

SENATE BILL REPORT

ESHB 1744

As Reported by Senate Committee On:
Early Learning & K-12 Education, March 27, 2023
Ways & Means, April 4, 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: Passed House: 3/6/23, 95-0.

Committee Activity: Early Learning & K-12 Education: 3/22/23, 3/27/23 [DPA-WM, DNP].

Ways & Means: 3/31/23, 4/04/23 [DPA (EDU)].

Brief Summary of Amended 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.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Wellman, Chair; Nobles, Vice Chair; Wilson, C., Vice Chair;
Hawkins, Ranking Member; Dozier, McCune, Mullet and Pedersen.

Minority Report: Do not pass.
Signed by Senator Hunt.

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: Alexandra Fairfortune (786-7416)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Early Learning & K-12 Education.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Staff: Kayla Hammer (786-7305)

Background: Charter Schools. 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.

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.

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.

Washington State Charter School Commission. The 11-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 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 of Representatives.

Authorizer Oversight of Charter 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.

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 Amended 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.

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, 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 must be to support charter schools and charter school boards in achieving and maintaining compliance with requirements governing charter schools. Technical assistance may be provided by commission staff or through a contractor.

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. 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 ten 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.

When deciding whether to approve an application, authorizers must grant charters only to applicants likely to ensure the financial viability of a successful charter public school.

When 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, but are not limited to:

- the persistent unsatisfactory performance of a charter school;
- a pattern of well-founded complaints about a charter school;
- the authority to conduct such oversight activities as provided by statute, rule, or charter contract; 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 ten-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.

EFFECT OF EARLY LEARNING & K-12 EDUCATION COMMITTEE AMENDMENT(S):

- Clarifies that the exception to hire noncertificated staff of unusual competence and in exceptional cases is an exception that applies to other public schools, not just charter schools.
- Provides that authorizers are not limited to conducting oversight activities for only the reasons listed in statute. Provides that authorizers are permitted to conduct or require oversight activities when the authority to conduct such activities is provided by statute, rule, or charter contract.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Early Learning & K-12 Education): *The committee recommended a different version of the bill than what was heard.* PRO: There have been some unfortunate situations where charter schools have closed not long after opening due to enrollment concerns and compliance issues. There was also a finding that some charter schools were hiring noncertificated teachers instead of pursuing emergency certificate options. This bill is in response to those situations, providing additional oversight of the Commission and technical assistance to make sure charter schools have the resources to be effective. Interrupting a student's educational experience is not good for learning so we want to minimize that happening. This will provide the necessary oversight needed so that all students have opportunities for success.

CON: New charter schools may no longer be established, which defeats the intent of voters. This bill increases regulations which will further harm charter schools and make them more difficult to operate. This bill represents a hostile attitude towards charter schools.

OTHER: The general policy of SBE is to not take a position on additional oversight responsibilities of other government offices. Charter schools are part of a multi-pronged system and are accountable to the terms they've agreed to in their contract.

Persons Testifying (Early Learning & K-12 Education): PRO: Representative Skyler Rude, Prime Sponsor; Catherine Ahl, League of Women Voters of WA.

CON: Liv Finne, Washington Policy Center.

OTHER: Randy Spaulding, Washington State Board of Education; Jessica de Barros, Charter School Commission.

Persons Signed In To Testify But Not Testifying (Early Learning & K-12 Education):
No one.

Staff Summary of Public Testimony on Bill as Amended by Early Learning & K-12 Education (Ways & Means): OTHER: There are concerns about having the capacity and additional staff to take on the requirements of the bill, but the commission is committed to transparency with support.

Persons Testifying (Ways & Means): OTHER: Jessica de Barros, Charter School

Commission.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.