

**JBC STAFF FISCAL ANALYSIS
HOUSE APPROPRIATIONS COMMITTEE**

CONCERNING THE AUTHORIZATION OF INSTITUTE CHARTER SCHOOLS BY THE STATE CHARTER SCHOOL INSTITUTE.

Prime Sponsors: Representative Carroll
Senator Groff

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Summary of Amendments Made to the Bill After the 03/12/04 Legislative Council Staff Revised Fiscal Note was Prepared

None.

JBC Staff Concurrence with Legislative Council Fiscal Note

Concurs **Does Not Concur** **Updated**

Amendments/Appropriation Status

The bill does not currently contain an appropriation clause. Staff has prepared an amendment (J.001) that would add a provision that appropriates moneys for two purposes. First, J.001 **appropriates \$150,000 cash funds exempt from the State Charter Institute Fund to the Department of Education, for allocation to the State Charter School Institute, for FY 2004-05.** This appropriation would provide the Institute with the authority to spend up to \$150,000 from the Fund if sufficient gifts, grants, and donations are received in FY 2004-05. As specified on page 17 of the printed bill, the Institute would not be obligated to commence operations necessary to receive applications until there is at least \$50,000 in the State Charter School Institute Fund, and the Institute would not be obligated to commence review of applications received until there is at least \$150,000 in the Fund.

Second, J.001 **appropriates \$5,000 cash funds exempt to the Department of Law for FY 2004-05 for the provision of legal services to the State Board of Education.** This amount, transferred from the Department of Education, would be from General Fund moneys withheld by the Department of Education from state equalization payments to school districts that are "accounting" districts of institute charter schools. This appropriation provides the Department of Law with the authority to receive and spend up to \$5,000 from the Department of Education.

Please note that J.001 does not provide an appropriation to the Department of Education associated with moneys withheld from accounting districts of institute charter schools for related administrative

costs. Section 22-30.5-513 (4) (a) in the bill, as amended by the Education Committee, authorizes the Department to retain up to 2.0 percent of the amount withheld from school districts' state equalization payments for institute charter schools "as reimbursement for the reasonable and necessary costs to the Department to implement the provisions of [Section 22-30.5-501 et seq., C.R.S.]". Thus, it does not appear that the Department requires an appropriation to spend amounts withheld. As indicated in the table on page 5 of the Legislative Council Staff Revised Fiscal Note, dated March 12, 2004, it is estimated that the Department would require \$168,528 and 2.0 FTE in FY 2004-05 to perform administrative functions related to institute charter schools. This amount is estimated to increase over time as the number of institute charter schools increases.

Sponsor Amendments

Staff is not aware of any sponsor amendment(s) to be offered.

Questions and Concerns

Time Frames

1. The bill, as amended, includes the following time frames:

The Governor and the Commissioner of Education are to make appointments to the State Charter School Institute within 30 days after the effective date of the bill (July 1, 2004), or by July 31, 2004.

The Institute is to promulgate rules that set forth the procedures for acceptance of institute charter school applications and the criteria for authorizing institute charter schools within 90 days after commencing operations.

An institute charter school applicant may only submit an application to the Institute if the school district in which the institute charter school is to be located has not retained exclusive authority to authorize charter schools. A local school board seeking to retain exclusive authority to authorize charter schools is required to present a written resolution to the State Board within 60 days of the effective date of the bill, or by August 29, 2004.

The Institute is to rule on an application in a public hearing, following reasonable public notice, within 60 days after receiving the application.

The Institute is to conclude negotiations with an institute charter school applicant and enter into a contract within 45 days after approving the application.

On or before November 10 of each year, the Institute is to certify to the State Board each institute charter school's pupil enrollment and on-line enrollment for that school year.

Is it likely that one or more institute charter schools could be approved by the State Charter School Institute and begin operations in FY 2004-05?

Charter School Facility Needs

2. Unlike existing ("district") charter schools, it appears that an *institute* charter school would not be eligible to receive local bond or mill levy funds to meet its facility needs. However, institute charter schools would be eligible to receive a proportionate share of the \$5.0 million state funds that is required to be appropriated annually for charter school capital construction costs [see Section 22-30.5-515, beginning on page 41 of the printed bill, as well as conforming amendments beginning on page 81 of the printed bill]. Based on current law the amount that each eligible charter school receives per pupil will decline as the overall number of pupils in eligible charter schools increases. How will institute charter schools' facility needs be financed over the long-term? Would the existence of institute charter schools increase the pressure on the General Assembly to provide state financial assistance for charter school facility needs?
3. One of the criteria the State Board of Education is to consider when determining whether a local board of education may retain exclusive authority to authorize charter schools is the district's provision of assistance to charter schools to meet their facilities needs by including those needs in local bond issues or otherwise providing available land and facilities that are comparable to those provided to other public school students in the same grade levels within the school district [see page 10 of the printed bill, lines 7 through 11]. If this provision has the effect of encouraging school districts to provide for the facility needs of charter schools, it may reduce the pressure on the General Assembly to provide state financial assistance for charter school facility needs.

Per Pupil Funding for Existing Charter Schools

4. Section 22-30.5-513 of the bill [which begins on page 30 of the printed bill] specifies that the amount of per pupil revenue that the Department is to withhold from accounting districts of institute charter schools shall include a proportionate amount of the additional per pupil revenues that the district receives based on the at-risk factor in the School Finance Act formula. However, this "district at-risk per pupil funding" amount is *in addition to* the district's per pupil funding (which includes at-risk funding). Is it the General Assembly's intent to provide institute charter schools with per pupil funding that includes a disproportionate share of the accounting district's funding for at-risk students?
5. The provision described in item #4 (above) also requires school districts that retain exclusive authority to authorize charter schools and that have pupil enrollments consisting of greater than

40 percent at-risk pupils ("at-risk" as currently defined in the School Finance Act, not the broader definition of "at-risk" included in Section 22-30.5-502 of the bill) to pay at least 95 percent of the sum of: [district per pupil funding plus district at-risk per pupil funding] to district charter schools that are authorized on or after the effective date of the bill (July 1, 2004). This provision would thus affect up to 44 districts that have at-risk pupil counts ranging from 40.03 percent of enrollment (Weld - Ault Highland) to 76.8 percent (Saguache - Center). Is it the General Assembly's intent to require these 44 districts to provide new charter schools with per pupil funding that includes a disproportionate share of the district's funding for at-risk students?

Categorical Program Funding

6. Unlike existing ("district") charter schools, *institute* charter schools would be authorized to receive state funds appropriated for special education for children with disabilities and the English Language Proficiency Program. However, when a child with a disability enrolls in and attends an institute charter school, the district of residence is not responsible for paying to the institute charter school the tuition charge for the "excess" costs incurred in educating the child.

Other Issues

7. The bill authorizes the State Board of Education to waive any state statutory requirements or State Board rules, with three exceptions: Colorado student assessment program; school accountability reports; and the "Children's Internet Protection Act" [see printed bill, page 19, line 22, through page 20, line 9]. This language is similar to existing language related to "district" charter schools. Is it the intent of the General Assembly to authorize the State Board to waive provisions of the "Public School Finance Act of 1994"? If so, it is possible that such waivers could impact the amount of state expenditures required to fund the Act.
8. Current law allows a local board of education to "reasonably limit the number of charter schools in the school district" [Section 22-30.5-109, C.R.S.]. Current law also appears to allow a local board of education to impose restrictions on the number of pupils that may enroll in a charter school, except for on-line pupils [see Section 22-30.5-109 (7), C.R.S.]. As amended by the Education Committee, the bill specifies that two of the criteria that the State Board of Education is to consider when determining whether a local board of education may retain exclusive authority to authorize charter schools is whether the school district had in place, during the previous four years [see Section 22-30.5-504 (5) (a) (III) and (V) of the bill]:
 - a moratorium regarding charter schools or a district-wide charter school enrollment limit;
or

- a policy or practice of imposing individual charter school enrollment limits, "except as provided in *article 36* of this title" [article 36 concerns Public Schools of Choice].

Is it the intent of the General Assembly to eliminate a local board of education's exclusive authority to authorize charter schools if it has limited the number of charter schools or restricted the number of pupils that may enroll in a charter school as authorized by *article 30.5* of title 22?