



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-3740/5  
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## 2011 BILL

1     **AN ACT** *to renumber* 118.40 (5); *to renumber and amend* 115.38 (1); *to amend*  
2           115.38 (title), 115.38 (2), 118.42 (1) (intro.), 118.42 (2) (intro.), 118.42 (3) (a)  
3           (intro.), 118.42 (3) (b) (intro.), 118.42 (4), 119.04 (1) and 121.006 (2) (d); and *to*  
4           **create** 115.38 (1e) to (1k), 115.38 (1s), 118.40 (3) (f), 118.40 (5) (b) and 118.42  
5           (3m) of the statutes; **relating to:** a school and school district accountability  
6           system.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, the Department of Public Instruction (DPI) must prepare a school and school district performance report for public schools in this state. The report must include various indicators of pupil academic achievement as well as other indicators of performance.

This bill requires DPI to prepare a report for private schools that are participating in a parental choice program (PCP) as well as for public schools. The school performance report for a private school participating in a PCP must be based only on data relating to the pupils attending the private school under the PCP.

Under current law, if DPI determines that a public school or school district has been in need of improvement for a specified period or ranks in the lowest five percent, the school board must engage in certain specified activities designed to improve the performance of the school or school district. If a public school or school district is determined to be in need of improvement for a longer period, DPI may direct the

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school board to take certain actions, such as implementing a new curriculum, implementing changes in administrative and personnel structures, or implementing a new or modified instructional design.

This bill modifies the current accountability system for schools. For school districts, the bill makes the directed improvements and interventions mandatory after three years of being in need of improvement instead of after four years.

The bill directs DPI to establish a comprehensive school accountability system beginning in the 2012–13 school year. The system covers public schools, including charter schools, and private schools that are participating in a PCP.

The bill requires that the system include all of the following components:

1. Multiple measures to determine performance, including pupil achievement and growth in reading and mathematics; measures of college and career readiness; and gaps in pupil achievement and rates of graduation, categorized by race, English language proficiency, disability, and income.

2. An index system to identify a school's level of performance and annually place each school into one of six performance categories. The bill requires DPI and each school board, charter school, and parental choice program school to publicize the performance category to which it has been assigned.

3. The production of annual school and school district reports.

Under the new accountability system, if DPI determines that a public school (other than a charter school) is in the lowest performance category, DPI must direct a diagnostic review of the school. Based on the review, DPI must direct the school board to choose to either implement DPI-approved improvement activities or close the school. If the school board chooses to implement the improvement activities, but after three years remains in the lowest performance category, DPI must direct certain specified activities, including annual performance evaluations and the establishment of teacher and principal improvement programs.

If DPI determines that a charter school is in the lowest performance category, the charter school must either implement DPI-approved improvement activities and improve its performance ranking within three years or risk having its charter revoked, or enter into a performance agreement with DPI in which the charter school agrees to meet annual, DPI-approved, performance benchmarks. If the school chooses the latter option and misses a benchmark in any year, DPI must revoke the school's charter. (The bill requires that every charter school's charter include a provision authorizing DPI to revoke the school's charter under these circumstances.)

If DPI determines that a private school participating in a PCP is in the lowest category, it must proceed as described above for charter schools except that, instead of revocation of the school's charter, the private school may be barred from participating in a PCP.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

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1           **SECTION 1.** 115.38 (title) of the statutes is amended to read:

2           **115.38** (title)   **School accountability system; performance report;**  
3           **educational program review.**

4           **SECTION 2.** 115.38 (1) of the statutes is renumbered 115.38 (1m), and 115.38  
5           (1m) (intro.), (c) and (e), as renumbered, are amended to read:

6           115.38 **(1m)** (intro.) The Annually, the state superintendent shall develop  
7           prepare a school and school district performance report ~~for use by school districts~~  
8           ~~under sub. (2).~~ The report shall include all of the following by school and by school  
9           district:

10           (c) Staffing and financial data information, as determined by the state  
11           superintendent, not to exceed 10 items. The state superintendent may not request  
12           a school or school board to provide information solely for the purpose of including the  
13           information in the report under this paragraph.

14           (e) The method of reading instruction used in the school or school district and  
15           the textbook series used to teach reading in the school or school district.

16           **SECTION 3.** 115.38 (1e) to (1k) of the statutes are created to read:

17           115.38 **(1e)** In this section, “school” means a public school, including a charter  
18           school, and a private school participating in a parental choice program under s.  
19           118.60 or 119.23.

20           **(1g)** The department shall establish a comprehensive school and school district  
21           accountability system beginning in the 2012–13 school year that includes all of the  
22           following components:

23           (a) Multiple measures to determine a school’s performance or a school district’s  
24           improvement status under s. 118.42, including all of the following:

25           1. Pupil achievement and growth in reading and mathematics.

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1           2. Measures of college and career readiness for high school pupils and measures  
2 indicative of being on track for college and career readiness in the elementary grades.

3           3. Gaps in pupil achievement and rates of graduation, categorized by race,  
4 English language proficiency, disability, and income level.

5           (b) An index system to identify a school's level of performance and annually  
6 place each school into one of 6 performance categories based on data derived from  
7 multiple school years. The department shall collect and disseminate the best  
8 practices from the schools placed in the highest performance category. For schools  
9 placed in the lowest performance category, the department shall identify  
10 opportunities to provide support and shall intervene as provided in pars. (d) to (f).  
11 As part of that intervention, the department shall establish performance  
12 improvement benchmarks, which shall reflect the annual improvement necessary to  
13 remove the school from the lowest performance category within 3 years.  
14 Performance improvement benchmarks shall be as uniform as reasonably possible  
15 for all schools other than those serving predominantly children at risk, as defined in  
16 s. 118.153 (1) (a).

17           (c) The production of annual school and school district reports that are timely,  
18 useful, and understandable. Each school and school district shall display  
19 prominently on the school's and school district's Internet sites the reports produced  
20 by the department under this section and make copies available upon request in the  
21 school's office.

22           (d) If the department determines that a public school other than a charter  
23 school is in the lowest performance category, the department shall do all of the  
24 following:

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1           1. Direct a department–approved, on–site, diagnostic review of the school to  
2 determine the cause of the school’s poor performance.

3           2. Direct the school board to implement department–approved improvement  
4 activities, based on the diagnostic review, within 3 school years or close the school.

5           3. If the school board chooses to implement department–approved  
6 improvement activities under subd. 2. but after 3 school years remains in the lowest  
7 performance category, direct the activities of the school in a manner consistent with  
8 s. 118.42.

9           4. If the diagnostic review under subd. 1. reveals that the school district has  
10 been in need of improvement for 3 consecutive school years, s. 118.42 applies.

11           (e) If the department determines that a charter school is in the lowest  
12 performance category, the charter school shall do one of the following:

13           1. After participating in a department–approved, on–site, diagnostic review,  
14 implement department–approved improvement activities. After 3 years, if the  
15 charter school remains in the lowest performance category, the department shall  
16 revoke the school’s charter.

17           2. Enter into a performance agreement with the department in which the  
18 charter school agrees to meet annual, department–approved, performance  
19 benchmarks. If a benchmark is not met in any year, the department shall revoke the  
20 school’s charter.

21           (f) If the department determines that a private school participating in a  
22 program under s. 118.60 or 119.23 is in the lowest performance category, the private  
23 school shall do one of the following:

24           1. After participating in a department–approved, on–site, diagnostic review  
25 paid for by the private school, pay for and implement department–approved

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1 improvement activities. After 3 years, if the private school remains in the lowest  
2 performance category, the department shall bar the school from participating in the  
3 program under s. 118.60 or 119.23.

4 2. Enter into a performance agreement with the department in which the  
5 private school agrees to meet annual, department–approved, performance  
6 benchmarks. If a benchmark is not met in any year, the department shall bar the  
7 school from participating in the program under s. 118.60 or 119.23.

8 **(1i)** In establishing the accountability system under sub. (1g), the department  
9 shall consult with all of the following:

10 (a) The governor.

11 (b) The chairpersons of the committees in the assembly and the senate whose  
12 subject matter is elementary and secondary education.

13 (c) The ranking minority members of each of the committees under par. (b).

14 (d) Members of education groups representing school boards, school  
15 administrators, and teachers.

16 (e) Members of organizations representing pupils and parents.

17 **(1k)** (a) The department shall annually report to the appropriate standing  
18 committees of the legislature under s. 13.172 (3) the performance category to which  
19 each school has been assigned.

20 (b) Each school board, the governing body of each charter school under s. 118.40  
21 (2r), and the governing body of each private school participating in a program under  
22 s. 118.60 or 119.23 shall annually report to the parent of each pupil enrolled in the  
23 school or school district the performance category to which the school has been  
24 assigned.

25 **SECTION 4.** 115.38 (1s) of the statutes is created to read:

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1           **115.38 (1s)** The governing body of a private school participating in a parental  
2 choice program under s. 118.60 or 119.23 shall provide the state superintendent with  
3 any information he or she requests for the purpose of preparing the school  
4 performance report under sub. (1m). The state superintendent shall prepare the  
5 report for each private school participating in a parental choice program under s.  
6 118.60 or 119.23 using only information relating to the pupils who are attending the  
7 private school under s. 118.60 or 119.23.

8           **SECTION 5.** 115.38 (2) of the statutes is amended to read:

9           **115.38 (2)** (a) Annually by January 1, each school board shall notify the parent  
10 or guardian of each pupil enrolled in the school district of the right to request a school  
11 and school district performance report under this subsection. Except as provided in  
12 par. (b), annually by May 1, each school board shall, upon request, distribute to the  
13 parent or guardian of each pupil enrolled in the school district, including pupils  
14 enrolled in charter schools located in the school district, or give to each pupil to bring  
15 home to his or her parent or guardian, a school and school district performance report  
16 that includes the information specified by the state superintendent under sub. ~~(1)~~  
17 (1m). The report shall also include a comparison of the school district's performance  
18 under sub. ~~(1)~~ (1m) (a) and (b) with the performance of other school districts in the  
19 same athletic conference under sub. ~~(1)~~ (1m) (a) and (b). If the school district  
20 maintains an Internet site, the report shall be ~~made available to the public at~~  
21 prominently displayed on that site.

22           (b) If a school board enters into an agreement with a federally recognized  
23 American Indian tribe or band in this state to establish a charter school, that school  
24 board shall, upon request, distribute to the parent or guardian of each pupil enrolled  
25 in the charter school a school and school district performance report that includes the

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1 information specified by the state superintendent under sub. ~~(4)~~ (1m), regardless of  
2 the location of the charter school.

3 **SECTION 6.** 118.40 (3) (f) of the statutes is created to read:

4 118.40 **(3)** (f) No charter school may be established by contract unless the  
5 contract authorizes the department to revoke the contract under sub. (5) (b).

6 **SECTION 7.** 118.40 (5) of the statutes is renumbered 118.40 (5) (a).

7 **SECTION 8.** 118.40 (5) (b) of the statutes is created to read:

8 118.40 **(5)** (b) A charter may be revoked by the department under s. 115.38 (1g)  
9 (e).

10 **SECTION 9.** 118.42 (1) (intro.) of the statutes is amended to read:

11 118.42 **(1)** (intro.) If the state superintendent determines that a school district  
12 has been in need of improvement for ~~4~~ 3 consecutive school years, the school board  
13 shall do all of the following:

14 **SECTION 10.** 118.42 (2) (intro.) of the statutes is amended to read:

15 118.42 **(2)** (intro.) If the state superintendent determines that a public school  
16 was in the lowest performing 5 percent of all public schools in the state in the  
17 previous school year prior to the 2012–13 school year, or was in the lowest  
18 performance category under s. 115.38 (1g) (b) in the 2012–13 school year or any  
19 school year thereafter, and is located in a school district that has been in need of  
20 improvement for ~~4~~ 3 consecutive school years, the school board shall do all of the  
21 following in the school:

22 **SECTION 11.** 118.42 (3) (a) (intro.) of the statutes is amended to read:

23 118.42 **(3)** (a) (intro.) If the state superintendent determines that a school  
24 district has been in need of improvement for ~~4~~ 3 consecutive school years, the state  
25 superintendent may, after consulting with the school board, the school district



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1 superintendent, and representatives of each labor organization representing school  
2 district employees, direct the school board to do one or more of the following in the  
3 school district:

4 **SECTION 12.** 118.42 (3) (b) (intro.) of the statutes is amended to read:

5 118.42 **(3)** (b) (intro.) If the state superintendent determines that a public  
6 school is located in a school district that has been in need of improvement for 4  
7 consecutive school years, prior to the 2012–13 school year or in a school district that  
8 has been in need of improvement for 3 consecutive school years beginning in the  
9 2012–13 school year; and that the school has been in need of improvement for 5  
10 consecutive school years prior to the 2012–13 school year or was among the lowest  
11 performing 5 percent of all public schools in the state in the previous school year,  
12 prior to the 2012–13 school year, or was in the lowest performance category under  
13 s. 115.38 (1g) (b) in the 2012–13 school year or any school year thereafter; the state  
14 superintendent may, after consulting with the school board, the school district  
15 superintendent, and representatives of each labor organization representing school  
16 district employees, direct the school board to do one or more of the following in the  
17 school:

18 **SECTION 13.** 118.42 (3m) of the statutes is created to read:

19 118.42 **(3m)** (a) The department shall report annually to the appropriate  
20 standing committees of the legislature under s. 13.172 (3) the improvement status  
21 of each school district under this section.

22 (b) Each school board shall annually report to the parent of each pupil enrolled  
23 in the school district the improvement status of the school district under this section.

24 **SECTION 14.** 118.42 (4) of the statutes is amended to read:

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1           118.42 (4) The state superintendent shall promulgate rules establishing  
2 criteria and procedures for determining whether a school or school district is in need  
3 of improvement and whether a school is among the lowest performing 5 percent of  
4 all public schools in the state, prior to the 2012–13 school year for the purposes of this  
5 section. Beginning in the 2012–13 school year, the state superintendent shall  
6 promulgate rules establishing criteria and procedures for determining whether a  
7 school district is in need of improvement for purposes of this section.

8           **SECTION 15.** 119.04 (1) of the statutes, as affected by 2011 Wisconsin Act 85,  
9 is amended to read:

10           119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c),  
11 66.0603 (1m) to (3), 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343,  
12 115.345, 115.365 (3), 115.38 ~~(2)~~, 115.445, 118.001 to 118.04, 118.045, 118.06, 118.07,  
13 118.075, 118.076, 118.10, 118.12, 118.125 to 118.14, 118.145 (4), 118.15, 118.153,  
14 118.16, 118.162, 118.163, 118.164, 118.18, 118.19, 118.20, 118.223, 118.225, 118.24  
15 (1), (2) (c) to (f), (6), (8), and (10), 118.245, 118.255, 118.258, 118.291, 118.292, 118.30  
16 to 118.43, 118.46, 118.51, 118.52, 118.55, 120.12 (4m), (5), and (15) to (27), 120.125,  
17 120.13 (1), (2) (b) to (g), (3), (14), (17) to (19), (26), (34), (35), (37), (37m), and (38),  
18 120.14, 120.21 (3), and 120.25 are applicable to a 1st class city school district and  
19 board.

20           **SECTION 16.** 121.006 (2) (d) of the statutes is amended to read:

21           121.006 (2) (d) Comply with a directive issued by the state superintendent  
22 under s. 115.38 (1g) (d) or 118.42 (3) (a) or (b).

23           **SECTION 17. Nonstatutory provisions.**

24           (1) ACCOUNTABILITY SYSTEM. Notwithstanding section 16.42 (1) (e) of the  
25 statutes, in submitting information under section 16.42 of the statutes for purposes

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1 of the 2013–15 biennial budget bill, the department of public instruction shall submit  
2 information concerning the cost of implementing the school and school district  
3 accountability system under section 115.38 (1g) to (1k) of the statutes, as created by  
4 this act.

**SECTION 18. Initial applicability.**

6 (1) CHARTER SCHOOL CONTRACTS. The treatment of sections 115.38 (1g) (e) and  
7 118.40 (3) (f) and (5) (b) of the statutes first applies to a contract for the establishment  
8 of a charter school that is entered into, modified, or renewed on the effective date of  
9 this subsection.

10 **SECTION 19. Effective dates.** This act takes effect on the day after publication,  
11 except as follows:

12 (1) The treatment of sections 115.38 (1), (1e) to (1k), (1s) and (2) and 119.04 (1)  
13 of the statutes takes effect on September 1, 2012.

14 (END)