

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** Senate Bill 1

**PRINTER NO.** 839

**AMOUNT**

See Fiscal Impact

**FUND**

General Fund

**DATE INTRODUCED**

June 4, 2021

**PRIME SPONSOR**

Senator Martin

**DESCRIPTION**

Senate Bill 1 amends the Public School Code by making revisions related to the establishment and operations of charter school entities, by establishing the mandate waiver program and by making revisions to the Education Improvement Tax Credit Program (EITC) and the Opportunity Scholarship Tax Credit Program (OSTC) as follows:

**Advertising** – The legislation provides that a paid media advertisement by a public school entity that refers to the cost of tuition or other services, including transportation, computers, internet or other electronic devices may not advertise the expense as free, and any reference must stipulate that the cost is covered by taxpayer dollars.

**Mandate Waiver Program** – The legislation establishes the Mandate Waiver Program to allow a school entity to apply to the Department of Education (department) for a waiver from provisions of the law, regulations, standards and guidance that will improve instructional programs or result in more efficient school operations. It requires the department to develop a standard waiver application, consider waiver applications within 30 days and issue a written approval, disapproval or request modifications. It provides that denied applications can be appealed to the Secretary of Education (secretary) and provides for the department to list approved applications online. Further, it precludes specific provisions from waiver.

**Transfer of Student Records** – The legislation provides for the transfer of attendance records between school entities, including nonpublic schools, within 10 days of a receipt of the record request and requires the student’s excused absences to be included in the record.

**Concurrent Enrollment** – The legislation permits a charter school entity to enter into a concurrent enrollment agreement with an institution of higher education to provide credit to students enrolled under the terms of the agreement.

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**Use of Sectarian Facilities** – The legislation permits a charter school entity to use sectarian facilities as long as there are discrete and separate entrances for the charter school entity, the religious objects and symbols are covered or removed to the extent reasonably feasible, or the unused portion of the facility or common areas do not contain religious symbols or objects.

**Charter School Requirements** – The legislation requires each charter school entity to establish an independent audit committee comprised of its board members to review a completed and certified audit of the charter school entity's operations performed by an independent certified public accountant. It provides that a charter school entity may be subject to an annual audit by the Auditor General. It requires a charter school entity and its foundation to make its annual budget and tax filings publicly available upon request and on the internet.

**Powers and Duties of Boards of Trustees** – The legislation prohibits an individual, or a family member of an individual who is employed by or a member of the local board of school directors reviewing a charter school or regional charter school, from serving as a voting member of the charter school's board of trustees. It also limits an employee of the school district that chartered a charter school or regional charter school to serving as a non-voting member of the board of trustees.

The legislation prohibits members of the board of trustees of a charter school entity from receiving compensation for their service and requires a trustee to be dismissed and immediately removed if convicted of a felony, infamous crime, theft or mismanagement of public funds in the discharge of their official duties.

The legislation requires the board of trustees of a charter school entity to comply with the Open Meetings Law and provides for members of the board to be considered public officials subject to the Public Official and Employee Ethics Act.

The legislation requires the board of trustees to consist of at least five (5) nonrelated voting members, or a charter school entity must appoint additional nonrelated voting members within 60 days. It also provides that a majority of the voting members of the board constitutes a quorum, which is required to take official action.

**Charter School Entity Administrators** – The legislation provides for a charter school entity administrator to be considered a public employee subject to the Public Official and Employee Ethics Act. It provides that an administrator may not receive compensation from another charter school entity or educational management services provider unless the administrator submits a sworn statement detailing the work to be performed for the other entity. It limits an administrator or family member of an administrator to serving as a non-voting member of the board of trustees of the charter entity that employs the administrator. It also provides for an administrator to be dismissed and immediately removed from duties if convicted of a felony, infamous crime, theft or mismanagement of public funds.

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**Public Charter School Commission** – The legislation establishes the Public Charter School Commission (commission) to serve as an additional authorizer of charter school entities. It provides the commission with the authority to receive and evaluate charter applications, approve and deny charter applications, execute charters and monitor charter performance. It provides for the commission to be comprised of seven members who serve without pay but may be reimbursed for reasonable expenses. It provides for the commission members to annually elect a chairperson and allows the chairperson to appoint, terminate and fix the pay of an executive director and other personnel. It provides for the chairperson to submit an annual budget request to the Governor and the majority and minority chairpersons of the Appropriations Committees in the Senate and House of Representatives and requires the General Assembly to make an annual appropriation to the commission for the salary and benefits of the executive director and other necessary expenses. It also requires the department to provide administrative support, office space, meeting space and any other assistance required by the commission to carry out its duties.

**Commission Charter Application Process** – The legislation requires the commission to adopt charter approval criteria at a public meeting and use criteria, procedures and practices when evaluating charter applications. It requires charter applications to receive a thorough review and at minimum one public hearing, with notice of the hearing published in the Pennsylvania Bulletin at least 30 days in advance. It requires the commission to adopt a resolution to approve or deny an application at a public meeting within 75 days of receipt and provide a copy of the resolution to the department within 15 days of the decision. It provides that an applicant has grounds to file its application as an appeal to the appeal board if the commission fails to act within the 75 days.

The legislation requires that if a charter applicant is approved by the commission, a written charter will be developed and signed, serving as the legal authorization of the charter school entity for at least three years but no more than five years. If an application is denied, it requires the commission to include reasons for the denial in the resolution. It allows an applicant that has been denied to reapply to the commission or appeal the decision to the appeal board. It provides that a charter authorized by the commission may apply for a 5-year renewal by November 1 of the final year of the approved charter and a decision to approve or deny the renewal application must be adopted by resolution by March 31 of the following year.

The legislation authorizes the commission to revoke or not renew a charter for a material violation of the charter, failure to meet performance expectations, failure to meet generally accepted standards of financial management, a violation of this article, a violation of state or federal law or a conviction of fraud. It specifies that a decision to not renew or revoke a charter must be presented at a public hearing with reasonable notice to the charter school entity and be adopted by resolution at a public meeting after the public has had at least 30 days to provide comment. It provides that a charter school entity may appeal this decision to the appeal board. It provides that if the health or safety of the charter school's staff or students is at risk, the commission may take immediate action to revoke a charter. It also requires the commission to provide a copy of the resolution to the department within 15 days of the decision to revoke or not renew the charter.

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**Due Process Rights** – The legislation provides that a charter may not contain a provision requiring a charter school entity to forfeit its due process rights to appeal with the appeal board.

**Use of Facilities by Cyber Charter Schools** – The legislation requires school districts, intermediate units, community colleges, and universities in the State System of Higher Education to provide cyber charter schools with reasonable access to their facilities for the administration of standardized tests. It requires cyber charter schools to give 60 days' notice of the need for facilities for required testing and requires that schools notify the cyber school of the location of the facilities to be provided in 30 days. It provides that the schools are not required to make facilities available on dates and times that may interfere with educational programs and a facility rental fee may be charged, as long as it is the same fee that applies to all organizations generally.

**Charter School Enrollment** – The legislation requires a charter school or regional charter school with a waiting list to assign students randomly to the waiting list and enroll them as spaces become available. It requires the department to work with charter schools or regional charter schools to create a standard paper and online charter enrollment form for students. It provides that information requested on the form and by a charter school or regional charter school is limited to the student's name, address, phone number, age, birth date, current grade level and the parent or guardian's name, address, phone number and email address. It also allows a charter school entity to limit its academic focus and allows a performing arts charter school entity to establish reasonable artistic criteria for admission.

**Fee Prohibition** - The legislation prohibits the Secretary of Education from charging a fee for any service or act performed by the department unless a fee is expressly permitted in this article.

**Charter Appeals** - The legislation requires the appeal board to conduct a review of an appeal within 30 days and issue a decision within 60 days of the review or the charter is deemed renewed or not revoked.

**Electronic Materials and Digital Books** – The legislation provides that instructional materials may include electronic or digital books in place of textbooks and permits a parent or guardian to elect not to receive an additional printer for each child enrolled in a cyber charter school.

**School District and Intermediate Unit Online Programs** – The legislation provides that a school district or intermediate unit is not precluded from offering instruction online but may not be considered a cyber charter school unless the requirements for establishing a cyber charter school as provided under this article are met.

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**Educational Tax Credits** – The legislation increases the total amount of tax credits available under the EITC from \$185 million to \$300 million beginning in Fiscal Year 2021-22. Within the EITC, it increases credits to scholarship organizations from \$135 million to \$185 million, credits to education improvement organizations from \$37.5 million to \$50 million, and credits to pre-kindergarten scholarship organizations from \$12.5 million to \$15 million.

The legislation increases the total amount of tax credits available under the OSTC from \$55 million to \$100 million beginning in Fiscal Year 2021-22.

The legislation provides for an automatic 25% increase in credits available under both the EITC and OSTC if 90% or more of the tax credits are approved in the prior fiscal year, beginning in Fiscal Year 2022-23.

The legislation moves the provisions that make credits available for scholarships for students attending economically disadvantaged schools from the OSTC to the EITC and increases the amount available for those schools from \$5 million to \$50 million.

### **FISCAL IMPACT:**

The provisions contained in Senate Bill 1 that provide for the mandate waiver program to allow school entities to seek waivers from provisions of the law or regulations that allow them to operate more efficiently may result in savings to school entities.

The provisions contained in the legislation providing for the Charter School Funding Commission are estimated to cost \$944,000 annually. This amount will provide for the salary and benefits for the executive director of the commission and staff to support its operations. The estimate assumes an annual salary for the executive director of \$150,000 and six (6) support staff paid at the average salary for staff employed by the Department of Education (\$71,832) based on the Office of Administration’s Workforce Statistics and the benefit rate (62.4%) projected for Department of Education employees for Fiscal Year 2021-22.

The provisions in the legislation providing for the Charter School Funding Commission will likely result in the approval of additional charter school entities, and school districts will experience additional costs to pay charter school tuition charges. Those costs will be offset to the extent that school districts are able to reduce fixed costs resulting from a reduction in enrollments. Please note, the average daily membership of a resident student enrolled in a charter school entity is counted in the school district’s average daily membership for the purpose of Basic Education Funding and Special Education Funding subsidies.

The provisions contained in the legislation will increase the tax credits available under the EITC and OSTC programs by \$160 million in Fiscal Year 2021-22. Additionally, future year increases will be dependent upon on whether the amount of tax credits approved exceeds 90% of the amount available. Below is a chart showing the projected increase in EITC and OSTC through Fiscal Year 2022-23.

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Credit	Current	2021-22	2022-23
<b>EITC (a)</b>	\$ 185,000,000	\$ 300,000,000	\$ 375,000,000
<b>OSTC (b)</b>	\$ 55,000,000	\$ 100,000,000	\$ 125,000,000
<b>Total (a+b)</b>	\$ 240,000,000	\$ 400,000,000	\$ 500,000,000
<b>\$Increase</b>		\$ 160,000,000	\$ 100,000,000

The legislation increases the amount of funding available for scholarships for students to attend nonpublic and nonresident school districts on a tuition basis by \$95 million in Fiscal Year 2021-22 and an estimated \$71.3 million in Fiscal Year 2022-23. To the extent the influx in tax credit scholarship dollars increases the number of students able to enroll in other schools, resident school districts may realize savings. The savings will be dependent on the school district’s ability to reduce fixed costs resulting from reduced enrollments compared to the loss of state subsidies resulting from the reduction in average daily membership.