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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. 822

February 16, 2009

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The bill was read for the first time and referred to the Committee on K-12 Education Policy and Oversight

1.1 A bill for an act
1.2 relating to education; reforming financial and academic requirements for charter
1.3 schools; providing for civil and criminal penalties; amending Minnesota Statutes
1.4 2008, sections 122A.25, subdivision 2; 124D.10, subdivisions 3, 4, 4a, 6, 6a, 11,
1.5 15, by adding a subdivision; 609.455.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2008, section 122A.25, subdivision 2, is amended to
1.8 read:

1.9 Subd. 2. **Applications; criteria.** The school district or charter school shall apply
1.10 to the Board of Teaching for approval to hire nonlicensed teaching personnel from the
1.11 community. The Board of Teaching shall not approve the hiring of a community expert
1.12 for more than a one-year period. An individual may only be approved as a community
1.13 expert once. The Board of Teaching may not grant any variance from the requirements
1.14 of this subdivision. In approving or disapproving the application for each community
1.15 expert, the board shall consider:

1.16 (1) the qualifications of the community person whom the district or charter school
1.17 proposes to employ;

1.18 (2) the reasons for the need for a variance from the teacher licensure requirements;

1.19 (3) the district's efforts to obtain licensed teachers, who are acceptable to the school
1.20 board, for the particular course or subject area or the charter school's efforts to obtain
1.21 licensed teachers for the particular course or subject area;

1.22 (4) the amount of teaching time for which the community expert would be hired;

1.23 (5) the extent to which the district or charter school is utilizing other nonlicensed
1.24 community experts under this section;

1.25 (6) the nature of the community expert's proposed teaching responsibility; and

2.1 (7) the proposed level of compensation to the community expert.

2.2 Sec. 2. Minnesota Statutes 2008, section 124D.10, subdivision 3, is amended to read:

2.3 Subd. 3. **Sponsor.** (a) A school board; intermediate school district school board;
2.4 education district organized under sections 123A.15 to 123A.19; charitable organization
2.5 under section 501(c)(3) of the Internal Revenue Code of 1986 that is a member of the
2.6 Minnesota Council of Nonprofits or the Minnesota Council on Foundations, registered
2.7 with the attorney general's office, and reports an end-of-year ~~fund~~ cash balance of at
2.8 least \$2,000,000; Minnesota private college that grants two- or four-year degrees and is
2.9 registered with the Minnesota Office of Higher Education under chapter 136A; community
2.10 college, state university, or technical college, governed by the Board of Trustees of the
2.11 Minnesota State Colleges and Universities; or the University of Minnesota may sponsor
2.12 one or more charter schools.

2.13 (b) A nonprofit corporation subject to chapter 317A, described in section 317A.905,
2.14 and exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code
2.15 of 1986, may sponsor one or more charter schools if the charter school has operated for
2.16 at least three years under a different sponsor and if the nonprofit corporation has existed
2.17 for at least 25 years.

2.18 (c) An agent of the sponsor that falsifies any professional credential, asset, or other
2.19 material fact relating to the sponsor or a sponsor's charter school is guilty of a gross
2.20 misdemeanor. All money collected under this subdivision must be deposited in the general
2.21 fund of the state treasury.

2.22 Sec. 3. Minnesota Statutes 2008, section 124D.10, subdivision 4, is amended to read:

2.23 Subd. 4. **Formation of school.** (a) A sponsor may authorize one or more licensed
2.24 teachers under section 122A.18, subdivision 1, to operate a charter school subject to
2.25 approval by the commissioner. A board must vote on charter school application for
2.26 sponsorship no later than 90 days after receiving the application. The school must be
2.27 organized and operated as a cooperative under chapter 308A or nonprofit corporation
2.28 under chapter 317A and the provisions under the applicable chapter shall apply to the
2.29 school except as provided in this section. Notwithstanding sections 465.717 and 465.719,
2.30 a school district may create a corporation for the purpose of creating a charter school.

2.31 (b) The commissioner shall establish process standards for sponsors in school
2.32 contracting, monitoring of academic performance, and ongoing oversight and evaluation.
2.33 The commissioner shall establish minimum criteria for sponsor capacity and infrastructure,
2.34 initial application, and renewal. Before the operators may form and operate a school, the

3.1 sponsor must file an affidavit with the commissioner stating its intent to authorize a charter
3.2 school. The affidavit must state the terms and conditions under which the sponsor would
3.3 authorize a charter school ~~and~~, how the sponsor intends to oversee the fiscal and student
3.4 performance of the charter school and to comply with the terms of the written contract
3.5 between the sponsor and the charter school board of directors under subdivision 6, the
3.6 differences between the sponsor's processes and those established by the commissioner,
3.7 and the effect of those differences. The commissioner must approve or disapprove the
3.8 sponsor's proposed authorization within 90 days of receipt of the affidavit using the
3.9 established minimum criteria. Failure to obtain commissioner approval precludes a
3.10 sponsor from authorizing the charter school that was the subject of the affidavit.

3.11 (c) The operators authorized to organize and operate a school, before entering into
3.12 a contract or other agreement for professional or other services, goods, or facilities,
3.13 must incorporate as a cooperative under chapter 308A or as a nonprofit corporation
3.14 under chapter 317A and must establish a board of directors composed of at least five
3.15 members until a timely election for members of the charter school board of directors is
3.16 held according to the school's articles and bylaws. A charter school board of directors
3.17 must be composed of at least five members. Any staff members who are employed at the
3.18 school, including teachers providing instruction under a contract with a cooperative, and
3.19 all parents of children enrolled in the school may participate in the election for members
3.20 of the school's board of directors. Licensed teachers employed at the school, including
3.21 teachers providing instruction under a contract with a cooperative, must be a majority
3.22 of the members of the board of directors before the school completes its third year of
3.23 operation, unless the commissioner waives the requirement for a majority of licensed
3.24 teachers on the board. Board of director meetings must comply with chapter 13D.

3.25 (d) The granting or renewal of a charter by a sponsoring entity must not be
3.26 conditioned upon the bargaining unit status of the employees of the school.

3.27 (e) A sponsor may authorize the operators of a charter school to expand the
3.28 operation of the charter school to additional sites or to add additional grades at the school
3.29 beyond those described in the sponsor's application as approved by the commissioner only
3.30 after submitting a supplemental application to the commissioner in a form and manner
3.31 prescribed by the commissioner. The supplemental application must provide evidence that:

3.32 (1) the expansion of the charter school is supported by need and projected enrollment;

3.33 (2) the charter school is fiscally sound;

3.34 (3) the sponsor supports the expansion; and

3.35 (4) the building of the additional site meets all health and safety requirements to
3.36 be eligible for lease aid.

4.1 (f) The commissioner annually must provide timely financial management training
 4.2 to newly elected members of a charter school board of directors and ongoing training to
 4.3 other members of a charter school board of directors. Training must address ways to:

4.4 (1) proactively assess opportunities for a charter school to maximize all available
 4.5 revenue sources;

4.6 (2) establish and maintain complete, auditable records for the charter school;

4.7 (3) establish proper filing techniques;

4.8 (4) document formal actions of the charter school, including meetings of the charter
 4.9 school board of directors;

4.10 (5) properly manage and retain charter school and student records;

4.11 (6) comply with state and federal payroll record-keeping requirements; and

4.12 (7) address other similar factors that facilitate establishing and maintaining complete
 4.13 records on the charter school's operations.

4.14 Sec. 4. Minnesota Statutes 2008, section 124D.10, subdivision 4a, is amended to read:

4.15 Subd. 4a. **Conflict of interest.** (a) A member of a charter school board of directors
 4.16 is prohibited from serving as a member of the board of directors or as an employee or agent
 4.17 of or a contractor with a for-profit entity with whom the charter school contracts, directly
 4.18 or indirectly, for professional services, goods, or facilities. A violation of this prohibition
 4.19 renders a contract ~~voidable at the option of the commissioner~~ void. The commissioner
 4.20 may reduce a charter school's aid under section 127A.42 or 127A.43 if the charter school
 4.21 fails to correct a violation under this subdivision in a timely manner. A member of a
 4.22 charter school board of directors who violates this prohibition shall be individually liable
 4.23 to the charter school for any damage caused by the violation.

4.24 (b) An individual may serve as a member of the board of directors if no conflict of
 4.25 interest under paragraph (a) exists.

4.26 (c) A member of a charter school board of directors that serves as a member of the
 4.27 board of directors or as an employee or agent of or a contractor with a nonprofit entity
 4.28 with whom the charter school contracts, directly or indirectly, for professional services,
 4.29 goods, or facilities, must disclose all potential conflicts to the commissioner.

4.30 (d) The conflict of interest provisions under this subdivision do not apply to
 4.31 compensation paid to a teacher employed by the charter school who also serves as a
 4.32 member of the board of directors.

4.33 (e) The conflict of interest provisions under this subdivision do not apply to a teacher
 4.34 who provides services to a charter school through a cooperative formed under chapter
 4.35 308A when the teacher also serves on the charter school board of directors.

5.1 Sec. 5. Minnesota Statutes 2008, section 124D.10, subdivision 6, is amended to read:

5.2 Subd. 6. **Contract.** (a) The sponsor's authorization for a charter school must be
5.3 in the form of a written contract signed by the sponsor and the board of directors of the
5.4 charter school. The contract must be completed within 90 days of the commissioner's
5.5 approval of the sponsor's proposed authorization. The contract for a charter school must
5.6 be in writing and contain at least the following:

5.7 (1) a description of a program that carries out one or more of the purposes in
5.8 subdivision 1;

5.9 (2) specific outcomes pupils are to achieve under subdivision 10;

5.10 (3) admission policies and procedures;

5.11 (4) management and administration of the school;

5.12 (5) requirements and procedures for program and financial audits;

5.13 (6) how the school will comply with subdivisions 8, 13, 16, and 23;

5.14 (7) assumption of liability by the charter school;

5.15 (8) types and amounts of insurance coverage to be obtained by the charter school;

5.16 (9) the term of the contract, which may be up to ~~three~~ five years;

5.17 (10) if the board of directors or the operators of the charter school provide special
5.18 instruction and services for children with a disability under sections 125A.03 to 125A.24,
5.19 and 125A.65, a description of the financial parameters within which the charter school will
5.20 operate to provide the special instruction and services to children with a disability; and

5.21 (11) the process and criteria the sponsor intends to use to monitor and evaluate the
5.22 fiscal and student performance of the charter school, consistent with subdivision 15.

5.23 (b) At the end of the contract period, the board of directors of the charter school must
5.24 demonstrate to the sponsor that the charter school continues to serve at least one of the
5.25 purposes in subdivision 1 before the contract may be renewed.

5.26 Sec. 6. Minnesota Statutes 2008, section 124D.10, subdivision 6a, is amended to read:

5.27 Subd. 6a. **Audit report.** (a) The charter school must submit an audit report to the
5.28 commissioner by December 31 each year. The charter school, with the assistance of the
5.29 auditor conducting the audit, must include with the report a copy of all charter school
5.30 agreements for corporate management services. If the entity that provides the professional
5.31 services to the charter school is exempt from taxation under section 501 of the Internal
5.32 Revenue Code of 1986, that entity must file with the commissioner by February 15 a
5.33 copy of the annual return required under section 6033 of the Internal Revenue Code
5.34 of 1986. If the commissioner receives as part of the audit report a management letter
5.35 indicating that a material weakness exists in the financial reporting systems of a charter

6.1 school, the charter school must submit a written report to the commissioner explaining
6.2 how the material weakness will be resolved. Upon the request of an individual, the charter
6.3 school must make available in a timely fashion the minutes of meetings of members, the
6.4 board of directors, and committees having any of the authority of the board of directors,
6.5 and statements showing the financial result of all operations and transactions affecting
6.6 income and surplus during the school's last annual accounting period and a balance sheet
6.7 containing a summary of its assets and liabilities as of the closing date of the accounting
6.8 period.

6.9 (b) A charter school that does not submit the report required in paragraph (a) is
6.10 subject to a civil penalty up to \$100,000. All money collected under this subdivision must
6.11 be deposited in the general fund of the state treasury.

6.12 Sec. 7. Minnesota Statutes 2008, section 124D.10, is amended by adding a subdivision
6.13 to read:

6.14 Subd. 6b. **School board approval.** (a) By February 1 of each year, a charter
6.15 school must select a reviewing school board for the next school year. A charter school
6.16 must submit the required administrative contracts, budget, and curriculum to either: (1)
6.17 the school board for the district that the charter school is physically located in; or (2) the
6.18 district in which the plurality of its students resided on the first day of student contact
6.19 in the preceding school year. For a charter school that provides only online learning,
6.20 the reviewing board is the district's board in which the plurality of the school's students
6.21 resided. A charter school in its first year of operation may estimate the district where the
6.22 plurality of its students will reside.

6.23 (b) Before approval of any administrative contract for the purchase of goods or
6.24 services in excess of \$10,000, a charter school must submit the contract to its reviewing
6.25 school board for approval. The reviewing school board must approve or disapprove any
6.26 submitted contracts within 30 days of receipt.

6.27 (c) By March 1 of each year, a charter school must submit its budget to its reviewing
6.28 school board. The reviewing school board must approve or disapprove the charter school
6.29 budget by April 1 of that year. If the reviewing school board disapproves the budget, the
6.30 board must report the reasons for the disapproval and propose changes to the budget.
6.31 The board must make a determination on subsequent proposed budgets within 30 days
6.32 of receipt.

6.33 (d) By March 1 of each year, a charter school must submit its curriculum to its
6.34 reviewing school board. The reviewing school board must approve or disapprove
6.35 the charter school curriculum by April 1 of that year. If the reviewing school board

7.1 disapproves the curriculum, the board must report the reasons for the disapproval and
 7.2 propose changes to the curriculum. The board must make a determination on subsequent
 7.3 proposed curriculum within 30 days of receipt.

7.4 Sec. 8. Minnesota Statutes 2008, section 124D.10, subdivision 11, is amended to read:

7.5 Subd. 11. **Employment and other operating matters.** A charter school must
 7.6 employ or contract with necessary teachers, as defined by section 122A.15, subdivision 1,
 7.7 who hold valid licenses to perform the particular service for which they are employed in
 7.8 the school. The charter school's state aid may be reduced under section 127A.42 if the
 7.9 school employs a teacher who is not appropriately licensed or approved by the board of
 7.10 teaching. The school must employ or contract with administrators who hold valid licenses
 7.11 to perform the particular service for which they are employed by the school. The school
 7.12 may employ necessary employees who are not required to hold teaching or administration
 7.13 licenses to perform duties other than teaching and may contract for other services. The
 7.14 school may discharge teachers, administrators, and nonlicensed employees. A person,
 7.15 ~~without holding a valid administrator's license, may perform administrative, supervisory,~~
 7.16 ~~or instructional leadership duties.~~

7.17 The board of directors also shall decide matters related to the operation of the school,
 7.18 including budgeting, curriculum and operating procedures.

7.19 Sec. 9. Minnesota Statutes 2008, section 124D.10, subdivision 15, is amended to read:

7.20 Subd. 15. **Review and comment.** (a) The department must review and comment on
 7.21 the evaluation, by the sponsor, of the performance of a charter school before the charter
 7.22 school's contract is renewed for another contract term. The sponsor must submit to the
 7.23 commissioner timely information for the review and comment. The department must
 7.24 review the collective performance of the sponsor's charter schools at least once every five
 7.25 years. The commissioner shall terminate a contract between a sponsor and a charter school
 7.26 for failing to meet minimum criteria established under subdivision 4, paragraph (b).

7.27 (b) A sponsor shall monitor and evaluate the fiscal and student performance of the
 7.28 school, and may for this purpose annually assess a charter school: (1) in its first, second,
 7.29 or third year of operation up to \$30 per student up to a maximum of \$10,000; and (2) in its
 7.30 fourth or a subsequent year of operation up to \$10 per student up to a maximum of \$3,500.

7.31 Sec. 10. Minnesota Statutes 2008, section 609.455, is amended to read:

7.32 **609.455 PERMITTING FALSE CLAIMS AGAINST GOVERNMENT.**

8.1 (a) A public officer or employee who audits, allows, or pays any claim or demand
8.2 made upon the state or subdivision thereof or other governmental instrumentality within
8.3 the state which the public officer or employee knows or has reason to know is false or
8.4 fraudulent in whole or in part, may be sentenced to imprisonment for not more than five
8.5 years or to payment of a fine of not more than \$10,000, or both.

8.6 (b) A school district whose school board approves the curriculum and budget
8.7 of a charter school over which it is the reviewing school board under section 124D.10,
8.8 subdivision 6b, without reviewing the curriculum and budget, may be sentenced to
8.9 payment of a fine of not more than \$100,000.

8.10 Sec. 11. **CHARTER SCHOOL MORATORIUM.**

8.11 Notwithstanding section 124D.10, subdivision 4, the commissioner of education
8.12 may not approve any new charter schools until July 1, 2011.

8.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.