

To: All Members, House of Representatives
From: Deborah Gordon Klehr, Executive Director
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Re: **Oppose HB 97 – Inadequate Charter School Reform**
Date: April 24, 2017

The Education Law Center is a non-profit legal advocacy and educational organization dedicated to ensuring that all of Pennsylvania’s children have access to a quality public education. We are not pro or anti charter school. We are advocates for vulnerable student populations. A responsible charter school law must empower local governing bodies to strategically control charter growth as a tool to increase quality options and improve our system of public education for all communities. The charter school law should not force blind expansion on already burdened systems and compel the loss of neighborhood schools options.

With forty-two years of experience in public education advocacy, we write to urge you to **oppose HB 97**, the purported charter reform legislation that was voted out of the House Education Committee last week. Unfortunately, this bill falls far short because, like its predecessors,¹ it fails to adequately address the significant problems presented by charter schools across the Commonwealth with regard to equity, transparency, and quality of education. This bill should not be passed without major revision.

Auditor General DePasquale has called Pennsylvania’s Charter School Law the worst in the country - this twenty-year-old law plainly needs improvement and updating, but HB 97 in its current form is a weak attempt and misses an opportunity to fix serious problems. We urge the House to hold a robust debate before voting on this bill. In its current form, HB 97 fails to serve our public school children in several ways.

Quality of education

- The charter school law should be amended to place strict limits on the expansion of underperforming cyber charter schools and fix the current waste associated with the excessive tuition paid by school districts to cyber charter schools.
- The bill’s language around cyber charter schools fails to adequately protect the rights of students with disabilities to individualized instruction. The state needs a cyber charter taskforce to look at academic outcomes and instruction models in cybers, including instruction for students with disabilities.

¹ See ELC analysis of prior iterations of HB 97: *HB 530, PN569 and SB 856, PN 968: Recommendations on Charter School Legislation*, June 19, 2015, available at <http://www.elc-pa.org/wp-content/uploads/2015/06/ELC-analysis-of-HB-530-and-SB-856-6-19-2015.pdf>.

- The bill does not require charter school teachers and principals to participate in the state-developed evaluation system required for other public school entities. If charter school educators and administrators are not held to the same standards of accountability to comply with state-developed requirements, families cannot accurately compare the school options available for their students.
- There is no good reason for a totally separate performance matrix to evaluate charter schools than we have for school districts. Limiting the criteria that may be used for evaluating a charter school entity to a new performance matrix that addresses only academic performance fails to acknowledge other reasons for revocation, including financial mismanagement and noncompliance with laws, regulations, and material provisions of its charter. Any matrix should include criteria that evaluates, relative to the authorizing school district, how equitably a charter school serves students in poverty, students with the full range of disabilities, English Learner students, and students experiencing homelessness and foster care.

Equity

- The bill must be amended to remove the perverse financial incentives in current law that encourage charter schools to underserve students with severe disabilities and overserve students with mild disabilities.² The definition of ‘at risk student’ should be amended to include students with disabilities.
- The bill should be amended to ensure that each charter school reserves space for the enrollment of an equitable number of students in their communities who are experiencing homelessness, living in foster care, and returning from juvenile justice placement. The charter school law should be amended to explicitly allow districts to hold charter schools accountable for failing to equitably and effectively serve at-risk student populations.
- The proposed Commission should be explicitly charged with conducting a full investigation into charter funding that considers the entire impact on our constitutional “thorough and efficient” system. For this purpose, the commission must allow time to take testimony from a wide variety of stakeholders over several months.

Transparency and accountability

- The bill should be amended to permit school districts to consider the financial capacity of the system as a factor in evaluating new charter applications. By limiting the ability of school districts to control their costs and plan for the educational needs of their students, the charter law has created an adversarial relationship between districts and charters. Without the authority to implement strategic charter expansion, many districts are unable to ensure their constitutional mandate to create a “thorough and efficient system of public education.”
- The vague language in HB 97 suggests a charter school need only refuse to agree to renewal terms, avoiding a ‘written agreement’ on enrollment, to permit them to expand into multiple buildings without district approval. [Section 1722-A(d)] The bill should be amended to explicitly grant local school boards the authority to implement enrollment caps on charter schools that are not equitably serving at risk students and achieving superior results.

² See ELC Analysis: *Inequities in Pennsylvania’s Charter Sector: Segregation by Disability*, February 2017, available at <http://www.elc-pa.org/resource/inequities-in-pennsylvanias-charter-sector-segregation-by-disability/>

- The bill should be amended to explicitly provide additional conditions that trigger nonrenewal or termination of a charter, including a mechanism to evaluate enrollment data of English Learners and students with disabilities to verify if charter entities are appropriately serving at-risk students (i.e. report the number of students with disabilities who won the enrollment lottery compared with number of students with disabilities that were enrolled); a mechanism to evaluate school climate issues including discipline and attrition rates at each school; and reporting on the academic *progress* of students over time.
- The bill’s proposal to increase the initial terms of charter schools to 5 years would make charter entities far less accountable. 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. Therefore, the longer the term of a charter, the longer it takes for true accountability for charter school performance. Additionally, the bill cites only academic benchmarks as indicators of negative review – failing to consider that other deficiencies can and do exist that should suggest nonrenewal of a charter. Finally, even those charter schools that do not satisfy academic quality benchmarks may still be renewed for an additional 5 year term. This failure to hold charter schools accountable for academic performance – not to mention financial integrity or the provision of legally mandated education services – is a dangerous step in the wrong direction. [Section 1720-A]
- Charter schools should not be permitted to amend their charters against the will of their authorizing school district. A charter is “legally binding” on both the charter and the authorizing district, 24 P.S. § 17-1720-A, which cannot be rationally reconciled with the bill’s proposal that one party can change the terms at any time. [Section 1720-A(c)]
- The additional roles specified to be added to the Charter School Appeal Board will effectively stack the CAB with more pro-charter members that will likely lead to more favorable decisions from the CAB for charter schools and less favorable decisions for districts. [Section 1721-A]
- The authorizing school district needs broad access to extensive records of its charter schools in order to perform its annual assessment and comprehensive review prior to renewal of a charter. HB 97 too narrowly defines the types of records to which a district has “ongoing access” which prevent districts from adequately reviewing charter school entities’ compliance with their charter and education laws. [Section 1728-A(a)]. Additionally, HB 97 as drafted in Section 1728-A(a)(3) suggests that the district’s access to special education records would not be permitted under FERPA, but if charters are to be held accountable, their authorizers must have access to teacher and student records. None of this access violates FERPA so long as districts are using these records in the effort to evaluate a charter school’s compliance with the law as they are charged with doing under the CSL.
- HB 97’s provisions relating to Multiple Charter School Organizations (MCSO) – essentially school districts with no geographical restrictions – leave too many questions about these networks. For example, families could be prevented from accessing their school governance if one board for an MCSO based in Harrisburg covered Pittsburgh and Philadelphia charter schools. Also, there is missing language to indicate that MSCOs are subject to the same laws as individual charter schools, including open meetings and open records laws. And the bill contains no process for revoking an MCSO and is much too permissive in allowing an MCSO to add as many additional existing charter schools as it wishes, even if those schools are “failing,” so long as there is one school performing satisfactorily. [Section 1729.2-A]

Over-reach of state; excessive limits to local control

- The bill requires PDE to develop a standard form for new charter school applications, which is generally good. [Section 1719-A] But the bill also prevents school districts from adding any additional terms or requiring any additional information. The educational outlook is different in every community so it is impossible for PDE to foresee the unique needs of each community. Local school boards should be able to request additional information responsive to their unique needs.
- The bill's requirement that a school district must sell district buildings no longer in active use to charter schools is excessive over-reach. The democratically elected members of school districts should have the ability to control the taxpayer's property. [Section 1722-A(b.1)]

Provisions supported by ELC

- The requirement that PDE create a standard student enrollment application that asks only for legally permitted information of student's identity, age and residency is a good and necessary amendment. [Section 1723-A(a)(3)]
- The bill's addition requiring charter schools to enforce truancy laws is a much-needed reform as many charter schools simply dis-enroll truant students rather than implement necessary supports and interventions. [Section 1719A(a)(18)]
- Anti-nepotism and conflict of interest provisions are good amendments that clarify existing law. [Section 1715-A(c); 1716-A(b.1)]
- The provision requiring each charter school to conduct an annual independent audit is a good one, though it should be made clear that educational management service providers are also covered. [Section 1728-A(d)]

Thank you for your consideration. If we can be of assistance, please do not hesitate to contact us at dklehr@elc-pa.org, (215) 346-6920; kmoon@elc-pa.org, (215) 346-6907; or ypelotte@elc-pa.org, (215) 346-6930.