the school system and they are doing what they should: serving students, including many global majority students. Charter schools are subject to strong accountability requirements. If a charter school is not meeting state requirements, it cannot languish and will be closed.

There are implementation questions about the legislation. The current accountability requirements are strong and the SBE is already part of that framework. All charter schools are accountable to the terms of their contracts and this, while appropriate, creates a much higher level of accountability than traditional public schools. Charter schools are subject to accountability from four sources: the SBE; the State Auditor, the Commission, and the charter school board.

The existing accountability system is complex, and the SBE has obligations to lawmakers, the public, and students, but having one agency participate in the oversight of another might create implementation and agency interplay issues that have not been fully considered.

Persons Testifying: (In support) Representative Skyler Rude, prime sponsor; and Julie Salvi, Washington Education Association.

(Opposed) Liv Finne, Washington Policy Center.

(Other) Rekha Bhatt, Washington State Charter Schools Association; Randy Spaulding, Washington State Board of Education; and Jessica de Barros and Harium Martin-Morris,

Charter School Commission.

Persons Signed In To Testify But Not Testifying: None.