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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

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<b>2007 Senate Bill 396</b>	<b>Assembly Substitute Amendment 1</b>
<i>Memo published: March 12, 2008</i>	<i>Contact: Joyce L. Kiel, Senior Staff Attorney (266-3137)</i>

Assembly Substitute Amendment 1 to 2007 Senate Bill 396 includes the provisions described below. All of the provisions are the *same as the version of Senate Bill 396 passed by the Senate* on February 19, 2008, *except* for the provisions relating to: (1) an enrollment limit; (2) the elements of the audit by the Legislative Audit Bureau (LAB); and (3) inclusion in Assembly Substitute Amendment 1 of a 10-day parent excused provision for a virtual charter school pupil's failure to participate.<sup>1</sup>

**Definition of Virtual Charter School**

Current law does not define a virtual charter school. The substitute amendment defines a "virtual charter school" as a "charter school under contract with a school board under s. 118.40 [the charter school statute] in which all or a portion of the instruction is provided through means of the Internet, and the pupils enrolled in and instructional staff employed by the school are geographically remote from each other."

**Charter School Statute**

The substitute amendment amends s. 118.40 (3) (c), Stats., to specify that the provisions in current law restricting where a school board, consortium of school boards, or consortium of one or more school boards and a cooperative educational service agency (CESA) may establish a charter school do *not* apply to the establishment of a virtual charter school. This provision responds to the Court of Appeals decision in *Johnson v. Burmaster*, 2008 WI App 4, which held that, because the large majority of Wisconsin Virtual Academy (WIVA) pupils receive their education at locations outside the Northern Ozaukee School District from teachers located outside that school district, WIVA is, in part, located

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<sup>1</sup> One other provision is not worded identically (the provision about the appropriately licensed teacher), but the provision included in Assembly Substitute Amendment 1 has the same substantive effect as the provision in the Senate version of Senate Bill 396.

outside the Northern Ozaukee School District--in violation of s. 118.40 (3) (c), Stats., which prohibits a school board from entering into a contract to establish a charter school located outside the school district.

### **Open Enrollment Statute**

The substitute amendment amends s. 118.51 (2), Stats., to clarify that a pupil may attend a charter school under the open enrollment program. (This amendment applies to all charter schools, not just virtual charter schools.)

In addition, the substitute amendment specifies that for purposes of the open enrollment program, a virtual charter school is located in the school district specified in s. 118.40 (8) (a). Section 118.40 (8) (a) is created to specify that a virtual charter school is considered to be located in the following school district: (1) if a school board contracts for the establishment of a virtual charter school--in the school district governed by that school board; and (2) if a consortium of school boards or consortium of one or more school boards and a CESA establish a virtual charter school by agreement--in the school district specified in the agreement. This provision responds to the court decision in *Johnson v. Burmaster*, in which the court held that WIVA was violating the open enrollment statute because WIVA is, in part, outside the school district which established it--in violation of the open enrollment statute which permits a pupil to attend school only in the nonresident school district in which the pupil has open enrolled.

This provision also applies to where a virtual charter school is considered to be located for purposes of s. 118.40 (7) (a), (am), and (ar), Stats. (statutes which generally provide that the school board of the school district in which a charter school is located determines whether or not the charter school is or is not an instrumentality of the school district).

### **Teacher Licensing Statute**

The substitute amendment specifies that if a pupil attends a virtual charter school, any person providing educational services to the pupil in the pupil's home, other than instructional staff of the virtual charter school, is not required to hold a license or permit to teach issued by the Department of Public Instruction (DPI). This provision responds to the court decision in *Johnson v. Burmaster*, in which the court held that the role required of WIVA parents (working one-on-one with a pupil, presenting the lesson, answering questions, and assessing progress) constituted teaching in a public school without a license--in violation of the teacher licensing statute.

### **Enrollment Limit**

The substitute amendment limits the number of full-time open enrollment pupils at virtual charter schools. In contrast to the Senate version of Senate Bill 396, the limit applies on a statewide basis, not to each virtual charter school separately. The substitute amendment establishes a system to implement the limit, including requiring that certain information be provided on the open enrollment application form and requiring DPI to determine if the limit will be exceeded and take the actions described below.

### ***Applicable School Years***

Like the Senate version of Senate Bill 396, the enrollment limit in the substitute amendment applies beginning in school year 2009-10. However, unlike the Senate version of Senate Bill 396, the enrollment limit does not sunset at the end of school year 2014-15; rather, the enrollment limit continues to apply in subsequent school years.

### ***Enrollment Limit***

In general, the limit under the substitute amendment for pupils attending virtual charter schools under the full-time open enrollment program is ***5,250 pupils statewide***. However, as described below, notwithstanding this limit: (1) pupils who are already attending a virtual charter school under the full-time open enrollment program in a school year may attend virtual charter schools the next school year (hereinafter, “continuing open enrolled pupils”); and (2) new open enrollment applicants who are siblings of continuing open enrolled pupils also may attend virtual charter schools the next school year.

### ***Process for Implementing the Enrollment Limit***

Each virtual charter school is required to report to DPI annually by the first Friday following the first Monday in April on: (1) the number of expected continuing open enrolled pupils; (2) the number of pupils who have initially applied and been accepted to attend under the open enrollment program (hereinafter, “new open enrollment applicants”); and (3) the number of these new open enrollment applicants who are a sibling of a continuing open enrolled pupil. DPI must count a pupil who has applied to more than one virtual charter school only once.<sup>2</sup> One of the following scenarios will then occur:

*Scenario 1.* If DPI determines that the number of ***expected continuing open enrolled pupils and of new open enrollment applicants is no more than 5,250***, DPI then notifies the virtual charter schools that all continuing open enrolled pupils and all new open enrollment applicants may attend virtual charter schools the next school year.

*Scenario 2.* If DPI determines that the number of ***expected continuing open enrolled pupils and of new open enrollment applicants equals or exceeds 5,250***, one of the following applies:

- *Scenario 2A.* If the number of ***expected continuing open enrolled pupils by itself is equal or greater than 5,250***, DPI notifies the virtual charter schools that the continuing open enrolled pupils and the new open enrollment applicants who are a sibling of a continuing open enrolled pupil may attend virtual charter schools the next school year, notwithstanding the limit, but that no other new open enrollment applicants may do so.
- *Scenario 2B.* If the number of ***expected continuing open enrolled pupils plus the number of new open enrollment applicants who are a sibling of a continuing open enrolled pupil is equal to or greater than 5,250***, DPI notifies the virtual charter schools that the continuing open enrolled pupils and the new open enrollment applicants who are a sibling of a continuing open

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<sup>2</sup> Under the full-time open enrollment program, a pupil may apply to up to three nonresident school districts.

enrolled pupil may attend virtual charter schools the next school year, notwithstanding the limit, but that no other new open enrollment applicants may do so, except for pupils who are later selected from the waiting list described below.

- *Scenario 2C.* If the number of ***expected continuing open enrolled pupils plus the number of new open enrollment applicants who are a sibling of a continuing open enrolled pupil is less than 5,250***, DPI notifies the virtual charter schools that the continuing open enrolled pupils and the new open enrollment applicants who are a sibling of a continuing open enrolled pupil may attend virtual charter schools the next school year. The remaining new open enrollment applicants are then selected on a random basis by DPI until the limit is reached. DPI notifies the virtual charter schools of the random selections.

DPI also is required to maintain a waiting list for those new applicants not selected, and DPI then uses names randomly selected from the waiting list to fill any newly available spaces. If a pupil is selected from the waiting list, the nonresident school district must report the pupil's name to the pupil's resident school district within 10 days of receiving notice from DPI of the selection. Also, if a pupil is selected from the waiting list and is accepted by the nonresident school district, the pupil's parent must notify the nonresident school district within 10 days of receiving notice of the acceptance about the pupil's intent to attend school in that school district the following school year.

#### **Audit by the Legislative Audit Bureau**

The substitute amendment requires the LAB to perform a financial and performance evaluation of virtual charter schools and submit the audit report to the Legislature by December 30, 2009. The required elements of the audit are as follows:

- Compare the amount paid by the state for pupils attending a virtual charter school through the open enrollment program to the actual educational costs of pupils attending virtual charter schools.
- Determine the actual and potential effects of state payments for pupils attending virtual charter schools through the open enrollment program on the budgets of the school districts in which the pupils reside and on other school districts.
- Compare the academic achievement of pupils who attend virtual charter schools to the academic achievement of pupils of similar socioeconomic backgrounds who attend other public schools.
- Determine the percentage of pupils attending virtual charter schools to which each of the following applied in the previous school year: (1) pupils who did not attend school; (2) pupils who attended a public school other than a virtual charter school; (3) pupils who attended a private school; and (4) pupils who attended a home-based private educational program.
- Determine the effect of the enrollment limit on the ability of pupils to attend virtual charter schools.

- Determine the amount of pupil-teacher contact and one-on-one pupil-teacher interaction, categorized by grade level, occurring in virtual charter schools, as compared to other public schools.
- Compare the cost of educating pupils in virtual charter schools to the cost of educating pupils in other public schools.
- Determine the level of satisfaction that pupils attending virtual charter schools and their parents or guardians enjoy with their schools.
- Determine the extent to which virtual charter schools have created innovative educational programs.
- Determine the extent to which special education and related services are provided to children with disabilities who attend virtual charter schools.

The last four elements were not included in the Senate version of Senate Bill 396, and the sixth item was worded differently in the Senate version of Senate Bill 396.

### **Virtual Charter School--Licensure and Staff Duties**

#### ***Current Law***

Current law requires that all instructional staff at a charter school hold a license or permit to teach issued by DPI. [s. 118.19 (1), Stats. (See also, s. 121.02 (1) (a) 2., Stats., requiring that a school board ensure that all instructional staff<sup>3</sup> of charter schools located in the school district hold a license or permit to teach issued by DPI.)]

Current administrative rules generally provide for licenses issued at particular developmental levels (for example, early childhood) and in particular subject categories<sup>4</sup> (for example, language arts). [See generally, ch. PI 34, Wis. Adm. Code.]

Current rules also provide for a “charter school instructional staff license” under s. PI 34.34 (1) and a “charter school instructional staff permit” under s. PI 34.34 (2). These charter school licenses and permits do not require completion of an approved program or institutional endorsement from a college or university for issuance. [s. PI 34.34 (intro.), Wis. Adm. Code.] Under current administrative rules:

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<sup>3</sup> The State Superintendent is required to define “instructional staff” for this purpose by administrative rule [s. 121.02 (1) (a) 2., Stats.] and has done so in s. PI 8.001 (6m), Wis. Adm. Code, which provides that:

Instructional staff for the purposes of charter schools, means all professional employees who have as part of their responsibility direct contact with students or with the instructional program of the school. Instructional staff includes, but is not limited to, teachers, librarians, pupil services staff, and administrative staff who supervise licensed staff.

<sup>4</sup> Categories also have subcategories.

- ***A charter school instructional staff license*** may be issued to an individual who holds a valid license issued by DPI upon the request of a school district administrator or a designated official of the employing school district or a (2r) independent charter school. A charter school instructional staff license allows the license holder to perform any instructional duty in a charter school, that is, the license holder is not restricted to teaching at the developmental level and in the subject category in which the underlying license may have been issued.
- ***A charter school instructional staff permit*** may be issued under certain circumstances to a person who does not hold a current license or permit to teach at a specific developmental level in a specific category.

Under current administrative rules, a school board is required to ensure that all instructional staff of charter schools hold either: (1) a DPI license or permit to teach at the developmental level and in the subject of their assignments; or (2) a charter school instructional staff license or a charter school instructional staff permit. [s. PI 8.02 (2) (a) 2. a., Wis. Adm. Code.] As noted above, the charter school license and permit are not at specific developmental levels or in specific subject categories.

### ***Assembly Substitute Amendment 1***

The substitute amendment specifies that, in a virtual charter school, an instructional staff member is responsible for all of the following for each pupil the instructional staff member teaches: (1) improving learning by planned instruction; (2) diagnosing learning needs; (3) prescribing content delivery through class activities; (4) assessing learning; (5) reporting outcomes to administrators and parents and guardians; and (6) evaluating the effects of instruction.

Effective July 1, 2009, the substitute amendment requires the governing body of a virtual charter school to assign an appropriately licensed teacher for each online course offered by the virtual charter school. It also specifies that, beginning July 1, 2009: (1) no person holding both a license to teach exclusively in a charter school and a license to teach in other public schools may teach, in a virtual charter school, a subject or at a level that is not authorized by the latter license; and (2) no person holding only a permit to teach exclusively in a charter school may teach in a virtual charter school.

### **Required Days and Hours and Required Teacher Response Time in Virtual Charter Schools**

Under ***current law***, a school board is required to annually schedule certain minimum amounts of direct pupil instruction as follows: (1) for kindergarten--at least 437 hours (for four-year-old kindergarten, up to 87.5 of those hours may be for outreach activities); (2) for grades one to six--at least 1,050 hours; and (3) for grades seven to twelve--at least 1,137 hours. In addition, the school board is required to schedule at least 180 school days annually. [s. 121.02 (1) (f), Stats.] These provisions do not apply to charter schools. [s. 118.40 (7) (b), Stats.]

The ***substitute amendment*** requires a virtual charter school to do all of the following effective July 1, 2008:

- Ensure that its teachers are available to provide direct pupil instruction for at least the minimum numbers of hours specified by grade level under current law as noted above. No more than 10 hours in any 24-hour period may count toward this requirement.

- Provide educational services to its pupils for at least 150 days each school year.
- Ensure that its teachers respond to inquiries from pupils or from the parents or guardians of pupils by the end of the first school day following the day on which the inquiry is received.

### **Compulsory School Attendance and Virtual Charter School Pupil's Failure to Participate**

#### ***Current Law***

Current law provides that, with limited exceptions, unless the child is excused, a person having under his or her control a child who is between the ages of six and 18 years must “cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the child becomes 18 years of age.” [s. 118.15 (1) (a), Stats.] (For example, one of the exceptions under current law is the statute which provides that instruction in a “home-based private educational program” that meets certain criteria may be substituted for attendance at a public or private school. [s. 118.15 (4), Stats.]

#### ***Assembly Substitute Amendment 1***

The substitute amendment specifies that this requirement does not apply to a person having under his or her control a child who is enrolled in a virtual charter school. It also includes the following provisions for a virtual charter school pupil relating to failure to participate:

- Provides that if a virtual charter school pupil fails to respond appropriately to a school assignment or directive from instructional staff within five school days, the governing body of the virtual charter school must notify the pupil's parent or guardian.
- Provides that the third time in the same semester that a virtual charter school pupil fails to respond appropriately to a school assignment or directive from instructional staff within five school days, the governing body of the virtual charter school must notify the pupil's parent or guardian, the school board that contracted for the establishment of the virtual charter school, the school board of the pupil's resident school district, and DPI.
  - If this occurs and the pupil is attending a virtual charter school contracted for by the ***pupil's resident school district***, the school board may assign the pupil to another school or program in the school district.
  - If this occurs and the pupil is ***not a resident of the school district*** that contracted for the establishment of the virtual charter school (for example, if the pupil is attending the virtual charter school under the open enrollment program), the school board that contracted for the establishment of the virtual charter school may transfer the pupil to the pupil's resident school district. The school board must notify the pupil's parent or guardian and DPI. The pupil's parent or guardian may appeal the transfer to DPI within 30 days after receipt of the notice of transfer. DPI must affirm the school board's decision unless DPI finds that the decision was arbitrary or unreasonable.

The substitute amendment additionally provides that if the parent or guardian of a pupil attending a virtual charter school notifies the virtual charter school in writing before a school assignment or directive is given that the pupil will not be available to respond to the assignment or directive during a specified period, the school days during that period do not count for purposes of the provision noted above regarding potential consequences for failing to respond appropriately within five school days for three times in a school semester. However, the virtual charter school must require the pupil to complete any assignment missed during the period. Also, this provision applies to no more than 10 school days in a school year.<sup>5</sup> (This 10-day parent excused provision was not included in the Senate version of Senate Bill 396.)

### **Prohibition on (2r) Virtual Charter Schools**

Current law authorizes the entities specified in s. 118.40 (2r) (b) 1., Stats. (that is, the University of Wisconsin (UW)-Milwaukee, City of Milwaukee, Milwaukee Area Technical College, and the UW-Parkside<sup>6</sup>) to establish or contract for the establishment of charter schools (sometimes referred to as independent or (2r) charter schools).

The substitute amendment prohibits these entities from establishing a virtual charter school.

### **Tuition Charge to Out-of-State Virtual Charter School Pupils**

Current law prohibits a charter school from charging tuition.

Effective July 1, 2008, the substitute amendment makes one exception to that prohibition and requires a school board that has contracted for the establishment of a virtual charter school to charge tuition for a pupil at the school who is not a resident of Wisconsin. The minimum amount that must be charged is the amount used for the per pupil state aid adjustment under the open enrollment program.

### **Parent Advisory Council for Virtual Charter School**

The substitute amendment requires the governing body of a virtual charter school to establish a parent advisory council for the school. The governing body is required to determine the selection process for members of the council. The governing body also must ensure that the council meets on a regular basis.

### **Contact Information for Virtual Charter Schools**

The substitute amendment requires the governing body of a virtual charter school, at the beginning of each school term, to inform the parent or guardian of each pupil attending the school, in

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<sup>5</sup> This provision is comparable to current s. 118.15 (3) (c), Stats., which provides that: (a) the compulsory attendance law does not apply to a child excused in writing by his or her parent or guardian before an absence; (b) the school board must require the child to complete any course work missed during the absence; and (c) such excused absences cannot exceed 10 days in a school year.

<sup>6</sup> The UW-Parkside is limited to one charter school with a maximum of 480 pupils.



writing, of the name, and how to contact, all of the following: (1) members of the school board that contracted for the establishment of the school; (2) the administrators of that school district; (3) the members of the virtual charter school's governing body (if different than the school board members); (4) members of the school's parent advisory council; and (5) staff of the virtual charter school.

### **Statewide Web Academy**

The substitute amendment requires the State Superintendent of Public Instruction to make online courses available for a reasonable fee, through a statewide web academy, to: school districts, CESAs, charter schools, and private schools located in the state.

### **Professional Development Requirement to Teach Online Courses**

Beginning July 1, 2010, the substitute amendment prohibits any person from teaching an online course in a public school, including a charter school, unless the person has completed at least 30 hours of professional development designed to prepare a teacher for online teaching.

### **Availability of Contracts Relating to Online Courses**

The substitute amendment provides that any contract entered into by a school board that relates to providing online courses is open to public inspection and copying.

### **LEGISLATIVE HISTORY**

The Senate adopted Senate Amendment 1 (introduced by Senators Lehman and Decker) to Senate Substitute Amendment 1 (introduced by the Senate Committee on Education) to Senate Bill 396 on a vote of Ayes, 17; Noes, 16. Senate Substitute Amendment 1, as amended, was adopted by the Senate on a vote of Ayes, 18; Noes, 15. The bill, as amended, was passed by the Senate on a vote of Ayes, 18; Noes, 15.

Assembly Substitute Amendment 1 (introduced by Representative Davis) was adopted by the Assembly on a voice vote. The Assembly concurred in the bill, as amended, on a vote of Ayes, 96; Noes, 1.

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