



Legislative position

The mission of the Pennsylvania School Boards Association is to promote excellence in public education and school board governance through leadership, service and advocacy.

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SUBJECT: Senate Bill 1085, P.N. 1597 (Sen. Smucker)
DATE: January 1, 2014

PSBA POSITION ON SENATE BILL 1085

PSBA Position: Oppose

PSBA recognizes Senate efforts to provide meaningful and overdue charter school reform; however, due to a number of provisions that are detrimental to school districts and our students, and which diminish accountability to the local taxpayer, we must oppose Senate Bill 1085. PSBA continues to work with legislators and stakeholders to reach agreements on the provisions of Senate Bill 1085 and to seek equitable changes leading to improved public education for all of the Commonwealth's children.

PSBA supports charter schools as long as they do not impose financial hardships on taxpayers and provided that they are held to the same standards of academic performance, accountability, and transparency that local school districts must uphold. For the reasons stated herein, we look forward to developing a number of changes to the legislation prior to a Senate floor vote with respect to our experiences with charter schools over the past decade. Please note that the following recommendation and concerns are not stated in priority order, but rather are listed sequentially by section number.

Section 1704-A. Charter School Funding Advisory Commission

Current language in Senate Bill 1085 calls for the Governor to convene a commission and appoint representatives of the school districts as members. PSBA suggests that the Independent Fiscal Office or the legislative Budget and Finance Committee be given the responsibility to convene the commission and provide staff. This change would ensure a nonpartisan approach to the commission and the IFO or Budget and Finance Committee would be able to offer fiscal expertise and data analysis that we believe would contribute significantly to the work of the commission. Further, we suggest that PSBA, as the entity representing the commonwealth's public school districts, be included in the bill as the entity that selects members representing school districts on the commission. To this end we recommend the following changes:

Section 1704-A Charter School Funding Advisory Commission

(A) The [Governor] Independent Fiscal Office shall immediately convene...

(B) 4. (III) Two members who shall represent school board members who shall be appointed by the Pennsylvania School Board Association.

1715-A. Charter School Requirements

Fund balance limits: In order to ensure that charter schools comply to these provision to the same degree that school districts must, we suggest adding additional language that would provide safeguards against the use of unassigned funds toward advertising and other costs for which taxpayers should not have to fund. Furthermore, we suggest to hold charter schools accountable to the this subsection, that a penalty be added for noncompliance.

Section 1715-A. Charter school requirements.—Charter schools shall be required to comply with the following provisions:

(11) Trustees of a charter school entity shall be public officials and subject to the provisions of 65 Pa.C.S. Ch. 11 (relating to ethics standards and financial disclosure).

(13)(i) For the 2014-2015 school year and each school year thereafter, a charter school shall not accumulate an unassigned fund balance greater than the charter school fund balance limit, which shall be determined as follows:

<u>Charter School Total Budgeted Expenditures</u>	<u>Maximum Unassigned Fund Balance as Percentage of Total Budgeted Expenditures</u>
<u>Less Than or Equal to \$11,999,999</u>	<u>12%</u>
<u>Between \$12,000,000 and \$12,999,999</u>	<u>11.5%</u>
<u>Between \$13,000,000 and \$13,999,999</u>	<u>11%</u>
<u>Between \$14,000,000 and \$14,999,999</u>	<u>10.5%</u>
<u>Between \$15,000,000 and \$15,999,999</u>	<u>10%</u>
<u>Between \$16,000,000 and \$16,999,999</u>	<u>9.5%</u>

<u>Between \$17,000,000 and \$17,999,999</u>	<u>9%</u>
<u>Between \$18,000,000 and \$18,999,999</u>	<u>8.5%</u>
<u>Greater Than or Equal to \$19,000,000</u>	<u>8%</u>

(ii) Any unassigned fund balance in place as of the most recently completed fiscal year that exceeds the charter fund balance limit shall be refunded on a per student pro rata basis within sixty (60) days of the effective date of this subclause to all school districts that made payments pursuant to section 1725-A in the 2012-2013 and 2013-2014 school years. The funds may not be used to pay bonuses to any administrator, board of trustees member, chief executive officer, employe, staff or contractor, be used to pay for media advertisements, including television, radio, movie theater, billboard, bus poster, newspaper, magazine, the Internet or any other commercial method that may promote student enrollment in a charter school, be used to pay for lobbying, legislative advocacy consulting or any effort to influence any member of the executive or legislative branch or federal or state government regarding the formulation, modification, or adoption of legislation or other policy affecting that charter school or all charter schools, or be transferred to a charter school foundation, closely related business entity or educational service provider and shall be an improper expenditure Any trustee authorizing such an improper expenditure shall be subject to a surcharge and shall reimburse a prorata share of the expenditure to the charter school.

(iii) For the 2014-2015 school year and each school year thereafter, any unassigned fund balance in excess of the charter school fund balance limit shall be refunded on a per student pro rata basis, by August 1 of each year, to all school districts that made payments under section 1725-A or section 1748.1-A in the prior school year.

(iv) By August 15, 2014, and August 15 of each year thereafter, each charter school shall provide the department with information certifying compliance with this clause. The information shall be provided in a form and manner prescribed by the department and shall include information on the charter school's estimated ending unassigned fund balance expressed as a dollar amount and as a percentage of the charter school's total budgeted expenditures for that school year.

(v) As used in this section, "unassigned fund balance" shall mean that portion of the fund balance which represents the part of spendable fund balance that has not been categorized as restricted, committed or assigned.

Section 1717-A. Establishment of a Charter School

Subsection (2), providing requirements for a charter school applicant to be eligible for appeal of the denial of a charter application, has been removed in Senate Bill 1085. This provision requires the charter applicant to obtain signatures of at least 2% or 1,000 residents, whichever is less, within 60 days of the denial to be able to proceed with the appeal. It also specifies the requirements for preparing this information and presenting it to the local board of school directors. *PSBA maintains that this subsection is important to remain in statute* because it helps to ensure that there is some taxpayer support behind the charter school applicant to warrant proceeding with the appeals process. Striking this language only serves to silence the local taxpayer who will be impacted financially and otherwise through the establishment of the charter school in the district. We recommend that this language not be removed in Senate Bill 1085.

Further, PSBA supports increasing the threshold in current statute from 2% to 10% and would support the following change:

Section 1717-A (2) In order for a charter school applicant to be eligible to appeal the denial of a charter by the local board of directors, the applicant must obtain the signatures of at least [two] ten per centum of the residents of the school district [or of one thousand (1,000) residents, whichever is less,] who are over eighteen (18) years of age.

Additionally, PSBA believes that for the review of a charter application denied by the local school district, the charter school appeal board should be required to consider the decision of the local school board rather than consideration of the charter application anew. This *de novo* review that is granted to the charter school appeal board grants the board independent authority in granting charters, instead of tasking it with the responsibility to determine whether the decision of the local school board was arbitrary or capricious. As such, we offer the following amendments to this section:

Section 1717-A. Establishment of a charter school.--***

(h) In the case of a review by the appeal board of an application that is revoked or is not renewed, the appeal board shall make its decision based on whether the decision of the local board of school directors was arbitrary or capricious pursuant to the local board's evaluation of the criteria established in subsection (e)(2). A [decision] determination by the appeal board that the local board of school directors acted arbitrarily or capriciously under this subsection or a decision by the appeal board under subsection (g) to grant, to renew or not to revoke a charter shall serve as a requirement for the local board of directors of a school district or school districts, as appropriate, to [sign the] negotiate with the charter school and form a written charter of the charter school as provided for in section 1720-A. Should the local board of directors fail to [grant the application] negotiate and sign the charter within [ten (10)] thirty (30) days of notice of [reversal of] the decision of the [local board of

directors] appeal board, the charter shall be deemed to be approved and shall be signed by the [chairman of the appeal board] local board of school directors and the charter applicant or the chairman of the board of trustees of the existing charter school.

(i)(1) The appeal board shall have the exclusive review of an appeal by a charter school applicant, or by the board of trustees of an existing charter school, of a decision made by a local board of directors not to grant a charter as provided in this section.

(6) In any appeal, the decision made by the local board of directors shall be reviewed by the appeal board on the record as certified by the local board of directors. The appeal board shall [give due consideration to] determine whether the findings of the local board of directors are arbitrary or capricious and specifically articulate its reasons for [agreeing or disagreeing with those findings] such determination in its written decision. The appeal board shall have the discretion to allow the local board of directors and the charter school applicant to supplement the record if the supplemental information was previously unavailable, to submit written briefs, to make oral argument in person, or to provide other relevant information.

(7) Not later than thirty (30) days after the date of notice of the acceptance of the appeal, the appeal board shall meet to officially review the certified record and, if allowed by the appeal board, to consider any written briefs, oral argument, and other relevant information.

Section 1719-A. Contents of Application

This section creates a standard application for charter applicants. PSBA does not take issue with the concept of a standard application. However, creating a standard charter school application and limiting that application to specific criteria eliminates the option to add additional requirements at the local level that could lead to higher quality charter education. This provision undermines Pennsylvania's long-standing tradition of local control and diminishes the authority of the charter school authorizer to perform its functions appropriately. We recommend allowing school districts the authority to supplement the charter application with items they believe add value to making the charter decision, such as more comprehensive instructional plans, enrollment and growth plans, teacher, student or financial accountability, or information that is pertinent to the local community. Finally, because PSBA opposes granting institutions of higher education the authority to act as authorizers for charter schools, subsection (20)(b) should be removed from the bill.

~~1719-A 20 (b) A local board of school directors or governing board of an institution of~~

~~higher education may not impose additional terms, develop its own application or require additional information outside the standard application for required under subsection (a).~~

Section 1720-A. Term and Form of Charter

Section 1720-A adds language that increases the term of initial charters and renewal of a charter to five and 10 years respectively. This increase seems to lend itself to charter school expansion without an equal provision for ensuring that charter schools are high-performing and, thus, deserve an extended charter term. In fact, this section even allows charter schools that have not met the academic quality benchmark to still be renewed for five years without proof of remediation or improvement:

“Charter schools and regional charter schools that have not satisfied the academic quality benchmark established by the department pursuant to section 1732-A, may be renewed for five (5) year periods upon reauthorization by the local board of school directors or the governing board of an institution of higher education or the appeal board.”

Under this standard, there is no incentive for charter schools to meet academic benchmarks since they can continue to be renewed. Most importantly, there is no academic accountability to students or taxpayers. Further, there is a disconnect between these provisions and other language in Senate Bill 1085 that would institute annual reporting and sanctions for school boards that maintain portfolios of persistently low-performing charter schools. PSBA wants to ensure that local school boards have the tools and resources to authorize and oversee high-performing charter schools and not be forced to perpetuate charters for low-performing charter schools. These provisions are contrary to our goal and what we believe to be the goal of the Senate in ensuring that every child attending a public school receives a high quality education and we recommend the following language in Section 9 containing Section 1720-A(a):

Upon effective date of the regulations implementing the performance metric as required by section 1732-A, charter schools and regional charter schools that have satisfied the academic quality benchmark established by the department pursuant to section 1732-A may be renewed for ~~five (5)~~ ten (10) year periods upon reauthorization by the local board of school directors of a school district...

~~Charter schools and regional charter schools that have not satisfied the academic quality benchmark established by the department pursuant to section 1732-A, may be renewed for five (5) year periods upon reauthorization by the local board of school directors or the governing board of an institution of higher education or the appeal board.~~

Section 1720-A also grants an automatic approval to any charter amendment request within 35 days if the local school board did not hold a hearing within that timeframe. PSBA opposes this change and recommends the following:

(3) Within ~~twenty (20)~~ THIRTY-FIVE (35) days after the hearing, the local board of school directors or the governing board of an institution of higher education shall grant or deny the

requested amendment. Failure by the local board of school directors or the governing board of an institution of higher education to hold a public hearing and to grant or deny the amendments within the time period specified shall be deemed ~~a denial~~ ~~AN APPROVAL~~ A DENIAL.

Section 1721-A. State Charter School Appeal Board

The charter school appeal board is amended to add two additional charter school representatives: an administrator and a member of the board of trustees. It also limits the parent sitting on the board from any parent of a school-aged child previously to a parent of a charter or cyber charter school student only. These changes jeopardize the balance of interests of the board and will aggravate problems with using the charter appeal board as a way to bypass the decisions of the local school board in determining the best educational proposals and management of the school district. PSBA suggests that a state-level board with the authority to overturn local decisions must be balanced and unbiased. For this reason, we recommend the expansion of the board to 11 members by also adding a business manager, a superintendent, and a school district solicitor.

The following language should be added to Section 1721-A:

- (9) A school district superintendent
- (10) A school district business administrator
- (11) A solicitor appointed by a school district

Section 1722-A. Facilities.

This section requires a school district that is selling a building to give the right of first refusal to purchase or lease the building at or below fair market value to a charter school. PSBA recommends that this language be eliminated because this provision precludes the ability of school districts to sell or lease district property to private taxpaying parties. Additionally, the provision is an undue restriction on the ability of school districts to obtain a fair market price for the sale or lease of district owned property and will effectively diminish the tax base of districts and other municipalities by eliminating the ability to sell property to a business or other private party. By selling a building, a school district both lowers cost because they are no longer paying to maintain that building, thus increasing their efficiency, and they also strive to increase their property tax base by selling the building to an entity that will remit a property tax, thereby helping the local community of taxpayers. By requiring a school district to provide the first right of refusal to a charter school for sale at or below market value, the school district has no opportunity to increase revenue from the sale of the building or by increasing its tax base.

Section 1723-A. Admission and Enrollment Requirements.

This section removes the ability for school districts and charter schools to negotiate and agree to charter school enrollment caps. The chartering school district relies on this information to determine the number of students that will likely enroll in the district for instructional and facilities planning, the amount and type of transportation that will be required, and the provision and costs of other student services. Additionally, it seems that removing the language in Senate Bill 1085 would be problematic because it could be interpreted to nullify any such terms in existing charter contracts,

and chartering school districts must be able to rely on the provisions in the signed charter for the entire term of the charter. Changes to this section thus allow for unlimited expansion and fiscal impact on school districts, whereas current law allows these caps where mutually agreed upon. We recommend that this provision, added in 2008, remain intact.

1725-A. Funding for Charter Schools.

Pennsylvania's school districts are being asked to provide more services and increased educational opportunities for their students despite thinning resources. In order to balance competing financial priorities in upcoming years, school districts must be afforded immediate relief from the flawed charter school funding formula that forces them to overpay charter and cyber charter schools. PSBA's platform supports legislation that reduces or eliminates the financial burden of charter and cyber charter school costs on local school districts, accounting for the actual per student educational expenditures of the charter and cyber charter school.

(a)(2) ...

~~If a charter school and the school district from which it is authorized have voluntarily capped enrollment or the district attempts to involuntarily cap enrollment of resident students and the charter school has enrolled the maximum number of resident students, it may enroll students residing outside of the district.~~

~~(d) (1) Enrollment of students in a charter school, regional charter school or cyber charter school [OR CYBER CHARTER SCHOOL] ENTITY, or expansion of a charter school, regional charter school or cyber charter school ENTITY into additional grade levels, shall not be subject to a cap or otherwise limited by any past or future action of a board of school directors, a board of control established under Article XVII-B, a special board of control established under section 692 or any other governing authority, unless agreed to by the charter school or cyber charter school as part of a written charter pursuant to section 1720-A.~~

- **Charter school funding formula:** Meaningful charter school reform would include revising the existing flawed charter school funding formula so that it is based on the actual costs of the cyber charter and charter school. The current state funding formula for charter and cyber charter schools bears no relationship to the actual instructional costs incurred by the charter schools. The amount that a school district has to pay to a charter or cyber charter school for each student is based on the sending school district's prior year budgeted expenditures per average daily membership minus certain budgeted expenditures of the district of residence, rather than the charter or cyber charter school's actual costs to educate the student.
- **The list of costs that school districts can deduct from their total budgeted expenditures when determining the per student amount paid to a charter school**

should be expanded. Under section 1725-A of the Public School Code, school districts may deduct their expenditures for nonpublic school programs, adult education programs, community or junior college programs, student transportation services, special education programs, facilities acquisition, construction and improvement services, and other financing uses. The list of deductions should be expanded by allowing districts to subtract their tax collection costs, athletic funds and costs related to school-sponsored extra-curricular activities, and tuition to charter schools. Further, school districts should be allowed to make additional deductions in calculating their payments to charter schools, particularly for services and programs that cyber charter schools do not offer, including costs for food services, library services, and health services. By proposing these additional deductions to the current charter and cyber charter school funding formula, the cost of charter and cyber charter school tuition will decrease for all school districts.

- **The pension double dip elimination needs further amendments that will provide meaningful financial relief to school districts.** The pension “double dip” currently provides all charter schools with two payments for pension reimbursement – once from the Commonwealth and again by the school district taxpayers adding up to 150% reimbursement for these costs to charter schools, even though school districts only receive a 50% total reimbursement from the state for pension costs. Arguably, charter schools should not receive a higher reimbursement for these costs than the local school district as a percentage of their costs or total dollar amount.

Currently, Senate Bill 1085 would eliminate half of the state’s reimbursement to charter schools and only 30% of the school district’s reimbursement through the tuition formula. PSBA recommends that the percent reduction in the cost to school districts be increased from 30% to 50%. Although this would still provide charter schools with a higher percentage of reimbursement than a school district receives for the same employer pension costs, it would provide enough savings to school districts to prove meaningful and worthwhile.

- **The funding formula for special education should be capped at actual costs.** The charter and cyber charter school funding formula for special education differs from the formula used to calculate school district special education subsidies and again is based on the student’s district of residence’s special education expenditures for the prior school year. PSBA believes that payments school districts make to charter schools for special education services should be capped at the actual cost of the special education services the charter school provides resident students and certainly no more than the district receives in state aid in a single year.

Charter schools should be required to report to the school district annually the actual cost of the special education services provided to each special education student of residence. Where the school district has paid the charter school in excess of the cost of the actual special education services provided to resident students, the charter school should be required to refund the excess to the school district. When a cyber charter school identifies a student as a needing special education services, the school district of residence should have

the authority to administer and deliver the educational services the student needs in lieu of paying the special education tuition rate to the cyber charter school.

PSBA recommends the following language for reforming the brick and mortar charter school funding formula:

Section 1725-A. Funding for Charter Schools.--(a) Funding for a charter school shall be provided in the following manner:

(1) ~~[There]~~Except as provided for in subsection (a.1), there shall be no tuition charge for a resident or nonresident student attending a charter school.

(2) For non-special education students, the charter school shall receive for each student enrolled no less than the ~~[budgeted]~~ actual total expenditure per average daily membership of the prior school year, as defined in section 2501(20), minus the ~~[budgeted]~~ actual expenditures at the end of the most recent fiscal year of the district of residence for nonpublic school programs and services; adult education programs; community/junior college programs; student transportation services; for special education programs; facilities acquisition, construction and improvement services; athletic funds and school sponsored extra-curricular activities set up in accordance with section 511; the full employer's share of retirement contributions paid to the Public School Employees' Retirement System; tuition to Pennsylvania charter schools for educational services provided to students attending the charter school; tax collection; for programs and services to the extent they are funded from Federal funds; for programs and services to the extent they are funded from the proceeds of competitive grants from private or public sources or from contributions or donations from private sources; and other financing uses, including debt service and fund transfers as provided in the Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems established by the department. ~~[This]~~ Except as provided for in subsection (a.1), this amount shall be paid by the district of residence of each student.

(3) The following shall apply to special education:

(i) For special education students, the intermediate unit of residence for such student will deliver the educational services required to address the specific needs of the exceptional

student and bill that student's district of residence for the services rendered. The charter school shall not be entitled to receive any additional payments from the student's district of residence for this student [the charter school shall receive for each student enrolled the same funding as for each non-special education student as provided in clause (2), plus an additional amount determined by dividing the district of residence's total special education expenditure by the product of multiplying the combined percentage of section 2509.5(k) times the district of residence's total average daily membership for the prior school year. This amount shall be paid by the district of residence of each student.], but shall not exceed the actual cost of the educational services provided for each special education student. Upon written request of the charter school, this amount shall be paid by the department to the charter school. Except as provided for in subsection (a.1), the department shall establish payment guidelines and notify the school district of the receipt of a request for direct payment by the department.

(ii) If a nonspecial education student is identified by the charter school in which the student is enrolled as a student with a disability in need of special education services, the district of residence shall have the power to administer and deliver the educational services required to address the specific needs of the exceptional student in lieu of payments by the district of residence for such student.

(iii) A resident school district may not pay out to charter schools or cyber charter schools an amount greater than it receives for special education in a school year.

[(4) A charter school may request the intermediate unit in which the charter school is located to provide services to assist the charter school to address the specific needs of exceptional students. The intermediate unit shall assist the charter school and bill the charter school for the services. The intermediate unit may not charge the charter school more for any service than it charges the constituent districts of the intermediate unit.] (4) Reserved

(5) Payments shall be made to the charter school in twelve
(12) equal monthly payments, by the fifth day of each month, within the operating school year. A student enrolled in a charter school shall be included in the average daily membership
of the student's district of residence for the purpose of providing basic education funding payments and special education funding pursuant to Article XXV. If a school district fails to

make a payment to a charter school as prescribed in this clause, the secretary shall deduct the estimated amount, as documented by the charter school, from any and all State payments made to the district after receipt of documentation from the charter school.

(6) Within thirty (30) days after the secretary makes the deduction described in clause (5), a school district may notify the secretary that the deduction made from State payments to the district under this subsection is inaccurate. The secretary shall provide the school district with an opportunity to be heard concerning whether the charter school documented that its students were enrolled in the charter school, the period of time during which each student was enrolled, the school district of residence of each student and whether the amounts deducted from the school district were accurate.

(a.1) If a public school district offers a cyber-based program equal in scope and content to an existing publicly chartered cyber charter school and a student in that district attends a cyber charter school instead of the district's cyber- based program, the school district shall not be required to provide funding to pay for a student's attendance at a cyber charter school.

Senate Bill 1085 requires the department to develop a transition procedure to recoup any payments made in error to a charter school or regional charter school as a result of direct payment; however, there is no procedure specified for how this money will be returned to the school district. PSBA recommends adding language to clarify that any overpayment to a charter school entity will be returned to the school district and the manner and timeline for such a reimbursement to occur.

(g) The department shall develop a transition procedure to be able to recoup in subsequent fiscal years any payments made in error to a charter school ~~entity~~ or regional charter school as a result of direct payment by the department to the charter school ~~entity~~ or regional charter school. ANY OVERPAYMENT TO A CHARTER SCHOOL OR REGIONAL CHARTER SCHOOL SHALL BE RETURNED TO THE SCHOOL DISTRICT OF RESIDENCE FROM WHICH THE OVERPAYMENT WAS MADE WITHIN THIRTY (30) DAYS FROM THE TIME THE PAYMENT WAS MADE IN ERROR.

Section 1728-A. Annual Reports and Assessments.

Charter schools should be required to prepare an audit to determine actual costs of providing regular and special education services to students. In an attempt to provide an equal financial playing field for both charter schools and traditional public schools, PSBA believes that legislation should require the PA Department of Education (PDE) to implement an audit process for these schools to determine the actual costs of education. While we appreciate that Senate Bill 1085 includes an audit process under this section, certain costs such as advertising costs, lobbying costs, and the costs of bonuses provided to administrators or members of the board of trustees, cannot be considered educational costs. Charter schools should be required to conduct an annual year-end audit of their actual *instructional* costs and reconcile these costs with the payments received from school districts so that money will be refunded back to school districts if there was overpayment.

In addition to the audit requirements in Section 1728-A, PSBA recommends adding the following:

~~(d) A charter school entity shall form an independent audit committee of its board members which shall review at the close of each fiscal year a complete certified audit of the operations of the charter school entity. The audit shall be conducted by a qualified independent certified public accountant. The audit shall be conducted under generally accepted audit standards of the Governmental Accounting Standards Board and shall include the following:~~ Within one hundred eighty (180) days of the effective date of this section, the department shall issue audit guidelines and may promulgate audit regulations under this article which shall be used in determining the year-end actual costs of educational services per non-special education student and special education student provided by a cyber charter school to any student who is a resident of a school district, which are subject to payment in accordance with section 1728-A. The audit guidelines shall take effect at the beginning of the first school year after which such audit guidelines have been issued.

(b) In order that the year-end actual costs of educational services per non-special education student and special education student are thoroughly and properly determined for the purpose of final reconciliation pursuant to paragraph (d), the audit guidelines issued by the department shall specify the actual costs of the educational services associated with the operation of the educational program offered by a cyber charter school.

(c) The following may not be considered actual costs of educational services associated with the operation of the educational program offered by a cyber charter school:

(i) Any paid media advertisement, including television, radio, movie theater, billboard, bus poster, newspaper, magazine, the Internet or any other commercial method that may promote student enrollment in a cyber charter school.

(ii) Any lobbying, legislative advocacy consulting or any effort to influence any member of the executive or legislative branch of Federal or State government regarding the formulation, modification, or adoption of legislation or other policy affecting either that cyber charter school specifically or cyber charter schools in general.

(iii) Any bonuses or additional compensation beyond the annual or termed contractual compensation for members of the board of trustees, faculty, administration and staff, including salary, benefits and any additional compensation not specifically enumerated in the contract.

(d) The audit guidelines issued by the department shall do the following:

(i) Allow a closely related business entity to charge no more than one hundred and seven per centum (107%) of the actual educational costs.

(ii) Require information as necessary for a full-scope review of a finalized management agreement entered into between a cyber charter school and a closely related business entity, including:

(A) All payments received from school districts of residence.

(B) Expenditures of the closely related business entity related to the delivery of educational and administrative services pursuant to the management agreement.

(iii) List and provide copies of all receipts and expenditures for an educational service provider that provides any service to a cyber charter school.

(iv) Provide reasonable penalties for failure to comply.

(e) The audit guidelines issued by the department shall include the following:

(1) An enrollment test to verify the accuracy of student enrollment and reporting to the State.

(2) Full review of expense reimbursements for board members and administrators, including sampling of all reimbursements.

(3) Review of internal controls, including review of receipts and disbursements.

(4) Review of annual Federal and State tax filings, including the Internal Revenue Service Code Form 990, Return of Organization Exempt from Income Tax and all related schedules and appendices for the charter school and charter school foundation, if applicable.

(5) Review of the financial statements of any charter school foundation.

(6) Review of the selection and acceptance process of all contracts publicly bid pursuant to section 751.

(7) Review of all board policies and procedures with regard to internal controls, code of ethics, conflicts of interest, whistle-blower protections, complaints from parents or the public, compliance with 65 Pa.C.S. Ch. 7 (relating to open meetings), compliance with the "Right-to-Know Law," finances, budgeting, audits, public bidding and bonding.

(f)(1) Within sixty (60) days from the effective date of this section the department shall effectuate an annual year-end final reconciliation process of tuition payments against actual costs of educational services per non-special education student and special education student provided and necessary procedures for the transfer of funds from the cyber charter school to the school district of residence. The final reconciliation process shall include one of the following:

(i) Allowing a school district of residence to withhold its last monthly payment from a charter school to account for any overpayments as identified by the year-end audit. If the school district of residence has sent overpayments, the district may adjust its last monthly payment accordingly.

(ii) Requiring a cyber charter school at the end of each school year to return any overpayments to a school district of residence owed a refund based on payments made during that school year. A cyber charter school may not return any overpayments on a pro rata basis.

(2) The department shall not deduct from a school district of residence's basic education subsidy any amount in excess of the selected expenditure per average daily membership amount calculated in accordance with section 1728-A.

(g) Cyber charter schools, educational service providers, charter school foundations, and closely related business entities shall provide to the department, unless already retained by the department, any information necessary to carry out the provisions of this section within ten (10) days from a request by the department.

(h) Except as provided under subsection (d), nothing contained under this section shall permit a school district of residence to provide funding for cyber charter schools in a manner other than that which is specified in section 1728-A.

(e) The certified audit under subsection (d) and the annual budget under subsection (g) are public documents and shall be made available on the school district's publicly accessible Internet website and the charter school entity's publicly accessible Internet website, if applicable.

(fk) A charter school entity may be subject to an annual audit by the Auditor General, in addition to any other audits required by Federal law or this article.

(g) A charter school entity shall annually provide the department and, in the case of a charter school or regional charter school, shall annually provide the school district, with a copy of the annual budget for the operation of the charter school entity that identifies the following:

(1) The source of funding for all expenditures as part of its reporting under subsection (a).

(2) Where funding is provided by a charter school foundation, the amount of funds and a description of the use of the funds.

(3) The salaries of all administrators of the charter school entity.

(4) All expenditures to an educational management service provider.

(hm) (1) Notwithstanding any other provision of law, a charter school entity and any affiliated charter school foundation shall make copies of its annual Federal and State tax filings available upon request and on the foundation's or charter school entity's publicly

accessible Internet website, if applicable, including Internal Revenue Service Code Form 990, Return of Organization Exempt from Income Tax and all related schedules and appendices.

(2) The charter school foundation shall also make copies of its annual budget available upon request and on the foundation's or the charter school entity' s publicly accessible Internet website within thirty (30) days of the close of the foundation's fiscal year.

(3) The annual budget shall include the salaries of all employes of the charter school foundation.

(n) For the purposes of this section:

"Closely related business entity" shall mean any organization with a management or operational relationship with a charter school involving either shared or overlapping aspects of

corporate identity such as ownership, board of directors or trustees membership, capital or profits.

"Educational service provider" shall mean a for-profit education management organization, nonprofit charter management organization, school design provider, business manager or any

other partner entity with which a cyber charter school intends to contract or presently contracts to provide educational services, operational services or management

services to the cyber charter school. The term shall not include a charter school foundation.

"Educational and administrative services" shall mean any direct expenditures for any instruction and the administration of the instructional program. The term shall not include any

expenditures not pertaining directly to the instruction and the administration of the instructional program.

"Management agreement" shall mean any contract establishing a management or operational relationship between a cyber charter school and closely related business entity for the provision of professional or nonprofessional services to the cyber charter school.

Section 1728.1-A. Governing Boards of Institutions of Higher Education as Authorizers of Charter Schools and Regional Charter Schools.

PSBA supports legislation that requires high standards of charter authorizer performance and accountability, prevents applicants from forum shopping, ensures funding for quality oversight by authorizers, and requires rigorous application, monitoring, renewal and revocation processes. Authorizers should examine the management, operations, enrollment, and academic performance of charter school entities and should be required to revoke chronically failing charters.

Including institutions of higher education as charter school authorizers is untested in Pennsylvania and provides for an end-run around school districts where the school district has no influence whatsoever in approving charters for educational quality or upholding accountability, but is still responsible for the tuition payments of resident students. Such a system for authorization will not prevent forum shopping and fails to acknowledge the results of a recent finding by the Center for Research on Education Outcomes (CREDO) that charter schools performed worse in states that use multiple types of authorizers than those having only a single type of authorizer.¹

Furthermore, while we appreciate your response to concerns raised by your colleagues and stakeholders regarding the lack of geographical constraints on charter authorization, PSBA still has concerns regarding the limitations that allow large universities with doctoral education degrees to authorize charter schools statewide and even allowing an institution with no education degree whatsoever to authorize despite a lack of any requirement to prove the institution is qualified to approve, oversee, and manage a charter school.

Section 1728.2. Charter Authorizer Accountability.

While PSBA understands the intent to strengthen charter schools by holding their authorizers to certain standards of accountability, we have strong concerns regarding the mandated annual report to the Department of Education (PDE) and the sanctions that would be developed by PDE and applicable to authorizers of low-performing charter schools. These provisions not only impose unfunded mandates on school districts, but also authorize punishments, which may be financial or punitive in nature, without a mechanism to improve charter school performance or mandate shutting down consistently low-performing charter schools. The language also does not address the chronically low performance of cyber charter schools authorized by PDE, or authorization problems that exist with charter school authorization by the charter appeal board, which can tie the hands of school districts that have denied a charter by reversing the decision and then holding the school district responsible for oversight. The charter school appeal board is not required to institute performance provisions, enrollment caps, or tuition control as part of the charter or to mediate negotiations between the charter school and the school district. Yet, under this proposal, charter school growth is encouraged and school districts would be held responsible for the performance of

¹ *Multiple Choice: Charter School Performance in 16 States. Multiple Choice: Charter School Performance in 16 States.* Center for Research on Education Outcomes, June 2009. Web. Summer 2009. credo.stanford.edu/reports/MULTIPLE_CHOICE_CREDO.pdf

charters granted outside of their control. Furthermore, school districts have little power to revoke chronically failing charters and would be further punished by the sanctions created in this section.

Section 1729-A. Causes for Nonrenewal or Termination.

Section 1729-A adds language stating that if after a hearing, “a local board of school directors or the governing board of an institution of higher education, or in the case of a cyber charter school, the department proves by a preponderance of evidence” that a charter school administrators has violated this article, the authorizing entity of the charter school “may require the charter school entity to replace the administrator or board member in order to obtain renewal of the charter.” PSBA would argue that the replacement be mandatory and immediate, instead of optional and solely necessary in possible conjunction with the school’s charter renewal.

In order to enhance accountability and promote academic student performance, PSBA recommends that the following language be added to this section as an additional reason that a charter may be subject to nonrenewal or revocation

- (a)(7) failure of a charter school subject to a probationary period under Section 1732-A
- (c)(3)(vii) to submit a charter school improvement plan or meet academic standards set by the department.

Section 1729.1-A. Evaluation of Educators.

Section 1729.1-A requires charter school entities to evaluate their educators using four rating categories of educator performance and multiple measures of student performance. In order to put charter schools and school districts on a level playing field where ever possible, the evaluation of teachers included in the bill should require charter schools to follow the same procedures school districts must follow that were passed in Act 82 of 2012 and it should be applicable to both certified and noncertified public educators. Instead of creating another separate standard for charter and cyber charter schools, PSBA recommends ensuring charter and cyber charter schools be held to the same standard of accountability as traditional public schools since they are funded by taxpayer dollars. In order to provide charter and cyber charter schools with adequate time to implement such changes, PSBA recommends that charter and cyber charter schools implement the evaluation standards in Section 1123 of the School Code no later than the 2016-2017 school year.

Therefore, the bill should be amended with the following language related to educator evaluations.

Section 1729.1-A. Evaluation of Educators.—

- (a) All applications by a charter school entity for a charter or for the renewal of a charter shall include a system of evaluation for educators that shall meet the same requirements as established for professional employes and temporary professional employes pursuant to section 1123 of the Public School Code shall be implemented no later than the 2016-2017 school year.

Section 1729.2-A. Multiple Charter Organizations.

Senate Bill 1085 language adds a section to establish multiple charter school organizations by application to and oversight by PDE. This allows charter schools to circumvent local school districts as a charter school authorizer and consolidate their charter with the Department of Education. There is no change in tuition and the local school district would be responsible for funding multiple charter organizations, while approval and oversight is transferred to PDE. Furthermore, under Senate Bill 1085, a multiple charter organizer does not need the permission of the local school board to reconstitute as a multiple charter organization under state authority.

PSBA suggests limiting these provisions to specific situations intending to allow consolidation of only high-performing charter schools into an organization for the purpose of allowing it to be managed by a single board of trustees and a single administrator. PSBA opposes the transfer of oversight of these charters to PDE without increased performance accountability and oversight by PDE. PSBA suggests the following language to replace that of Section 1729.2-A for multiple charter school organizations:

Section 1717 A (j). Multiple charter school organization.

(1) Establishment.--

(a) Subject to the requirements of this section, two or more charter schools established pursuant to Section 1717-A may merge or consolidate under 15 Pa.C.S. Pt. II Subpt. C (relating to nonprofit corporations) into a multiple charter school organization.

(b) The multiple charter school organization shall be:

(i) granted legal authority to operate two or more individual charter schools under the oversight of a single board of trustees and a single chief administrator who shall oversee and manage the operation of the individual charter schools under its organization;

(ii) subject to all of the requirements of this article unless otherwise provided for under this section.

(c) Nothing in this section shall be construed to affect or change the terms or conditions of any individual charter previously granted by a school district for a charter school that is consolidated under this section, nor shall it be construed to affect or change the terms or conditions of any individual charter renewed by a school district subsequent to consolidation under this section.

(d) A charter school that within either of the most recent two school years has failed to meet the standards for student performance set forth in 22 Pa. Code Ch. 4 (relating to academic standards) or any performance standard set forth in the individual charter, or has failed to meet generally accepted fiscal management or audit standards shall not be eligible to consolidate or merge with another charter school unless the merger or consolidation includes a charter school that has not failed to meet such standards during the most recent

two consecutive school years.

(2) Application. -- The Secretary shall develop and issue a standard application form for multiple charter school organization applicants, which shall contain the following information:

(1) The identification of the multiple charter school organization.

(2) The names of the charter schools seeking merger or consolidation under subsection (1).

(3) A copy of the approved charters of each charter school agreeing to merge or consolidate under subsection (a).

(4) An organizational chart clearly presenting the proposed governance structure of the multiple charter school organization, including lines of authority and reporting between the board of trustees, chief administrator, administrators, staff and any educational management service provider that will play a role in providing management services to the charter schools under its jurisdiction.

(5) A clear description of the roles and responsibilities for the board of trustees, chief administrator, administrators, educational management service providers, and any other entities, including a charter school foundation, shown in the organizational chart.

(6) A clear description and method for the appointment or election of members of the board of trustees.

(7) Standards for board performance, including compliance with all applicable laws, regulations and terms of the individual charters.

(8) Enrollment procedures for each individual charter school, pursuant to each individual charter, to be included in the multiple charter organization.

(9) Documentation of whether each individual charter school to be included in the multiple charter organization has met the student performance requirements pursuant to 22 Pa Code Ch. 4 for the past two consecutive school years.

(10) Documentation of whether each individual charter school to be included in the multiple charter organization has met the performance standards in each the individual charter for the past two consecutive school years.

(11) Documentation of whether each individual charter school to be included in the multiple charter organization has met fiscal management and audit standards for the past two consecutive school years.

(12) The name and contact information for each charter's school's principal or lead

administrator.

(13) Any other information as deemed necessary by the Secretary.

(e) Special conditions. --A multiple charter school organization may:

(1) Participate in the assessment systems in the same manner in which a school district participates and its individual charter schools shall participate in the assessment systems in the same manner as individual schools in school districts. All data gathered for purposes of evaluation shall be gathered in like manner.

(3) Add existing charter schools within the same school district to its organization by amending the plan of merger or consolidation set forth in the application as approved by the Secretary, subject to the approval of the amendment by the Secretary.

(4) Allow students enrolled in an individual charter school to matriculate to another individual charter school under its oversight and within the same school district so as to complete a course of instruction in an educational institution from kindergarten through grade 12 or otherwise in the best interests of the student.

(f) Renewal.-- A multiple charter school organization shall be regarded as the holder of each individual charter of each individual charter school under its oversight and each such previously or subsequently awarded charter shall be subject to nonrenewal or revocation by the school district in accordance with this article. The nonrenewal or revocation of the charter of an individual charter school under the oversight of the multiple charter organization shall not affect the status of a charter awarded for any other individual charter school under the oversight of the multiple charter organization.

(g) New Charter Schools.—Nothing in this section shall be construed to alter the requirements or procedures for establishing a new charter school, whether or not intended to become part of a multiple charter organization. An application submitted pursuant to Section 1717-A for establishment of a new charter school that is intended to become part of a multiple charter organization shall state such intent, and in addition to the information required under Section 1719-A, the application shall include as exhibits the merger or consolidation plan approved by the Secretary creating the multiple charter organization that the new charter school is intended to join, and the proposed amendment to that plan seeking approval of the Secretary to include the new charter school in the multiple charter organization.

Section 1732-A. Provisions Applicable to Charter Schools.

Section 1732-A includes the addition of a performance matrix by which charter school performance is to be measured. While the proposal lists various criteria that may be included in the matrix such as assessment scores, PVAAS growth, attendance, etc., it does not include two other critical factors that must be included: the School Performance Profile (SPP) score that every public school building (including all charters) receives, and the Federal Accountability Designation (Reward, Focus, Priority) that some Title I schools receive. These two measures should be included. PSBA believes that this method of evaluation leaves open several questions, such as:

- What will be the weighting of the various criteria? PSBA believes that the SPP scores and Federal Accountability Designation should account for the heaviest weightings since these are the formal measures the state uses to rate public schools.
- Since both the SPP and the Federal Accountability Designation use the state assessments (PSSA and Keystone Exams) as key factors but also include areas of measurement for scoring public schools, PSBA questions why the matrix should results from other standardized tests. If this is to be included, PSBA believes that the matrix should weight state assessment results more heavily than other standardized test scores. Is this the most cost effective system to implement if another method of evaluation is already in place?
- Does it serve a particular purpose to evaluate the performance of charter schools on a different set of standards and criteria than those by which we evaluate school districts?
- How often are charter schools evaluated under this system? Is it only required to occur prior to the charter's renewal?
- Does PDE have the capacity or the funding to develop this new system?

PSBA has strong concerns about the performance matrix being developed by PDE with only input from the charter school, and not from the school district that is responsible for authorization, oversight, renewal and/or revocation of the charter. Low-performing charters are granted a 5-year renewal in this section, instead of the new 10-year term, when academic quality benchmarks are not met. This provision seems contrary to the premise that charters schools are expected to provide high quality education, meet certain standards, and to the newly proposed requirements for charter school authorizer accountability. Instead of a 5-year renewal, a probationary process needs to be added to this section, regardless of the evaluation system used to assess charter school performance. The probationary process we propose would last 3 years and would require an underperforming charter school to create and adhere to an improvement plan, then be reassessed for a charter renewal or revocation decision at the end of the probationary period. Part of making charter schools work in Pennsylvania includes holding these schools to a higher performance standard, putting them on the same playing field as traditional public schools, and holding them accountable for their academic results.

The following is proposed language that would enhance the performance matrix provided for in the bill and increase accountability by providing a three probationary period and specific improvement plan for charter schools that are underperforming.

(3)

(ii) The performance matrix shall assess performance by utilizing objective criteria, including, but not limited to: student performance on the Pennsylvania System of School Assessment test, the Keystone Exam or another test established by the State board to meet the requirements of section 2603-B(d) (10)(i) and required under the No Child Left Behind Act of 2001 (Public Law 107-110, 115 Stat. 1425) or its successor Federal statute; annual growth as measured by the Pennsylvania Value-Added Assessment System; Pennsylvania School Performance Profile; attendance; attrition rates; graduation rates; other standardized test scores; school safety; parent satisfaction; accreditation by a nationally recognized accreditation agency, including the Middle States Association of Colleges and Schools or another regional institutional accrediting agency recognized by the United States Department of Education or an equivalent federally recognized body for charter school education; and other measures of school quality, including measures for assessing teacher effectiveness.

(VII) A charter school that fails to meet academic performance standards established by the department shall be subject to a period of up to three years and must submit a charter school improvement plan to the local board of school directors that authorized the charter that shall identify:

- (1) specific instruction designed to improve student performance in core academic subjects;
- (2) instructional strategies that will be applied to improve student performance;
- (3) professional development that will be provided to charter school staff to improve instruction; and
- (4) specific academic improvement goals

(VIII) A charter school under a probationary period of probation under subsection (VII) that fails to submit a charter school improvement plan or meet the academic standards established by the department such failure shall be grounds for nonrenewal or revocation of the charter pursuant Section 1729-A.

Section 1745-A. Establishment of Cyber Charter School.

Section 1745-A adds a subsection clarifying that a school district is not precluded from offering an online or Internet-based program of instruction, but that that instruction is not recognized as a cyber charter school. While PSBA does not disagree with this provision, we do advocate that when a school district expands its program of study to offer online instruction or an Internet-based

program, that school districts should not have to pay tuition reimbursements for students attending a cyber charter school instead. Cyber charter schools were created to provide another medium by which students may learn and when the district provides an equivalent program through its own online resources, they should not be responsible for payments to cyber charters. PSBA's suggested language can be found under Section 1725-A.

Additionally, the same comment applies as previously regarding granting a five year cyber charter renewal, instead of ten years, when the cyber charter fails to meet academic quality benchmarks. PSBA strongly suggests instituting a probationary period for these schools instead of rewarding them with five more years of operation without any sort of improvement plan in place. (See Section 1732-A)

Section 1752-A. Funding for Cyber Charter Schools.

While PSBA appreciates that 5% savings are generated by the Senate Bill 1085's reform of the cyber charter funding formula, it provides far less savings than the original bill's proposal and still fails to address the actual cost of providing education in cyber charter schools. Furthermore, since this 5% reduction is not based on a particular calculation, such as actual instructional costs, we fear this could leave school districts open to the liability of lawsuits brought forward by cyber charter schools. As with brick-and-mortar charter school funding for nonspecial and special education students, PSBA strongly suggests revisions to the tuition reimbursement formula that requires a cyber charter school to calculate its actual instructional costs based on the language provided for Section 1725-A and with a few additional exemptions for services a cyber charter school does not provide, such as food services, library services, and health services. PSBA's suggested language can be found under Section 1725-A.

We believe that these common-sense policy recommendations to the current charter school law will restore some balance to the current inequities in charter school/school district authority and accountability.

PSBA strives to be a continued partner in good education policy in for Pennsylvania's students. As we continue to analyze the language of Senate Bill 1085, we will provide additional comment as necessary and continue to work with the General Assembly to develop meaningful and equitable charter school reform legislation.

PSBA Platform:

D. School Choice

It is resolved that PSBA support parental options within the public school system. PSBA believes that constitutional restraints must be upheld and that choice programs should not impose financial hardships on taxpayers. Commonwealth funding should be provided to support the costs of public school choice initiatives, only after the state fulfills its commitment to adequately and equitably fund public schools. (*Rev. 2011*)

The association:

2. Supports amendments to the Charter School Law that would: allow school boards to operate charter schools; ensure that transportation of charter school students is governed by local school board policy; require that any proposed charter school with significant enrollment from more than one district be organized as a regional charter school; and ensure access to all charter school records by any district with children enrolled in the school. *(Rev. 2011)*
3. Supports legislation to require charter and cyber charter schools to be subject to the same laws and regulations that all public schools must follow. *(2012)*
4. Supports legislation that reduces or eliminates the financial burden of charter and cyber charter school costs on local school districts, including proposals that reform regular and special education funding, taking into account the actual per student educational expenditures of the charter and cyber charter school. *(Rev. 2012)*
7. Supports legislation that requires any nonpublic school entity that receives direct financial aid, tuition tax credits or vouchers such as the Educational Improvement Tax Credit program to be subject to the same state fiscal and academic accountability requirements as public school entities. Such requirements include audits and the collection of data on the use of funds for administrative and program expenditures, student achievement and socioeconomic characteristics of scholarship students. *(Rev. 2012)*
8. Supports legislation that requires high standards of charter authorizer performance and accountability, prevents applicants from forum shopping, ensures funding for quality oversight by authorizers, and requires rigorous application, monitoring, renewal and revocation processes that examine the management, operations, enrollment, and academic performance of charter school entities. Further, PSBA supports legislation that requires authorizers to revoke chronically failing charters. *(2012)*
9. Supports legislation that would require cyber and charter schools to comply with the same financial and academic accountability standards as school districts. *(Rev. 2011)*
12. Supports legislation to require any student that receives public funds for educational purposes to take the PSSA and/or other state assessments. *(Rev. 2012)*
14. Supports legislation that would require more rigorous enforcement/penalties to all public entities including charter schools, cyber charter schools, owners, operators and managers/EMOs-that fail to comply with the Commonwealth of Pennsylvania's Open Records Law. *(2013)*

Bill Summary

Senate Bill 1085 makes significant changes to the Charter School Law, providing further for transparency and fiscal accountability, funding, authorization, and performance evaluation. There are a number of changes to the charter school board of trustees, application process and charter terms, and changes that affect the role of school districts as charter school authorizers, such as requiring direct payment by school districts. The state portion of the retirement double dip is divided, institutions of higher education are added as a charter school authorizer, and authorization for multiple charter organizations is added. The language requires an annual report from each charter school authorizer on the performance of charter schools in their portfolios. Authorizers with low-performing charter schools will be subject to sanctions as determined by PDE.