

**JBC STAFF FISCAL ANALYSIS  
SENATE APPROPRIATIONS COMMITTEE**

CONCERNING THE AUTHORIZATION OF INSTITUTE CHARTER SCHOOLS BY THE STATE CHARTER SCHOOL INSTITUTE, AND MAKING AN APPROPRIATION THEREFOR.

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 (Amended by the House Appropriations Committee 04/08/04 and by the House on Second Reading 04/15/04)**

*House Appropriations Committee*

1. Adds an appropriation clause to the bill (described in detail in the "Amendments / Appropriation Status" section below).

*House Second Reading*

2. Adds language requiring the State Board of Education to grant to a local board of education exclusive authority to authorize charter schools within its geographic boundaries if: (a) the district's total pupil enrollment is less than 3,000; or, (b) the percentage of pupils who are enrolled in district charter schools who are eligible for free or reduced-cost lunch is greater than the percentage that is one percentage point below the overall percentage for the district [see page 12 of the reengrossed bill, line 2 through 15]. *This provision limits the number of school districts in which a state charter school may be authorized. Based on 2003 pupil enrollment data, criteria (a) limits the bill to 38 school districts (with the remaining 144 automatically retaining exclusive authority to authorize charter schools). Data has not yet been compiled to determine how many of the 38 larger districts may meet criteria (b).*
3. Adds language requiring the State Board of Education to grant a local board of education exclusive authority to authorize charter schools within its geographic boundaries if the total number of students enrolled in charter schools authorized by the school district as a percent of total district enrollment exceeds by more than 3.0 percent the statewide percent of students enrolled in charter schools. Also requires that a school district that retains exclusive authority to authorize charter schools pursuant to this provision satisfy the requirements specified in Section 22-30.5-504 (5) (a) of the bill [page 9 of the reengrossed bill, line 25, through page 12, line 1]. *Given the latter requirement that these districts must satisfy the same requirements that a district must demonstrate to otherwise retain exclusive authority to authorize charter schools, it is unclear whether or how many districts may be impacted by this provision.*

4. Adds a provision authorizing a local board of education to permit the establishment of one or more institute charter schools within its geographic boundaries by adopting a favorable resolution and submitting it to the State Board of Education.
5. Strikes existing statutory language that states that a charter school may agree with the school district to pay any actual costs incurred by the school district in providing unique support services used only by the charter school. Instead, inserts language requiring the charter school and the school district to negotiate prior to the beginning of each fiscal year for the payment to the school district of any *direct* costs incurred by the school district (and defines "direct costs"). Further, bars the district from withholding from the charter school any moneys as reimbursement for direct costs if the charter school and the school district do not reach agreement regarding the payment of direct costs. Directs the school district to provide an itemized accounting to each charter school for the direct costs incurred [see page 73 of the reengrossed bill, line 20, through page 74, line 12].

The Legislative Council Staff Revised Fiscal Note (dated March 12, 2004), is based on assumptions concerning how many institute charter school applications would be approved for initial operation during FY 2004-05 and subsequent fiscal years, and how many students would attend such schools. *It is unclear what impact the above amendments may have on the number of institute charter schools that would be approved or the number of students that would attend such schools (which drives the fiscal impact of the bill detailed on pages 4 and 5 of the Legislative Council Staff Revised Fiscal Note). Thus, the estimated fiscal impact identified in the Legislative Council Staff Revised Fiscal Note still appears to be reasonable.*

**JBC Staff Concurrence with Legislative Council Fiscal Note**

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

**Amendments/Appropriation Status**

The bill currently contains an appropriation clause that is consistent with the Legislative Council Staff Revised Fiscal Note dated March 12, 2004. The provision appropriates moneys for two purposes:

- \$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 19 of the reengrossed bill [lines 15 through 23], 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.

- \$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 the bill 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, 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 five 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 [page 15 of the reengrossed bill, lines 13 through 15].

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 [page 17, lines 11 through 16].

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 for FY 2004-05 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 [page 9, lines 1 through 4].

The Institute is to rule on an application in a public hearing, following reasonable public notice, within 60 days after receiving the application [page 27, line 25, through page 28, line 2].

The Institute is to conclude negotiations with an institute charter school applicant and enter into a contract within 45 days after approving the application [page 28, lines 2 through 6]. 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.

*Given the above time frames, 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 43 of the reengrossed bill, as well as conforming amendments beginning on page 94]. 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? [See also item #3, below.]*
  
3. Please note that 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 11 of the reengrossed bill, lines 1 through 5]. 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. Please note that Section 22-30.5-513 of the bill [which begins on page 32 of the reengrossed 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 (rather than receiving the overall district per pupil revenues regardless of the number of at-risk pupils served). This provision 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<sup>1</sup> to pay a *proportionate* amount of at-risk funding to district charter schools that are authorized on or after July 1, 2004 [see page 39, lines 10 through 17, and related definitions on pages 32 and 33]. 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).

This provision would ensure that for institute charter schools and for new charter schools in a limited number of districts, at-risk funding allocated to charter schools is proportional to the number of at-risk students served by the charter school. *If this bill is intended to encourage charter schools to serve at-risk students, why wouldn't this provision apply to all school districts and to all charter schools (perhaps with a phase-in period)?*

#### Categorical Program Funding

5. Please note that 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.

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<sup>1</sup> "At-risk" as currently defined in the School Finance Act, rather than the broader definition of "at-risk" included in Section 22-30.5-502 of the bill.

Other Issues

6. 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 reengrossed bill, page 21, line 20, through page 21, line 7]. 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.
  
7. 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.]. The bill, as amended, 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) (I) (C) and (II) (E) 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?*