

# The Washington State Board of Education

Governance | Accountability | Achievement | Oversight | Career & College Readiness

<b>Title:</b>	<b>Rules, Charter Schools, Authorizer Oversight Fee and Charter Applications Timeline</b>	
<b>As Related To:</b>	<input checked="" type="checkbox"/> Goal One: Effective and accountable P-13 governance. <input type="checkbox"/> Goal Two: Comprehensive statewide K-12 accountability. <input type="checkbox"/> Goal Three: Closing achievement gap.	<input type="checkbox"/> Goal Four: Strategic oversight of the K-12 system. <input type="checkbox"/> Goal Five: Career and college readiness for all students. <input type="checkbox"/> Other
<b>Relevant To Board Roles:</b>	<input checked="" type="checkbox"/> Policy Leadership <input checked="" type="checkbox"/> System Oversight <input type="checkbox"/> Advocacy	<input type="checkbox"/> Communication <input type="checkbox"/> Convening and Facilitating
<b>Policy Considerations / Key Questions:</b>	<ol style="list-style-type: none"> <li>1. Do the proposed rules provide for an authorizer oversight fee at a level that appropriately supports the cost of carrying out the duties of a charter school authorizer RCW 28A.710.100?</li> <li>2. Do the proposed rules provide for the ability of the State Board to adjust the fee in the future, based on evidence?</li> <li>3. Do the proposed timelines for charter applications provide sufficient time for both charter applicants and authorizers to perform their functions in a way that conduces to establishing and operating quality schools?</li> <li>4. Do the proposed rules provide for a workable and transparent way for the SBE to certify the approval of charter applications by authorizers so as to ensure compliance with the limits on the number of charter schools in RCW 28A.710.150?</li> </ol>	
<b>Possible Board Action:</b>	<input checked="" type="checkbox"/> Review <input type="checkbox"/> Adopt <input checked="" type="checkbox"/> Approve <input type="checkbox"/> Other    The possible Board action is to approve draft rules for filing of a CR 102, Notice of Proposed Rule-Making, and scheduling of a public hearing.	
<b>Materials Included in Packet:</b>	<input checked="" type="checkbox"/> Memo <input checked="" type="checkbox"/> Graphs / Graphics <input checked="" type="checkbox"/> Third-Party Materials <input type="checkbox"/> PowerPoint	
<b>Synopsis:</b>	<p>The State Board of Education is required to adopt rules to RCW 28A.710.110 (Authorizer oversight fee) and RCW 28A.710.140 (Charter school applications).</p> <p>RCW 28A.710.110 requires the SBE to establish a statewide formula for an authorizer oversight fee, an amount deducted from the state allocation to the charter school and transmitted to the authorizer to support ongoing administrative costs of authorizing. The proposed rules provide for an authorizer oversight fee of four percent, the maximum permitted by the statute, decreasing to 3 percent after an authorizer has authorized ten charter schools. They also require the SBE to periodically review the authorizer oversight fee to determine the need for any adjustment.</p> <p>RCW 28A.710.140 requires the SBE to establish an annual statewide timeline for charter application submission and approval or denial, which must be followed by all authorizers. The timeline includes dates required to be established in other sections of the law for issuance of requests for proposals by all authorizers and for reports by all authorizers to the SBE on actions to approve or deny charter applications. The proposed rules provide for two sets of timelines: one for charter applications made in 2013 only, and a second for charter applications in 2014 and all subsequent years. The second, ongoing timeline is designed to result in charter approvals by no later than mid-October of the year prior to the year in which the school is opened.</p>	



## PROPOSED RULES, RCW 28A.710.110, RCW 28A.710.140 CHARTER SCHOOLS

### Policy Consideration

Members will review and approve for filing a CR 102 for public hearing, with any changes they may direct, proposed rules to RCW 28A.710.110 (Authorizer Oversight Fee) and RCW 28A.710.140 (Charter applications – Submission – Approval of Denial).

### Summary

**RCW 28A.710.110** requires the State Board of Education (SBE) to establish a statewide formula for an authorizer oversight fee. The fee is calculated as a percentage of the state operating funding allocated under RCW 28A.710.220 to each school under the jurisdiction of the authorizer. The fee may not exceed four percent of each charter school's annual state funding.

The law permits use of a sliding scale in which the funding percentage could decrease after the authorizer has reached a certain threshold such as number of charter schools authorized or number of years authorizing. It does not permit setting one authorizer oversight fee for one kind of authorizer, and a different fee for another kind of authorizer.

The formula for the oversight fee established by the SBE under this section applies to *all authorizers*, both school districts approved by the SBE under RCW 28A.710.090 and the Washington Charter School Commission.

The fee is transmitted to the authorizer by the Office of the Superintendent of Public Instruction as a deduction from the state allocation to the charter school.

Authorizers may use the revenue received from the exclusively for the purpose of fulfilling the duties of an authorizer set forth in RCW 28A.710.100. These include:

1. Soliciting and evaluating charter applications.
2. Approving quality charter applications and denying weak or inadequate ones.
3. Negotiating and executing sound charter contracts with approved charter schools.
4. Monitoring the performance and legal compliance of charter schools.
5. Determining whether each charter contract merits renewal, nonrenewal, or revocation.

The proposed rules (WAC 180-19-060) establish a statewide formula for an authorizer oversight fee as follows:

- *A four percent oversight fee*, the full percentage allowed by the law. This recognizes the lack of solid empirical data on which to base a calculation, and the significant, up-front costs of authorizing that can be inferred from the statute.

- *A three percent oversight fee after an authorizer has authorized ten charter schools.* This recognizes the economies of scale that can be achieved by an authorizer after accumulating a sizeable portfolio of authorized charter schools. It also recognizes that the Washington Charter School Commission, the only authorizer likely to be affected by this provision, will and should have available state general fund resources to support its activities in addition to that provided by the fee.
- *Periodic review of the oversight fee by the SBE,* based on high-quality data gained through experience, to determine whether the formula should be adjusted to ensure it is meeting the intents of the charter school law.

## Background

The National Association of Charter School Authorizers, in *Charter School Authorizer Funding* (2009) states:

Ensuring that authorizing agencies have sufficient funding to execute their duties professionally is essential for quality authorizing and quality charter schools. State charter school policy should provide for adequate authorizer funding as an essential element of charter school infrastructure.

The mode and level of authorizer funding varies widely among the 42 states having charter school law. Some states provide a state appropriation to authorizers to cover their costs. Some expect authorizers to make allocations for this activity from their base budgets. As of 2009, 14 states funded authorizing through fees deducted from allocations to charter schools. Maine (2011) and Washington (2012) make at least two more now.

There is limited instruction that can be gained from other states on the percentage at which the authorizer oversight fee should be set. The fees vary not only by the percentage but by the funding base to which it is applied – sometimes just state revenue to the charter school, sometimes total revenue. This and other variables make state-by-state comparisons difficult.

According to the National Alliance for Public Charter Schools, “There is no single formula for authorizer funding that is ‘the best’ for every state. The determination of an adequate, efficient and well-working formula for authorizer funding will depend on conditions in each state, including the variety and preexisting financial capacities of authorizers in the state.” (NAPCS, *A New Model for Supporting the Growth of High-Quality Public Charter Schools*, 2009, p. 12.)

It is also difficult to identify reasonable costs to an authorizer – both district and Commission – for performing its duties in a high-quality way, to which an appropriate amount of fee revenue might then be pegged. According to NACSA, “There is no empirical evidence that identifies a specific level of funding required for quality authorizing.” (*Funding*, 2009) In follow-up research the organization has found a wide range in personnel deployment and expenditures among a group of effective, single-purpose authorizers sampled.

One of the considerations for the authorizer oversight fee is what is expected of authorizers by each state’s charter schools law. NACSA notes that Washington’s law is very explicit about the responsibilities of authorizers and demands a high degree of transparency and accountability, suggesting that fee funding should provide upper-end resources (telephone conversation with staff).

Given the lack of strong empirical data on costs of quality authorizing, and the entire lack of experience with charters in Washington, there is a compelling case for providing in rule for review of the oversight fee at appropriate intervals. The idea finds strong support from the National Alliance for Public Charter Schools:

To ensure efficient and well-directed used of tax dollars, the state's designated authorizer oversight body should periodically review, and if warranted by the actual costs of authorizing (as reported annually to the state), adjust the authorizer funding or scale. Charter authorizing should be neither a financial burden nor a 'cash cow' for authorizers (NACPS, *Model*, p. 12.).

RCW 28A.710.100(4), which requires each authorizer to submit an annual report to the SBE, provides for key information with which to make such an analysis. The information that must be contained in the reports includes "The authorizer's operating costs and expenses detailed in annual audited financial statements." This enables SBE to arrive at estimates, based on empirical evidence, of the actual costs of authorizing activities to both school districts and the Commission. After enough years of experience, the SBE could use the data to make any necessary adjustments in the fee established at the outset.

## Summary

RCW 28A.710.140(1) provides that the SBE must establish an annual statewide timeline for charter application submission and denial. This timeline must be followed by all authorizers, both approved school districts and the Washington Charter School Commission. The timeline must include two other dates called out in other sections of the law:

- The annual date by which each authorizer must issue and broadly publicize a request for proposals for charter school applications (RCW 28A.710.130);
- The last date by which each authorizer must submit a report to the SBE on actions to approve or deny a charter application (RCW 28A.710.150).

As with the rules adopted by the Board in February on the authorizer approval process, the proposed rules recognize the necessity for establishing two sets of timelines:

1. A temporary timeline for charter applications received in 2013 only, for prospective school openings in fall 2014.
2. A second, ongoing timeline, starting much earlier, for charter applications received in 2014 and all years thereafter, for prospective school openings in fall 2015 and succeeding falls.

Proposed WAC 180-19-070 and WAC 180-19-080 establish timelines for charter applications and action on them by authorizers as follows:

Action	Applications in 2013 Only	Applications in 2014 and Ongoing
Last date for all authorizers to issue RFPs (28A.710.130)	September 22, 2013	April 15, 2014
Closing date for charter application submissions to all authorizers	November 22, 2013 (60 days)	July 15, 2014 (90 days)
Closing date for authorizer approval or denial of charter applications	January 22, 2014 (60 days)	October 15, 2014 (90 days)
Last date by which authorizer must submit report of action to approve or deny application (28A.710.150)	February 1, 2014 (10 days, per law)	October 25, 2014 (10 days, per law)

Proposed WAC 180-19-090 establishes procedures for the lottery required by 28A.710.150(3) to determine which charters are selected to be implemented when the SBE receives reports of charter approvals that would cause the limits established in that section on the allowed number of schools to be exceeded.

## Background

The timelines in place for charter applications and authorizer action in other states are of more interest than value in guiding decisions on the best timeline for our state. That is in part because of the variety of practices in other states. New Jersey, for example, has two cycles for charter applications to its state Department of Education, one in the spring and another in the fall. It is also because only a handful of other states include the authorizer approval step that we have in our law in their own charter school laws. According to information received from the National Alliance for Public Charter Schools, in response to an SBE inquiry, just five states – Hawaii, Louisiana, Nevada, Minnesota, and Ohio – require approval of charter school authorizers by some state oversight body. Not all of these require approval of local school boards as authorizers.

In its flagship *Principles & Standards for Quality Charter School Authorizing*, the National Association of Charter School Authorizers sets out guidelines for the time to plan for in a charter schools process:

A well-planned process might include minimum timeframes such as 1) three months from release of the RFP/application packet to the application deadline; 2) three months for evaluation of the applications, and 3) nine months, but preferably 12-18 months, from [charter] approval to school opening. (p. 26)

The proposed rules to RCW 28A.710.140 seek to follow those guidelines as best as reasonably possible, given the unique circumstances of enactment of Initiative 1240 in fall 2012. The ongoing timeline provides nearly 11 months between approvals of charters by authorizers in mid-fall and prospective school openings the following September. They work back from there, providing 90 days for charter applications and another 90 days for evaluations and decisions on

them by authorizers. The ten days from charter approvals by which authorizers must submit reports of actions to approve or deny is set in statute.

**Action**

The Board will review and consider approval of the proposed rules for public hearing.

## RCW 28A.710.110

### Authorizer oversight fee — Establishment — Use.

(1) The state board of education shall establish a statewide formula for an authorizer oversight fee, which shall be calculated as a percentage of the state operating funding allocated under RCW [28A.710.220](#) to each charter school under the jurisdiction of an authorizer, but may not exceed four percent of each charter school's annual funding. The office of the superintendent of public instruction shall deduct the oversight fee from each charter school's allocation under RCW [28A.710.220](#) and transmit the fee to the appropriate authorizer.

(2) The state board of education may establish a sliding scale for the authorizer oversight fee, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of years of authorizing or after a certain number of charter schools have been authorized.

(3) An authorizer must use its oversight fee exclusively for the purpose of fulfilling its duties under RCW [28A.710.100](#).

(4) An authorizer may provide contracted, fee-based services to charter schools under its jurisdiction that are in addition to the oversight duties under RCW [28A.710.100](#). An authorizer may not charge more than market rates for the contracted services provided. A charter school may not be required to purchase contracted services from an authorizer. Fees collected by the authorizer under this subsection must be separately accounted for and reported annually to the state board of education.

[2013 c 2 § 211 (Initiative Measure No. 1240, approved November 6, 2012).]

## RCW 28A.710.130

### Charter school applications — Request for proposals, content — Charter school application, content.

(1)(a) Each authorizer must annually issue and broadly publicize a request for proposals for charter school applicants by the date established by the state board of education under RCW [28A.710.140](#).

[2013 c 2 § 213 (Initiative Measure No. 1240, approved November 6, 2012).]

## RCW 28A.710.140

### Charter applications — Submission — Approval or denial.

(1) The state board of education must establish an annual statewide timeline for charter application submission and approval or denial, which must be followed by all authorizers.

[2013 c 2 § 214 (Initiative Measure No. 1240, approved November 6, 2012).]



## RCW 28A.710.150

### Maximum number of charter schools — Process — Certification — Lottery — Notice.

(1) A maximum of forty public charter schools may be established under this chapter, over a five-year period. No more than eight charter schools may be established in any single year during the five-year period, except that if in any single year fewer than eight charter schools are established, then additional charter schools equal in number to the difference between the number established in that year and eight may be established in subsequent years during the five-year period.

(2) To ensure compliance with the limits for establishing new charter schools, certification from the state board of education must be obtained before final authorization of a charter school. Within ten days of taking action to approve or deny an application under RCW [28A.710.140](#), an authorizer must submit a report of the action to the applicant and to the state board of education, which must include a copy of the authorizer's resolution setting forth the action taken, the reasons for the decision, and assurances of compliance with the procedural requirements and application elements under RCW [28A.710.130](#) and [28A.710.140](#). The authorizer must also indicate whether the charter school is designed to enroll and serve at-risk student populations. The state board of education must establish, for each year in which charter schools may be authorized as part of the timeline to be established pursuant to RCW [28A.710.140](#), the last date by which the authorizer must submit the report. The state board of education must send notice of the date to each authorizer no later than six months before the date.

(3) Upon the receipt of notice from an authorizer that a charter school has been approved, the state board of education shall certify whether the approval is in compliance with the limits on the maximum number of charters allowed under subsection (1) of this section. If the board receives simultaneous notification of approved charters that exceed the annual allowable limits in subsection (1) of this section, the board must select approved charters for implementation through a lottery process, and must assign implementation dates accordingly.

(4) The state board of education must notify authorizers when the maximum allowable number of charter schools has been reached.

[2013 c 2 § 215 (Initiative Measure No. 1240, approved November 6, 2012).]

**Chapter 180-19 WAC  
CHARTER SCHOOLS  
(Phase II)**

**WAC 180-19-060 Authorizer Oversight Fee.** (1) The statewide formula for the authorizer oversight fee transmitted to an authorizer by the superintendent of public instruction, as provided for in RCW 28A.710.110, shall be calculated at four percent of the state operating funding allocated under RCW 28A.710.220, with the fee decreasing to three percent of the state operating funding after an authorizer has authorized ten (10) charter schools.

(2) The Board shall periodically review the adequacy and efficiency of the authorizer oversight fee for the purpose of determining whether the formula should be adjusted in order to ensure fulfilling the purposes of Chapter 28A.710 RCW. In conducting the review, the Board shall utilize the information on authorizers' operating costs and expenses included in the annual report submitted to the Board by each authorizer as set forth in 28A.710.100(4) .

**WAC 180-19-070 Charter School - Request for proposals.** Each authorizer shall annually issue requests for proposals for charter schools. For the year 2013, a request for proposal must be issued by no later than September 22, 2013. Requests for proposals in all subsequent years must be issued no later than April 15.

**WAC 180-19-080 Charter School applications - Submission, Approval or Denial.** (1) An applicant, as defined in RCW 28A.710.010, seeking approval must submit an application for a proposed charter

school to an authorizer by no later than July 15 of the year in which the applicant seeks approval; Provided, however, that an applicant seeking approval to operate a charter school in 2014 must submit an application to an authorizer by no later than November 22, 2013.

(2) An authorizer receiving an application for a proposed charter school must either approve or deny the proposal by no later than October 15 of the year in which the application is received; Provided, however, that for applications received in 2013, the authorizer must approve or deny the proposal by no later than January 22, 2014.

(3) The authorizer must provide the State Board of Education with a written report of the approval or denial of an applicant's proposal for a charter school within ten days of such action, but no later than October 25, whichever is sooner; Provided, however, that for proposals for charter schools received in 2013, the report must be received within ten days of the action, but no later than February 1, 2014, whichever is sooner. The notice must comply with the requirements set forth in RCW 28A.710.150(2). The report shall be sent to the board via electronic mail to sbe@k-12.wa.us.

**WAC 180-19-090 Board Certification of Charter Schools -- Lottery.**

(1) Upon receipt of notice from an authorizer that a charter school has been approved, the chair of the state board of education shall certify whether the approval is in compliance with the limits on the maximum number of charters in RCW 28A.710.150. Certification from the state board of education must be obtained before final

authorization of a charter school. The certification of a charter school shall be posted on the Board's website.

(2) If the board receives notification of charter approvals under this section on the same day, and the total number of approvals exceeds the limits in RCW 28A.710.150(1), the board will select approved charters for certification through a lottery process as follows.

(a) The board shall notify the authorizer that the approved charter school has not been certified by the board for operation and must be selected for certification through a lottery.

(b) Within 30 days after determining that the limit for charter schools has been exceeded, the board shall conduct a lottery, as required by RCW 28A.710.150(3), at a publicly noticed meeting to select and certify approved charters for implementation. The board shall randomly draw the names of charter schools from the available pool of approved charter schools that have not been certified until the maximum allowable total number of charter schools has been selected.

i. A charter school shall be certified by the board for operation commencing in the following school year so long as the total number of charter schools that may be established in any single year under RCW 28A.710.150 is not exceeded.

ii. Once the total number of charter schools that may be established in any single year under RCW 28A.710.150 is exceeded, the Board shall certify a charter school for operation in a subsequent year based upon the charter's selection in the lottery.

**WAC 180-19-200 Computation of Time.** (1) "Days" means calendar day whenever used in this chapter, unless otherwise specified. The period of time for performing an act governed by this chapter is determined by excluding the first day and including the last day, unless the last day is an official state holiday, Saturday, or Sunday, in which event the period runs until the end of the next business day. (2) If a specific due date is established under this chapter, and that date falls on a Saturday, Sunday, or official state holiday, such period is automatically extended to the end of the next business day.

## RCW 28A.710 Timelines for Rules

### Rules to RCW 28A.710.090. Charter school authorizers – Approval process As Adopted February 26, 2013.

Action	2013 Approvals Only	2014 Approvals And Ongoing
District notice of intent to submit authorizer application	April 1, 2013	October 1, 2013
SBE posts district authorizer application	April 1, 2013	October 1, 2013
Closing date for authorizer applications to SBE	July 1, 2013 (90 days)	December 31, 2014 (90 days)
Closing date for SBE decisions on authorizer applications	September 12, 2013 (72 days)	April 1, 2014 (90 days)

### Rules to RCW 28A.710.140. Charter applications – Submission – Approval or denial Proposed March 2103 for CR 102 and Public Hearing.

Action	Applications in 2013 Only	Applications in 2014 and Ongoing
Last date for all authorizers to issue RFPs (28A.710.130)	September 22, 2013 (10 days)	April 15, 2014 (15 days)
Closing date for charter application submissions to all authorizers	November 22, 2013 (60 days)	July 15, 2014 (90 days)
Closing date for authorizer approval or denial of charter applications	January 22, 2014 (60 days)	October 15, 2014 (90 days)
Last date by which authorizer must submit report of action to approve or deny application (28A.710.150)	February 1, 2014 (10 days, per law)	October 25, 2014 (10 days, per law)

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