

**THE CENTER FOR EDUCATION REFORM'S ANALYSIS OF PROPOSED
CHANGES TO PA CHARTER SCHOOL LAW**

PA 2013D05990BIL: NLH

Proposed PA Senate Bill
CER Comments

UNIVERSITY AUTHORIZERS

Page 3, Lines 27 – Page 4, Line 4, and in multiple other places throughout the bill: **“Governing board of an institution of higher education” shall mean an institution of higher education subject to Article XX-C which elects by affirmative vote of a majority of all members to become an authorizer of charter schools and shall assume the same powers and duties as a local board of school directors under this article. The term does not include a governing board of an institution of higher education that does not vote affirmatively to become an authorizer.** And elsewhere in the bill: **“...or the governing board of an institution of higher education...”**

Typically, as in our model language, a university authorizer is defined along with other authorizers under a “Charter Authorizers” section. Here, “university authorizers” would then be defined to mean the boards of trustees of two- and four-year public institutions of higher learning, or a person or entity assigned those duties under the direction as voted on by the university’s board.

The language concerning where charter applications are submitted needs to be revised, too. University authorizers should (and have in other states) be allowed to properly and effectively create institutes or appoint executives who oversee the charter authorizing functions. Therefore, wherever language occurs regarding applications submitted to a “governing board of an institution of higher education” additional language should be added to say “or its designated agent...” or language from CER’s model legislation may be used:

- “(ii) The ultimate responsibility for choosing to authorize a charter school and responsibilities for maintaining sponsorship shall rest with the university’s board of trustees;
- (iii) Notwithstanding subsection (ii), the university’s board of trustees may vote to assign sponsorship authority and sponsorship responsibilities to another person or entity that functions under the direction of the university’s board. Any decisions made under this subsection shall be communicated in writing to the Department of Education and the university’s board; and
- (iv) Before a university may authorize a charter school, the university must conduct a public meeting with public notice in the county where the charter school will be located.”

Recommendation – Create a new and different section for alternate authorizers that includes desired provisions, allowing separation from the requirements, rules, and procedures imposed on school districts as authorizers (this is how the law is laid out in Michigan and New York, among others, for example). This will also allow the law to replace “the local board of school directors or the governing board of an institution of higher learning” with the better “authorizers,” and will allow additions to eligible authorizers in the future (mayors; additional public bodies; etc.) as desired by the legislature.

POSITION: Support – but use clarified and revised language.

EDUCATIONAL MANAGEMENT SERVICE PROVIDERS

Page 3, Line 19-26: **“Educational Service Management Provider” shall mean a for-profit education management organization, nonprofit charter management organization, school design provider, business manager or any other partner entity with which a board of trustees of a charter schools or cyber charter school contracts to provide educational design, business services, comprehensive management or personnel functions or to implement the charter. The term shall not include a charter school foundation.**

Two points: First, this definition is too messy, and does not achieve its intended purpose. If a definition is desired, the language could and should simply state: “...shall mean an entity with which the board enters into a contract to operate and manage the charter school, or any significant operational part thereof.” Second, there really is no need to define “Educational Management Service Provider” (ESPs). Traditional school districts contract with ESPs and would not similarly regulated, creating an uneven and unfair playing field. Services of ESPs to a charter school are defined in a contract, and the proposed contract can be made part of the application content, as it is in this law. Authorizers have the prerogative to approve or deny an application based on the school’s business model or proposed partners – such provisions need not be codified into law.

POSITION: Strongly oppose. Delete or modify as noted.

Page 1, Line 13: **“Administrator” shall include an employe of a charter school...**

Page 3, Line 1: **“Chief administrator” shall mean an individual appointed by a board of trustees o oversee and manage the operation of a charter school...**

These definitions conflict with the ability of a charter school board to contract with an ESP that serves as the employer of all school staff. The definitions should be eliminated, and where “administrator” or “chief administrator” appears in the bill it should be clarified to ensure that only when these individuals are employees of the school, not when they are employees of a contracted ESP, would the proposed regulations apply. In other instances, the services contract between a charter school board and an ESP will provide the needed accountability.

POSITION: Oppose and delete.

Page 21, Line 27 – Page 22, Line 5: **(C) Roles and responsibilities of the governing board, the school staff, and the educational management service provider...(E) Performance evaluation measures and timelines; (F) The compensations structure... (G) Methods of contract oversight and enforcement.**

These provisions are inappropriate to include in a managements services contract. Authorizers can and should (indeed, it is in this law already) require the roles and responsibilities of the board, which will include oversight of the ESP. Roles of school staff do not belong in the services contract. Compensation of staff will be in the annual budgets of the school. And, the services provided by the ESP is what the entire contract is about.

POSITION: Oppose and delete the noted sections.

Page 22, Line 9: **(I) Conditions for renewal and termination of the contract.**

The services contract is not the vehicle for these requirements. The charter school board will determine if and when it wishes to renew a successful partnership with its ESP with the approval of its authorizer. Conditions for termination shouldn’t exist – a board should be able to terminate its agreement with an ESP whenever it chooses. The process for terminating, and the services to be provided during the process of terminating, however, could be required to be specified.

POSITION: Oppose unless revised as noted.

RELIGIOUS SYMBOLS

Page 5, Line 20 – Page 6, Line 1: **(i) A charter school shall not provide any religious instruction, nor shall it display religious objects and symbols on the premises of the charter school. The charter school shall provide for discrete and separate entrances to buildings utilized for school purposes only. (ii) It shall not be a violation of this section for a charter school to utilize a sectarian facility: (A) if the religious objects and symbols within the portions of the facility utilized by the school are covered or removed to the extent reasonably feasible; or (B) in which the unused portion of the facility or its common areas contain religious symbols and objects.**

No public school is allowed to educate students in a way that intends to indoctrinate them with religious beliefs; expressly dictating that edict to charter schools here is unnecessary and not proper. Further, some are likely to interpret that the teaching of religion, including comparative religion and instruction on religious tolerance, is prohibited. Federal guidance on the subject is clear that religion can be a subject taught in public schools, but indoctrination cannot. Additionally, requiring separate entrances to be constructed to a sectarian facility is unreasonable.

POSITION: Strongly oppose the inclusion of paragraph (i). It should be deleted in its entirety.

CHARTER SCHOOL BOARDS - Ethics

Page 7, Lines 10-16; Page 8, Lines 4-24; Page 11, Line 20 – Page 12, Line 5 (subsections (b.2) (1) – (4): **Various provisions regarding ethical behavior by board members.**

As board trustees of charter schools are already defined in law as public officials, the charter law need not, and should not, go further than noting: “All state laws pertaining to ethical behavior and ethics reporting for public officials thus shall apply to trustees.” If specific statutory provisions are desired to be cited, such as those applicable to local school board members, they may be cited here as cross-references. But the listing here of new ethical requirements is overkill and unfair. With such language, any strengthening of ethics provisions for public officials would automatically apply to charter school trustees. The ethics provisions here invite regulators to go overboard targeting charter schools solely.

POSITION: Oppose. This language is unnecessary with traditional and existing ethics rules. The strengthening of charter authorizers, too, will allow additional oversight here.

Page 13, Line 9 – Page 14, Line 4: **In any case where the board of trustees of a charter school fails to pay or to provide for the payment of:...**

Sufficient civil penalties and legal remedies exist for any of the violations specified here. It is unnecessary and appears unduly punitive to include these provisions.

POSITION: Oppose and delete.

CHARTER SCHOOL BOARDS – Rental Payments as Capital Guarantees

Page 9, Lines 12-21: **The board of trustees of a charter school entity shall supply the grantor of the charter school entity and the secretary a list of the amount of rental payments, which are guarantees for school building debt or bonds that become due...**

This unique condition seems out of place here, and should be made its own section with clarity that it applies only to charter schools issuing debt.

POSITION: Clarify and segregate into its own section.
CHARTER SCHOOL FUNDING

Pages 9, Line 22 – Page 11, Line 1: **Fund Balance limits shall be as follows...**

A charter school that saves money for the purposes of a) expanding or maintaining a facility, b) paying teachers more, c) the creation of innovations in technology and learning, d) growing more schools, e) not having to be dependent on philanthropy, and so on, should not be punished by forced caps on the size of reserves allowed. It should be the role of the authorizer to ensure sound business practices, and charter schools are required to have annual audits that are public.

POSITION: Oppose and delete.

Page 67, Line 26 – Page 68, Line 8: ***Provisions on aid payments to cyber charter schools for non-special education students and special education students.***

This appears to be an unnecessary and punitive provision against cyber charter schools. What is basis for imposing the “lesser of the median amounts calculated to be paid by all districts of residence or 90% of the amount calculated to be paid by the district of residence”? Has the financial impact on charter schools been calculated, and does it result in unneeded financial gain for the local school district?

POSITION: Oppose. Awaiting clarification.

CHARTER SCHOOL BOARDS – Make-up

Page 12, Lines 18 – 30: **The board of trustees of a charter school shall consist of a minimum of five (5) nonrelated voting members. If a charter school has fewer than (5) nonrelated voting members serving on its board on the effective date of this subsection, the charter school shall, within sixty (60) days, appoint additional members to the board to meet the minimum requirements of this section. Within one (1) year of the effective date of this subsection, at least one (1) member of the board of trustees of a charter school shall be a parent of a child currently attending the charter school. The board member shall be eligible to serve only so long as the child attends the charter school.**

Requiring a specific makeup of a charter school board is not the purview of state law but the purview of authorizers approving charters. To provide the maximum amount of governance autonomy, a charter school board should have authority to determine what works best for them within law, already established ethics policies, and good management practice.

POSITION: Oppose - maximum autonomy in governance with good authorizer oversight is a key component of a successful charter. If alternative language is desired, these sections could be replaced simply by: “Each authorizer shall establish guidelines for the construct of charter school boards in a manner designed to provide maximum autonomy to the governance plan of the founders of each school, but in no instance shall a charter school board of trustees be created with fewer than five (5) nonrelated voting members.”

**CHARTER SCHOOL BOARDS – Process; and
CHARTER APPLICATIONS – Approval Process**

Page 13, Lines 1-8: **A majority of the voting members of the board of trustees shall constitute a quorum if less than a majority is present at any meeting, no business may be transacted at the meeting. The affirmative vote of a majority of all the voting members of the board of trustees, duly recorded, shall be required in order to take action on the subjects enumerated under subsection (a).**

Page 16, Lines 1-4: **A charter application shall be deemed approved by the local board of school directors of a school district or the governing board of an institution of higher education upon affirmative vote by a majority of all directors.**

These provisions are unnecessary, as they are basic rules of operation for public meetings and governance of nonprofit organizations, such as schools. These sections should be deleted.

POSITION: Delete.

CHARTER AUTHORIZERS

Page 15, Lines 3-9: **Not later than seventy-five (75) days after the first public hearing on the application, the local board of school directors or the governing board of an institution of higher education shall grant or deny the application. For a charter school beginning in the 1997-1998 school year, the local board of school directors shall grant or deny the application no later than sixty (60) days after the first public hearing.**

The mandating of timing to consider and finalize charter reviews (75 days) was intended during the original law's review to ensure that districts did not ignore charter petitions. This should not apply to university (and other alternative) authorizers, as they should be allowed to be independent, innovate, and define their own schedules. With the establishment of strong alternative authorizers, the law could simply state that an authorizer shall "...establish and publicize a reasonable timeline for the review of and approval or denial of all charter applications." If desired, the law also could provide that charter applications not approved or denied within such timeframes would automatically be granted approval.

POSITION: Oppose unless modified as noted.

APPEALS OF DENIALS

Page 16, Line – Page17, Line 14: **At the option of the charter school applicant, a denied application may be revised and resubmitted to the local board of school directors or the governing board of an institution of higher education....**

Rarely do states with multiple authorizers require appeals: with good, strong, multiple routes for charter applications to be approved, an individual authorizer's determination can be allowed to stand as final. If an appeals process is desired, re-submission to the denying authorizer should not be required – it is a waste of time and effort. Rather, a denied applicant should be able to go directly to the state appeals board as exists in this legislation (deleting (5)(f), and as proposed in this draft (i)(2) through (5)).

POSITION: Delete the Appeals Board and the appeals process. If kept, the burden of re-submitting to the denying authorizers should be removed.

Page 27, Lines 5-25: **The State Charter School Appeal Board shall consist of the Secretary of Education and [six (6)] the following members who shall be appointed by the Governor by and with the consent of a majority of all the members of the Senate... (1) A parent of a school-aged child enrolled at a charter school, regional charter school or cyber charter school. ... (7) An administrator of a charter school, regional charter school or cyber charter school. (8) A member of the board of trustees of a charter school, regional charter school or cyber charter school.**

If the appeals board is kept, there should not be people representative of authorizers or constituents directly affected by charter schools on it. These should be dispassionate but smart people who have involvement in their local and state communities, civics, business, foundation or government.

POSITION: Delete membership provisions (1), (7), and (8).

CHARTER APPLICATION - Content

Page 21, Lines 1-14: ***Various requirements to include organization charts with governance structures and lines of authority and reporting, roles and responsibilities of boards, administrators and entities, methods of appointment of board members, and standards for board performance.***

The law should not micromanage the application process, as this language does. As an alternative, the law could simply read: "...information on the governance structure and governance responsibilities as required by the authorizer." Similar changes should be made to the requirements for multiple charter school applications (Page 57, Lines 6-21).

POSITION: Oppose, and delete the noted sections.

Page 23, Line 7: **A description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.**

POSITION: Add: "if known at the time of application."

Page 24, Lines 15-20: **Indicate whether or not the charter school will seek accreditation by a nationally recognized accreditation agency including the Middle States Association of Colleges and Schools or another regional institutional accrediting agency recognized by the United States Department of Education or an equivalent federally recognized body for charter school education.**

Whether a charter school will or will not seek accreditation should have no bearing on whether the application is approved or denied, and offers no guarantee of quality of performance. This section should be deleted as unnecessary.

POSITION: Oppose and delete.

Page 24, Lines 21 – 25: **A local board of school directors or the governing board of an institution of higher education may not impose additional terms, develop its own application or require additional information outside the standard application form required under subsection (a).**

Application requirements stated in law should be minimum requirements not maximum ones. Best-practice models allow authorizers to be picky about their approvals, to set the bar high, and to create processes that benefit their portfolio of schools. Not allowing additional requirements in the content of a charter application denies the opportunity of authorizers to increase rigor where it is determined there will be an eventual beneficial result on the success of the school.

POSITION: Strongly oppose and delete.

CHARTER AMENDMENT

Page 26, Line 29: **...Failure by the local board of school directors or the governing board of an institution of higher education to hold a public hearing and to grant or deny the amendments within the time period specified shall be deemed a denial.**

An authorizer's refusal to act as prescribed by law should not result in punishment of a charter school. Here, "shall be deemed a denial" should be changed to "shall be deemed approval of the requested amendments."

POSITION: Oppose unless amended as noted. If amended, support.

ALCOHOLIC BEVERAGES

Page 30, Lines 9-26: **Alcoholic beverages shall not be available for consumption, purchase or sale in any charter school or cyber charter school facility...**

The states alcohol sale laws, consumption regulations, and provisions regarding alcoholic beverages in public places provides sufficient coverage of this issue. This appears as unnecessary overkill.

POSITION: Oppose and delete.

PARTICIPATION IN RETIREMENT SYSTEM

Page 33, Line 17 – Page 34, Line 16: **All employees of a charter school shall be enrolled in the Public School Employees' Retirement System...**

Requiring participation in a particular retirement system significantly impedes on a charter school's autonomy and the ability of its board to design employment incentives in a manner it sees fit to operate the school in the most effective manner. Many charter schools, for example, find that higher base salaries and merit-based performance bonuses are a greater enticement to quality teachers than the type of retirement plan offered. Put simply, a charter school should be allowed to design its own employee benefit package, and local market forces will quickly determine the ability of the school to attract the desired quality of teachers and other staff.

POSITION: Strongly oppose. Delete.

MANDATORY HEALTH PLANS

Page 33, Line 17 – Page 34, Line 16: **Every employe of a charter school shall be provided [the same] similar health care benefits as the employe would be provided if he or she were and employe of the local district.**

Requiring participation in a employee health plan of a particular design significantly impedes on a charter school's autonomy and the ability of its board to design employment incentives in a manner it sees fit to operate the school in the most effective manner. As with retirement plans (above), a charter school should be allowed to design its own employee benefit package, and local market forces will quickly determine the ability of the school to attract the desired quality of teachers and other staff. Additionally, while moving from "the same" to "similar" is a step in the right direction (though still not acceptable), it creates a litigious environment where parties will be suing schools and authorizers based on varying claims as to what constitutes "similar."

POSITION: Strongly oppose. Delete.

CHARTER SCHOOL AUDITS

Page 46, Lines 8-27: **A charter school shall form an independent audit committee of its board members which shall review at the close of each fiscal year a complete certified audit of the operations of the charter school. The audit shall be conducted under generally accepted audit standards of the Governmental Accounting Standards Board and shall include the following...**

Charters are required to have audits performed. The law need not, and should not, micromanage and require the establishment of a committee of the board or the content of what generally accepted audit principals already require to be included in regular audits. If desired, the law could state simply: "A charter school board shall cause to be performed annually an independent audit by a qualified entity. Such audits shall be made part of the school's public record."

POSITION: Oppose and delete. Alternatively, the language could be modified as proposed.

CHARTER SCHOOL BUDGETS

Page 47, Lines 15-17: **A charter school shall annually provide the school district and the department with a copy of the annual budget for the operation of the school...**

This is a role for the authorizer. The passage should instead read: "A charter school shall annually provide its authorizer with a copy of the annual budget for the operation of the school, and the authorizer shall make such budget publicly available."

POSITION: Modify as noted.

Page 47, Lines 23-24: **The salaries of all administrators of the charter school.**

This is an unnecessary and micromanaging requirement for school budget content.

POSITION: Oppose and delete.

CHARTER AUTHORIZER ACCOUNTABILITY

Page 49, Lines 2-3: **... including the authorizer's operating costs and expenses detailed in annual audited financial statements...**

Authorizers are public bodies, and access to public information is specified in and available through existing law. This provision is unnecessary.

POSITION: Oppose and delete.

Page 49, Lines 16-21: **In reviewing or evaluating the performance of each local board of school directors of a district and the governing board of an institution of higher education, the department shall apply nationally recognized principles and standards of quality charter school authorizing as determined by the National Association of Charter School Authorizers.**

The state education department should be given autonomy to determine what standards of evaluation it wants to apply to authorizers. Further, a specific lobbying group and vendor – here, the National Association of Charter School Authorizers – should not be specified in this law.

POSITION: Oppose and delete.
TEACHER EVALUATION

Page 52, Lines 11-27: **Evaluation of Educators...**

The requirement of policies and procedures such as appears here flies in the face of the precise type of autonomy charter schools are envisioned to be given. Charter schools should be able to establish their own procedures for evaluation, compensating, and providing benefits to staff (among numerous other things). Charter schools are held accountable for outcomes – the academic performance of students. They should be given the promised freedom to get to that goal however they see fit.

POSITION: Oppose and delete.

CHARTER SCHOOL EVALUATIONS

Page 61, Line 61 – Page 63, Line 2: ***Provisions regarding the establishment by the department of a charter school performance evaluation matrix.***

Why should charter schools be treated differently than other public schools? Should not any “performance evaluation matrix” be equally applicable to all district schools? Further, it should be the role of the authorizer to develop its own desired process, procedures, and standards for evaluating the performance of charter schools. The Department may, if desired, be required to develop a “model” matrix that may be used by an authorizer if so desired, but a requirement as proposed here should not be codified into law.

POSITION: Oppose and delete.