

DRAFT

## WHO 'HAS CHARTER SCHOOLS'? WHO DOESN'T?

At the beginning -- about 1993 -- the classification of charter laws was based on what-happened. Laws that produced schools were called "live laws". Laws that did not were called "dead laws".

Then university people got into classifying charter laws. "Live" and "dead" was not academically respectable terminology. "Strong laws" and "weak laws", they preferred to say. Others took up this approach. By 1996 there were efforts even to rank the laws in order from 'strongest' to 'weakest'.

It took a while to see the implications of trying to evaluate a state's charter program in terms of the provisions of the law itself. By 1997, though, it was clear that 'strong/weak' was not describing well what was really going on. It had a hard time explaining states like California where the law seemed 'weak' but where the charter program was clearly live. School boards tried to define 'strong' as a law that creates strong school boards. Also, opponents began to 'game' the criteria.

\* Because a law was considered stronger (so, ranked higher) if it did not limit the number of schools allowed, bills began to appear that provided for an unlimited number of schools -- so long as only local boards were eligible to create them!

\* Because a law was considered stronger if local boards were not the only approving authority, bills began to appear that gave approval authority also to intermediate school districts and colleges of education and other bodies the authors knew wouldn't really be interested in creating charter schools either.

It's time to go back to a classification based on what-happens. In this memo, and in the maps and graphic, we classify states according to whether their charter programs have proved to be 'dynamic' or 'static'. We define those terms and set out the criteria for classification.

We hope readers -- and especially policymakers in the states -- will find this new approach helpful. As always, we would be interested in your reactions and suggestions.

## Dynamic, and Static, Charter Laws

No state can "have charter schools" just by calling certain schools 'charter schools' or by calling some law 'a charter law'. Your neighbor can cobble-together some plywood and wire in the back yard to look something like an airplane, and may call it 'an airplane'. But you're entitled to test that: Does it fit the definition of an airplane? More important: Does it fly?

By the test of what's-real about 16 states and the District of Columbia "have charter schools" -- have laws that fit the definition of 'charter' and do 'fly', do really work. These account for over 90 per cent of the schools. Ten states do not: They have about two per cent of the schools. In seven states, with about eight per cent of the schools, you can't quite tell.

### **What is the definition of 'charter'?**

Not everything that flies is an airplane. Birds fly; so do hang-gliders, blimps and dirigibles. If we mean airplane we need to define 'airplane'. The same with 'charter': It's not 'magnet schools', not 'alternative schools', not a waiver program, not what passes for 'site-management'. It's something else.

The elements of the charter idea have been clear and agreed-on from the start: **(a)** The Legislature says it's OK for some public body other than the local board to offer public education in the community; so a public school may be run by somebody other than the local district. **(b)** New schools may be created as well as existing schools converted. **(c)** The school will be a legal entity and the teachers will belong to the school. **(d)** The principles of public education apply; these are neither district schools nor private schools. **(e)** The school is on a term and must demonstrate performance in order to have its life extended. **(f)** It is a school of choice, for parents, students and teachers. **(g)** In return for a dual accountability to public authority and to parents the school gets cut free from most process-controls that apply to districts. **(h)** The full per-pupil amount moves with the student and the state pays the school directly. **(i)** Teachers can take leave to work in a charter school with rights to return to the district, or may form a professional group to own and run the learning program on contract to the school.

The laws can vary and still be 'charter': Some airplanes have propellers on the rear and some (helicopters) don't have wings. Enough of the essentials have to be present, though.

### **What does it mean to 'fly'?**

A four-part test separates 'dynamic' from 'static'.

\* Schools have to appear. There have to be proposals -- and from applicants other than state or district superintendents. Obviously, proposals have to be approved. And the number of schools needs to grow over the years.

\* The law itself needs to evolve and improve. This can happen as 'caps' on the number of schools get lifted, as new approving-authorities get added, as financing is enriched, etc. States previously 'static' can come alive; become 'dynamic'. States that start with 'dynamic' laws need to keep moving.

\* A support-structure for the charter program needs to appear, mainly in the private sector. In 'dynamic' states there will be a 'trade association' of school operators or a 'resource center' (one, or more) or both (see map). There may be a 'friends' group' in addition. Foundations will be making grants.

\* Districts should be changing and improving their own programs in response, as the charter program grows. The purpose of 'charter schools' is, after all, to cause districts to improve schools for all kids. It's hard to get data on this: The first study of district responses has only just appeared. So for the moment we look for an 'alternate sponsor': Dynamics are at least possible with this; are unlikely without it.

On these tests here's the way the states lay out:

There's a problem, obviously, in a fact-based classification with laws that have only just been enacted. Clearly it takes a year or more to know what happens. So we separate the states that have had laws "long enough" from those that have not. Each of the latter is then classified ("presumptively dynamic" or "presumptively static") in terms of the way the law is likely to perform, considering the states and laws it most resembles.

In some states, even after a few years, it may still not be clear whether a program is 'dynamic'. So courageously we create a middle category that might be called "Can't Tell for Sure".

There're a few other puzzlements in applying the tests.

'Split-level' states -- A few states with laws that produce a 'static' program have, or have recently added, separate and different provisions that produce (or may over the years produce) a 'dynamic' program in their big urban district/s. We've put a state in the 'dynamic' category if its law produces a live program even just in the large urban districts.

**Wisconsin**, where the law was originally not 'dynamic', began to evolve different provisions applying only to Milwaukee that do qualify as 'dynamic'. **Ohio** in 1996 enacted a local-board-only law for the state generally and another, that authorizes the state board to approve charters, applying only to the state's "Big 8" districts. **Missouri's** 1998 law, for St. Louis and Kansas City only, should prove 'dynamic'.

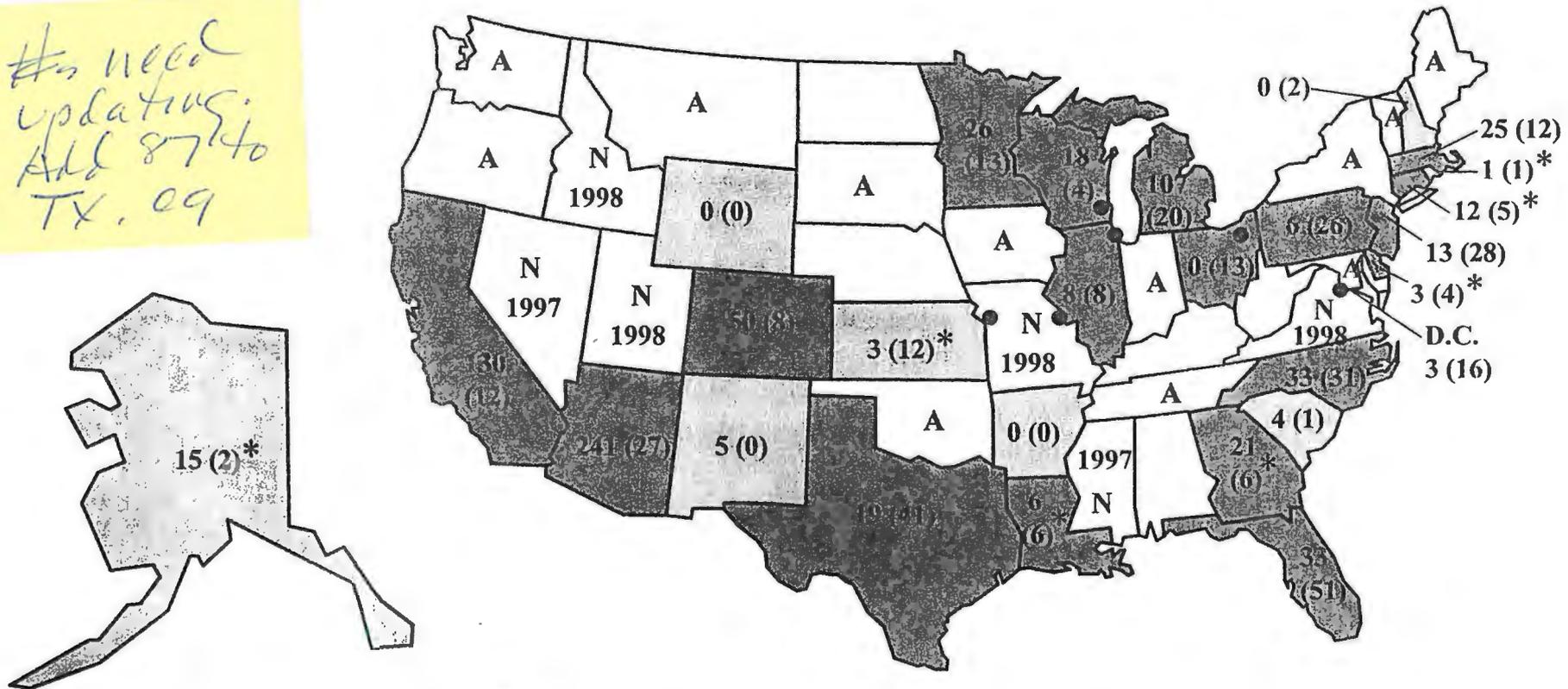
Unique settings -- Note that a law producing a 'static' program in one context can be 'dynamic' in another (demonstrating again the best test is not in the provisions of the law itself).

**California** was a perplexing case for the old 'strong/weak' classification. There -- before the big upgrade of the law in 1998 -- the local boards were effectively the only approving authority. Yet California's program clearly was . . . everybody felt . . . dynamic. Why? Because of the other factors at work: especially rapidly growing enrollments and state constitutional prohibitions against districts raising local taxes. Per-pupil spending fell and teacher salaries rose, so programs were cut and class-size increased. No one should have been surprised that the charter program took off. **Florida** is now the perplexing case: no alternate sponsor, but apparently a dynamic program.

**Illinois** law until 1997 was emphatically 'static': Local boards had rejected something like 30 applications. In Chicago, however, that law generated a 'dynamic' program. This was because two earlier laws had changed public education in Chicago. One, in 1988, created local school councils with real powers. The other, in 1995, removed the local board and superintendent and gave control of the schools to Mayor Daley. The traditional arrangements and traditional (hostile) attitudes were gone. The law was the same but the new people responded differently.

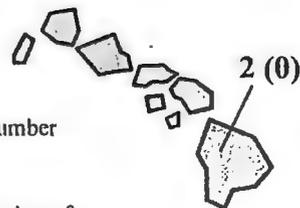
# Charter Laws and Charter Schools as of July 1998

*#s need updating. Add 87 to TX. 09*



The value outside parentheses represents the number of charter schools as of July 1998

The value inside parentheses represents the number of charter schools approved to open as of July 1998



- States that do not have charter legislation
- States that have (or \* arguably have) dynamic programs (see text)
- States that do not have (or \* arguably do not have) dynamic programs
- N States that have recently adopted charter legislation
- A States that are active in pursuing charter legislation
- States with a separate program for large urban districts

The difference between 'dynamic' and 'good' -- Some value-judgment is implied in our classification: 'Dynamic' is better than 'static'. But what if a law generates too many dynamics, so the program goes out of control in ways that cause significant problems for that state or for the charter strategy nationally?

**Arizona** is the relevant case. With a much smaller population it has more schools than California. The level of activity is the result of a law that sets up two state chartering bodies (in addition to letting any local board start a school anywhere in the state); that lets charters run for 15 years; and that lets a charter be granted directly to a commercial firm, provides significant up-front financing and lets the operator keep the public assets if the school closes. In addition the state oversight has been less than rigorous. Dynamic? You bet.

Whether numbers alone indicate dynamics -- Several states have generated a significant number of schools, especially for their size. But this may not reflect the spontaneous efforts of parents, teachers and others to create innovative new schools for students generally. It may be simply another effort by districts to create more schools for kids-not-doing-well; especially when urged to do so by state officials who've gotten start-up-grant money from the U.S. Department of Education because they "have a law" and need to get that money used.

\*

A brief note on the 'Can't Tell for Sure' states

To simplify the map we have divided the states in this middle category (note the asterisk) between 'dynamic' and 'static' . . . partly on the potential in the present law and partly on a judgment about prospects for improving the law. So:

Mapped with 'dynamic': **Connecticut** has private support from its Center for School Change; needs more legislative support. **Delaware** gets the benefit of the doubt. **Georgia** lacks an alternate sponsor but has recently moved beyond existing-district-schools-only and there is legislative interest. **Louisiana** added a state-board appeal in '97; now needs private-sector activity.

Mapped with 'static': **Alaska** has a good many at-risk schools. A support structure is hard to develop in so large and sparsely-settled a state. The **Kansas** program has filled its 15-school limit, mostly with schools for the at-risk, stimulated by the commissioner (who is personally positive). **Rhode Island's** 1998 upgrading of its law was remarkable but until the 'money' piece has been filled in by Commissioner Peter McWalters it's hard to put it in the 'dynamic' category yet.