

**Assembly Committee on Education
June 2, 2011**

**Testimony of Deputy State Superintendent
Dr. Michael Thompson on 2011 Assembly Bill 51**

Thank you to Chairperson Kestell and members of the committee for the opportunity to testify before you today. My name is Mike Thompson. I am the Deputy State Superintendent of the Department of Public Instruction (DPI). With me today is Bob Soldner, the Director of School Management Services. On behalf of State Superintendent Tony Evers, I am here to testify in opposition to 2011 Assembly Bill 51 (AB 51) due to concerns about the impact on local school districts and the public school system in Wisconsin and constitutional issues raised by the bill.

The department supports high quality charter schools. Since 2005, DPI has supported charter school innovation by applying for federal charter school start up grants. To date we have received over \$138 million in grant money to distribute to schools and now have the seventh highest number of charter schools in the country with over 200 charter schools statewide. As you can see from the map being distributed, charter schools are located across the state. All charter schools outside of the Milwaukee and Racine areas are authorized by local school boards. According to our most recent survey data, school boards have approved 98 percent of the charter proposals presented to them. While some modification may be needed, overall this system works very well.

When the department testified on this bill in the Senate, one of our chief concerns was that this bill was a blank check to independent charter schools from the accounts of local school districts, and it exacerbated inequities in the current school funding system. There are only three sum sufficient appropriations for K-12 education. One is for national board certified teachers, another for private school choice, and the third is for independent charters. School districts are already bracing for a reduction of \$850 million dollars in the biennial budget.

Assembly Substitute Amendment 1 to AB 51 attempts to address this problem by mimicking the funding mechanism the state utilizes to pay for open enrollment students. Essentially, resident school districts will still be able to count the student for revenue limit purposes. Funding for the student who attends a charter school authorized by a CESA or the state board will come directly from the resident district's general equalization aid. If a school district does not receive enough equalization aid to pay for all charter school students, the department will take categorical aid from the district, and if there is still not enough aid to pay for charter school students, the resident district will be obligated to make a payment to the department.

The department is concerned that the substitute amendment will result in two separate methods of funding independent charter schools in Milwaukee because the amendment does not change the method of funding for existing independent charter schools authorized by the City of Milwaukee and UW-Milwaukee. Students attending those schools, and any schools authorized in the future by those entities, will continue to be funded as a first draw off equalization aids from all the school districts in the state.

The Charter School Authorizing Board as laid out in the original bill and in the substitute amendment continues to raise significant constitutional questions. In the Senate hearing, we

asked for clarification regarding the authority of the executive director of the board vis-à-vis the authority of the state superintendent, given the language in the bill stating the executive director shall “exercise such further powers, functions and duties as the board prescribes.” While it is clear that the substitute amendment attempts to address this by giving the State Superintendent a seat on the board and providing him with two of the eight appointments, it does not resolve the constitutional problem. Under Article X, Section 1 of the Wisconsin Constitution “The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct.” The Wisconsin Supreme Court issued a decision in 1996 clarifying that the legislature may not give any other officer authority equal or superior to that of the state superintendent.¹

Additionally, Article X, Section 3 of the Wisconsin constitution states that the legislature shall provide by law for the establishment of district schools which shall be as nearly uniform as practicable. This section raises two more constitutional concerns. The first goes directly to the heart of the bill since it provides for the establishment of something other than the district schools required by Article X, Section 3.

The second constitutional concern is created by the provision in the substitute amendment. This provision allows a school district to convert all its schools to charter schools and eliminates the requirement that the board then provide alternate arrangements for students not wanting to attend the charter school. Given that charter schools do not have to comply with all the laws governing traditional public schools, the department is not sure how the 20 standards would be applied to a district in these instances. The department believes this uncertainty could result in a violation of the constitutional requirement that school districts be as uniform as practicable.

The substitute amendment still allows a charter school contract to provide for more than one school. There are important policy questions regarding the merit of allowing a CESA or state board to authorize multiple charters under one contract. Establishing multiple schools under one contract gives rise to cookie cutter charter schools rather than unique and innovative models on which the charter movement is built. There are serious questions regarding the size, scope, and impact of what could easily become an essentially independent and separate public school system unaccountable to local voters and communities.

Moreover, the department questions why the bill allows CESAs, which are regional education agencies, the ability to charter schools outside of their CESA boundaries. CESAs should only be allowed to charter schools within their boundaries.

When the bill’s limits on the number of contracts the state board can enter into ends, there are real questions as to the ability of school districts to compete as authorizers with the Charter School Authorizing Board. Districts will be constrained by revenue limits in their ability to spend the money needed to create new charter schools. Corporations and others seeking to establish independent charter schools will have no such restrictions.

The committee should be aware that this bill will affect private schools as well as public schools in regards to federal dollars. All charter schools serving low-income children are entitled to federal Title I funds. As the number of independent charters expands, it will divert Title I resources from existing school districts and their ability to prioritize Title I funds to school buildings. In addition, independent charter schools receiving Title I funds are not subject to the Title I requirement that public school districts are to provide equitable services to private school children. In essence, fewer Title I dollars for public school districts will mean fewer Title I

¹ *Thompson v. Craney*, 199 Wis. 2d 674, 546 N.W.2d 123 (1996), [95-2168](#).

dollars for private schools.

The substitute amendment, while greatly improving the bill by requiring concurrent applications to the local school district and state board, does not specifically address if a charter school governing board must first reapply to a school board when it seeks a renewal contract or wishes to modify it. In addition, it does not give the school district the right to match the last best offer by the state board.

The department thanks the bill's authors for attempting to improve the bill with the substitute amendment. However, given the constitutional issues and the significant implications for public school districts and the students they serve, the department opposes this bill.

Thank you for the opportunity to testify before you today. I would be happy to answer any questions you may have.