

**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



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **53A-1a-501.3**, as last amended by Laws of Utah 2007, Chapter 344

33 **53A-1a-501.6**, as last amended by Laws of Utah 2007, Chapter 344

34 **53A-1a-502.5**, as last amended by Laws of Utah 2009, Chapter 391

35 **53A-1a-508**, as last amended by Laws of Utah 2008, Chapter 382

36 **53A-1a-512**, as last amended by Laws of Utah 2009, Chapter 165

37 **53A-1a-520**, as enacted by Laws of Utah 2008, Chapter 319

38 **63I-4-102**, as last amended by Laws of Utah 2009, Chapter 294

39 ENACTS:

40 **53A-1a-521**, Utah Code Annotated 1953



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

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

44 **53A-1a-501.3. Definitions.**

45 As used in this part:

46 (1) "Asset" means property of all kinds, real and personal, tangible and intangible, and
47 includes:

- 48 (a) cash;
- 49 (b) stock or other investments;
- 50 (c) real property;
- 51 (d) equipment and supplies;
- 52 (e) an ownership interest;
- 53 (f) a license;
- 54 (g) a cause of action; and
- 55 (h) any similar property.

56 (2) "Board of trustees of a higher education institution" or "board of trustees" means
57 the board of trustees of a university or community college listed in Section 53B-1-102.

58 [~~2~~] (3) "Chartering entity" means the entity that authorizes the establishment of a

59 charter school.

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

61 **53A-1a-501.6. Power and duties of State Charter School Board.**

62 (1) The State Charter School Board shall:

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

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

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

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

71 (i) identifying and promoting successful charter school models;

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

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

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

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

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

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

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

85 (2) The State Charter School Board may:

86 (a) contract;

87 (b) sue and be sued; and

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

90 Board; and

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

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

93 **53A-1a-502.5. Charter schools -- Maximum authorized students.**

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

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

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

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

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

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

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

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

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

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

115 **53A-1a-508. Content of a charter -- Modification of charter.**

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

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

120 (3) The charter shall include:

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

- 152 (i) employee evaluation; and
- 153 (ii) employment of relatives.

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

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

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

161 **53A-1a-512. Employees of charter schools.**

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

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

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

168 (a) Chapter 8, Utah Orderly School Termination Procedures Act;

169 (b) Chapter 10, Educator Evaluation; and

170 (c) Title 52, Chapter 3, Prohibiting Employment of Relatives.

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

173 (i) are licensed; or

174 (ii) on the basis of demonstrated competency, would qualify to teach under alternative
175 certification or authorization programs.

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

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

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

182 (b) While on leave, the employee may retain seniority accrued in the school district and

183 may continue to be covered by the benefit program of the district if the charter school and the
184 locally elected school board mutually agree.

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

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

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

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

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

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

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

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

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

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

207 or

208 (ii) under any other program.

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

213 (b) A retraction provided under this Subsection (9):

- 214 (i) shall be documented by a resolution adopted by the governing body of the charter
- 215 school;
- 216 (ii) is a one-time election;
- 217 (iii) is irrevocable; and
- 218 (iv) applies to the charter school as the employer and to all employees of the charter
- 219 school.

220 (10) The governing body of a charter school shall ensure that, prior to the beginning of

221 each school year, each of its employees signs a document acknowledging that the employee:

- 222 (a) has received:
 - 223 (i) the disclosure required under Section 63A-4-204.5 if the charter school participates
 - 224 in the Risk Management Fund; or
 - 225 (ii) written disclosure similar to the disclosure required under Section 63A-4-204.5 if
 - 226 the charter school does not participate in the Risk Management Fund; and
- 227 (b) understands the legal liability protection provided to the employee and what is not
- 228 covered, as explained in the disclosure.

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

230 **53A-1a-520. Accountability -- Rules.**

231 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act and

232 after consultation with [~~the State Charter School Board~~] chartering entities, the State Board of

233 Education shall make rules that:

- 234 (1) require a charter school to develop an accountability plan, approved by [~~the State~~
- 235 ~~Charter School Board~~] its chartering entity, during its first year of operation;
- 236 (2) require a [~~charter school authorizer~~] chartering entity to:
 - 237 (a) visit a charter school at least once during:
 - 238 (i) its first year of operation; and
 - 239 (ii) the review period described under Subsection (3); and
 - 240 (b) provide written reports to its charter schools after the visits; and
- 241 (3) establish a review process that is required of a charter school once every five years
- 242 by its [~~authorizer~~] chartering entity.

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

244 **53A-1a-521. Authorization of a charter school by a board of trustees of a higher**

245 **education institution.**

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

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

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

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

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

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

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

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

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

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

274 (c) (i) The school's charter may include a provision that the charter school pay an
275 annual fee to the board of trustees for the board of trustees' costs in providing oversight of, and

276 technical support to, the charter school in accordance with Subsection (6).
277 (ii) An annual fee described in Subsection (5)(c)(i) may not exceed the product of:
278 (A) 1% of the value of the weighted pupil unit as established in statute for the current
279 fiscal year; and
280 (B) the October 1 enrollment count of the charter school for the current fiscal year.
281 (6) A board of trustees of a higher education institution shall:
282 (a) annually review and evaluate the performance of charter schools authorized by the
283 board of trustees and hold the schools accountable for their performance;
284 (b) monitor charter schools authorized by the board of trustees for compliance with
285 federal and state laws, rules, and regulations; and
286 (c) provide technical support to charter schools authorized by the board of trustees to
287 assist them in understanding and performing their charter obligations.

288 Section 8. Section **63I-4-102** is amended to read:

289 **63I-4-102. Definitions.**

290 (1) (a) "Activity" means to provide a good or service.

291 (b) "Activity" includes to:

292 (i) manufacture a good or service;

293 (ii) process a good or service;

294 (iii) sell a good or service;

295 (iv) offer for sale a good or service;

296 (v) rent a good or service;

297 (vi) lease a good or service;

298 (vii) deliver a good or service;

299 (viii) distribute a good or service; or

300 (ix) advertise a good or service.

301 (2) (a) Except as provided in Subsection (2)(b), "agency" means:

302 (i) the state; or

303 (ii) an entity of the state including a department, office, division, authority,
304 commission, or board.

305 (b) "Agency" does not include:

306 (i) the Legislature;

- 307 (ii) an entity or agency of the Legislature;
- 308 (iii) the state auditor;
- 309 (iv) the state treasurer;
- 310 (v) the Office of the Attorney General;
- 311 (vi) the Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
- 312 (vii) the Heber Valley Railroad Authority [~~created in Title 9, Chapter 3, Part 3, Heber~~
- 313 ~~Valley Historic Railroad Authority~~];
- 314 (viii) the Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah
- 315 Science Center Authority;
- 316 (ix) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing
- 317 Corporation Act;
- 318 (x) the Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State
- 319 Fair Corporation Act;
- 320 (xi) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'
- 321 Compensation Fund;
- 322 (xii) the Utah State Retirement Office created in Title 49, Chapter 11, Utah State
- 323 Retirement Systems Administration;
- 324 (xiii) a charter school chartered by the State Charter School Board or a board of
- 325 trustees of a higher education institution under Title 53A, Chapter 1a, Part 5, The Utah Charter
- 326 Schools Act;
- 327 (xiv) the Utah Schools for the Deaf and the Blind created in Title 53A, Chapter 25b,
- 328 Utah Schools for the Deaf and the Blind;
- 329 (xv) an institution of higher education as defined in Section 53B-3-102;
- 330 (xvi) the School and Institutional Trust Lands Administration created in Title 53C,
- 331 Chapter 1, Part 2, School and Institutional Trust Lands Administration;
- 332 (xvii) the Utah Communications Agency Network created in Title 63C, Chapter 7,
- 333 Utah Communications Agency Network Act; or
- 334 (xviii) the Utah Capital Investment Corporation created in Title 63M, Chapter 1, Part
- 335 12, Utah Venture Capital Enhancement Act.
- 336 (3) "Agency head" means the chief administrative officer of an agency.
- 337 (4) "Board" means the Privatization Policy Board created in Section 63I-4-201.

338 (5) "Commercial activity" means to engage in an activity that can be obtained in whole
339 or in part from a private enterprise.

340 (6) "Local entity" means:

341 (a) a political subdivision of the state, including a:

342 (i) county;

343 (ii) city;

344 (iii) town;

345 (iv) local school district;

346 (v) local district; or

347 (vi) special service district;

348 (b) an agency of an entity described in this Subsection (6), including a department,
349 office, division, authority, commission, or board; and

350 (c) an entity created by an interlocal cooperative agreement under Title 11, Chapter 13,
351 Interlocal Cooperation Act, between two or more entities described in this Subsection (6).

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

353 (a) manufactures a good or service;

354 (b) processes a good or service;

355 (c) sells a good or service;

356 (d) offers for sale a good or service;

357 (e) rents a good or service;

358 (f) leases a good or service;

359 (g) delivers a good or service;

360 (h) distributes a good or service; or

361 (i) advertises a good or service.

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

364 (a) contract;

365 (b) transfer of property; or

366 (c) another arrangement.

Legislative Review Note
as of 1-28-10 12:18 PM

Office of Legislative Research and General Counsel

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.
