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68th Montana Legislature

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TO: Education Interim Committee and Education Interim Budget Committee
FROM: Pad McCracken, Committee Staff
RE: HB 549 – Public Charter Schools brief overview and issues
DATE: March 7, 2024

[House Bill No. 549](#) (Anderson, 2023) now codified at [Title 20, chapter 6, part 8, MCA](#), established the Public Charter School Act to create innovative schools under the general supervision of the Board of Public Education and under the supervision and control of elected trustees of the school's governing board. The Board of Public Education (BPE) has done heroic work in implementing HB 549 under a very tight timeline, and in January 2024 approved 19 public charter schools after receiving and reviewing [26 applications](#).

This memo will not be a comprehensive overview of the whole Act by any means but will focus on the two parallel pathways for creating a charter school established in the Act that I will refer to as "Route 1" and "Route 2". All 19 of the approved charters used Route 1. There may be some workability issues or clarifications to address with Route 2. The term "**located school district**" is crucial to any discussion of these two routes. It means the existing school district in which a charter school is located.

Route 1 allows the trustees of an existing public school district to submit a lengthy application to the BPE, the BPE then reviews the application, including hosting an in-person interview with the applicant. If approved, the BPE and the school district enter into a charter contract. For funding purposes, the new school is considered a separate budget unit and receives an additional basic entitlement if its ANB is above certain thresholds. The trustees of the existing school district are the governing board of the charter school but must appoint an advisory board for the new charter school.

Route 2 allows applicants other than an existing local school board to apply. The applicants must be residents of the district or county in which the proposed charter school is to be located and must have first sought the creation of a school or program serving the mission and vision of the proposed charter school by the located school district with the trustees of that district declining. Something of a "right of first refusal."

Additionally, an application under Route 2 must include:

- A legal description of the property boundaries that will be used for the new "charter school district"
- Information on the *initial* governing board members (this unelected board is responsible for preoperation and initial operation of the public charter school until the election described below)

The BPE's consideration of the application is identical to its consideration of an application under Route 1, except that the BPE needs to request input from the electors of the school district where the charter school is proposed.

It is after a Route 2 application is approved by the BPE that things get a little funky. The approval triggers the creation of a new charter school district, the boundaries of which are the legal description of the campus of the charter school. This territory is then removed from the territory of the located school district. This raises some questions including:

- what if the charter school campus is leased space in a mall?
- what if the charter school campus changes locations year to year?
- is the property in the new district subject to school levies of the located school district out of which it was carved?
- does the new district have any taxing authority? The funding provisions make it appear as if the district does not, but this could be clarified.

At the regular school election in the first year the charter school is operational, the governing board must be elected by the electors of the located school district. This governing board then replaces the initial governing board. The governing board of the charter school district must be 7 members, with a majority of them qualified electors of the county in which the new charter school is located.

The funding for a Route 2 school, a new charter school district, differs from Route 1 in that the funding is entirely state paid. The amount is calculated the same as any other school district's BASE budget but receives a basic entitlement only if it hits the same ANB thresholds as those under Route 1. There is no mechanism for an overBASE budget or funding through any other funds available to other school districts; the BASE budget amount provided is "both the minimum and maximum amount of public funding for the charter school district." This would seem to preclude any federal charter school funding if available.¹ This also raises questions about the adequacy of this funding to operate a Route 2 charter school.

¹ Whether any public charter schools under HB 549 are eligible for federal charter school funding and how are questions that should be explored further.

The funding for a Route 2 charter school also has the potential to create perverse incentives for their creation in that the educational costs for the students would be borne entirely by the state, reducing the obligation of local taxpayers.

I did not comprehensively review all 26 applications, but based on my understanding, two of the denied applications pursued Route 2 or something akin to Route 2:

1. The YES Public Charter School applicants had apparently not first sought the creation of a similar program or school through the existing located school district.
2. The Liberty Elementary Charter applicants were trying to create a network of affiliated charter campuses outside the Liberty Elementary district boundary. This would not be allowable under either Route 1 or Route 2, but the objectives may have been achievable under HB 549 if each proposed charter campus submitted an application using Route 2.²

The BPE (and OPI) may be best situated to offer suggestions for statutory clarifications regarding HB 549. I am aware of a handful of issues in addition to the Route 2 questions identified above. These include:

- How should the BPE determine what is truly innovative? Could the statutes be more explicit in describing the innovation the Legislature is hoping to encourage?
- Are online/virtual charters allowed? HB 549 was silent on this issue, but states the following: *(1) (a) A public charter school must be open to any student residing in the state.* (20-6-808, MCA) If online/virtual charters are allowed, how does the Public Charter School Act interact with the out-of-district attendance laws as amended by HB 203 and the remote learning laws as amended by HB 214?
- Are public charter schools subject to the existing statutes on opening schools? OPI is contending that they are, but this would allow county officials and the superintendent of public instruction to effectively veto the opening of a public charter school after having been approved by the BPE which under the Act is "the sole entity authorized to enter into charter contracts with a governing board."
- How are public charter schools funded in their first year of operation? The second fiscal note, following amendments to the bill, indicated that new charter schools meeting ANB thresholds would receive a basic entitlement in the first year of operation but would not have a mechanism for estimating ANB. This comports with the amendments to the bill which among other things removed a first-year enrollment mechanism.

² It's important to remember that Route 2 is only available to applicants within Class 1 and 2 Districts. These district size classifications are based on total population, not on school enrollment.