AUTHORIZATION OF CHARTER SCHOOLS BY
HIGHER EDUCATION INSTITUTIONS

2010 GENERAL SESSION
STATE OF UTAH

Chief Sponsor:  J. Stuart Adams
House Sponsor:  Gregory H. Hughes

LONG TITLE

General Description:
This bill allows a board of trustees of a higher education institution to authorize the establishment and operation of a charter school and specifies the responsibilities of a board of trustees that authorizes a charter school.

Highlighted Provisions:
This bill:
- defines terms;
- subject to approval by the State Board of Education, allows a board of trustees of a higher education institution to enter into an agreement with certain individuals or entities to establish and operate a charter school;
- allows a fee to be charged for a board of trustees' costs of providing oversight and technical support to a charter school;
- specifies procedures for applying for authorization of a charter school by a board of trustees of a higher education institution;
- specifies the responsibilities of a board of trustees of a higher education institution that authorizes a charter school; and
- makes technical amendments.

Monies Appropriated in this Bill:
None
Other Special Clauses:

This bill coordinates with S.B. 69, College of Eastern Utah Affiliation with Utah State University, by making substantive amendments.

Utah Code Sections Affected:

AMENDS:

53A-1a-501.3, as last amended by Laws of Utah 2007, Chapter 344
53A-1a-501.6, as last amended by Laws of Utah 2007, Chapter 344
53A-1a-502.5, as last amended by Laws of Utah 2009, Chapter 391
53A-1a-508, as last amended by Laws of Utah 2008, Chapter 382
53A-1a-512, as last amended by Laws of Utah 2009, Chapter 165
53A-1a-520, as enacted by Laws of Utah 2008, Chapter 319
631-4-102, as last amended by Laws of Utah 2009, Chapter 294

ENACTS:

53A-1a-521, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 53A-1a-501.3 is amended to read:

As used in this part:
(1) "Asset" means property of all kinds, real and personal, tangible and intangible, and includes:
(a) cash;
(b) stock or other investments;
(c) real property;
(d) equipment and supplies;
(e) an ownership interest;
(f) a license;
(g) a cause of action; and
(h) any similar property.
(2) "Board of trustees of a higher education institution" or "board of trustees" means the board of trustees of a university or community college listed in Section 53B-1-102:
(a) the board of trustees of the University of Utah;
(b) Utah State University;
(c) Weber State University;
(d) Southern Utah University;
57e Snow College;
57f Dixie State College of Utah;
57g the College of Eastern Utah;
57h Utah Valley University; or
57i Salt Lake Community College; or
57j (b) the campus board of directors of a college campus within the Utah College of Applied Technology.
58 "Chartering entity" means the entity that authorizes the establishment of a
charter school.

Section 2. Section 53A-1a-501.6 is amended to read:


(1) The State Charter School Board shall:

(a) authorize and promote the establishment of charter schools, subject to the provisions in this part;

(b) annually review and evaluate the performance of charter schools authorized by the State Charter School Board and hold the schools accountable for their performance;

(c) monitor charter schools authorized by the State Charter School Board for compliance with federal and state laws, rules, and regulations;

(d) provide technical support to charter schools and persons seeking to establish charter schools by:

(i) identifying and promoting successful charter school models;

(ii) facilitating the application and approval process for charter school authorization;

(iii) directing charter schools and persons seeking to establish charter schools to sources of private funding and support;

(iv) reviewing and evaluating proposals to establish charter schools for the purpose of supporting and strengthening proposals before an application for charter school authorization is submitted to [the State Charter School Board or a local school board] a chartering entity; and

(v) assisting charter schools to understand and carry out their charter obligations;

(e) provide technical support, as requested, to a [local school board] chartering entity relating to charter schools;

(f) make recommendations on legislation and rules pertaining to charter schools to the Legislature and State Board of Education, respectively; and

(g) make recommendations to the State Board of Education on the funding of charter schools.

(2) The State Charter School Board may:

(a) contract;

(b) sue and be sued; and

(c) (i) at the discretion of the charter school, provide administrative services to, or perform other school functions for, charter schools authorized by the State Charter School
Board; and

(ii) charge fees for the provision of services or functions.

Section 3. Section 53A-1a-502.5 is amended to read:


(1) The State Charter School Board, local school boards, and boards of trustees of higher education institutions may only authorize a combined maximum student capacity of:

(a) 32,921 students for the charter schools in the 2008-09 school year; and

(b) beginning in the 2009-10 school year, an annual increase in charter school enrollment capacity equal to 1.4% of total school district enrollment as of October 1 of the previous school year.

(2) (a) The State Board of Education, in consultation with the State Charter School Board, shall allocate the students under Subsection (1) between the State Charter School Board, local school boards, and boards of trustees of higher education institutions.

(b) One-third of the student capacity described under Subsection (1)(b) shall be allocated to increase the maximum student capacity of operating charter schools.

(c) If the operating charter schools do not use the allocation described under Subsection (2)(b), the remaining student capacity may be used by new charter schools.

(3) An increase in charter school enrollment capacity in the 2011-12 school year or thereafter shall receive:

(a) tentative approval by the State Board of Education by November 30 of the year that is two years before the year that the increase in charter school enrollment capacity takes effect; and

(b) final approval by the State Board of Education by the following April 1, subject to legislative authorization of the increase in charter school enrollment capacity.

Section 4. Section 53A-1a-508 is amended to read:

53A-1a-508. Content of a charter -- Modification of charter.

(1) The major issues involving the operation of a charter school shall be considered in advance by the applicant for a charter school and written into the school's charter.

(2) The governing body of the charter school and the chartering entity shall sign the charter.

(3) The charter shall include:
(a) the age or grade levels to be served by the school;
(b) the projected maximum number of students to be enrolled in the school and the
projected enrollment in each of the first three years of operations;
(c) the governance structure of the school;
(d) the financial plan for the school and the provisions which will be made for auditing
the school under Subsection 53A-1a-507(4);
(e) the mission and education goals of the school, the curriculum offered, and the
methods of assessing whether students are meeting educational goals, to include at a minimum
participation in the Utah Performance Assessment System for Students under Chapter 1, Part 6,
Achievement Tests;
(f) admission and dismissal procedures, including suspension procedures;
(g) procedures to review complaints of parents regarding the operation of the school;
(h) the opportunity for parental involvement at the school;
(i) how the school will provide adequate liability and other appropriate insurance for
the school, its governing body, and its employees;
(j) the proposed school calendar, including the length of the school day and school
year;
(k) whether any agreements have been entered into or plans developed with school
districts regarding participation of charter school students in extracurricular activities within
the school districts;
(l) the district within which the school will be located and the address of the school's
physical facility, if known at the time the charter is signed;
(m) the qualifications to be required of the teachers, including the requirement of a
criminal background check;
(n) in the case of an existing public school converting to charter status, alternative
arrangements for current students who choose not to attend the charter school and for current
teachers who choose not to teach at the school after its conversion to charter status;
(o) the school's intention to create a library;
(p) a description of school administrative and supervisory services;
(q) fiscal procedures to be used by the school; and
(r) the school's policies and procedures regarding:
(i) employee evaluation; and
(ii) employment of relatives.

(4) A charter may be modified by mutual agreement of the chartering entity and the governing body of the school.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall make rules that establish the procedures and deadlines for approved charter schools to apply and qualify for expansion, including the establishment of satellite campuses.

Section 5. Section 53A-1a-512 is amended to read:

53A-1a-512. Employees of charter schools.

(1) A charter school shall select its own employees.

(2) The school's governing body shall determine the level of compensation and all terms and conditions of employment, except as otherwise provided in Subsections (7) and (8) and under this part.

(3) The following statutes governing public employees and officers do not apply to charter schools:

(a) Chapter 8, Utah Orderly School Termination Procedures Act;
(b) Chapter 10, Educator Evaluation; and
(c) Title 52, Chapter 3, Prohibiting Employment of Relatives.

(4)(a) To accommodate differentiated staffing and better meet student needs, a charter school, under rules adopted by the State Board of Education, shall employ teachers who:

(i) are licensed; or
(ii) on the basis of demonstrated competency, would qualify to teach under alternative certification or authorization programs.

(b) The school's governing body shall disclose the qualifications of its teachers to the parents of its students.

(5) State Board of Education rules governing the licensing or certification of administrative and supervisory personnel do not apply to charter schools.

(6)(a) An employee of a school district may request a leave of absence in order to work in a charter school upon approval of the local school board.

(b) While on leave, the employee may retain seniority accrued in the school district and
may continue to be covered by the benefit program of the district if the charter school and the
locally elected school board mutually agree.

(7) Except as provided under Subsection (8), an employee of a charter school shall be a
member of a retirement system under Title 49, Utah State Retirement and Insurance Benefit
Act.

(8) (a) At the time of application for a charter school, whether the chartering entity is
the State Charter School Board [or a school district], a local school board, or a board of trustees
of a higher education institution, a proposed charter school may make an election of
nonparticipation as an employer for retirement programs under Title 49, Chapter 12, Public
Employees' Contributory Retirement Act and under Title 49, Chapter 13, Public Employees'
Noncontributory Retirement Act.

(b) A charter school that was approved prior to July 1, 2004 may make an election of
nonparticipation prior to December 31, 2004.

(c) An election provided under this Subsection (8):

(i) shall be made at the time specified under Subsection (8)(a) or (b);

(ii) shall be documented by a resolution adopted by the governing body of the charter
school;

(iii) is in effect unless the charter school makes an irrevocable retraction of the election
of nonparticipation in accordance with Subsection (9); and

(iv) applies to the charter school as the employer and to all employees of the charter
school.

(d) The governing body of a charter school may offer employee benefit plans for its
employees:

(i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act;

or

(ii) under any other program.

(9) (a) A charter school that made an election of nonparticipation as an employer for
retirement programs under Title 49, Chapter 12, Public Employees' Contributory Retirement
Act and under Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act, may
subsequently make an irrevocable retraction of the election of nonparticipation.

(b) A retraction provided under this Subsection (9):
(i) shall be documented by a resolution adopted by the governing body of the charter school;

(ii) is a one-time election;

(iii) is irrevocable; and

(iv) applies to the charter school as the employer and to all employees of the charter school.

(10) The governing body of a charter school shall ensure that, prior to the beginning of each school year, each of its employees signs a document acknowledging that the employee:

(a) has received:

(i) the disclosure required under Section 63A-4-204.5 if the charter school participates in the Risk Management Fund; or

(ii) written disclosure similar to the disclosure required under Section 63A-4-204.5 if the charter school does not participate in the Risk Management Fund; and

(b) understands the legal liability protection provided to the employee and what is not covered, as explained in the disclosure.

Section 6. Section 53A-1a-520 is amended to read:

53A-1a-520. Accountability -- Rules.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act and after consultation with [the State Charter School Board, chartering entities], the State Board of Education shall make rules that:

(1) require a charter school to develop an accountability plan, approved by [the State Charter School Board, its chartering entity], during its first year of operation;

(2) require a [charter school authorizer, chartering entity] to:

(a) visit a charter school at least once during:

(i) its first year of operation; and

(ii) the review period described under Subsection (3); and

(b) provide written reports to its charter schools after the visits; and

(3) establish a review process that is required of a charter school once every five years by its [authorizer, chartering entity].

Section 7. Section 53A-1a-521 is enacted to read:

53A-1a-521. Authorization of a charter school by a board of trustees of a higher
education institution.

(1) Subject to the approval of the State Board of Education and except as provided in Subsection (7), an individual or entity identified in Section 53A-1a-504 may enter into an agreement with a board of trustees of a higher education institution to establish and operate a charter school.

(2) (a) An individual or entity identified in Section 53A-1a-504 applying for authorization from a board of trustees of a higher education institution to establish and operate a charter school shall provide a copy of the application to the State Charter School Board and the local school board of the school district in which the proposed charter school shall be located either before or at the same time it files its application with the board of trustees.

(b) The State Charter School Board and the local school board may review the application and may offer suggestions or recommendations to the applicant or the board of trustees of a higher education institution prior to its acting on the application.

(c) The board of trustees of a higher education institution shall give due consideration to suggestions or recommendations made by the State Charter School Board or the local school board under Subsection (2)(b).

(3) (a) If a board of trustees of a higher education institution approves an application to establish and operate a charter school, the board of trustees shall submit the application to the State Board of Education.

(b) The State Board of Education shall, by majority vote, within 60 days of receipt of the application approve or deny an application approved by a board of trustees of a higher education institution.

(c) The State Board of Education's action under Subsection (3)(b) is final action subject to judicial review.

(4) The State Board of Education shall make a rule providing a timeline for the opening of a charter school following the approval of a charter school application by a board of trustees of a higher education institution.

(5) (a) After approval of a charter school application, the applicant and the board of trustees of a higher education institution shall set forth the terms and conditions for the operation of the charter school in a written contractual agreement.

(b) The agreement is the school's charter.

(c) (i) The school's charter may include a provision that the charter school pay an annual fee for the board of trustees' costs in providing oversight of, and
technical support to, the charter school in accordance with Subsection (6).

(ii) An annual fee described in Subsection (5)(c)(i) may not exceed the product of:

$\rightarrow \left(\frac{1}{\text{current fiscal year}}\right) \rightarrow \left(\text{October 1 enrollment count of the charter school for the current fiscal year}\right) ;$

(B) shall be paid to the board of trustees' higher education institution; and

(C) shall be expended as directed by the board of trustees.

(6) A board of trustees of a higher education institution shall:

(a) annually review and evaluate the performance of charter schools authorized by the board of trustees and hold the schools accountable for their performance;

(b) monitor charter schools authorized by the board of trustees for compliance with federal and state laws, rules, and regulations; and

(c) provide technical support to charter schools authorized by the board of trustees to assist them in understanding and performing their charter obligations.

(7) (a) In addition to complying with the requirements of this section, a campus board of directors of a college campus within the Utah College of Applied Technology shall obtain the approval of the Utah College of Applied Technology Board of Trustees before entering into an agreement to establish and operate a charter school.

(b) The Utah College of Applied Technology Board of Trustees shall establish a policy for granting approval to a campus board of directors to enter into an agreement to establish and operate a charter school.
(ii) an entity or agency of the Legislature;
(iii) the state auditor;
(iv) the state treasurer;
(v) the Office of the Attorney General;
(vi) the Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
(vii) the Heber Valley Railroad Authority [created in Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority];
(viii) the Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science Center Authority;
(ix) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing Corporation Act;
(x) the Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair Corporation Act;
(xi) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers' Compensation Fund;
(xii) the Utah State Retirement Office created in Title 49, Chapter 11, Utah State Retirement Systems Administration;
(xiii) a charter school chartered by the State Charter School Board or a board of trustees of a higher education institution under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act;
(xiv) the Utah Schools for the Deaf and the Blind created in Title 53A, Chapter 25b, Utah Schools for the Deaf and the Blind;
(xv) an institution of higher education as defined in Section 53B-3-102;
(xvi) the School and Institutional Trust Lands Administration created in Title 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration;
(xvii) the Utah Communications Agency Network created in Title 63C, Chapter 7, Utah Communications Agency Network Act; or
(xviii) the Utah Capital Investment Corporation created in Title 63M, Chapter 1, Part 12, Utah Venture Capital Enhancement Act.

(3) "Agency head" means the chief administrative officer of an agency.
(4) "Board" means the Privatization Policy Board created in Section 63I-4-201.
(5) "Commercial activity" means to engage in an activity that can be obtained in whole or in part from a private enterprise.

(6) "Local entity" means:

(a) a political subdivision of the state, including a:
(i) county;
(ii) city;
(iii) town;
(iv) local school district;
(v) local district; or
(vi) special service district;
(b) an agency of an entity described in this Subsection (6), including a department, office, division, authority, commission, or board; and
(c) an entity created by an interlocal cooperative agreement under Title 11, Chapter 13, Interlocal Cooperation Act, between two or more entities described in this Subsection (6).

(7) "Private enterprise" means a person that for profit:

(a) manufactures a good or service;
(b) processes a good or service;
(c) sells a good or service;
(d) offers for sale a good or service;
(e) rents a good or service;
(f) leases a good or service;
(g) delivers a good or service;
(h) distributes a good or service; or
(i) advertises a good or service.

(8) "Privatize" means that an activity engaged in by an agency is transferred so that a private enterprise engages in the activity including a transfer by:

(a) contract;
(b) transfer of property; or
(c) another arrangement.


If this S.B. 55 and S.B. 69, College of Eastern Utah Affiliation with Utah State University, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the database for publication delete the subsection referencing "the College of Eastern Utah" in Subsection 53A-1a-501.3(2) in S.B. 55 and renumber the remaining subsections accordingly. ✪
S.B. 55 - Authorization of Charter Schools by Higher Education Institutions

Fiscal Note

2010 General Session
State of Utah

State Impact
Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact
Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.