

**KSBA Staff Review of [HB 520](#) – Charter Schools – Rep. Carney - (as introduced 2-17-17)**

Section	Statute	Summary	Comments
<p><b>1</b>  <b>pg. 1</b></p>	<p>New in chapter 160</p>	<p><b>DEFINITIONS FOR SECTIONS 1 TO 10</b></p>	<ul style="list-style-type: none"> <li>• Definition of “achievement gap” <b>conflicts with current statutory definition in <a href="#">KRS 158.649</a> and <a href="#">SB 1</a></b>. It is also somewhat vague (i.e. “...especially...”). It leaves out student subgroups such as ELL and children with disabilities, etc. Also, with the definition of this term repealed by SB 1, it would not be defined for purposes of this bill.</li> <li>• Unlike prior bills, “education service provider,” “applicant,” and “charter school board of directors” are not explicitly limited to nonsectarian entities, nor are they limited to nonprofit entities. Sections 3 and 4 address this, but it is not addressed here at the definition level.</li> <li>• Subsection (12)(b) is not limited to “pursuant to Sections 1 to 10 of this Act.”</li> <li>• Definition of “start-up” school would seem to allow a current private school to become a public charter school.</li> <li>• <b>Virtual charter schools are allowed</b>. The overwhelming majority of data presented to the KBE by local and national experts at the</li> </ul>

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			<p>day-long study session in November weighs heavily against allowing virtual charters in Kentucky. In fact, the expert from CREDO at Stanford University advised the KBE against allowing virtual charters if/when Kentucky enacts a charter law. <b>KSBA opposes the authorization of virtual schools in Kentucky in light of the student achievement data and experience from numerous other states,</b> which have demonstrated that attendance in a virtual charter is often the equivalent of not attending school at all in terms of academic outcomes. There are significant governance concerns in light of other states' experiences as well. An extensive investigation by Education Week, published last November and entitled "<a href="#">Rewarding Failure</a>," illustrates these concerns.</p> <ul style="list-style-type: none"> <li>• Throughout definitions, such as in subsection (13), it is unclear which district a virtual school would be "located in."</li> </ul>
<p><b>2</b>  <b>pg. 3</b></p>	<p>New in chapter 160</p>	<p><b>NATURE OF OVERALL CHARTER "PROJECT"</b></p> <ul style="list-style-type: none"> <li>• General Assembly findings</li> <li>• Purposes of charter school project. There are numerous stated purposes, not limited to closing achievement gaps.</li> </ul>	<ul style="list-style-type: none"> <li>• Page 3, line 26 calls this a "project." The word "pilot" is not included. This is not a pilot project in any limited or trial basis as has been contemplated by many stakeholders. The bill would allow an unlimited number of charters</li> </ul>

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		<ul style="list-style-type: none"> <li>• <b>Beginning in academic year 2017-2018</b>, any authorizer may authorize an unlimited number of charter schools within the boundary of a local school district (unclear as to how virtual schools would be considered for location).</li> <li>• Enrollment would be statewide. (Including in virtual schools, which could enroll from anywhere in the state).</li> <li>• Provides for certain enrollment preferences, such as current students; sibling groups; children of board of directors and employees; low-income students)</li> </ul>	<p>to be authorized statewide, with open enrollment across geographic and district boundaries.</p> <ul style="list-style-type: none"> <li>• The bill prohibits a local board from negotiating charter terms to limit enrollment across districts, as well as terms to cap enrollment on even a phased-in basis. This constitutes a significant change to the current district-based attendance framework, and raises concerns from short- and long-term planning standpoints.</li> <li>• As explained in a recent report by the <a href="#">Moody's credit rating agency</a>, sudden shifts in enrollment to a charter school cause strain on existing schools, because they cannot reduce costs tied to the enrollment shift as quickly, or as precisely as needed. The report found that charter schools can reduce district revenues faster than the districts can reduce costs, and that "[a]s some of these districts trim costs to balance out declining revenues, cuts in programs and services will further drive students to seek alternative institutions including charter schools." KSBA requests that local boards and applicants be allowed to negotiate enrollment terms that enable better</li> </ul>

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			<p>fiscal and facility planning, such as phased-in limits.</p> <ul style="list-style-type: none"> <li>• <b>Conflicts with SB 1</b>, which removes the statutory definition and provisions for “persistently low-achieving school.” This terminology should be amended, or a definition of this term should be added here.</li> <li>• The KBE must promulgate administrative regulations for major segments of the process. The KBE regulation process is very lengthy, more so than for other regulations (to allow for greater public comment). Therefore, the timeframe for charters to begin to be authorized may be unreasonably short. It would be advisable to delay the authorization of charters to the following academic year.</li> </ul>
<p><b>3</b>  <b>pg. 5</b></p>	<p>New in chapter 160</p>	<p><b>NATURE OF INDIVIDUAL CHARTER SCHOOLS/BOARDS</b></p> <ul style="list-style-type: none"> <li>• “A public charter school shall be part of the state’s system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a local school district, or a school, except the public charter school shall adhere to the same health, safety, civil rights, and disability rights requirements as are applied to all public</li> </ul>	<ul style="list-style-type: none"> <li>• The provisions for appeal of every denial of any requested charter contract amendment is concerning. If the KBE is presented with many appeals, it may present problems if the appeal process is lengthy.</li> <li>• The bill is not explicit as to which laws and regulations will apply to a charter (it does not cite which specific regulations will constitute health and safety regulations, for example. It is unclear if this includes restraint and seclusion</li> </ul>

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		<p>schools and to all requirements otherwise identified in [this Act].”</p> <ul style="list-style-type: none"> <li>• Certain requirements are provided, including but not limited to: <ul style="list-style-type: none"> <li>• Charter school must ensure student’ participation in required state assessment of student performance.</li> <li>• Charter must comply with Open Records and Open Meetings laws.</li> <li>• Charter must adhere to GAAP principles and same audit requirements applied to public schools].</li> <li>• Charter must provide instructional time that is at least equivalent to student instructional year applied to public schools.</li> </ul> </li> <li>• Enrollment lottery provisions.</li> <li>• Charter school board of director membership provisions.</li> <li>• A board of directors may hold one or more charter contracts, each of which shall be separate and distinct from any other charter school.</li> <li>• Charter shall be nonsectarian. Nondiscrimination provisions.</li> <li>• Disability provisions. IEP and ARC provisions.</li> </ul>	<p>regulations). This may lead to implementation delays, appeals to the KBE, and litigation. Greater specificity in the statute may be advisable.</p>

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		<ul style="list-style-type: none"> <li>• Local school district shall provide transportation to charter students residing in the district, and shall retain all related funding.</li> <li>• Athletics and extracurricular provisions.</li> <li>• Charter board may request amendments to the charter. Each denial of a requested amendment appears to be individually appealable to the KBE.</li> <li>• Leave of absence provision for current teacher desiring to work for a charter.</li> </ul>	
<p><b>4</b></p> <p><b>pg. 13</b></p>	<p>New in chapter 160</p>	<p><b>CHARTER APPLICATION PROVISIONS</b></p>	<ul style="list-style-type: none"> <li>• Page 16, line 1, states that the application must describe the health and food services to be provided. The bill does not require these services to be provided. Given the rates of poverty in Kentucky, student well-being may suffer if health/food services are not provided.</li> <li>• As stated above, virtual charter provisions are concerning. If Kentucky adopts best practices and builds upon successes of other states, virtual charters would be prohibited, not allowed. <b>Note: Stanford University’s 2015 <a href="#">CREDO study</a> on online charters presented to the KBE in November found that “[a]cademic benefits from online charter schools are currently the exception rather than the rule.”</b></li> </ul>

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5  pg. 18	New in chapter 160	<p><b>DUTIES OF AUTHORIZERS</b></p> <ul style="list-style-type: none"> <li>• Local boards, among other required duties, shall: <ul style="list-style-type: none"> <li>• Solicit applications.</li> <li>• Approve new and renewal applications that “meet the requirements of this section and Section 4.”</li> <li>• Establish and maintain policies and practices consistent with the principles and professional standards for authorizers.</li> </ul> </li> <li>• No later than 60 days following the filing of an application, the local board shall approve or deny the application.</li> <li>• Standards for approval are stated.</li> <li>• Upon approval by a local board, the application shall be submitted to the KDE for final approval by the Commissioner.</li> </ul>	<ul style="list-style-type: none"> <li>• Page 19, line 2: requirement that local boards “shall...solicit” applications raises questions. “Solicit” has significant meaning in public procurement. This would require a local board in a district that is already under fiscal distress to actively solicit applications, even though the community would not have the capacity to support a charter. This is especially concerning in the eastern and western coal fields, where districts have just learned that they will have substantial revenue shortfalls in the current year due to unmined coal reassessments.</li> <li>• Requiring all local boards to actively solicit applications constitutes an unfunded mandate, as the bill does not provide any funding for authorizer training or application review processes.</li> <li>• Page 19, lines 16-23: This would take a significant amount of time, and again, this makes the timeline of 2017-2018 unreasonable. Further, this would require all 173 school boards to adopt policies, even if they are in communities that do not have the capacity to support any charter school.</li> </ul>

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			<ul style="list-style-type: none"> <li>• Sixty-day deadline for application approval is concerning. More than 60 days are needed to ensure a quality review.</li> <li>• There are no standards provided to guide the “final approval” of all applications by the Commissioner, which places significant and unfettered discretion to him/her. More specifics may be advisable to guide this process.</li> </ul>
<p><b>6</b>  <b>pg. 21</b></p>	<p>New in chapter 160</p>	<p><b>KBE APPEALS PROCESS</b></p> <ul style="list-style-type: none"> <li>• “The state board, upon receipt of a notice of appeal or upon its own motion, shall review decisions of any authorizer concerning the approval or denial of [an application], the nonrenewal or revocation of a [contract], the denial of a public charter school’s request to consider a charter amendment, or the unilateral imposition of conditions, in accordance with the provisions of this section.”</li> </ul>	<ul style="list-style-type: none"> <li>• This process could become very cumbersome and time consuming. KSBA supports an appeals process for charter authorization itself; however, the appeal of every requested amendment to an already agreed-upon and executed charter contract is concerning for practical reasons.</li> </ul>
<p><b>7</b>  <b>pg. 24</b></p>	<p>New in chapter 160</p>	<p><b>TERMS OF CHARTER CONTRACTS</b></p> <ul style="list-style-type: none"> <li>• Required terms of charter contracts are listed.</li> <li>• Allows for “pre-opening conditions” to be part of the mutually negotiated and executed charter contract, and states that “reasonable</li> </ul>	<ul style="list-style-type: none"> <li>• Many of the mandated terms of the charter contract are reasonable, but the section on pre-opening conditions is vague. The verbiage is subjective and therefore likely to drive appeals and litigation. The entire section, page 25, lines 17-23, is a significant infringement on</li> </ul>



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		<p>conditions shall not include enrollment caps or operational requirements that place undue constraints on a public charter school or are contradictory to the provisions of [this Act]. Such conditions, even when incorporated in a charter contract, shall be considered unilaterally imposed conditions.”</p> <ul style="list-style-type: none"> <li>• The local board is responsible for collecting, analyzing, and reporting to the KBE all state assessment and achievement data for each charter school it oversees.</li> </ul>	<p>local board authority to contract, which is among the general statutory powers of locally elected boards.</p> <ul style="list-style-type: none"> <li>• On page 26, line 27, the local board is responsible for collecting assessment data from the charter, but the charter is not explicitly required/mandated to provide it. This is problematic in the event that a charter school does not respond timely to requests for data.</li> <li>• KBE is charged with promulgating regulations for this process. Again, this is a lengthy process that makes the overall timeline unreasonable.</li> </ul>
<p><b>8</b> <b>pg. 28</b></p>	<p>New in chapter 160</p>	<p><b>STATUS OF CHARTER BOARD. POWERS AND DUTIES OF BOARD.</b></p> <ul style="list-style-type: none"> <li>• Powers of the charter board are detailed.</li> <li>• “[N]o civil liability shall attach to any public charter school authorizer or to any of its members or employees, individually or collectively, for any acts or omissions of the public charter school. Neither the local school district nor the Commonwealth shall be liable for the debts of financial obligations of a public charter schools or any person or corporate entity who operates a public charter school.”</li> </ul>	<ul style="list-style-type: none"> <li>• The liability provisions are positive from the state and local school board perspectives.</li> </ul>

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<p><b>9</b></p> <p><b>pg. 29</b></p>	<p>New in chapter 160</p>	<p><b>CHARTER RENEWAL PROVISIONS</b></p> <ul style="list-style-type: none"> <li>• Charters may be renewed for terms of three to five years.</li> <li>• “No later than one (1) calendar year prior to the expiration date of a charter contract, an authorizer shall issue a public charter school performance report and ... renewal application guidance to the public charter school it authorized” noting weaknesses or concerns that could jeopardize renewal.</li> <li>• Upon a closure, a “public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets” shall be followed. The protocol would be developed by the authorizer.</li> <li>• Upon a closure, the charter school assets shall be distributed first to satisfy outstanding payroll for employees, then to creditors, then to the State Treasurer for deposit in the state general fund.</li> </ul>	<ul style="list-style-type: none"> <li>• The performance report due prior to renewal seems as if it would be better suited to be issued first by the charter to the authorizer. Depending on the experience over the term, the authorizer may not have sufficient information to generate the report.</li> <li>• No automatic closure process is established. There is no performance trigger that would require a closure to occur.</li> </ul>
<p><b>10</b></p> <p><b>pg. 33</b></p>	<p>New in chapter 160</p>	<p><b>CONVERSION SCHOOLS</b></p> <ul style="list-style-type: none"> <li>• An existing public school may be converted into a charter school if 60 percent of the parents of students attending the school</li> </ul>	

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		<p>have signed a petition requesting conversion, or the local board votes to convert the school.</p> <ul style="list-style-type: none"> <li>• The KBE shall promulgate regulations for the conversion process.</li> <li>• A conversion school shall hire its own employees. Employees of the school shall be employees of that school (and implicitly not of the authorizing district).</li> <li>• “For any collective bargaining agreement entered into on or after the effective date of this Act, a governing board shall not be bound by its collective bargaining agreement for employees of a conversion public charter school.” “Employees of a conversion ... school may organize and collectively bargain only as a unit separate from other school employees.”</li> </ul>	
<p><b>11</b> <b>pg. 35</b></p>	<p>New in chapter 157</p>	<p><b>FUNDING PROVISIONS -- ENROLLMENT AND ATTENDANCE</b></p> <ul style="list-style-type: none"> <li>• Students enrolled in a charter school that resides in the boundaries of “that” local school district shall be included in the average daily attendance (ADA) of the authorizer for purposes of calculating the</li> </ul>	<p><b>MAJOR CONSTITUTIONAL CONCERN</b></p> <ul style="list-style-type: none"> <li>• A state requirement that a local school board, which by law is the tax-levying authority for the district, must directly transfer local tax revenues to a charter school is a <b>violation of the state constitution</b> on several grounds.</li> </ul>

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		<p>state and local share of funding for the charter school.</p> <ul style="list-style-type: none"> <li>• <b>“School districts shall transfer state and local funds to public charter schools on a proportionate per pupil basis after local capital outlay funds, transportation funds, and a [3%] authorizer administrative fee are excluded from gross state and local funds.” Further, “School districts shall be fined not less than [3%] of the total funding per funding period to be transferred to the charter school for every [3 days] late on funds transfers.”</b> Page 35, lines 12 to 22.</li> <li>• Students enrolled in a charter school who do not reside within the boundaries of that local school district shall be included in the ADA of the district of residence for purposes of calculating the state and local share of funding for the charter school. <b>“The student’s district of residence shall transfer state and local funds to [the charter] on a proportionate per pupil basis after transportation funds and a [1% fee] for the school district are excluded...”</b></li> </ul>	<ul style="list-style-type: none"> <li>• This <b>violates fundamental principles of representative democracy in the area of taxation.</b></li> <li>• This <b>contravenes the dual state/local funding system enacted by KERA</b> in 1990, which is designed to encourage local communities to provide more financial support to their own schools by imposing higher taxes upon themselves (through equalized Tier I funding). If the state transfers that local tax money to charters – which could be located anywhere in the state and with which the local board may have no involvement or oversight whatsoever – the incentive for greater local financial support is lost. This could lead directly to reduced overall financial support for all schools.</li> <li>• Apart from the constitutional violation, it would nonetheless constitute a <b>substantial infringement on local control over local taxes</b> levied on a community by its elected school board. The state does not direct how local boards distribute state or local funds among existing public schools of the district, because this is an essential role of the local board in furtherance of its statutory duty to “manage</li> </ul>

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			<p>and control” the public schools of the district. This has been in place for many decades.</p> <ul style="list-style-type: none"> <li>• The “power of the purse” as it relates to tax dollars collected from locally imposed tax levies is a fundamental power of any elected local governmental entity, be it a school board, a city, a county fiscal court, or any other taxing district. This provision represents a substantial infringement on local control, home rule, and representation over taxation and the use of public funds.</li> <li>• It is also unclear how these funding (and location) provisions would apply in the case of a virtual charter, which may have no physical location anywhere in the state.</li> </ul>
<p><b>12</b> <b>pg. 37</b></p>	<p>New in chapter 161</p>	<p><b>RETIREMENT PROVISIONS and BARGAINING</b></p> <ul style="list-style-type: none"> <li>• Charter school employees shall participate in TRS or CERS, as applicable, “provided the [school] satisfied the criteria set by the [IRS] to participate in a governmental retirement plan.”</li> <li>• A charter school employee shall not be required to be a member of any collective bargaining agreement.</li> </ul>	<ul style="list-style-type: none"> <li>• The limiting phrase relating to IRS qualification for charter school staff to participate in TRS and CERS deserves further consideration. If charter schools are “bodies politic” and constitute public schools, why is there any concern that the staff could be prohibited from participating in these public employee retirement systems?</li> <li>• Considering many of the entities, including various quasi-governmental entities,</li> </ul>

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			participate in these systems today, it is not clear why charter schools would not be allowed to.
<b>13</b>  <b>pg. 38</b>	161.220	<b>TRS PARTICIPATION</b>	<ul style="list-style-type: none"> <li>• Same concern relative to IRS determination of eligibility.</li> <li>• If charter school staff were determined to be ineligible for TRS and CERS, what retirement would be provided?</li> <li>• If no retirement were provided, this would be an area of competitive disadvantage between charters and noncharter public schools, in terms of fixed costs.</li> </ul>
<b>14</b>  <b>pg. 46</b>	78.510	<b>CERS PARTICIPATION</b>	<ul style="list-style-type: none"> <li>• Same concerns as noted above.</li> </ul>