



**Education Law Center Analysis:**  
Charter School Law Reform Legislation  
SB 1085, PN 1488

**October 29, 2013**

For more than 35 years, ELC has advocated for access to a quality public education for Pennsylvania's most vulnerable and at-risk children.

Since Act 22 created charter schools in the Commonwealth in 1997, we have represented hundreds of students and parents of students who attend or wish to attend charter schools throughout the state. Out of this experience representing families, ELC has advocated for a series of charter school reforms, which are outlined in our Principles for Charter School Reform ([http://www.elc-pa.org/wp-content/uploads/2013/12/ELC\\_PrinciplesforCharterSchoolReform\\_9\\_20\\_12.pdf](http://www.elc-pa.org/wp-content/uploads/2013/12/ELC_PrinciplesforCharterSchoolReform_9_20_12.pdf)).

These principles reflect our belief that all public schools — both districty run and charter — should be adequately funded.

The General Assembly has a constitutional duty to “provide for the maintenance and support of a thorough and efficient system of public education.” Pa. Const. Art. III, § 14. As school districts are the only system charged with serving every single student, they should not be defunded by the expansion of charter schools which, because of their ability to limit their capacity, have no obligation to serve all students and, thus, are not “thorough.” In addition, unregulated expansion of charter schools will paradoxically decrease “school choice” if expansion defunds a district's neighborhood schools.

Our principles also reflect our concern that, while some charter schools make every effort to serve all students, **charter schools as a whole do not serve, to the same extent as their authorizing school districts, the most vulnerable student populations** — students in deep poverty, English language learners, students with severe disabilities, students experiencing homelessness, and students in foster care.<sup>1</sup> The result in heavily chartered communities is that these students are more concentrated in the local school district, which must simultaneously contend with escalating charter school payments, often leaving it with fewer resources to adequately serve these vulnerable students. When charter schools are underserving vulnerable and costly students, it is nearly impossible to accurately assess whether they are performing as well as their authorizing districts.

We agree with others that charter school reform is needed in the Commonwealth and recognize the significant effort that has gone into both HB 618 and SB 1085. In particular, the charter school law should be amended to ensure greater accountability for providing quality educational choices for all kinds of students. We must ensure that charter expansion does not result in further underfunding of traditional public schools and, ultimately, in further reducing school choice — the opposite of the charter school law’s legislative intent. For this reason, we support some provisions of SB 1085, as explained below. However, through the lens of our charter reform principles and through the lens of the state constitutional mandate to maintain and support a thorough and efficient system of public education, ELC strongly opposes many other provisions of the bill. As a whole, we believe the harmful amendments significantly outweigh the minor improvements, and, therefore, we oppose passage of the bill as it is currently drafted.

In short, SB 1085 would permit **any charter school, good or bad, to grow without permission from any authority**. Similarly, SB 1085 would **permit charter schools to unilaterally amend the terms of their charter**, at any time, for any reason. The bill would **double the length of a charter from five to ten years**, which would slice accountability in half. The bill would **permit**

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<sup>1</sup> See [http://www.elc-pa.org/wp-content/uploads/2014/01/PACHarterSchoolDemographics\\_10\\_29\\_13.xlsx](http://www.elc-pa.org/wp-content/uploads/2014/01/PACHarterSchoolDemographics_10_29_13.xlsx)

**institutions of higher education to authorize new charters**, even though they have no financial stake or accountability to the public for the school’s performance. SB 1085 would **permit “multiple charter school organizations” to avoid accountability to the communities they serve** by electing to be authorized by the Pennsylvania Department of Education. SB 1085 would create **a funding commission that is stacked in favor of charter schools** and not permitted to consider the fiscal impact of charter expansion on their local communities. SB 1085 would also single out the city of Philadelphia by **permitting charter schools in the city to ignore the authority of the School District of Philadelphia’s governing body**.

In particular, we strongly oppose the following provisions:

- Section 1723-A(d)(1) removes the provision in the current law that allows charters and local districts to negotiate on enrollment caps. Removing that language sets up a potentially harmful fiscal scenario for school districts that have more than one or two charters and eliminates an important accountability measure in the charter-district relationship. Districts such as Pittsburgh, York, and Philadelphia — which are already in dire financial straits — would be further jeopardized by unregulated charter expansion. Unless a charter school is serving equivalent proportions of vulnerable student populations and clearly out-performing their local district, a check on charter school growth is an important part of charter school accountability. Rather than removing even the ability to agree on enrollment caps, the bill should amend the current law to ensure that charter schools can only expand enrollment at the discretion of their authorizing districts’ democratically elected governing boards.
- Section 1720-A(a) would double the length of a renewed charter from five years to ten years and would strike a major blow to charter school accountability. The end of the term of a charter is the only time an authorizer is required to “conduct a comprehensive review” of a charter school. See Section 17-1728-A. Therefore, the longer the term of a charter, the longer it takes for true accountability for charter school performance. In effect, this increase in the term of a charter would slice charter accountability in half. In

addition, removing the authority of the School District of Philadelphia to utilize one-year renewals limits its ability to hold charter schools accountable.

- We oppose both the make-up of the Charter School Funding Advisory Commission and its mandate as drafted in Section 1704-A. In addition to the Secretary of Education, the Chair of the State Board of Education and a representative from a university, the Commission would include *four* members representing charter schools and only three members representing school districts. In addition, the Commission would be narrowly charged with meeting with charter and cyber school operators and reviewing charter school finances, but would not be able to consider the significant impact on school district finances by charter expansion. The finances of charters and districts are inextricably linked, and it would be a missed opportunity if the Commission were not able to examine the fiscal impact on district-run schools. There is a significant need for a balanced commission charged with conducting a full investigation into charter funding that considers the entire impact on our constitutional system. The commission in this bill is only designed to consider charter school needs.
- For the same reason, we also oppose the complete overhaul to charter funding in Section 1725-A, including shifting the evidentiary burden with regard to all funding disputes onto school districts. Changes to charter funding should be studied by qualified individuals dedicated to creating quality school choices in the charter sector while maintaining and supporting the existing choices in school districts. Ultimately, charter funding should consider the impact on both charter schools and their authorizing school districts.
- Section 1725-A(a)(2)(ii)(A) would create a system of direct payment to charter schools from the state, again permitting the state to supersede local authority for charter school payments. This jeopardizes local accountability, as does language in 1719-A(a), which gives the state authority over designing a standardized charter school application. While we support many of the requirements of 1719-A, local communities should have discretion to alter the requirements on applicants.

- We oppose the removal of an authorizing school district’s authority to review individual student-identifying information or teacher certification and personnel records at charter schools in Section 1728-A(a)(2-3). If charters are to be held accountable, their authorizers must have access to student and teacher records. None of this access violates FERPA.
- The addition of a governing board of an institution of higher education as a charter authorizer, in Section 1717-A, is a major concern. We oppose the removal of local control by school district governing bodies, which are generally elected by their communities and are also best positioned to understand the impact of charter school expansion. Approval and renewal of charter school applications is one of the last remaining levers of local control. In addition, we note that the definition of an institution of higher education is too broad and would include institutions with no expertise in the management, operation, or oversight of pre-K-12 public education.
- We oppose the elimination in Section 1717-A(e)(2)(iv) of the requirement that charter schools demonstrate how they might serve as a model for other public schools. One intent of the charter school law is to provide innovation. If charters schools are not providing something new, or something better, they should not be authorized. In addition, Section 1717-A should be amended to require a financial impact study on the authorizing school district as a condition of granting a charter. The charter school law was intended to provide parents and students with *additional* quality choices. If the addition of charter schools reaches the point at which local school districts, due to charter payments, are financially unable to maintain their own quality educational options, then charter expansion should not be permitted.
- We oppose the expansion of the Charter Advisory Board with two presumably pro-charter members in Section 1721-A. The bill also requires that the parent member on the CAB be a parent of a child enrolled in a charter school. This purely “pro-charter” shifting of the CAB membership would further damage charter accountability.

- We do not oppose the allowance of Multiple Charter School Organizations under Section 1729.2-A, as it makes sense to permit charters to realize the efficiencies of consolidation. However, MCSOs should not be permitted to transfer their charters to authorization by PDE. This would strike another major blow to local control. In addition, as demonstrated by poor cyber charter outcomes, PDE has not proven to be an effective authorizer. If MCSOs are approved, the law should also prevent their formation across more than one school district.
- We oppose Section 1720-A(c), because charter schools should not be permitted to amend their charters against the will of their authorizing school district. Under the law, a charter is “legally binding” on both the charter and the authorizing district. See 24 P.S. § 17-1720-A. This cannot be rationally reconciled with the ability of one party to unilaterally change the terms at any time for any reason.
- We oppose Section 17-1717-A(j-k), which would permit Philadelphia charter school applicants to ignore the authority of the School Reform Commission. In recognition of extraordinary financial constraints, Act 46 granted powers to the SRC to suspend various provisions of the school code, including provisions of the charter school law. The SRC, at great financial cost to District schools, has expanded charter schools in Philadelphia faster than any other community in the Commonwealth. However, recognizing that many charter schools are performing poorly and recognizing the devastating consequences from the recent underfunding of traditional public schools (in large part attributable to charter school expansion), the SRC has recently narrowed the expansion of new charter schools in Philadelphia. Instead, the SRC has continued to convert district schools to charter schools. Recognizing problems with quality and the serious financial impact on district students, the SRC has limited this authorization of new charters to proven applicants who are equitably serving all kinds of students. This has been a smart and responsible practice by the SRC. The provisions of the bill that would

diminish SRC power would open the flood gates to dozens of unproven charter operators, compromise quality, and exacerbate the district's budgetary crisis.

- We were disappointed that the bill does not strengthen accountability by expanding the authority to revoke or non-renew a charter that is not responsibly providing quality choices to all kinds of students. The current CSL provides no authority — absent clear evidence of intentional discrimination — to hold a charter school accountable for not equitably serving a community's vulnerable student populations, such as minority students, students with severe disabilities, students for whom English is a second language, students in deep poverty, students experiencing homelessness, or students in foster care. In addition, Section 1729-A should be amended to require that the Charter Advisory Board and the courts provide greater deference to school districts' decisions to deny, not renew, or revoke a charter.
- We had hoped the bill would include provision for the creation of "neighborhood" charter schools, or charters that serve a defined neighborhood catchment similar to district-operated schools. The School District of Philadelphia, via the charter conversion process, has converted dozens of neighborhood schools into charter-operated schools. While the jury is still out on whether these charter operators are doing a better job than the district, there are promising signs in many of these schools and they are clearly better at serving vulnerable student populations than "traditional" charter schools. This is, in large part, because all students living in the neighborhood catchment have a guaranteed spot in the school, should they choose to attend. Many charter operators would like to concentrate on the communities in which they are located and, subject to authorizing district approval, the charter school law should be amended to make that possible.
- We were disappointed that the bill did not seek to eliminate, or at least limit, the expenditure of public funding on charter school advertisements. This unsavory practice has become ubiquitous in Pennsylvania, particularly with regard to cyber charter

schools, and should be addressed in any charter amendment.

ELC does support, at least in part, some provisions of SB 1085 that would bring improvements to the Charter School Law:

- We support the imposition of ethics standards and financial disclosure requirements on charter schools, as proposed in Section 1715-A(a)(11). However, we note that these provisions simply reaffirm existing law.
- The conflict-of-interest provisions of Section 1715-A(a)(12) are a good first step. However, we believe these provisions should be changed to completely ban a charter school administrator from receiving compensation from another charter entity or from an Education Management Service Provider. We believe that all public officials, and their family members, should be prohibited from sitting on charter boards.
- We support the prohibition of persons serving on charter boards if they or an immediate family member receives compensation from or are a member of a local school board responsible for authorizing or renewing the charter school, as proposed in Section 1716-A(b.1)(1). That provision should be expanded to include extended family members.
- We support Sections 1716-A(d-f) which would require at least one parent on a charter school's board of trustees. We suggest that, if the board of trustees is larger than five, then parents of students enrolled in the charter school should comprise at least 20% of the board. Any parent members should be elected by fellow parents.
- We support the provisions requiring greater transparency with regard to Education Management Service Providers, as proposed in Section 1719-A(a)(4.4). We suggest that the law clarify that all related records of an Education Management Service Provider are subject to the Right-to-Know Law.
- We support the fiscal accountability measures contained in Section 1728-A(d).



- We support the new provisions providing accountability over charter authorization in Section 1728.1-A. Obviously, and importantly, effective charter oversight requires significant financial resources. Without additional state funding, or at least allowing school districts to deduct the cost of charter oversight from their charter payments, these new provisions will result in a burdensome unfunded mandate.
- The proposition that any teacher evaluation system be equally applied to charter entities, as seems to be the intent of Section 1729.1-A(a), is a good step toward leveling the playing field between district-run schools and charter schools. Unfortunately, there is no evidence that evaluations based primarily on high-stakes testing improves learning.
- The clarification in Section 1723-A(a)(1) of existing law specifying what charter schools are permitted to require as a condition of enrollment, the creation of a common charter school application, and the clarification that charter schools may not utilize evaluations of students as a condition of enrollment are good steps toward eliminating improper charter school enrollment practices. The bill should include explicit protections that ensure at-risk students have equal access to charter school enrollment.
- We support the elimination of the “pension double-dip” for charter schools, as proposed in Section 1724-A(c). We suggest that these saving should be provided to school districts as part of a charter school payment reimbursement.
- ELC has called for a statewide moratorium in Pennsylvania on the expansion of cyber charter schools, which have been plagued by scandalous management, waste of public funds at the hands of individual profiteers, and poor academic outcomes. Therefore, we support the minor reduction in cyber charter funding, which appears would occur from Section 1752-A(1). However, it is unclear how the size of this reduction was arrived at and whether or not it is sufficient. Additional changes to charter school funding should be vetted by a balanced funding commission.

- We support the *concept* of a performance matrix, as set out in Section 1732-A(c)(3), as a tool to ensure that charter entities provide a high-quality public education to all kinds of students. But how we elect to measure schools, in particular whether schools are accountable for providing a quality education to our most vulnerable populations, will be the ultimate determination of whether the particular matrix improves educational opportunities or whether it creates unintended incentives to push out students who are difficult to serve. *The bill should mandate that the matrix measures charter schools, in part, by whether they adequately serve the vulnerable student populations that reflect their communities.* Also, we note that the bill requires the department to consult with charter school operators in developing the matrix, *but not with school district officials.* This makes little sense, as districts are the entities that would be charged with utilizing the matrix to measure charter schools. Finally, we oppose the provision in Section 1732-A(c)(3)(iv), which prevents local authorizers from amending the matrix. Local charter school authorizers must be permitted some leeway to impose additional measures in the matrix for the charter schools they authorize as many Pennsylvania communities have unique educational needs.

Ultimately, SB 1085 would gut local control over charter school authorization and growth, encourage unfettered expansion of even poorly-operated charter schools, take already underfunded school districts to the brink of financial collapse, and remove important accountability tools that school districts can use to ensure that charter schools are performing well and equitably serving all kinds of students. Because the bill would decrease accountability and damage public education for the majority of public school students it should not be passed as drafted.

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