RESPONSE TO QUESTIONS ABOUT CHARTER SCHOOLS REGARDING:

FUNDING
FACILITIES
ASSETS AND LIABILITIES
TECHNICAL ASSISTANCE AND OVERSIGHT

A REPORT TO THE
EXECUTIVE APPROPRIATIONS COMMITTEE
OF THE UTAH STATE LEGISLATURE

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EXECUTIVE SUMMARY

Purpose of the Charter School Study

The rapid increase in the number of charter schools opening in the state and the associated state costs prompted the Utah Legislature to impose a cap on new schools pending the completion of a charter school study. S.B. 5, "Amendments to the Minimum School Program Budget," enacted in the 2006 General Session, directs the Office of Legislative Research and General Counsel and the Office of the Legislative Fiscal Analyst to jointly conduct the study under the direction of the Executive Appropriations Committee.

Scope of Study

The Executive Appropriations Committee developed a set of questions to be addressed, and responsibility for researching the questions was divided among staff of the Office of Legislative Research and General Counsel, Office of the Legislative Fiscal Analyst, and the Office of the Legislative Auditor General, who was engaged in a charter school audit that addressed some of the same issues as the charter school study. In addition to the work of the legislative staff offices, questions pertaining to technical assistance and oversight were addressed by the Utah State Office of Education, and the Utah Education Policy Center surveyed parents of charter school students and charter school and school district officials. The scope of the entire charter school study is outlined in a document following this Executive Summary.

This report includes the research findings of the Office of Legislative Research and General Counsel, Office of the Legislative Fiscal Analyst, and Utah State Office of Education. The Utah Education Policy Center's survey results are reported in a separate document. The questions addressed by the Office of the Legislative Auditor General will be included in the charter school audit report expected to be published in December 2006.

The questions addressed in this report, brief summaries of the findings, and where more detailed information may be obtained are noted below.

Where to Find More Information	Research Questions and Findings
Pages 1-1 to 1-13	*1. How are charter schools funded in other states?* An examination of charter school financing systems in 16 states reveals: • Charter schools do not have access to the same level of funding as other public schools on an ongoing basis. • Charter schools generally have access to the same state and federal school funds to which school districts have access, but they have much less access to local revenue sources. • Several states require school districts to share with charter schools local operational revenues generated by discretionary tax levies, but no surveyed states require school districts to share local capital facilities revenues. • To replace local revenues not available to charter schools, several states provide supplementary state monies for either capital facilities or operational purposes.
Pages 2-1 to 2-15	*2. How are the capital facilities needs of charter schools addressed?* To determine how other states address charter school facility needs, the Office of Legislative Research and General Counsel: (1) reviewed previous studies on charter school facility financing; (2) examined the facility assistance programs of twelve states; and (3) conducted a survey of charter school facilities in eight states. The main research findings are as follows: • Most charter schools lease facilities from either private entities or school districts. Leases are usually at market rates. • Some charter schools purchase facilities, using a combination of funding and financing sources. Banks or private investors

may agree to loan funds. Charter schools can access tax exempt bonding in some states. In addition, some states provide credit enhancement mechanisms to reduce borrowing costs, such as loan guarantees.

- Some states annually provide funds on a per pupil basis for lease, construction, or debt service costs. Less common forms of state aid are competitive grants and loans.

Pages 3-1 to 3-16

3. *How does the use of a local tax replacement formula compare to a local revenue sharing mechanism?*

In Utah, the difference between using a local tax replacement formula or a local revenue sharing mechanism as a way to provide revenue access to charter schools requires answering the question of 'Who pays?' Under the local tax replacement formula, the state provides a per student revenue supplement to charter schools. However, a local revenue sharing mechanism requires the local district to transfer a portion of locally generated property tax revenue to a charter school when a resident student enrolls.

Pages 3-1 to 3-16

4. *What are the potential benefits and problems with having school districts participate in the funding of charter schools attended by residents of the district?*

___Requiring school districts to participate in the direct funding of charter schools attended by resident students presents several problems. Experience in Utah showed that four problems emerged as a result of local revenue sharing: (1) charter schools were dependent on school districts for a portion of their operating budget; (2) per student revenue inequities emerged among the charter schools; (3) school districts lacked oversight of locally generated revenues; and (4) property tax revenues supported purposes not directly approved by the taxpayer. Many of the benefits associated with school district participation in local revenue sharing depend on perspectives. For the state, local revenue sharing disperses some of the cost to the school districts.

Pages 4-1 to 4-6

5. *How does startup funding for a charter school compare to that of a school district school?*

A survey of seven charter schools found the average cost of starting a charter school is about $2,266 per student using first year

enrollment numbers for each school. Using the enrollment capacity for each school the average cost per student for start up costs for a charter school is $1,153.

A similar survey of eight recently constructed traditional public schools revealed an average start up cost per student of $1,440 using first year enrollment numbers. Using the enrollment capacity for each school the average cost per student for start up costs for a public school is $986**.** Despite having facility requirements that many charter schools do not have, such as furnishing gyms, cafeterias, and theaters, traditional public schools have a lower average start up cost per student.

Pages 5-1 to 5-9

6. *How many charter school students transfer back to school district schools and what is the impact on a school district when the transfer occurs during a school year? Have transfers during a school year increased due to charter schools?*

The transfer of students between district schools and charter schools, or even from school to school, is difficult to track. Most often only the sending and receiving schools know that a student transfer has taken place. As a result, no comprehensive statewide data exists that quantifies the number of student transfers occurring in a given year.

In an effort to answer the questions above, the Office of the Legislative Fiscal Analyst conducted an informal poll of fifteen district schools regarding transfers in the 2005-06 school year. The findings of the informal poll revealed that:

- Three schools reported few transfers to charter schools and five schools reported transfers of more than 20 students**.**

- Seven schools reported that some students returned to the district school. Returning student numbers range from four or fewer to more than 75**.**

- Some schools reported that there was no noticeable impact on the schools due to students transferring to or from charter schools. However, the majority reported some impacts - particularly in faculty allocations to schools and class sizes. Counselor time was impacted in secondary schools.

Pages 6-1 to 6-13

7. *What is the potential liability of the state in regards to charter school facilities and leases?*

Charter schools are a relatively new construct with developing law. The status of the relationship between charter schools and their chartering entities directly affects respective liabilities:

- Some states allow charter schools to be established as highly independent legal and fiscal entities.
- Some states allow charter schools to be constituted as an extension, subdivision, or arm of their chartering entity.
- Many state charter school enabling statutes have focused more on creating operational independence for charter schools than they have on clarifying the legal status of the parties to the charter.

The broad legal question that concerns the state and school districts is to what extent are chartering entities responsible for a charter school's facilities and operations? Liability is a broad legal term that includes all the debts, legal obligations, claims, responsibilities, statutory violations, and duties relating to the facilities and operations of a charter school.

There are several legal theories or tools that may protect the state or another chartering entity from vicarious liability for the facilities or operations of a charter school:

- designating the school as a local education agency (LEA).
- requiring organization as a nonprofit corporation.
- providing powers to a charter school that demonstrate its legal independence.
- providing statutory clauses to shield or limit liability.
- prohibiting the charter school from extending the faith and credit of the chartering entity to any third party.
- requiring charter schools to obtain insurance.

- preserving governmental immunity for charter schools.
- using memoranda of understanding.
- require indemnification.

Because of the ambiguities surrounding the liability of chartering entities, there are several areas where Utah's public policy and statutory law should be clarified in legislation.

Pages 6-13 to 6-15

8. *Do charter schools meet building, health, and safety codes?*

Part of the challenge of creating school facilities for charter schools is to generally conform to land use and zoning requirements, building codes, and health and safety requirements, whether they construct new buildings or make renovations to existing structures.

Pages 6-15 to 6-17

9. *What provisions should be made for the assets and liabilities of a charter school when a charter school is terminated?*

Utah's charter school statutes do not currently specify the procedures for closing the school, whether the closure of the charter school is voluntary or because of a charter revocation. Clear termination procedures should be established before a charter school, its chartering entity, and the school's creditors are actively involved in a case or controversy.

Pages 7-1 to 7-8

10. *What accounts for the cost differences between school district and charter school buildings?*

A comparison of two recently constructed elementary schools in close proximity to each other, one of which is a charter school and the other a traditional public school, reveals that the charter school had lower overall facility costs mainly due to smaller square footage and acreage per student and a heating and cooling system with lower initial cost.

Pages 8-1 to 8-4

11. *What technical assistance to and oversight of charter schools is required to assure their viability and success? What monitoring and intervention actions should a charter school authorizer take to assure the financial viability of a charter school?*

The administrative help available to traditional schools through school districts is not typically available to charter schools. Charter schools receive some business and technology services through the Utah State Office of Education (USOE), but more services are needed. To provide sufficient support for charter schools and to help ensure charter schools' financial viability, the State Board of Education requests the following:

- three additional FTEs for the USOE charter school staff, including an auditor, an accountant, and a computer specialist;

- the establishment of a charter school service center similar to the regional service centers that serve rural school districts; and

- funds to aid charter schools when creating schools, including funds for:
  - legal advice for lease, construction and other contracts;
  - accounting and setup costs; and
  - community outreach programs.

SCOPE OF THE CHARTER SCHOOL STUDY

Questions	Research Method/Entity
Purpose and Nature of Charter Schools 1) What are the purposes of charter schools? a) Is current state law specifying the purposes of charter schools too broad or too restrictive, if so, why and how should it be modified? b) Are charter school authorizers too lenient or too restrictive in awarding charters, if so, why and how should their policies or practices be modified? c) What are the most important reasons for creating charter schools and what reasons are of lesser importance? 2) What criteria should a charter school authorizer use to approve or disapprove an application to establish a charter school? 3) Should the number of charter schools starting up each year be limited, if so, why and what should be the maximum number of new charter schools annually? 4) Why do parents enroll their children in charter schools, and for what reasons do parents withdraw their children from charter schools? 5) What role should parents have in the governance of charter schools their children attend? a) Should charter schools be required to include parents on their governing bodies, if so, how many, or what percentage, of the positions should be filled by parents? b) What should be the governance structure of a charter school with multiple campuses, i.e., should each campus have a separate governing body? 6) What role should the charter school authorizer have in the governance of a charter school? 7) Why are nearly all charter schools in Utah authorized by the State Charter School Board rather than a local school board?	Surveys of school district and charter school administrators and board members and parents of charter school students, as applicable, conducted by the Utah Education Policy Center

Questions	Research Method/Entity
a) What changes in state laws or rules may result in local school boards authorizing a greater number of charter schools? 8) From what state laws or rules regulating public schools should charter schools be exempt, and why should charter schools receive those exemptions?	
9) For what purposes have existing charter schools been created?	Audit, Office of the Legislative Auditor General
Charter School Finances and Funding 10) What is the financial condition of Utah charter schools? a) What is the amount of revenue received and sources of revenue for both new and established charter schools? b) How do revenues of charter schools compare to school district revenues? c) How do charter school administrative, operation and maintenance, and capital expenditures compare to similar expenditures of school districts? d) How do salary schedules for teachers, directors, and other personnel in charter schools compare to salaries of similar employees in school districts?	Audit, Office of the Legislative Auditor General
11) How are charter schools funded in other states? a) How are the capital facilities needs of charter schools addressed?	Office of Legislative Research and General Counsel
12) How does the use of a local tax replacement formula compare to a local revenue sharing mechanism? a) What are the potential benefits and problems with having school districts participate in the funding of charter schools attended by residents of the district?	Office of the Legislative Fiscal Analyst
13) How many charter school students transfer back to school district schools and what is the impact on a school district when the transfer occurs during a school year?	Office of the Legislative Fiscal Analyst

Questions	Research Method/Entity
a) Have transfers during a school year increased due to charter schools?	
14) How does startup funding for a charter school compare to that of a school district school?	Office of the Legislative Fiscal Analyst
Charter School Assets and Liabilities 15) What is the potential liability of the state in regards to charter school facilities and leases? a) Do charter schools meet building, health, and safety codes? 16) What provisions should be made for the assets and liabilities of a charter school when a charter school is terminated? 17) What accounts for the cost differences between school district and charter school buildings?	Office of Legislative Research and General Counsel
Charter School Compliance with Utah law 18) Are charters schools in compliance with the open and public meeting laws? 19) Are charter schools in compliance with the procurement code, or in compliance with their own adopted procurement policies? 20) Are charter schools teaching the core curriculum? 21) Do teachers in charter schools have proper certification to provide instruction?	Audit, Office of the Legislative Auditor General
Charter School Application Process 22) What are the best practices of charter schools to develop a strategic plan in the initial development phase? 23) Does the application, business plan, and financial plan provide sufficient and useful information needed to determine whether a charter school will likely be successful? 24) How does Utah's application process compare with the charter school application processes of other states?	Audit, Office of the Legislative Auditor General

Questions	Research Method/Entity
25) What standards or criteria should be used to determine the financial viability of a charter school startup?	
Technical Assistance and Oversight 26) What technical assistance to and oversight of charter schools is required to assure their viability and success? 27) What monitoring and intervention actions should a charter school authorizer take to assure the financial viability of a charter school?	Utah State Office of Education
28) What training do charter school governing board members and administrators need to open and operate a charter school?	Survey of school district and charter school administrators and board members conducted by the Utah Education Policy Center

CHAPTER ONE
CHARTER SCHOOL FUNDING IN UTAH AND OTHER STATES

Summary

The rapid increase in the number of charter schools in Utah and the associated state costs have prompted a study of how other states fund charter schools. This study examines the charter school financing systems of 16 states, which together have more than 80% of the charter schools in the nation. The major study findings are as follows:

- Charter schools do not have access to the same level of funding as other public schools on an ongoing basis.
- Charter schools generally have access to the same state and federal school funds to which school district have access, but they have much less access to local revenue sources.
- Several states require school districts to share with charter schools local operational revenues generated by discretionary tax levies, but no surveyed states require school districts to share local capital facilities revenues.
- To replace local revenues not available to charter schools, several states provide supplementary state monies for either capital facilities or operational purposes.

How Charter Schools are Funded in Utah

Charter schools in Utah and their supporters have been asking the Legislature for parity in funding, which means that students in charter schools would receive, or have access to, funding at the same level as students in other public schools. Under current law, charter schools in Utah have access to state revenues similar to school districts, except charter schools are not entitled to transportation funds[1] and do not qualify for monies that supplement local discretionary tax levies to guarantee a minimum amount of money is generated.[2] Another difference in state funding between charter schools and school districts is funding for administrative costs. Charter schools receive substantially less money for administrative costs than similarly sized school districts.[3]

Also contributing to differences in funding between charter schools and other public schools is charter schools' inability to

access local tax revenues. Charter schools are not authorized to impose taxes, and school districts are not obligated to share local revenues with charter schools. To make up for the lack of local tax revenues, charter schools receive state monies under a statutory formula to replace some, but not all, local revenue that is available to school districts.[4] For fiscal year 2006-07, the formula yields $1,142 per pupil.[5] In addition to the monies provided under the formula, the Legislature appropriated $7,100,000 in one-time monies for fiscal year 2006-07 to be distributed to charter schools based upon average daily membership.[6] The additional appropriation, along with the $1,142 per pupil allotment, will give charter schools, at least for the 2006-07 school year, revenues approximately equal to average per pupil local tax revenues.

Federal funds have helped close the funding gap between charter schools and other public schools, but the money is not available to charter schools on an ongoing basis. The state receives a grant from the federal government for charter schools' startup costs. The grants are awarded on a competitive basis and are available for the first three years of a charter school's operations. With the large number of schools opening the past few years, the amount of federal startup funds per school has been reduced. To supplement the federal startup funds, the Legislature appropriated $2,800,000 in state monies on a one-time basis in fiscal year 2005-06[7] and $4,100,000 in fiscal year 2006-07.[8] Of the state startup monies appropriated in fiscal year 2006-07, $2,100,000 is targeted for three high-tech charter high schools.[9]

Utah is also the recipient of a $8,904,245 five-year grant from the federal government for charter schools facilities aid. The money is distributed on a per pupil basis to all charter schools. In the 2005-06 school year the aid amounted to $196 per student.[10]

Due to the significant and rapid increase in state costs to help pay for charter school startup costs and to replace local revenues not available to charter schools, the Legislature requested a study of charter school funding in other states.

A Recent Study Shows Charter Schools Are Underfunded Relative to Other Schools

A review of the literature on charter school financing revealed that the most recent and comprehensive study comparing charter school and school district financing was published in August 2005 by the Thomas B. Fordham Institute. The study, "Charter School Funding: Inequity's Next Frontier," examined the sources and amounts of funding for charter schools and school districts in 16 states and the District of Columbia. The primary findings of the Fordham study were:

- overall, charter schools are significantly underfunded relative to district schools;
- discrepancies are larger in most big urban school districts;
- the primary driver of the district-charter gaps is charter schools' lack of access to local and capital funding; and
- data to make comparisons between charter and district funding are often not readily available.[11]

According to the Fordham study, only two states, Minnesota and New Mexico, approached parity in per pupil revenues between charter schools and school districts. The other 14 states and the District of Columbia had disparities ranging from 5.5% to 39.5% less than school district funding levels.[12]

The Fordham study findings were based on data from the 2002-03 school year. For the purpose of this study, the current state laws and policies on charter schools for each of the 16 states in the Fordham study were examined. As shown in Table 1, the 16 states investigated have more than 80% of the charter schools and charter school students in the United States.

Table 1 [13]

Number of Charter Schools and Students
2005-06 School Year

	Number of Charter Schools	Percent of Charter Schools in U.S.	Number of Charter School Students	Percent of Charter School Students in U.S.
U.S.	3613	100.00%	1,040,536	100.00%
Arizona	466	12.90%	83,092	7.99%
California	574	15.89%	212,000	20.37%
Colorado	120	3.32%	44,424	4.27%
Florida	333	9.22%	92,158	8.86%
Georgia	48	1.33%	20,201	1.94%
Illinois	42	1.16%	16,000	1.54%
Michigan	226	6.26%	91,567	8.80%
Minnesota	124	3.43%	20,600	1.98%
Missouri	23	0.64%	11,000	1.06%
New Mexico	52	1.44%	8,500	0.82%
New York	79	2.19%	22,232	2.14%
North Carolina	97	2.68%	28,000	2.69%
Ohio	297	8.22%	72,000	6.92%
South Carolina	27	0.75%	5,227	0.50%
Texas	237	6.56%	89,171	8.57%
Wisconsin	183	5.07%	25,000	2.40%
16 States Total	2,928	81.04%	841,172	80.84%

Source: The National Alliance for Public Charter Schools

Sources of Funding for Charter Schools

The major sources of funding for school districts and charter schools are state, local, and federal funds. Private funds are generally a minor source of funding for school districts but can be significant for some charter schools. The Fordham study found that 15% of funding for charter schools in Illinois came from sources other than federal, state, and local monies.[14]

Charter schools have access to base level funding through joint state and local school financing programs

Each state creates funding formulas which determine the amount of money the state and school districts contribute to funding public schools. The state contribution to school funding is designed in part to equalize the variation in the funding capability of school districts. The funding formulas typically establish a base level amount of funding per student either statewide or for each school district that is weighted based on the cost of educating the student. In Utah, the base level amount of funding per student is known as the value of the weighted pupil unit. Other state funding formulas provide a certain amount of money per staff position. A few states simply allocate funds to school districts based on what was received in the previous year plus an inflation factor.[15]

The joint state and local school financing programs provide base level funding for school districts' operations, although allocations for capital outlay are included in some state funding formulas. Most of the money received under a joint state and local school financing program is unrestricted; that is, school districts are free to spend the money for any operational purpose.

Charter schools generally have full access to funding through the joint state and local school financing programs. The funding may be based on:

(1) the characteristics of the students in the charter school;
(2) average per pupil funding in the school district that authorized the charter school;
(3) average per-pupil funding in the school district in which the charter school is located; or
(4) or average per-pupil funding statewide.

Charter schools may receive state and federal categorical funds if they meet eligibility requirements

In addition to the unrestricted funds, states provide categorical funds for which spending is restricted to certain programs. School districts may receive categorical funds if they meet eligibility requirements for the program. Categorical funds provided by the state of Utah include funding for educator professional development and gifted and talented students. The federal government also provides categorical funds, such as Title 1 monies which are restricted to children from low income families.

Charter schools may receive state and federal categorical funds if they meet eligibility requirements. If a charter school is considered an LEA (local education agency), it may apply for federal and state categorical funds directly from the state education office. Otherwise, it receives categorical funds through its authorizer.

Charter schools generally do not have full access to local operations funds

State laws authorize school districts, counties, or cities to impose tax levies for public school operations. Some local revenues constitute the school district's local contribution to the joint state and local school financing program. Typically, however, local entities are permitted to generate tax revenue for school district operations in excess of the local contribution to the joint state and local school financing program. In Utah, school districts impose the basic levy, the revenues from which are the school district's contribution to the basic program.[16] In addition to the

basic levy, school districts in Utah may impose the voted or board leeway and several other levies specifically authorized in statute to raise additional funds for operations.[17]

Most states do not require school districts to share with charter schools local operational revenues in excess of the local contribution to the joint state and local school financing program. The exceptions include Florida[18], Georgia[19], Missouri[20], and North Carolina[21] whose state laws specify that schools districts are required to share with charter schools discretionary or supplemental tax levies. Additionally, in two states, South Carolina[22] and New York[23], charter school funding is based on a school district's per pupil general fund revenues or operating expenses which presumably include most local tax revenues for operations.

The required sharing of discretionary or supplemental local operational revenues is not necessarily limited to charter schools authorized by school districts. In Missouri[24], North Carolina[25], and New York[26], charter schools may be authorized by entities other than school districts, and all charter schools are entitled to receive discretionary or supplemental local operational revenues from their students' resident districts. However, that is not the case in South Carolina, where only charter schools authorized by local school boards are entitled to funding based on district per pupil general fund revenues.[27]

Several states require sharing of discretionary or supplemental operational revenues

A brief description of state requirements to share discretionary or supplemental local operational revenues follows:

- Florida law provides that "the basis for the agreement for funding students enrolled in a charter school shall be the sum of the school district's operating funds from the Florida Education Finance Program....including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy..."[28]

- According to Georgia law, "...local revenue shall be allocated to a local charter school on the same basis as for any local school in the local school system."[29] Local revenue is defined as "local taxes budgeted for school purposes in excess of the local five mill share...and...investment earnings, unrestricted donations, and the sale of surplus property; but exclusive of

revenue from bonds issued for capital projects, revenue to pay debt service on such bonds, local option sales tax for capital projects, and budgeted revenue to pay food service program costs."[30]

- Missouri law requires school districts to pay to a charter school having one or more resident pupils "...local tax revenues per weighted average daily attendance from the incidental and teachers' funds in excess of the performance levy ..."[31]

  Kansas City School District has challenged the law allowing charter schools to receive a full share of per pupil operations funds. It claims the state has violated a settlement agreement in a federal desegregation case. The district had been withholding about $800 per student per year to pay off federal court-ordered bonds to improve schools.[32]

- In North Carolina, a school district must transfer to a charter school for each resident student attending the charter school an amount equal to per pupil local current expense, including revenue appropriated by the county for operations, supplemental school taxes for current expense, and fines and forfeitures. Supplemental school taxes may only be distributed, however, to charter schools located within the school district.[33]

- South Carolina has different funding schemes for charter schools authorized by local school boards and those authorized by the South Carolina Charter Public School District which was created to authorize charter schools statewide. Local school board-authorized charter schools receive per pupil revenues based on the district's per pupil general fund revenues. Charter schools authorized by the South Carolina Charter Public School District receive "...the current year's base student cost, as funded by the General Assembly, multiplied by the weighted students enrolled in the charter school..."[34]

- In New York, a school district is required to pay to a charter school for each resident pupil the approved operating expense per pupil of the public school district.[35]

No states require sharing of local capital facilities revenues

None of the states surveyed require school districts to distribute local capital facilities funds to charter schools; although, New Mexico[36] and Colorado law specifically permit the sharing of capital facilities revenues. School districts in Colorado may include charter schools' capital construction needs in a ballot question to the voters of the district for approval of bonded indebtedness. Similarly, a ballot question for approval of a special mill levy for capital construction of charter schools may be submitted to the voters of a school district.[37]

Some states provide supplemental state revenues

_To make up for the lack of locally generated revenues, some states provide supplemental state revenues to charter schools. Five of the 16 states surveyed provide state funds to charter schools for capital facilities. Texas provides state funds to replace certain local discretionary operational revenues. Arizona law specifies an amount of additional assistance to be awarded to each charter school student, but the statute neither indicates the purpose of the allotment nor how it is calculated.

A brief description of the supplemental state revenues provided to charter schools follows:

- California has a loan program and two grant programs to assist charter schools in paying for capital facilities.
  - The Charter School Revolving Loan Program provides loans up to $250,000 per school that must be repaid within five years.[38]
  - The Charter School Facilities Program is funded from proceeds of two state bond measures. A charter school may apply for a grant for up to 50% of project costs and may repay the remaining 50% by making long term lease payments.[39]
  - The Charter School Facility Grant Program reimburses charter schools serving a high proportion of low income students for lease expenses. The funding is awarded on a per pupil basis in the amount of up to $750 per unit of average daily attendance.[40]
- The Colorado legislation annually appropriates money for charter schools' capital facilities needs.[41] In fiscal year 2005-06

the distribution to charter schools amounted to an average of $145 per pupil.[42] Due to a funding increase in fiscal year 2006-07, charter schools are projected to receive $220 per pupil.[43]

- Florida provides a per pupil allocation of money for capital outlay purposes to charter schools that have been in operation for at least three years. The per pupil amount is up to one-fifteenth the cost per student station for an elementary school, middle school, or high school as specified in statute.[44] In the 2005-06 school year, the per pupil allocation amounted to $374 for an elementary school student, $429 for a middle school student, and $568 for a high school student.[45]

- Minnesota law allows charter schools to apply for building lease aid when a charter school has insufficient operating capital revenue. The lease aid amounts to the lesser of 90 percent of the per pupil approved leasing costs or $1,500 per pupil for certain older schools and $1,200 for newer schools.[46]

- Charter schools in New Mexico may apply for grants to make lease payments. The amount of a grant may not exceed the actual lease costs or $600 times the average full-time equivalent enrollment using the leased space.[47]

- Similar to Utah's voted and board levy programs, Texas school districts may impose tax levies to generate operational revenues in excess of the basic program and the state guarantees that each penny of discretionary tax effort up to a certain amount yields a certain amount per student in average daily attendance. In Texas, each charter school authorized by the State Board of Education receives from the state the guaranteed yield per student in average daily attendance associated with the maximum tax rate in the guarantee program.[48]

- In Arizona, charter schools authorized by the State Board of Education or State Board for Charter Schools receive additional assistance over the base support level. State statute specifies that the amount of the additional assistance is $1,387 per student in kindergarten through grade eight and $1,617 per student in grades nine through twelve.[49]

Obstacles to Sharing of Local Capital Facilities Revenues

An examination of state laws comparing school district and charter school funding show that charter schools do not have access to the same level of funding as other public schools on an ongoing basis. The differences in per pupil spending of charter schools and school districts identified by the Fordham study also indicate that charter schools have less access to funds than school districts.

Whereas some states have attempted to equalize access to operations funding by requiring operations dollars to follow the student, this concept has not extended to capital facilities dollars. There may be legal or practical obstacles, or both, to requiring school districts to send capital facilities monies to charter schools for each charter school student residing within the school district's boundaries. A local school board may have pledged certain tax revenues to pay bonded indebtedness. Any diversion of those revenues might result in a default on bond payments. Furthermore, school districts are undoubtedly less able to make adjustments in capital facilities budgets than operations budgets in response to declining enrollment.

To provide for the capital facilities needs of charter schools, states have either given state monies to charter schools or encouraged school districts to make space for them. The next section of this report will discuss in greater depth how charter schools' capital facilities needs are being addressed.

Chapter 1 Endnotes

1. *Utah Code Annotated*, sec. 53A-1a-513 (Supp. 2006).

2. *Utah Code Annotated*, sec. 53A-17a-133 (Supp. 2006). Charter schools do not have taxing authority, so they are not able to qualify for monies under the section.

3. *Utah Code Annotated*, sec. 53A-17a-108 (Supp. 2006). In determining administrative costs under this section, the charter schools combined receive the same amount as a school district of equal size.

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CHAPTER TWO
SECURING CHARTER SCHOOL FACILITIES

Summary

Acquiring a facility is one of the most challenging tasks in opening a charter school. Because charter schools do not have authority to levy a property tax and often have little or no financial history, they frequently experience difficulty in obtaining facility funding. To determine how other states address charter school facility needs, the Office of Legislative Research and General Counsel:

(1) reviewed previous studies on charter school facility financing;
(2) examined the facility assistance programs of twelve states; and
(3) conducted a survey of charter school facilities in eight states.

The main research findings are as follows:

- Most charter schools lease facilities from either private entities or school districts. Leases are usually at market rates.

- Some charter schools purchase facilities, using a combination of funding and financing sources. Banks or private investors may agree to loan funds. Charter schools can access tax exempt bonding in some states. In addition, some states provide credit enhancement mechanisms to reduce borrowing costs, such as loan guarantees,.

- Some states annually provide funds on a per pupil basis for lease, construction, or debt service costs. Less common forms of state aid are competitive grants and loans.

Charter Schools Face Difficulties in Securing Facility Funding

Nationwide, charter schools receive funds from the state, the local school district, or both. However, funding formulas generally exclude capital expenses, so many charter schools must divert funds from instruction to secure their physical location.

Charter schools also face challenges in accessing institutional or private financial markets. Newly established charter schools frequently lack a credit history, often have cash flow issues initially, and rarely have administrators trained in business. In

addition, few states grant charters for more than five years. These factors cause most lenders to view charter schools as poor financial risks.

Facility Financing Mechanisms

The four major mechanisms used to finance charter schools' facilities projects include (1) leases, (2) loans, (3) bonds, and (4) credit enhancement.

Most charter schools lease facilities

Most charter schools lease facilities, under which a charter school utilizes a facility for a set period of time. Some lease agreements include a lease-purchase arrangement, which generally allows the school to apply lease payments toward the eventual facility purchase. [1]

Charter schools may obtain loans directly from a lender or a loan pool created by one or more financial backers

Some charter schools have utilized direct loans and loan pools to finance a facility purchase. Direct loans are a contract between a lender and the school, usually secured by the building itself. If a charter school defaults on the direct loan, the lender bears the cost and takes ownership of the property. A loan pool is a fund created by one or more financial backers, such as a bank, governmental entity, private foundation, or other financial institutions. With a revolving loan pool, loan repayments provide funds to loan to other charter schools. If a charter school defaults, the pool absorbs the costs, which reduces the amount of funds available for other charter school borrowers.[2]

Some facilities are financed with tax exempt revenue bonds secured with per pupil funding

In many states, charter schools have the authority to issue bonds, or to have bonds issued on their behalf through a conduit bond issuer. Tax-exempt bonds usually come with lower interest expenses and are preferable financing tools for charter schools. These bonds are generally revenue bonds with per pupil funding as the main revenue stream.[3]

Two federal bond programs, Qualified Zone Academy Bonds (QZABs) and Qualified Public Education Facility Bonds (QPEFs), offer a potential financing option for charter schools. The QZAB program assists with the renovation and repair of public school facilities in low income school districts. However, many states have yet to designate any of their allotment of QZAB funds for charter schools. The QPEF Program facilitates the issuance of tax-exempt private activity bonds. However, individual states must pass legislation establishing charter schools as eligible recipients.[4]

Credit enhancement mechanisms facilitate access to financing and reduce borrowing costs

Credit enhancement mechanisms facilitate access to financing and may reduce borrowing costs. They include loan guarantees, district guarantees, debt service reserves, and letters of credit. Loan guarantees require a guarantor who is willing to pay the scheduled interest in the event that the charter school defaults. A district guarantee is a loan guarantee made by the school district, usually used in the case of new construction. Should the charter school default, the district assumes the balance of the outstanding loan. A debt service reserve is a fund, typically equal to one year of principal and interest, set aside in case the charter school does not meet its payments. A letter of credit is generally granted by a third party guarantor and given to a financial institution as additional security on a loan.[5]

National Funding Picture

The most thorough study of charter school facilities and finance arrangements was completed in 2001 by Charter Friends National Network (CFNN) and Ksixteen.

Few charters schools have free or nearly free use of facilities

At that time, 73% of surveyed charter schools reported lease arrangements while about 19% owned their own building.[6] Only 13% of the surveyed schools reported use of free facilities or facilities for which they paid only token amounts.[7] More than 36% of participating schools reported sharing space with other organizations.[8]

Financing arrangements are oftentimes burdensome

Even when a charter school secures funding and financing for a facility, the arrangements can be burdensome. The CFNN and Ksixteen study found that charter schools commonly took four to six months to obtain facility financing and that almost ten percent of charter schools took more than eighteen months to secure financing.[9]

The study also found that, although most financial advisors recommend that charter schools limit their debt service payments to 12-15% of their total operating funds, nearly a third of charter schools spend 15% or more of their annual funding on facilities and ten percent spend 20% or more.[10] A study by the Institute for Education and Social Policy at New York University found that surveyed schools typically spent 20-25% of their revenue to repay loans and bonds.[11]

State facilities financing programs include per pupil funding allotments, grants, and loans

In May 2005, the Educational Facilities Financing Center of the Local Initiatives Support Corporation reported on state facility and finance programs available to charter schools. The most common type of facilities funding and financing assistance available to charter schools is simply granting charter schools permission to lease district facilities, with half of the surveyed states allowing charter schools to lease district facilities. Programs involving conduit issuers for tax exempt bonds are the next most common type of assistance available. Specific per pupil funding allotments for facilities and state level grant programs are equally common. Seven states have authorized each type of program. However, only three states have implemented and funded grant programs for charter school facilities. Credit enhancement programs exist in four states. Loan programs have been authorized in only three states, making loan programs the least common form of state assistance available to charter schools.[12]

Charter School Facilities Funding Practices of 12 States

This section provides general examples of the major types of facilities finance assistance programs in use across the country, culled from twelve states (Arizona, California, Colorado, Florida, Michigan, Minnesota, New York, North Carolina, Ohio, Pennsylvania, Texas, and Wisconsin) with the highest numbers of active charter schools in the nation. Together these states account for more than 70% of charter schools and more than 80% of charter school students in the nation.

Charter schools typically may access tax exempt bonding through conduit issuers

- In Colorado, the Educational and Cultural Facility Authority (ECFA) may issue revenue bonds on behalf of charter schools. Additionally, Colorado law requires school districts to invite charter schools to discuss their capital construction needs prior to submitting a bond request to the voters for facilities funding. However, districts are not required to include the charter schools as part of their bond requests or bond issues.[13]

- In New York, charter schools are considered public agents that are eligible to obtain tax-exempt financing.[14]

- Several other states provide charter schools with access to tax exempt debt through conduit issuers. Arizona,[15] California, Florida, Michigan, Minnesota, North Carolina,[16] and Texas[17]

are among these states.

Mechanisms to reduce facilities costs include a debt reserve fund, loan guarantees, and an exemption from ad valorem taxes

- Colorado has established a charter school debt reserve fund, which enhances eligible charter schools' ability to borrow funds at favorable rates.[18]

- Florida provides an exemption from ad valorem taxes for facilities, or portions of facilities, used to house charter schools.[19]

- In Ohio, the Facilities Loan Guarantee Program authorizes the Ohio School Facilities Commission to guarantee up to 85% of the principal and interest on a loan made to the governing authority of a charter school. The guarantee can last for a period of fifteen years.[20]

Some states require school districts to provide surplus space to charter schools

- California passed Proposition 39, which requires school districts to provide charter schools meeting certain minimum enrollment criteria with "facilities sufficient to accommodate the charter school's needs."[21] To comply with the law, schools need only provide existing district facilities to charter schools sufficient to accommodate in-district students attending the charter school in a manner reasonably equivalent to students in the district-run schools.[22]

- Colorado school districts must provide surplus space to charter schools, free of charge. However, districts can charge charter schools for the operation and maintenance costs.[23]

- If requested by the charter school, local school boards in North Carolina must lease any available building or land to a charter school within its district unless the board can demonstrate that it is not feasible. School boards are permitted to provide charter schools with facilities free of charge, but in such cases, the charter school is responsible for the maintenance of and insurance for the school facility.[24]

In a few states, a charter school may apply for a state grant or loan

- California operates two grant programs for charter school facilities funding:

  - California's Charter School Revolving Loan Program (CSRLP) provides funds for leasing facilities, making improvements to facilities, purchasing instruction materials and equipment, and expanding programs. Eligible charter schools can borrow up to $250,000, which must be repaid within five years at an interest rate that is typically three to five percentage points below the market rate for a similar loan from a private lender.

  - California's Charter School Facilities Program (CSFP) provides funds for new construction or for renovation. Half of the costs of a particular project are funded as a grant; the charter school is responsible for repaying the other half either through a lump sum payment or through a long-term lease agreement. Ownership of the project belongs to the school district in which the project is located.[25]

- Both the Arizona[26] and New York[27] legislatures have created charter school stimulus funds. However, no monies have been provided to implement the fund.

- Minnesota provides grants for facility improvement.[28]

Several states annually allocate funds on a per-pupil basis

- Arizona law provides charter schools with "equalization assistance" in the form of a per- pupil allocation. For the 2006-07 school year, this allocation is equal to $1,387 for each grade K-8 student and $1,617 for each grade 9-12 student.[29]

- California operates a Charter School Facility Grant Program, which provides reimbursement for lease payments made by charter schools in low income communities. The reimbursement rate is up to $750 per pupil.[30]

- Funds appropriated by the Colorado legislature for charter school facilities are allocated on a per pupil basis.[31] In fiscal year 2005-06, charter schools received $145 per student. In fiscal year 2006-07, due to a funding increase, the amount is expected to be approximately $220 per pupil.[32]

- The Florida Charter School Capital Outlay Fund provides

eligible charter schools with a per pupil allocation that can be used to purchase real property, construct school facilities, lease school facilities, or renovate facilities. The state provides a per pupil allocation equal to one-fifteenth the cost per student station. During the 2005-06 school year, this amounted to $374 per elementary school student, $429 per middle school student and $568 per high school student.[33]

- Minnesota law provides for lease aid to charter schools. These funds are disbursed on a per-pupil basis and may not be more than 90% of the approved per-pupil cost or $1,200. (Older charter schools may be grandfathered under a previous version of the statute and receive $1,500 per pupil).[34]

- In Pennsylvania, eligible charter schools are reimbursed for costs associated with leasing facilities. The reimbursement amount is the lesser of the annual rental payment or the product of the enrollment and a per pupil allocation. The allocation is $160 for elementary school students, $220 for secondary school students and $270 for vocational-technical students.[35]

Charter School Facility Survey

___In order to learn in what type of facilities charter schools are housed and how those facilities were acquired, the Office of Legislative Research and General Counsel conducted an internet survey of charter schools in Arizona, California, Colorado, Minnesota, North Carolina, Ohio, Utah and Wisconsin. The selection of these states was not random. Aside from Utah, each of these states is among the top twelve states in the nation in terms of the number of active charter schools. Additionally, each of these states has an internet-accessible directory of all charter schools in the state that includes e-mail contact information.

Rather than randomly sampling the charter schools in each state, each charter school with an e-mail address was included in the sampling frame. For every state except Arizona this amounted to a census. For Arizona, only about 46% of the charter schools had e-mail addresses given in the directory. The survey questions are included in Appendix A.

Response rates ranged from 100% for Utah to 24% for California

Table 1 contains information on the response rates for schools in the survey, by state. Aside from Utah, where 100% of charter schools responded to the survey, response rates ranged from 47.4% for North Carolina to 24.4% for California. There is a potential for

non-response bias in the results. However, it is likely reasonable to assume that the characteristics of charter schools who did not respond to the survey are similar to the charter schools that did respond. In that case, non response bias should not have a major impact on our interpretation of the results.

Table 1: Response Rates

	UT	AZ	CA	CO	MN	NC	OH	WI
Surveys sent	36	232	569	122	135	95	297	183
Response rate	100%	25%	24%	29%	31%	47%	24%	33%

Most charter schools are located in buildings, although portable classrooms are commonplace in California

Table 2 shows the percentage of schools in each state housed in buildings, portable classrooms, or in some combination of buildings and portable classrooms. In every state except California, the vast majority of charter schools are housed in one or more buildings. In California, the percentage of charter schools housed in one or more buildings is nearly equal to the percentage of charter schools housed in some combination of buildings and portable classrooms.

Table 2: Types of facilities in which charter schools are housed

	UT	AZ	CA	CO	MN	NC	OH	WI
One or more buildings	78%	90%	45%	74%	88%	76%	90%	93%
One or more portable classrooms	6%	5%	9%	11%	0%	9%	4%	3%
Combination of buildings and portable classrooms	17%	7%	46%	14%	9%	16%	4%	2%

In the majority of states surveyed, most charters schools are owned by a private entity

Table 3 provides information on the percentage of charter school facilities in each state owned by charter schools, school districts, not-for-profit organizations, other public entities, or other private entities. The values do not necessarily add up to 100% because many charter schools are housed in multiple facilities and each facility may be owned by a separate entity. Except for California, Colorado, and Wisconsin, the most common owner of a charter school facility in the study was a private entity. In Wisconsin and California, the most common owner of a charter school facility was a school district. Colorado and North Carolina had the highest percentage of charter schools owning their own facilities, and Minnesota had the highest percentage of charter

schools owned by private entities.

Table 3: Ownership of charter school facilities

	UT	AZ	CA	CO	MN	NC	OH	WI
Charter school	19%	32%	12%	40%	9%	40%	9%	3%
School district	11%	0%	50%	29%	12%	7%	23%	64%
Sponsoring not-for-profit	11%	14%	10%	11%	9%	18%	14%	8%
Other public entity	14%	3%	8%	3%	9%	11%	6%	7%
Other private entity	50%	58%	40%	26%	70%	51%	52%	20%

Sources of funding and financing include loans from banks or private investors and state or school district funds

Many charter schools that purchase their own facilities use a combination of sources for funding and financing. As a result, the percentages in Table 4 do not add up to 100. In Utah, Arizona, and North Carolina, the most common means for a charter school to finance a facility purchase is through a bank or private investor. In California, it is more common for charter schools to finance facilities purchases using state or district funds. In Minnesota, Ohio, and Wisconsin charter school ownership of charter school facilities is relatively uncommon and trends are difficult to generalize.

Table 4: Sources of funding/financing for charter schools that own their facilities

	UT	AZ	CA	CO	MN	NC	OH	WI
State or district funds	29%	32%	63%	57%	25%	50%	17%	50%
Federal grants	29%	11%	0%	7%	0%	6%	17%	0%
Private donations	14%	21%	25%	29%	25%	11%	50%	100%
Banks or private investors	86%	42%	31%	29%	0%	56%	67%	50%
Tax-exempt bond proceeds	0%	32%	0%	36%	50%	0%	0%	0%

Most leases are at market rates

Most charter schools in this study that did not own their facilities, but instead made lease payments at or near market rates.

This was true in every state except Colorado and Wisconsin, where a substantial number of schools were housed in facilities that were free or nearly free to the charter school. Agreements with charter school management companies appeared to be relatively uncommon nationwide, though they are most common in Ohio and Utah. Table 5 displays the percentages of schools that do not own their own facilities that reported each type of payment arrangement.

Table 5: Payments made by charter schools leasing their facilities

	UT	AZ	CA	CO	MN	NC	OH	WI
Free or nearly free	7%	5%	15%	33%	0%	9%	14%	45%
Market rates	71%	73%	57%	46%	92%	64%	59%	28%
Operations and maintenance costs only	10%	7%	16%	13%	3%	9%	8%	5%
Payment to a charter school management company	10%	2%	2%	0%	0%	6%	11%	2%

Few charter schools occupy district facilities at no cost

In most surveyed states, it was relatively uncommon for charter schools to occupy district facilities at no cost to the charter school. Table 6 shows the percentage of charter schools in each state reporting this type of arrangement. In Colorado and especially in Wisconsin, it is fairly common for charter schools to occupy district facilities at little or no cost to them.

Table 6: Percentage of all charter schools occupying district facilities at no cost to them

UT	AZ	CA	CO	MN	NC	OH	WI
0.0%	0.0%	10.8%	22.9%	0.0%	2.2%	11.3%	41.0%

Differences in facilities financing arrangements may be explained by state policies

This study was not designed to establish cause and effect relationships between state policies and charter school's facility financing choices. However, the study highlights some differences in charter school facilities finance arrangements that may be explained by differences in state policies.

In Minnesota, only 9% of charter schools in the study owned their facility and none occupied facilities at no cost to the charter school. The rest of the charter schools in the study leased property and 92% of the charter schools that leased property made payments

at or near market rates. This finding is not surprising– Minnesota policy makes provisions for charter school facilities primarily through lease aid.[36]

In California, approximately 50% of charter schools occupy district-owned facilities. About 80% of these charter schools make some sort of payment to the district for the use of these facilities. This finding seems consistent with the policies of Proposition 39, which requires school districts to make district space available to charter schools, but also allows districts to charge charter schools for the use of the space.[37]

Colorado has a per-pupil allotment for capital facilities, credit enhancement programs, and tax-exempt bond programs for charter schools. Not surprisingly, charter school ownership of facilities is high in Colorado, at 40%. Colorado school districts are required to provide surplus space to charter schools, free of charge, though they may charge for operations and maintenance costs. It is not surprising that the percentage of charter schools in Colorado that occupy district facilities at no charge is higher than in most other states in the study.[38]

Wisconsin has no statutory provisions for charter school facilities. Despite this, Wisconsin was the leader in the number of charter schools occupying district space at no charge. This appears to be a result of the institutional culture in Wisconsin. Charter schools in Wisconsin are funded by agreement; Wisconsin law does not make any specifications for how charter schools are to be funded.

APPENDIX A

(1) During the 2005-2006 school year, in what type of facilities was the charter school housed?

(a) one or more buildings
(b) one or more portable classrooms
(c) a combination of buildings and portable classrooms

(2) During the 2005-2006 school year, who **owned** the facilities in which the charter school was housed? Mark all that apply.

(a) the charter school
(b) a school district
(c) a not for profit organization that sponsored the charter school
(d) a public entity other than the charter school or school district (for example, a state or local government or public university)
(e) a private entity (for example, an individual, company, or church)

(3) If the charter school **owned** the facilities in which it was housed during the 2005-2006 school year, what were the sources of funds used to buy the facilities? Mark all that apply.

(a) funds that the charter school received from the state or school districts
(b) federal grants
(c) private donations
(d) loan from a bank or other private investor
(e) tax exempt bond proceeds

(4) If the charter school **did not own** the facilities in which it was housed during the 2005-2006 school year, what payments were made, if any, for the use of the facilities?

(a) none or very little, use of the facilities was free or nearly free to the charter school.
(b) the charter school made lease payments at or near market rates
(c) the charter school made payments to cover the facilities' operations and maintenance costs only
(d) the charter school made payments to a charter school management company that provided the facilities as part of the management agreement

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CHAPTER Three
LOCAL REVENUE

Summary

This chapter compares two methods for providing access to locally generated property tax revenues for charter schools, as well as, the potential problems and benefits associated with each method. Specifically, the Legislature requested information on the following questions: How does the use of a local tax replacement formula compare to a local revenue sharing mechanism, and what are the potential benefits and problems with having school districts participate in the funding of charter schools attended by residents of the district?

In Utah, the difference between using a local tax replacement formula or a local revenue sharing mechanism as a way to provide revenue access to charter schools requires answering the question of 'Who pays?' Under the local tax replacement formula, the state provides a per student revenue supplement to charter schools. However, a local revenue sharing mechanism requires the local district to transfer a portion of locally generated property tax revenue to a charter school when a resident student enrolls.

Requiring school districts to participate in the direct funding of charter schools attended by resident students presents several problems. Experience in Utah showed that four problems emerged as a result of local revenue sharing: (1) charter schools were dependent on school districts for a portion of their operating budget; (2) per student revenue inequities emerged among the charter schools; (3) school districts lacked oversight of locally generated revenues; and (4) property tax revenues supported purposes not directly approved by the taxpayer. Many of the benefits associated with school district participation in local revenue sharing depend on perspectives. For the state, local revenue sharing disperses some of the cost to the school districts.

Background

As mentioned in Chapter One, the rapid cost increases associated with charter school student growth prompted the Legislature to issue a study in order to better understand charter school funding issues. As earlier chapters demonstrate, charter schools have largely the same access to funds provided through state and federal educational programs as local schools districts provided they meet the same program eligibility requirements. However, charter schools have much less access to local revenue

sources generated by school districts through assessing property taxes. Unlike school districts, charter schools do not have the ability to tax their patrons to support school operation or facility needs.

The lack of access by charter schools to local revenues, represents the fundamental issue behind the charter school funding debate. Over the course of the past five years, the Utah Legislature developed the Local Replacement Funding Program (LRFP) in the Minimum School Program in an attempt to mitigate a charter school's inability to access local revenue sources.

Questions continue to arise over the formula that derives the per-student funding levels of the LRFP. These questions center on the per-student funding amount guaranteed through the LRFP compared to the per-student funding amount generated by a charter school student's home school district through local property taxes.

Comparing per-student funding levels between the districts and charter schools has resulted in multiple attempts to alter the LRFP formula. The first attempt resulted in replacing a local revenue sharing formula with a formula totally supported with State Uniform School Fund revenue. A rapid influx of students enrolling in charter schools over the past several years has resulted in significant annual cost increases to the State in order to support the LRFP.

Since its inception, the annual appropriation to the LRFP has nearly doubled each fiscal year. Additional attempts to alter the LRFP formula to mitigate actual or perceived per pupil funding inequities between school districts and charter schools, has resulted in the Legislature requesting additional information through this comprehensive study on charter schools in Utah.

This chapter provides information on the use of a local tax replacement formula (funded entirely with state revenue) compared to a local revenue sharing mechanism. Specifically, Legislators requested a comparison of the potential benefits and problems that may arise with having school districts participate in the funding of charter schools attended by students that reside within the school district boundaries.

The following sections provide further information on school

district property tax levies, the Local Replacement Funding Program, and the complexities associated with transferring locally generated revenues from districts to charter schools.

School District Property Tax Levies

School district revenues derived from local sources account for, on average, 21.8 percent of a school district's total revenue.[1] Limited access for charter schools to local property tax revenues contributes to the differences in total funding accessible to charter schools when compared to other public schools.

These local revenues may be generated by a school district through levying up to thirteen different taxes, as well as interest on investments, tuition payments, and student fees. Property taxes represent the main source of local revenue to a school district. The following sections provide a summary of each of the thirteen property tax levies available to a school district.

Local Property Taxes Supporting A School District's General Fund

School districts have the option of imposing up to five different property tax levies to support the district's general fund. According the Utah State Office of Education, the district general fund "is the chief operating fund of the school district. It is used to account for all financial resources of the school district except those required to be accounted for in another fund. A district may only have one general fund."[2] A district uses its general fund to account for the majority of the revenue and expenditures supporting the operation and maintenance of educational programs. The five levies include the Basic Rate, Voted Leeway, Board Leeway, Board Leeway K-3 Reading Program, and Impact Aid (Title VII).

The Basic Rate

The Basic Rate represents the largest property tax imposed by a school district. Each district must impose a minimum basic property tax levy [the Basic Rate or Basic Levy] and contribute the proceeds from the levy to the cost of providing basic educational services in the district.[3] Assessing the Basic Rate allows a school district to participate in the Basic Program of the Minimum School Program. The Basic Program equalizes the revenues supporting the education programs in each district and charter school. School districts that yield more revenue through the imposition of the state-wide basic rate require less support from the State's Uniform School Fund to support their basic education programs. School districts that yield less revenue from the Basic Rate and charter

schools (since they cannot impose a Basic Rate) receive more revenue from the Uniform School Fund.

Basic Rate Revenue and Charter Schools

Equalization through the Basic Program provides charter schools with access to revenues generated by the Basic Rate even though they only receive Uniform School Fund revenue. School districts and charter schools receive Basic Program revenues through the allocation of Weighted Pupil Units (WPUs). Each school located in a school district as well as charter schools generate WPUs based on their total number of enrolled students and other defined characteristics that may generate additional WPUs (e.g. special education, career and technology education, professional staff).

Local Option Taxes

School districts, either through board or voter approval, may impose any of the remaining four taxes to support the general fund of the district. Statute requires that school districts meet various requirements governing the use of the revenue generated through these levies.

The remaining local option taxes include three state guarantee programs and one tax levy that districts may use to stabilize federal entitlement funding. A local school board, or the electorate of a school district, may approve additional levies to support the school districts basic education program. These levies include the Board Leeway, Voted Leeway, and Board Leeway K-3 Reading Program. The state supports, or guarantees, each of these levies by providing in statute a minimum level of revenue yield for a school district levying one of the taxes. Finally, the Impact Aid (Title VII) levy only impacts school districts eligible for Federal Impact Aid funding.

Local Option Revenue and Charter Schools

Charter schools do not have access to the revenues generated through local option levies as they do with revenues from the Basic Rate. Since school districts account for local option tax revenue sources in their general funds, the Local Replacement Formula Program (discussed in the next section) largely mitigates the funding differential. However, the formula "does not count state guarantees used to supplement local property taxes in districts with low property values. These revenues might be considered a 'quasi-property tax' and are used for the same purposes as the local property taxes."[4]

Local Property Taxes Supporting Capital Outlay, Debt Service, and Textbooks & Supplies

School districts in Utah may levy four taxes to assist them in providing capital facilities and equipment. These taxes include the Capital Outlay, Voted Capital Outlay, Debt Service and the 10 Percent of Basic levies. Revenue generated by these levies support the Debt Service and Capital Projects funds of a school district. Generated revenue accounts "for the accumulation of resources for, and the payment of, general long-term debt principal and interest; and to account for resources and payments for the acquisition of capital facilities and equipment."[5]

Local School District Responsibility for Capital Facilities

Local school districts have the responsibility for construction and renovation of school facilities. These four revenue sources provide districts with the capability to generate revenues from property taxes to construct and renovate capital facilities, maintain school plants, purchase capital equipment, pay principal and interest debt service, purchase building sites, build and furnish school facilities, and meet some textbook and supply needs.

Capital Outlay Foundation Program

The State provides a nominal amount of revenue in an effort to equalize school district capital facility construction. State funds guarantee that a school district that imposes a Capital Outlay Levy generates a minimum level of revenue per student in Average Daily Membership (ADM).

Capital Outlay Revenue and Charter Schools

Charter schools do not have access to local revenues generated for capital outlay and debt service functions. The national comparison outlined in Chapter One indicates that "no surveyed states require school districts to share local capital facilities revenues."[6] The State implemented the Local Replacement Formula Program in the Minimum School Program as an effort to provide a state fund replacement for local capital outlay and debt service revenues not available to charter schools. However, the next section of this report details how the LRFP does not fully mitigate the funding differential between charter schools and other public schools when compared on a per student basis.

Other School District Property Tax Options

The remaining property tax levies available to a school district include: Special Transportation, Recreation, Utah Government Immunity (Tort Liability), and Judgement Recovery. These four levies represent the most restricted property tax levies available to a school district. School districts may only levy these taxes to support specific needs of the school district.

Conditional Levies

Revenues generated from these levies may only support the following:

- *Pupil Transportation* - to transport students that are not eligible for state supported program, provide hazardous bus routes, transport students for school activities and field trips, and to purchase school buses.[7]

- *Recreation* - provides revenue for school districts to join with municipalities or counties in purchasing or operating recreation facilities.[8]

- *Utah Government Immunity (Tort Liability)* - provides revenue for school districts to pay liability insurance premiums, legal costs to defend the district against claims, settlements or judgements, as well as for actual claims, settlements or judgements against school board members or district employees.[9]

- *Judgement Recovery* - school districts may use this levy to fund a property tax judgement (including interest) against the school district as a result of a successful appeal that the district over collected property tax of a property owner.[10]

Other Conditional Levy Revenue and Charter Schools

Revenue generated through these tax levies supports functions largely unique to school districts, specifically, pupil transportation and various responsibilities required of a taxing entity. Due to the nature of these levies, charter schools do not have access to the revenue generated from them. This revenue is also excluded from the formula for the Local Replacement Funding Program.

Charter School Local Replacement Funding Program

The Legislature created the Charter School Local Replacement Funding Program (LRFP) over the course of the 2001-2003 General Sessions. Program objectives include replacing some of "the local funds retained by a student's home school district"[11] and assisting charter schools because they "do not have bonding authority or the ability to tax their patrons to cover facility costs."[12] Providing ongoing funding capacity for charter schools to obtain adequate educational facilities is at the core of the program.

Chapter Two of this report details the difficulties charter schools face in securing adequate facilities. State funding formulas "generally exclude capital expenses, so many charter schools must

divert funds from instruction to secure their physical location."[13] Further, the study of charter school financing models in other states, detailed in Chapter One found that "several states require school districts to share with charter school local operations revenues generated by discretionary tax levies"[14] and that in order to "replace local revenues not available to charter schools, several states provide supplementary state monies for either capital facilities or operational purposes."[15]

Original Cost Sharing Program

Charter school replacement funding originated with the local school districts and the state sharing in the cost of the program. "The state provided an appropriation equal to half the per pupil revenue generated in the school districts through property tax collections. School districts in turn transferred the other half to a charter school when a [district] student enrolled."[16]

Inequities in the Cost Sharing Program

The original cost-sharing program resulted in some funding inequities among charter schools. State revenue only equalized half of the replacement funding received by charter schools. The formula estimated a state-wide per pupil average of locally generated revenue in the school districts. The state provided half of this state-wide average to charter schools.

Revenue received by a charter school directly from a student's home district was not equalized. The mechanism created a benefit for charter schools enrolling students from school districts that collect more local revenue than the state average. Charter schools enrolling these students received more revenue than if they enrolled students from districts below the state-wide average.

Strained Relationships: Charter Schools & School Districts

In addition to inequities resulting from the original formula, "charter schools became dependent on a district for funding, further straining the relationship between districts and charter schools."[17] Charter schools relied on districts to transfer the appropriate level of funding and ensure that funds were received in a timely manner. This dependence resulted in frequent conflicts between districts and charter schools, sometimes resulting in intervention of the Utah State Office of Education.

District to District Student Transfers through Statutory Open Enrollment Provisions

The original charter school LRFP was not the first local revenue sharing mechanism implemented in Utah. Under statutory provisions governing 'Open-Enrollment' in the State, statute requires school districts to transfer local revenues to another school district when a student chooses to enroll the receiving district's school. The statute reads "the State Board of Education shall adopt rules providing that the resident district pay the nonresident district, for each of the resident districts's students who enroll in the nonresident district, ½ of the amount by which the resident district's per student expenditure exceeds the value of the state's contribution."[18] This formula mirrors the original cost-sharing formula implemented for the LRFP.

The tensions that resulted in a local revenue sharing mechanism between school districts and charter schools do not occur in the same transaction between two school districts. The State Board of Education adopted Rule R277-437 "Student Enrollment Options" which outlines a specific formula for districts to use when determining the amount of revenue to transfer to a receiving school district. This chapter does not discuss potential reasons for this dichotomy. Knowing that the State's 'Open-Enrollment' provisions pre-date both the original LRFP formula and the legislation authorizing charter schools in Utah further complicates fully understanding the charter school - school district tensions as a result of sharing local revenues.

Creation of the Minimum School Program - Charter School Local Replacement Funding Program

Legislators created the Charter School Local Replacement Funding Program within the Minimum School Program in an attempt to better equalize per student revenues among charter schools and reduce conflicts between the school districts and charter schools. "During the 2003 General Session, the Legislature changed statute and developed a system that allowed the local school districts to retain all locally generated property tax revenue."[19] This change in statute removed the dependent relationship between school districts and charter schools. "The state now provides an equalized average per student amount directly to the charter school"[20] to replace some of the locally generated property taxes collected by a school district. This mechanism removes funding inequities and ensures that each charter school receives the same level of per student funding from the state, regardless of originating district.

Statutory Formula

Statute defines a formula that calculates an estimated average local property tax generated per student in each of the 40 school districts. Utah code states "the amount of money provided for each charter school student shall be determined by: (i) calculating the sum of: (A) school districts' operations and maintenance revenues [general fund] derived from local property taxes, except revenues from imposing a minimum basic tax rate pursuant to Section 53A-17a-135; (B) school districts' capital projects revenues derived from local property taxes; and (C) school districts' expenditures for interest on debt."[21] This formula provides a replacement to charter schools for some of the locally generated property tax revenues retained by the school districts. As a result of this formula, the state provides all revenues (except for some federal funds) supporting charter schools in Utah.

Accurately Reflecting Local Revenue in the Formula

Beginning with the 2004 General Session, the Legislature received information that the formula deriving the per-student amount for charter schools does not reflect the level of revenue generated by the school districts. The formula "uses debt service [interest on debt] expenditures instead of debt service revenue collected by the districts as one of the primary formula components. [...] the Legislature used caution during the creation of the formula in statute in order to enure that school district bond revenue was not double counted in the formula."[22]

Using Local Revenue Generated for Debt Service Does Not Double Count Bond Revenue and Taxes to Repay Bonds

School district bond revenue is not accounted for in the local property tax revenue generated for the debt service program. Instead, bond revenue is accounted for by school districts as an "other" revenue source. It was thought at the time the LRFP program was created "that the districts' debt service revenues included the proceeds from bond sales as well as the taxes levied to pay back the principal amounts on those bonds. To avoid double counting the [bond] debt proceeds and the taxes used to pay the debt, the formula was crafted to only count the interest expenditures on debt."[23] Since bond proceeds are not accounted for in debt service fund revenues, the local revenue generated to support this fund can be included in the formula without fear of double counting.

Formula Change Considerations

Revising the formula for the LRFP is likely required in order to more appropriately reflect local property tax revenue generated by school districts. The current formula does not reflect the original intent behind the LRFP, which is to provide charter schools with a

replacement of approximately the same revenue (based on the state average) that a school district retains when a student enrolls in a charter school.

Charter School Parity Funding

Charter school supporters have "been asking the Legislature for parity in funding, which means that students in charter schools would receive, or have access to, funding at the same level as students in other public schools."[24] The replacement attempts to provide approximately the same level of revenue - or parity - for each student enrolled in a charter school, but fails to accomplish this goal. Several reasons contribute to this failure.

1. Continuing to use debt service expenditures instead of debt service revenues understates the level of per student revenue available through the LRFP formula for students enrolled in charter schools.

2. According to the Utah Foundation, the LRFP "does not count state guarantees used to supplement local property taxes in districts with low property values."[25] These guarantees include the Capital Outlay Foundation Program, as well as the Voted and Board Leeway Programs.

3. Charter schools, by nature, do not have conditions to support using some local revenue sources in the LRFP formula. The prior section identifies certain tax levies unique to school district needs, namely, pupil transportation.

Potential Solution Proposed in the 2006 Legislative General Session

Since the 2004 General Session, charter schools have attempted to have the LRFP formula changed to include debt service revenues. These efforts lacked success until the 2006 General Session when the Public Education Appropriations Subcommittee adopted a new LRFP formula. However, the new formula was not adopted by the Legislature.

New Formula Proposed for the Charter School Local Replacement Funding Program

The new formula, created by the Utah State Office of Education and endorsed by the State Board of Education, provides a simpler way of determining a local funding replacement. Instead of focusing on which local levies may or may not apply to charter schools, the formula simply "covers those funds that charter schools do not receive that school districts currently do receive" focusing "solely on revenues that charter schools do not receive

under the Minimum School Program."[26] The formula is as follows:

- Step #1 - Include all Minimum School Program revenues not currently received by charter schools (State Guarantees for the Board and Voted Leeway Programs & Capital Outlay Funding Program).

- Step #2 - Add all local tax revenues generated by the school districts.

- Step #3 - Subtract all revenues already covered by state funding (through the Minimum School Program) or revenues that charters are not eligible to receive (Revenue from the Basic Rate, K-3 Reading Program Revenue, and Special Transportation Levy Revenue).

- Step #4 - Divide the total by the Average Daily Membership (ADM) in the school districts.

The new formula mirrors the intent of the original LRFP formula, but provides a cleaner, easier to follow method of calculating the formula. The formula is designed to achieve funding equity between charter schools and district schools. Calculations of the new formula conducted during the 2006 General Session provided slightly more per student revenue than a revised version of the LRFP formula.

Similar to the statutory LRFP formula, the new formula would not require school districts to participate in a cost-sharing mechanism.

Additional Considerations Related to a New Formula

As with the current LRFP formula outlined in statute, the new formula uses an un-weighted state average. The funding received by a charter school does not reflect the actual per student revenue generated by a student's home district. A charter school may receive more revenue per student through the state supplement than the district would otherwise generate in local revenue for that same student.

The following table details the differential among school districts in locally generated revenue. This example uses the formula defined in statute for the LRFP to demonstrate the differential. While this example does not consider all revenues

generated by a school district, it provides a good example to demonstrate the variances associated with an un-weighted average.

Local Replacement Formula Per Student Amount Generated by School Districts State Average Compared to Top & Bottom Ten Districts FY 2007 LRFP Calculation	
School District	**LRFP Formula Amount Per Student**
Tinitc	$446
Box Elder	570
South Sanpete	613
Piute	615
Cache	663
Tooele	725
Weber	734
Davis	760
Alpine	778
Nebo	793
State Average	**$1,142**
Garfield	1,802
Salt Lake	2,142
Carbon	2,149
Emery	2,188
North Summit	2,249
Daggett	2,265
Millard	2,284
Rich	2,518
South Summit	2,784
Park City	4,582

Source: Utah State Office of Education, Finance and Statistics Section
Annual Finanical Report - 2005.
Superintendent's Annual Report - ADM by District & Grade
Prepared by: Office of the Legislative Fiscal Analyst (11/06BL).

The above table provides the top and bottom ten districts for per student local revenue (as determined by the LRFP formula). This example shows that per student local revenues range from $446 in Tintic School District to $4,582 in Park City School District.

Based on this example, students originating from school districts below the state average benefit through greater access to per student revenues when compared to students remaining in their resident district. This occurs as a result of using an un-weighted

average. Charter school students receive the state funded LFRP supplement which equals the state average and is not adjusted for resident district amount.

School districts falling below the state average account for 56 percent of all ADM students in Utah. The majority of charter schools have opened within the boundaries of school districts listed in the bottom ten in the table above.

Local Replacement Funding Compared to Local Revenue Sharing

The charter school study commissioned by the Legislature asked "how does the use of a local tax replacement formula compare to a local revenue sharing mechanism?" As stated above, the LRFP began as a local revenue sharing program. Districts were required to transfer local funds to charter schools. The preceding section also listed several complications of the original local revenue sharing program.

In the survey of charter school funding in other states (located in Chapter One), the Office of Legislative Research and General Counsel found that "most states do not require school districts to share with charter schools local operations revenues in excess of the local contribution to the joint state and local financing program."[27] The survey found exceptions in Florida, Georgia, Missouri, and North Carolina. Each of these states have laws specifying that "school districts are required to share with charter schools discretionary or supplemental tax levies."[28] The study further found that "none of the states surveyed require school districts to distribute local capital facilities funds to charter schools."[29]

In Utah, the Legislature abandoned the local revenue sharing mechanism that resulted in tensions between the school districts and charter schools. The Legislature created a program that benefitted both charter schools and school districts. Charter schools benefitted through increased funding, budget relief (no-longer dependent on school districts) and reduced tensions with school districts. School districts benefitted by no longer transferring local funds to charter schools (this was often seen as problematic and counter to agreements made with voters upon approving tax levies) and the ability to use local revenues saved by students transferring to charter schools to benefit the remaining students in the district.

Through altering the original local revenue sharing mechanism, the Legislature created a supplemental funding program (LFRP) for charter schools that conceptually reflects charter school funding mechanisms found in some of the surveyed states. The survey outlined in Chapter One found that "to make up for the lack of locally generated revenues, some state provide supplemental state revenues to charter schools. Five of the 16 states surveyed provide state funds to charter schools for capital facilities"[30]. Providing some form of additional state revenue to support charter school operations appears to be a commonly used practice in other states.

Chapter 3 Endnotes

1. Utah State Office of Education, Finance and Statistics Section. *School District Tax Levies Description, March 2006.* http://www.schools.utah.gov/finance/tax/default.htm

2. Utah State Office of Education, Finance and Statistics Section. *Fund Definitions, July 2006.* http://www.schools.utah.gov/finance/finance/chart_accounts/definitions/FundDef07.pdf

3. Utah State Office of Education, Finance and Statistics Section. *School District Tax Levies Description, March 2006.* http://www.schools.utah.gov/finance/tax/default.htm

4. Utah Foundation, Research Report. *Challenges Facing Utah Charter Schools,* (Salt Lake City: Utah Foundation, 2005), 7.

5. Utah State Office of Education, Finance and Statistics Section. *Fund Definitions, July 2006.* http://www.schools.utah.gov/finance/finance/chart_accounts/definitions/FundDef07.pdf

6. Chapter One, 1-1.

7. Utah State Office of Education, Finance and Statistics Section. *School District Tax Levies Description, March 2006.* http://www.schools.utah.gov/finance/tax/default.htm

8. Ibid., 3.

9. Ibid., 4.

10. Ibid., 4.

11. Office of the Legislative Fiscal Analyst. *2002-2003 Appropriations Report.* August, 2002, 215.

12. Office of the Legislative Fiscal Analyst. *Issue Brief: Charter School Local Replacement Funding.* January, 2005.

13. Chapter Two, 2-1.

14. Chapter One, 1-1.

15. Ibid.

16. Office of the Legislative Fiscal Analyst. *Issue Brief: Charter School Local Replacement Funding.* January, 2005.

17. Office of the Legislative Fiscal Analyst. *Minimum School Program - Charter School Local Replacement Funding.* Issue Brief to the Public Education Appropriations Subcommittee. December, 2003.

18. Utah Code, Section 53A-2-210.

19. Office of the Legislative Fiscal Analyst. *Issue Brief: Local Replacement Formula Change.* January, 2006.

20. Ibid., 1.

21. Utah Code, Section 53A-1a-513(4).

22. Office of the Legislative Fiscal Analyst. *Issue Brief: Local Replacement Formula Change.* January, 2006.

23. Utah Foundation, Research Report. *Challenges Facing Utah Charter Schools,* (Salt Lake City: Utah Foundation, 2005), 7.

24. Chapter One, 1-1.

25. Utah Foundation, Research Report. *Challenges Facing Utah Charter Schools,* (Salt Lake City: Utah Foundation, 2005), 7.

26. Utah State Legislature. *Minutes of the Joint Public Education Appropriations Subcommittee.* January 30, 2006.

27. Chapter One,1-6.

28. Ibid.

29. Ibid., 1-8.

30. Ibid.

CHAPTER FOUR
CHARTER SCHOOL START-UP COSTS

Summary

A survey of seven charter schools found the average cost of starting a charter school is about $2,266 per student using first year enrollment numbers for each school. Using the enrollment capacity for each school the average cost per student for start up costs for a charter school is $1,153.

A similar survey of eight recently constructed traditional public schools revealed average start up cost per student of $1,440 using first year enrollment numbers. Using the enrollment capacity for each school the average cost per student for start up costs for a public school is $986**.** Further, charter schools do not have the same facility requirements as traditional public schools in that public schools provide gyms, cafeterias, and theaters which charter schools do not.

What is Defined as a Start Up Cost?

The definition of "start-up costs" is somewhat vague and is not clearly defined in Utah statute. Definitions in other states varied somewhat, however, there were some common themes: consultant fees for policy creation; general curriculum; attorney fees for the establishment of bylaws; supplies; textbooks; library books; maintenance supplies; and media materials. One should note that there is distinction between these costs and the construction of new space or remodeling of an existing space.

In the 2005 General Session the Legislature authorized $2.8 million to equalize revenue for charter school start-up costs on a per-student basis. A Federal charter start-up grant provided $150,000 per school regardless of school size. This state appropriation converted federal money to $860 per-student. The appropriation included no requirements as to how the money was to be spent. Some charter schools in the study were created before this appropriation.

Methodology

In determining and comparing start-up costs, the LFA looked at a cross section of charter schools that have been in operation for more than one year. It did so to assure each school had one full year of financial information. The LFA's sample of charter schools is also being used by the Auditor General in their current audit with one exception.

A similar approach was taken for a sample of public schools started within the past two to three years. Budget information was taken from each of the public schools in order to draw a comparison on a per school basis. The same object codes from the Utah State Office of Education accounting system were used in order to standardize the costs.

The object codes used were:

300 Professional and Technical
400 Property Services
500 Other (Except Travel)
610 Supplies
641 Textbooks
644 Library Books
650-660 Periodicals, AV Materials
670 Computer Supplies
680 Maintenance Supplies
730 Equipment
750 Media Materials

These costs were not audited and represent the information reported to the USOE from the school itself. These schools represent a cross section of elementary schools and middle schools. Enrollment numbers represent each first year enrollment levels.

A calculation was also made using the same object codes and school, but using the total capacity for each school. This method was applied to both the public schools and charter schools.

Costs Calculated Using First Year Enrollment

The average start-up cost per student for each charter school is $2,266 based on first year enrollment numbers. Table 1 below shows each charter school start-up cost.

Table 1

School	First Year Enrollment Number	Total Cost of Start Up	Average Cost Per Student Using First Year Enrollment
Pinnacle	185	$283,700	$1,553
East Hollywood	152	$618,821	$4,071
North Davis Preparatory Academy	476	$1,112,508	$2,337
Timpanogos Academy	349	$301,007	$862
City Academy	60	$169,558	$2,825
John Hancock	160	$210,353	$1,314
Salt Lake Arts Academy	117	$300,879	$2,571

Details for each school are listed in the appendix

The public school system currently has an average cost per student of $1,440 based on first year enrollment numbers. This cost also includes the costs of cafeterias, gyms, and other facilities that may not necessarily be included in the facilities at charter schools. Table 2 shows start up costs found in the sample of public schools.

Table 2

School	First Year Enrollment Number	Total Cost of Start Up	Average Cost Per Student Using First Year Enrollment
East Meadow Elementary	462	$674,840	$1,460
Foothill Elementary	479	$674,840	$1,408
Orchard Hill Elementary	584	$674,840	$1,155
Wright Elementary	676	$892,319	$1,320
West Point Junior High	1,087	$1,920,927	$1,767
Fort Herriman Middle	824	$1,512,000	$1,834
Sunset Ridge Middle	780	$1,512,000	$1,938
Daybreak Elementary	1,067	$675,000	$632

Details for each school are listed in the appendix

The data for public schools is different than that for a charter school. First, a charter school may not have the same facilities when compared with a traditional public school building. Second, public schools did not use a standard method for allocating funds to each new school. An example, of this variety of methods is that one district will allocate the same amount of money for each type of school: elementary, middle, or high school. Another district might allocate money on the basis of anticipated enrollment numbers.

Cost Calculated Using Total Capacity of School

Using total capacity for a school the cost per-student reveals not much difference in cost. Table 3 shows an average cost of $1,153 per student.

Table 3

School	Total Capacity	Total Cost of Start Up	Average Cost Per Student Using Total Capacity
Pinnacle	340	$283,700	$834
East Hollywood	600	$618,821	$1,031
North Davis Preparatory Academy	525	$1,112,508	$2,119
Timpanogos Academy	505	$301,007	$596
City Academy	200	$169,558	$847
John Hancock	185	$210,353	$1,137
Salt Lake Arts Academy	200	$300,879	$1,504

Details for each school are listed in the appendix

The cost for start up using the total capacity for a public school averaged $986 per student**.** Table 4 shows the cost per school.

Table 4

School	Total Capacity	Total Cost of Start Up	Average Cost Per Student Using Total Capacity
East Meadow Elementary	900	$674,840	$749
Foothill Elementary	900	$674,840	$749
Orchard Hill Elementary	900	$674,840	$749
Wright Elementary	853	$892,319	$1,046
West Point Junior High	1200	$1,920,927	$1,600
Fort Herriman Middle	1,400	$1,512,000	$1,080
Sunset Ridge Middle	1,400	$1,512,000	$1,080
Daybreak Elementary	812	$675,000	$831

Details for each school are listed in the appendix

Using these two different calculations the cost per student varies somewhat. In the future a standard way of cost per student calculation would be helpful in order to get a more accurate cost for start-up costs.

Charter School Common Expenses
Calculated by First Year Enrollment

Obj. Codes	Common Expenses	Pinnacle	East Hollywood	North Davis Prep	Timpanogos Academy	City Academy	John Hancock	Salt Lake Arts Academy
300	Professional and Technical	3,594	110,516	236,385	33,025	30,100	25,199	53,335
400	Property Services	13,445	33,569	398,928	38,319	52,890	66,938	47,096
500	Other (Except Travel)	157,574	103,003	78,013	16,003	16,679	0	33,294
610	Supplies	27,003	46,349	117,003	44,695	25,526	62,173	54,863
641	Textbooks	24,141	31,967	91,343	0	7,066	42,190	0
644	Library Books	0	0	12,807	42,311	324	3,677	0
650-660	Periodicals, AV Materials	946	0	0	2,398	44	23	0
670	Computer Supplies	0	0	0	0	3,225	10,153	0
680	Maintenance Supplies	0	0	0	983	2,406	0	0
730	Equipment	56,997	293,417	178,029	123,273	31,298	0	112,291
750	Media Materials	0	0	0	0	0	0	0
	Total	**$283,700**	**$618,821**	**$1,112,508**	**$301,007**	**$169,558**	**$210,353**	**$300,879**
	First Year Enrollment	**151**	**152**	**476**	**349**	**60**	**160**	**117**
	Start Up Cost Per Student	**$1,878.81**	**$4,071.19**	**$2,337.20**	**$862.48**	**$2,825.97**	**$1,314.71**	**$2,571.62**
	Average for Nine Charter Schools	**$2,266**						

Charter School Common Expenses
Calculated by Total Capacity

Obj. Codes	Common Expenses	Pinnacle	East Hollywood	North Davis Prep	Timpanogos Academy	City Academy	John Hancock	Salt Lake Arts Academy
300	Professional and Technical	3,594	110,516	236,385	33,025	30,100	25,199	53,335
400	Property Services	13,445	33,569	398,928	38,319	52,890	66,938	47,096
500	Other (Except Travel)	157,574	103,003	78,013	16,003	16,679	0	33,294
610	Supplies	27,003	46,349	117,003	44,695	25,526	62,173	54,863
641	Textbooks	24,141	31,967	91,343	0	7,066	42,190	0
644	Library Books	0	0	12,807	42,311	324	3,677	0
650-660	Periodicals, AV Materials	946	0	0	2,398	44	23	0
670	Computer Supplies	0	0	0	0	3,225	10,153	0
680	Maintenance Supplies	0	0	0	983	2,406	0	0
730	Equipment	56,997	293,417	178,029	123,273	31,298	0	112,291
750	Media Materials	0	0	0	0	0	0	0
	Total	**$283,700**	**$618,821**	**$1,112,508**	**$301,007**	**$169,558**	**$210,353**	**$300,879**
	Total Capacity for School	**340**	**600**	**525**	**505**	**200**	**185**	**200**
	Start Up Cost Per Student	**$834.41**	**$1,031.37**	**$2,119.06**	**$596.05**	**$847.79**	**$1,137.04**	**$1,504.40**
	Average for Nine Charter Schools	**$1,153**						

Public School Common Expenses
Calculated by First Year Enrollment

Obj. Codes	Common Expenses	East Meadow Elementary	Foothill Elementary	Orchard Hill Elementary	Wright Elementary	West Point Junior High	Fort Herriman Middle	Sunset Ridge Middle	Daydreak Elementary
	District	Nebo	Nebo	Nebo	Granite	Davis	Jordan	Jordan	Jordan
	Type	Elementary	Elementary	Elementary	Elementary	Junior High	Junior High	Junior High	Junior High
300	Professional and Technical	0	0	0	0	0	0	0	0
400	Property Services	2,300	2,300	2,300	250,425	383,685	0	0	0
500	Other (Except Travel)	0	0	0	269	0	0	0	0
610	Supplies	164,352	164,352	164,352	37,183	172,018	65,000	65,000	55,000
641	Textbooks	296,350	296,350	296,350	113,455	328,082	300,000	300,000	130,000
644	Library Books	61,000	61,000	61,000	43,509	56,507	100,000	100,000	45,000
650-660	Periodicals, AV Materials	0	0	0	821	51,864	0	0	0
670	Computer Supplies	10,000	10,000	10,000	0	718,739	20,000	20,000	10,000
680	Maintenance Supplies	4,581	4,581	4,581	0	56,524	0	0	0
730	Equipment	136,257	136,257	136,257	446,657	153,508	1,027,000	1,027,000	435,000
750	Media Materials	0	0	0	0	0	0	0	0
	Total	**$674,840**	**$674,840**	**$674,840**	**$892,319**	**$1,920,927**	**$1,512,000**	**$1,512,000**	**$675,000**
	First Year Enrollment	**462**	**479**	**584**	**676**	**1,087**	**824**	**780**	**1,067**
	Start Up Cost Per Student	**$1,460.69**	**$1,408.85**	**$1,155.55**	**$1,320.00**	**$1,767.18**	**$1,834.95**	**$1,938.46**	**$632.61**
	Average	**$1,440**							

Public School Common Expenses
Calculated by Total Capacity

Obj. Codes	Common Expenses	East Meadow Elementary	Foothill Elementary	Orchard Hill Elementary	Wright Elementary	West Point Junior High	Fort Herriman Middle	Sunset Ridge Middle	Daydreak Elementary
	District	Nebo	Nebo	Nebo	Granite	Davis	Jordan	Jordan	Jordan
	Type	Elementary	Elementary	Elementary	Elementary	Junior High	Junior High	Junior High	Junior High
300	Professional and Technical	0	0	0	0	0	0	0	0
400	Property Services	2,300	2,300	2,300	250,425	383,685	0	0	0
500	Other (Except Travel)	0	0	0	269	0	0	0	0
610	Supplies	164,352	164,352	164,352	37,183	172,018	65,000	65,000	55,000
641	Textbooks	296,350	296,350	296,350	113,455	328,082	300,000	300,000	130,000
644	Library Books	61,000	61,000	61,000	43,509	56,507	100,000	100,000	45,000
650-660	Periodicals, AV Materials	0	0	0	821	51,864	0	0	0
670	Computer Supplies	10,000	10,000	10,000	0	718,739	20,000	20,000	10,000
680	Maintenance Supplies	4,581	4,581	4,581	0	56,524	0	0	0
730	Equipment	136,257	136,257	136,257	446,657	153,508	1,027,000	1,027,000	435,000
750	Media Materials	0	0	0	0	0	0	0	0
	Total	**$674,840**	**$674,840**	**$674,840**	**$892,319**	**$1,920,927**	**$1,512,000**	**$1,512,000**	**$675,000**
	Total Capacity for Each School	**900**	**900**	**900**	**853**	**1,200**	**1,400**	**1,400**	**812**
	Start Up Cost Per Student	**$749.82**	**$749.82**	**$749.82**	**$1,046.09**	**$1,600.77**	**$1,080.00**	**$1,080.00**	**$831.28**
	Average	**$986**							

CHAPTER FIVE
STUDENTS TRANSFERRING TO CHARTER SCHOOLS: IMPACT ON DISTRICT SCHOOLS

Summary

Anecdotes about students transferring from district schools to charter schools and back again, prompted the Legislature to ask the following questions:

1. How many charter school students transfer back to district schools during the course of the school year?

2. What impacts do transfers have on a district school when a student transfers to a charter school during the school year.

The transfer of students between district schools and charter schools, or even from school to school, is difficult to track. Most often only the sending and receiving schools know that a student transfer has taken place. As a result, no comprehensive statewide data exists that quantifies the number of student transfers occurring in a given year.

In an effort to answer the questions above, the Office of the Legislative Fiscal Analyst conducted an informal poll of fifteen district schools. These schools provided some cursory information on number and impact of district school to charter school student transfers. The responses from the surveyed schools, along with methodology, may be found in subsequent sections of this chapter.

Tracking Student Transfers

The tracking and reporting of students transferring between public schools (district schools & charter schools) occurs at the most local level - between schools. In the majority of instances, only the sending and receiving schools know that a student transfer has taken place. No state-wide or school district information exists that comparatively reports student transfers in a given school year.

The Utah code verifies the local nature of student transfers between public schools. State statute requires that "within 14 days after enrolling a transfer student, a school shall request, directly from the student's previous school, a certified copy of his record."[1] Statute indicates that the receiving district is responsible to obtain student records in a timely manner.

Impact on State Revenue Allocations when a Student Transfers Schools

A student transfer may positively or negatively impact the allocation of State Minimum School Program revenues to a district school or charter school. The level of impact depends on when the transfer occurs during the school year, and the overall number of students transferring in or out of a particular school.

Prior-year Plus Growth Distribution Model

In Utah, school districts receive state revenues under a 'prior-year plus growth' distribution model. The prior year enrollment acts as the basis for allocating state revenue. School districts receive additional state revenue depending on their actual student growth. Utah code states that "under prior year plus growth, kindergarten through grade 12 average daily membership for the current year is based on the actual kindergarten through grade 12 average daily membership for the previous year plus an estimated percentage growth factor."[2] The growth factor represents the "percentage increase in total average daily membership on the first school day of October in the current year as compared to the total average daily membership on the first school day of October of the previous year."[3]

The State Office of Education finalizes district enrollment numbers shortly following the October enrollment count. Special education enrollment counts are finalized following an enrollment count in December. These counts becomes the basis for receiving state revenues for the entire school year.

Following the October enrollment counts, each school district or charter school receives a monthly allocation of state revenue. The USOE corrects for any errors in estimating school district or charter school enrollments following the October enrollment count for regular education programs. After the December special education enrollment count, the USOE also corrects for any estimate errors. These adjustments occur through altering monthly allocations and offsetting districts or charter schools that received too much or too little revenue during the first few months of the school year. Finally, a ten day rule provides that following ten consecutive unexplained absences a student is no longer included in the average daily membership count of the school. Consequently, an adjustment to the school's ADM count occurs in the subsequent school year through a lower 'prior-year' base.

Student Transfers May Impact Revenue Allocation

Transferring students generally do not have a noticeable impact on school revenues. Traditionally, student transfers have a tendency to equalize over the course of a school year. With the increase in charter school enrollment, reports that student transfers no longer equal out over the course of a school year have increased. Anecdotal reports of significant impacts have emerged and prompted the Legislature to request answers to the questions listed at the beginning of this chapter.

Impact of Transfers on Schools

The level of revenue impact on a district school depends on when the transfer occurs and how many students transfer. Many district schools argue that student transfers have increased as a result of new charter schools in the area and transfers no longer equalize over the course of the school year.

Two Scenarios

The following represent two ways in which funding for a district school may be impacted by students transferring to a charter school. The scenarios are based solely on the prior-year plus growth model and do not represent actual occurrences. Although these scenarios view transfers from a district school perspective, they also impact charter school finances in roughly the same way.

- *Before School Begins* - Simply, a student enrolled last year does not enroll in the current year. Since the student was enrolled in the prior-year, he/she is included in the base enrollment count. Assuming that another student enrolls in place of the transferred student (enrollment stays flat), no revenue impact should occur. A growing school may not receive as much 'plus growth' funding as anticipated due to the transferring student. A school facing excessive student enrollment loss is held harmless through provisions outlined in the Minimum School Program.[4]

- *After School Begins* - A student enrolls in the district school at the beginning of the school year and transfers to a different school (charter school or another district). The timing and quantity of students transferring become greater factors in the level of financial impact.

  Students transferring out of a district school prior to the October count create the most noticeable impact. If a charter school opens late (several weeks after the district school),

parents may opt to enroll their students in the district school and wait for the charter school to open. In these early weeks, the district school contracts with staff and provides services to educate the number of students that have enrolled in the school. If a significant number of students transfer out of the district school after the district contracted for services but before enrollment counts provide additional 'plus growth' funding, a situation arises in which the district school likely will not receive sufficient funding to cover contracted services.

Students that transfer out of a district school following the October 1 count have less of a financial impact on the current year operation of a district school. Once the annual funding level is determined, based on the October 1 count, the annual allocation does not change until the next year. The ten day rule takes effect and a transfer student is not included in the ADM base for the next year.

The state does not alter Minimum School Program revenue allocations to school districts on a monthly basis. The October count becomes the basis for monthly allotments made throughout the year. These allotments generally do not change much over the course of the year. In allocating these funds to district schools, a school district may opt to alter funding more often to accommodate for transferring students.

Determining Funding in a Charter School's 1st Year

During the first year of operation, a charter school receives its monthly Minimum School Program allocation based on anticipated student enrollment. The USOE adjusts a charter school's monthly allocation based on actual enrollment as verified by the October 1 count. During the second year, charter schools receive monthly allocations based on the prior-year plus growth model.

School Transfer Survey - District Schools Report on Impacts of Student Transfers to Charter Schools

Since no comparable information exists on student transfers, the only way to assess potential impacts is to ask the schools involved in a student transfer. Several district schools were asked to participate in a survey in order to better understand the potential impacts of students transferring to charter schools.

The Office of the Legislative Fiscal Analyst conducted the survey during October 2006. Information provided through survey responses do not represent a statistically accurate sample. Survey responses provide information on the specific experiences of

schools involved in the transfer of students to charter schools. Information from different schools may produce different responses. However, the information provided by the survey does increase understanding of potential impacts on district schools when students transfer to a charter school.

Methodology

The questions posed by the Legislature requested information on the impact in district schools of student transfers to charter schools. For this reason, charter schools were not included in the school survey.

District schools were selected based on their geographic proximity to a charter school that opened during the 2005-06 school year. The 2005-06 school year was chosen because a significant number of charter schools began operation, these schools were located throughout the state (although most were located in Utah County), and it provides a recent full-year example (instead of a partial year for schools opening in 2006-07).

Location of Surveyed Schools

Charter schools opened within the traditional boundaries of seven school districts during the 2005-06 school year. These districts include: Alpine, Cache, Davis, Granite, Iron, Jordan, and Nebo. These districts provide a fairly good geographic representation of the state.

Charter Schools that Opened During the 2005-06 School Year

During the 2005-06 school year, eleven charter school opened in the school districts listed above. These charters represent a total enrollment of 4,522 students. Charter schools opening in fall of 2005 include:

Charter School	**Boundary District**
Lincoln Academy	Alpine
Odyssey Charter School	Alpine
Utah County Academy of Sciences	Alpine
Thomas Edison Charter School - South	Cache
Wasatch Peak Academy	Davis
Beehive Science & Technology Academy	Granite
Success Academy	Iron

Navigator Point Academy	Jordan
North Star Academy	Nebo
American Leadership Academy	Nebo
Reagan Academy	Nebo

District Schools Surveyed

Fifteen district schools were contacted over the course of the survey. Contacted schools include:

District School	**School District**
Greenwood Elementary	Alpine
Manila Elementary	Alpine
Pleasant Grove Junior High	Alpine
Mountain View High School	Alpine
Nibley Elementary	Cache
Orchard Elementary	Davis
Evergreen Junior High School	Granite
Cedar High School	Iron
Bluffdale Elementary	Jordan
Oquirrh Elementary	Jordan
South Hills Middle School	Jordan
Canyon Elementary	Nebo
Westside Elementary	Nebo
Spanish Fork Junior High	Nebo
Spanish Fork High School	Nebo

Summary of Responses to Survey Questions

A total of ten schools provided partial or complete responses through survey e-mail or phone requests. The survey asked district schools to respond to six questions that tried to assess the impact of students transferring to charter schools. Information obtained from the school responses may be found below.

- *For the 2005-06 school year, was there a noticeable decline in the number of students enrolled in your school due to students transferring to a charter school?*

  Responses ranged from no student transfers to around 150 students transferring. Three schools reported 'very few' or a 'small decline.' Five schools reported transfers of more than 20 students.

- *Did students transfer as a general block (over the course of a couple of weeks regardless of grade) or over the course of the school year?*

  Seven schools responded to this question. All reported that students left in a block (defined as within a couple of weeks). Two of these schools noticed that some students transferred over the course of the year - primarily in three blocks: (1) before school began; (2) mid-September; and (3) at the end of the charter school's first semester (returning to the district school).

- *If students transferred in a general block - what time of year did this occur? Before October 1?*

  Most students transferred at the beginning of the school year or a couple of weeks after school began. Many schools reported that students were 'no-shows.' These students registered the prior year but did not enroll in the district school.

  Several schools mentioned that transfers coincided with the end of the 1st quarter in the district school or charter school.

- *If students transferred as a general block - what general impacts did this have on the school?*

  Some schools reported that there was no noticeable impact on the school due to students transferring to charter schools. However, the majority reported some impacts - particularly in faculty allocations to schools and class sizes.

  A few schools reported that parents will 'dual enroll' their student (enroll in district school until charter school opens). This makes it difficult for the district to allocate staff.

Counselor time was impacted in secondary schools. Students registered for classes but did not show up on the first day. This required counselors to re-work class schedules, track students that did not enroll, and work out credit reporting problems for students returning mid-year to a district school.

- *Did any students re-enroll in the school after attending a charter school for a period of time, but before the end of the school year? If so, approximately how many students returned?*

  Seven schools reported that some students returned to the district school. Two schools did not have any students return. Returning student numbers range from 4 (or fewer) to more than 75. Most reported that 4 or 5 students returned.

  A couple of schools reported impacts associated with re-enrolling students that transfer back. Primarily these issues revolve around the quality of records kept on credits earned by charter schools. Some returning students lost credit due to insufficient verification of credits earned.

  In one instance, a school reported that the district estimates indicated the school would lose 100 students and cut teacher allocations to the school. When charter school students transferred back to the district school, after October 1, the school did not have enough teachers and its budget allocation did not provide for the returning students.

Conclusion

Responses to the survey questions above, confirm that the total number of students transferring between school districts and charter schools in Utah is largely unknown. Each local school is responsible for maintaining these records. Schools participating in a survey provided a snapshot assessment of the number of student transfers between charter schools and district schools. These schools also used their experiences to demonstrate potential impacts on district schools when students transfer to charter schools. Reported impacts ranged from 'no noticeable impact' to more noticeable effects that resulted in the re-allocation of teaching staff, increased workloads for faculty, and larger class sizes.

Chapter 5 Endnotes

1. Utah Code Section 53A-11-504.

2. Utah Code Section 53A-17a-106.

3. Ibid.

4. Utah Code Section 53A-17a-139.

CHAPTER SIX
CHARTER SCHOOL ASSETS AND LIABILITIES

Summary

Charter schools are a relatively new construct with developing law. The status of the relationship between charter schools and their chartering entities directly affects respective liabilities:

- Some states allow charter schools to be established as highly independent legal and fiscal entities.
- Some states allow charter schools to be constituted as an extension, subdivision, or arm of their chartering entity.
- Many state charter school enabling statutes have focused more on creating operational independence for charter schools than they have on clarifying the legal status of the parties to the charter.

The broad legal question that concerns the state and school districts is to what extent are chartering entities responsible for a charter school's facilities and operations? Liability is a broad legal term that includes all the debts, legal obligations, claims, responsibilities, statutory violations, and duties relating to the facilities and operations of a charter school.

There are several legal theories or tools that may protect the state or another chartering entity from vicarious liability for the facilities or operations of a charter school:

- designating the school as a local education agency (LEA).
- requiring organization as a nonprofit corporation.
- providing powers to a charter school that demonstrate its legal independence.
- providing statutory clauses to shield or limit liability.
- prohibiting the charter school from extending the faith and credit of the chartering entity to any third party.
- requiring charter schools to obtain insurance.

- preserving governmental immunity for charter schools.
- using memoranda of understanding.
- require indemnification.

Because of the ambiguities surrounding the liability of chartering entities, there are several areas where Utah's public policy and statutory law should be clarified in legislation.

Part of the challenge of creating school facilities for charter schools is to generally conform to land use and zoning requirements, building codes, and health and safety requirements, whether they construct new buildings or make renovations to existing structures.

Utah's charter school statutes do not currently specify the procedures for closing the school, whether the closure of the charter school is voluntary or because of a charter revocation. Clear termination procedures should be established before a charter school, its chartering entity, and the school's creditors are actively involved in a controversy.

Background Information

Charter school developers, operators, and chartering entities encounter challenging legal issues in starting and running their schools. This chapter discusses several policy and legal areas relating to charter schools, chartering entities, and the state, including how the relationships of these parties are defined and related facility, operational, and liability issues.

Within the State System of Public Education, charter schools are a relatively new construct with developing law. The passage, in 1998, of the initial charter school enabling legislation[1] established the foundation and framework of charter school statutory law in Utah. Beginning in 2000, twenty-one bills[2] have substantively affected charter schools, not including other bills that have created programs for or regulated traditional public schools and charter schools alike.

Charter School Legal Status

Before analysis of liabilities can be performed, it is first necessary to discuss the nature of the relationship between charter schools and their chartering entities. How charter schools are

How charter schools are legally defined directly affects related liability issues

legally defined directly affects related liability issues.

A charter, in the most basic sense of the term, is a grant of permission to engage in some sort of activity. As it pertains to charter schools, a charter is the legal document that authorizes a group or individual to own and operate a public school. Under Utah law, a charter serves as a binding written contractual agreement between the chartering entity and the charter school developers, specifying the terms of their relationship.[3]

There are two basic models of charter school-sponsor relationships

The exact legal status of charter schools depends on the specific terms of the state laws under which they are established. Nationally, there are two basic models of charter school-sponsor relationships. Under both models, charter schools are granted much operational independence, but the models differ on the degree of legal separation from the chartering entity.

Some charter schools are highly independent with a legal status separate from that of the chartering entity

In some states, charter schools are established as highly independent legal and fiscal entities with a legal status separate from that of the chartering entity. These schools enjoy a wide degree of autonomy, but are responsible to manage their own legal and financial affairs. For these type of charter schools, the issue is how the independent charter school will handle liability between the school and its chartering entity, especially when the charter school operates outside the parameters of its chartering entity.

Other charter schools have little or no legal and fiscal autonomy

In other states with more restrictive legislation, charter schools may have little or no legal and fiscal autonomy. In such states, a charter school is typically constituted as an extension, arm, subdivision, or instrumentality of its chartering entity. These charter schools generally enjoy little operational autonomy, but are responsible for a much shorter list of issues. The assignment of liability should not be much of an issue for these type of charter schools because they operate within the legal jurisdiction of the chartering entity.

Some states have not clearly indicated which model their state has adopted. Many state charter school laws contain conflicting or inconsistent sections and provisions with respect to the two models described above. Also, many charter school enabling statutes have focused more on creating operational independence for charter schools than they have on clarifying the legal status of the parties to a charter. Operational independence may seem to provide charter

Many state charter school enabling statutes have focused more on creating operational independence for charter schools than they have on clarifying the legal status of the parties to the charter

schools with virtually all the legal powers of an independent entity, but that does not clarify whether or not they are legally formed as separate entities. In other words, it is often not clear where a charter school's liability ends and the district or state's begins.

The Utah Charter Schools Act contains many provisions that provide operational independence for all charter schools. For example, charter schools in Utah are exempt from many of the requirements applicable to traditional public schools.[4] In addition, the Legislature has outlined the purposes of charter schools in Utah by statute.[5] Those purposes encourage and direct charter schools to generally innovate, use different teaching methods, and establish new models of public schools.[6]

The Utah code seems to assume that a charter school should be treated as a legally distinct entity, especially for those schools chartered by the State Charter School Board. For district chartered schools, however, there are fewer statutory references that clearly explain the relationship between the charter school and its sponsoring school district. The determination of whether local charter schools may be established as legal entities that are independent of their chartering district seems to be left to the local charter.

For charter schools chartered by the State Charter School Board, the schools have additional operational and legal independence from the state because the state doesn't maintain local school facilities or operations. The state may, however, retain liability to the extent that a state chartered school has not clearly and consistently been created and treated as a separate independent legal entity. The final analysis of state responsibility for any of its independent entities also needs to include political considerations and moral responsibility. If state chartered schools are closed or become insolvent, political pressure will surely be placed on the Legislature to make any aggrieved parties whole.

For district chartered schools, liability issues are even more complicated. In addition to having the potential liability claims and moral responsibility like those described in the last paragraph for the state, a district must clarify if a charter school is legally independent or is an extension of the district's operations. Utah's charter school statutes should probably be clarified to aid those school districts who would like to establish charter schools. The

The broad legal question posed that concerns the state and school districts is to what extent are chartering entities responsible for a charter school's facilities and operations?

current ambiguities in the law coupled with liability concerns may make school districts reluctant to approve district charter schools. If there is a legislative desire to see more locally chartered schools, the statutes may need to clearly differentiate the regulation of state and district chartered schools and allow districts more flexibility and protection as a chartering entity.

Regardless of its cause or source, the many ambiguities in charter statutes often confuse those charged with administering or overseeing charter schools. There is often a tension between a chartering entity's desire to provide its charter schools with operational independence, but to preserve its oversight authority for other purposes. Nevertheless, the broad legal question posed that concerns the state and school districts is to what extent are chartering entities responsible for a charter school's operations?

What Constitutes Liability?

Liability is a legal conclusion that represents the application of a very complex set of legal doctrines and is commonly used as a broad legal term. Liability has been defined to include all the debts, legal obligations, claims, responsibilities, and duties of an entity.[7] More specifically in the context of chartering entity liability, vicarious liability means the "imposition of liability on one person for the actionable conduct of another, based solely on a relationship between the two persons."[8]

There are many examples of potential claims against a charter school

Liability claims can be created through debt, injury, loss, or damage in any manner connected with a charter school's facilities and operations. Legal theories that are used to create liability claims are torts, negligence, breach of contract, and constitutional and statutory violations, particularly those with civil rights implications. Potential examples of claims against a charter school could be bodily injury, personal injury, death, property loss or damage, child abuse, athletic incidents, vehicular incidents, employment claims, civil rights claims, lease violations, breach of service contracts, and debts.

Liability for Noncompliance to Laws and Regulations

Besides the criminal and civil laws applicable to all persons and organizations, a charter school has additional laws to follow as a public educational entity. Many school statutes create or define potential civil rights claims. If violated, these laws raise issues of vicarious liability for the state or a school district as a chartering entity. Besides the state laws and rules, charter schools are subject to federal laws, including the following:

Charter schools must comply with numerous federal laws

- Federal statutes prohibiting discrimination (the U.S. Department of Education's Office for Civil Rights monitors compliance of schools and enforces these), including:
  - Title VI of the Civil Rights Act of 1964
  - Title IX of the Education Amendments of 1972
  - Section 504 of the Rehabilitation Act of 1973
  - Age Discrimination Act of 1975
  - Americans with Disabilities Act of 1990
- Improving America's Schools Act of 1994 (IASA) (authorizes most major federal education programs, including the federal charter schools grants programs).
- Individuals with Disabilities Education Act (IDEA) (governs services to special needs students).
- No Child Left Behind Act of 2001 (NCLB) (the newest reauthorization of the Elementary and Secondary Education Act (ESEA) expands the federal role through its measures that were designed to drive broad gains in student achievement and to hold states and schools more accountable for student progress, especially for disadvantaged students).
- The Family Educational Rights and Privacy Act (FERPA) (protects the privacy of student education records and applies to all schools that receive funds under an applicable program of the U.S. Department of Education).
- The Protection of Pupil Rights Amendment (PPRA) (protects the rights of parents and students and applies to programs that receive funding from the U.S. Department of Education, including making instructional materials available for inspection by parents and requiring written parental consent before minor students are required to participate in certain surveys, analysis, or evaluations).

Violations of federal statutes may raise issues of vicarious liability for the chartering entity

The complexity of complying with all those federal statutes and the risks of liability for violations may make a school district reluctant

to charter schools unless the district is assured that the charter school will be legally independent and liable for its own operations.

Whether originating from the operations of a charter school, its obligations such as leases, or from constitutional or statutory civil rights claims, remedies will be sought against each potential party with resources. Liability determinations require the application of facts to diverse and complicated laws and judgments are ultimately assigned to the legally responsible entity. Therefore, it is difficult to provide concrete conclusions concerning the liability of the state or school districts for charter schools without the benefit of specific facts.

An important part of a liability discussion is the various legal theories and tools that may shield or limit vicarious liability. While no single theory or tool may eliminate liability concerns, carefully crafted laws may provide layers of protections for chartering entities.

Various legal theories and tools may shield or limit vicarious liability

Designation as an Local Education Agency (LEA)

The area of federal special education laws provides one model of local responsibility for compliance. The federal government requires a local education agency to be responsible for providing special education services at each public school. In Utah, by State Board rule, a local education agency (LEA) means a local board of education, combination of school districts, other legally constituted local school authority having administrative control and direction of free public education within the state.[9] A charter school is deemed to be under the control of the local education agency (the chartering district) that authorized the charter, unless the charter school is legally established as a separate local education agency.

Designation of a charter school as an LEA may limit certain responsibilities of its chartering entity

The Utah code doesn't deal with this LEA issue. By State Board rule, however, a "charter school application shall designate the type of charter granted and the anticipated LEA status of the charter school."[10] The charter school application is also required to include "a description of the methods the applicants shall use to comply with its obligations as an LEA."[11] So, if a charter school satisfies the conditions found in the State Board rules, it will participate as a local educational agency and shall be deemed a local educational agency for the purposes of compliance with federal special education law and for eligibility for federal and state

special education funds.

The LEA model may be extended to other areas to clarify charter school legal status, require explicit local responsibility for charter school operations, and limit vicarious liability. For example, most charter school reports are submitted to the State Office of Education, not to a chartering district. The Statutes could be clarified to indicate ultimate responsibility so that a chartering district would not be left with liability for reporting, but with no way of knowing whether or not reports have been submitted or submitted on time. Independent district chartered schools could be responsible for their own reports, and an instrumentality charter school could make responsibility arrangements with the district through its charter or other means discussed in this chapter.

The LEA model may be extended to other areas to clarify legal status and limit vicarious liability

Incorporation is another tool that could clarify legal status and protect a chartering entity. In states where charter schools are highly independent legal entities, charter schools are often required to be constituted as independent corporations. For example:

Charter School Organization as a Nonprofit Corporation

- In Idaho, "A public charter school shall be organized and managed under the Idaho nonprofit corporation act. The board of directors of a public charter school shall be deemed public agents authorized by a public school district, the public charter school commission, or the state board of education to control the public charter school, but shall function independently of any school board of trustees in any school district in which the public charter school is located, or independently of the public charter school commission except as provided in the charter."[12]

- In Minnesota, all charter schools must be constituted as independent non-profit or cooperative corporations.[13]

Legal status may be clarified by requiring charter schools to be organized as nonprofit corporations

In states where charter schools are not considered to be independent legal entities, by way of contrast, a chartering entity may not have the obligation or option of incorporating its charter schools. For example, in Wisconsin, charter schools must be constituted as a legal arm of the school district.[14]

In Utah, statutes neither require nor prevent a charter school from organizing as a nonprofit corporation. Prospective charter schools, however, are encouraged or required by chartering entities to become a nonprofit corporation during the application and

approval process.

The Legislature should clarify the incorporation requirements for Utah charter schools. Unless there is a desire to prevent legally independent charter schools, there are a couple of policy arguments that favor using the nonprofit corporation status to limit liability concerns. Incorporation of a charter school protects its chartering entity because it provides notice to outside parties that the new charter school has actually been legally created as a separate and independent entity. Another benefit of a corporate structure is that it also gives the charter school the powers and authority provided under the appropriate state corporations statutes, including the provisions of Utah code,Title 16, Chapter 6a, the Utah Revised Nonprofit Corporation Act.

Organization as a nonprofit corporation does not supersede status as a public school

If charter schools are organized as nonprofit corporations, that structure does not supersede their status as "public schools within the state's public education system"[15] The Utah code does provide that an "employee of a charter school is a public employee and the governing body is a public employer in the same manner as a local school board for purposes of tort liability.[16] The potential issues arising from the status of a charter school as both a nonprofit corporation and a public entity can be further clarified in statute universally or for specified purposes by the Legislature.

Independent Legal Status Through Granted Powers

Charter school powers may be used to demonstrate legal independence and limit the vicarious

In additional to corporate status, the powers granted to charter schools may be used as evidence to demonstrate legal independence and thereby limit vicarious liability. If charter schools exercise the significant powers that are generally associated with independent legal status, including the ability to sue and be sued, purchase property, employ personnel, and contract, then those charter schools may be argued to be constituted as legally independent entities.

Some state charter school provisions are as follows:

- Idaho provides that "A public charter school may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and borrow money for such purposes, to the same extent and on the same conditions as a traditional public school district, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of traditional public school districts and

liability of the chartering entity

other public schools . . ."[17]

- North Carolina allows that "The board of directors of a charter school may sue and be sued."[18]

In Utah, the State Charter School Board is given the explicit authority to "contract" and "sue and be sued."[19] Those powers may be implied for individual charter schools throughout the Utah code, but they are not expressly granted in the charter school statutes. State and district charter schools are often assumed to be legally independent, but if this is Utah's public policy, then it should be clarified and detailed in the charter school statutes.

Statutory clauses that limit liability may also shield vicarious liability claims against a chartering entity. Some examples of state provisions are:

Explicit Clauses that Limit Liability

- North Carolina provides that "No civil liability shall attach to any chartering entity, to the State Board of Education, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school."[20]

- Idaho provides that a chartering entity "shall have no liability for the acts, omissions, debts or other obligations of a public charter school, except as may be provided in the charter."[21]

Statutory clauses that limit liability may shield vicarious liability claims against a chartering entity

- Some states do not expressly limit the liability of a chartering entity by statute, but require the charter school petition to consider liability issues:

  - California requires the charter school petitioners to"provide information regarding the proposed operation and potential effects of the school, including, . . . the potential civil liability effects, if any, upon the school and upon the school district."[22]

  - Wisconsin requires the charter school petition to include a description of the "effect of the establishment of the charter school on the liability of the school district."[23]

- Utah does not use a shield approach for the chartering entity, but does declare charter school independence by providing that "The governing body of a charter school and the school are

solely liable for any damages resulting from a legal challenge involving the operation of the school."[24]

Another way to limit a chartering entity's exposure to potential vicarious liability claims is to prohibit the charter school from extending the faith and credit of the chartering entity to any third party. Statutes or charters could provide that a charter school has no authority to enter into a contract that would legally bind its chartering entity. A charter school could also be limited in its authority to contract by the amount of funds obtained from the school district, or from other independent sources.

Prohibitions on Extending Faith and Credit

Charter school insurance requirements are also used as a protection for chartering entities. While insurance does not really limit liability, if claims arise against a charter school, insurance may be used to satisfy an aggrieved party.

Civil Liability and Insurance

An insurance settlement from a charter school may prevent or limit potential vicarious liability claims against the chartering entity or against school employees or individual charter school board members. Insurance may also preserve the financial viability of a legally independent charter school with a claim against its facilities or operations.

A brief description of state requirements for charter schools to obtain insurance follows:

Charter school insurance requirements are a protection for chartering entities and others

- North Carolina requires that the "State Board of Education shall adopt rules to establish reasonable amounts and types of liability insurance that the board of directors shall be required by the charter to obtain."[25] Compliance with those rules is required to be included in the charter.

- Idaho requires a public charter school to "secure insurance for liability and property loss."[26]

- Wisconsin requires the charter school petition to include a "description of the school facilities and the types and limits of the liability insurance that the school will carry."[27]

- Utah requires a charter to include "how the school will provide adequate liability and other appropriate insurance for the school, its governing body, and its employees."[28] It also

provides that "A charter school . . . may participate in the Risk Management Fund upon the approval of the state risk manager and the governing body of the charter school."[29]

Charter schools established pursuant to Utah's charter school law are public entities and, thus, they are entitled to immunity from liability for claims that would be barred under the Governmental Immunity Act of Utah, absent the applicability of one of its exceptions.[30] Chartering entities need to ensure that chartering documents, other agreements, and the actions of governmental actors do not result in an unintentional waiver of governmental immunity protections.

Liability and Governmental Immunity

In many states and localities, charter schools enter into separate agreements from their charter to clarify relationships, responsibilities, and liabilities of the charter school and its chartering entity. These side agreements are sometimes referred to as memoranda of understanding (MOU). Also, in states where charter schools are constituted to be an extension of the chartering district, charters schools often do not enter into any formal incorporation or establishment process, but rely more on the less formal memorandum of understanding with the chartering entity.

Memoranda of Understanding (MOU)

MOUs may be one of the best ways to clarify charter school status and fix ambiguities in statutes, thereby limiting chartering entity liabilities. Some advantages of MOUs are the flexibility they provide the parties. MOUs allow the parties to act quickly or to customize remedies to their individual circumstances. A MOU also alleviates the need for either a charter modification or statutory amendment by legislation.

A statute or charter could require indemnification through a hold harmless agreement between a charter school and its chartering entity. The goal of indemnification is to make a party who has or would suffer a loss whole by payment, replacement, or repair. Such an agreement could provide that to the extent not covered by insurance or otherwise barred by governmental immunity, the charter school agrees to indemnify and hold its chartering entity harmless from all liability, claims, demands, and debts.

Indemnification

The value of an indemnification agreement would be limited by the financial resources of the charter school. Expanded alternatives

besides individual indemnification agreements could be explored, including the creation of a reserve fund or other pooling arrangements. Regardless of the vehicle used, the arrangement should include a provision that any indemnification provision may not be considered a relinquishment or waiver of any kind of applicable limitations of liability, including those provided by governmental immunity.

The theories and tools described above are important liability protections, but policymakers should also consider the importance of the need for charter schools to manage risk and limit potential liability claims against themselves and their chartering entities. Training and resource materials from the State Charter School Board, its staff, and other experts relating to these complicated issued can be invaluable to charter schools and their chartering entities.

Prevention and Training

This discussion of charter schools' legal status, relationships, and liability issues may have raised more questions than it resolved. General liability conclusions are difficult to provide because most of the legal analysis with these issues depends on the application of complex legal doctrines to specific facts. Charter school law in general and relating to liabilities is also still developing. A number of legal theories or tools have been described that may be used to protect chartering entities from liability for charter schools. Additionally, because of the legal ambiguities surrounding the liability of charter schools and their chartering entities, this chapter has also indicated several areas where Utah's public policy and statutory law should be clarified in legislation.

Conclusion

Finding a suitable facility is one of the most difficult tasks faced by a charter school's founders. To create classrooms and other school facilities, charter schools have to generally conform to zoning requirements, building codes, and health and safety requirements, whether they construct a new building or make renovations to an existing structure.

Around the nation, statutes uniformly require charter schools to conform to the same health and safety standards as traditional public schools.[31] Federal law also requires compliance by defining

Health and Safety Requirements and Building Codes

a charter school as one that adheres to "all applicable Federal, State and local health and safety requirements."[32]

While the basic rules of having charter schools comply with health and safety requirements are mostly similar, several variations of the requirements exist among statutes:

- By statute, Utah somewhat ambiguously requires that a "charter school shall meet all applicable federal, state, and local health, safety, and civil rights requirements."[33]

- North Carolina matches charter school requirements to those of traditional public schools by requiring that a "charter school shall meet the same health and safety requirements required of a local school administrative unit."[34]

Nationally, charter schools conform to the same health and safety standards as traditional public schools

- Wisconsin allows more flexibility in this area by requiring the charter school's petition to include the "procedures that the school will follow to ensure the health and safety of the pupils."[35]

The facilities in which a charter school provides its educational services must meet minimum requirements as established in the charter school law. In Utah, the statute only provides the brief requirement that a "charter school shall meet all applicable federal, state, and local health, safety, and civil rights requirements."[36] The regulation of the design, construction, operation, sanitation, and safety of public schools is found in Utah administrative rules.[37]

Building Codes and Land Use Ordinance Conformity

One recently debated issue has been to what extent school districts and charter schools are required to conform to municipality and county land use ordinances when siting, installing, constructing, operating, or otherwise using a school facility.[38] The general rule is that charter schools, like school districts and other political subdivisions of the state, shall conform to applicable land use ordinances.[39] However, school districts and charter schools enjoy numerous exemptions and limitations on the authority of the municipality or county, including protections from unauthorized fees, special inspection provisions, and consideration as a permitted use.[40]

This is an evolving area of charter school statutory law in Utah that has been recently modified in both the 2005 and 2006 General

Sessions of the Legislature.[41]

The state superintendent of public instruction does have a role in school facility issues and is statutorily given certain enforcement authority.[42] Accordingly, a charter school sends the State Office of Education a certificate of inspection verification and a request for the issuance of a certificate authorizing permanent occupancy of a new school building.[43]

Charter School Assets and Liabilities if a Charter School is Terminated

Utah's charter school statutes do not currently specify the procedures for closing a charter school, whether the closure of the charter school is voluntary or because of a charter revocation. Although charter school closures are unusual, a common cause of closures nationally is financial insolvency of the charter school. Without governing law, the chartering entity and the school's creditors may both claim ownership of the school's assets, which may just amount to school furniture, books, and computers. If the law doesn't protect the chartering entity, whether it is a school district or the state, creditors will use available remedies to collect outstanding debts from the chartering entity. Termination procedures and protections should be established before a charter school, its chartering entity, and the school's creditors are actively involved in a controversy.

One approach is for the charter school and its chartering entity to establish the procedures for closing the school in each charter. For example, California requires the petition to establish a charter school to contain:

> "A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records."[44]

Another approach is to create a default position that statutorily establishes the reversion of property to the chartering entity or that prevents the chartering entity from assuming the debts of a charter school unless the parties agree otherwise. Idaho, which as discussed above requires its charter schools to be organized and managed under the Idaho nonprofit corporation act, provides:

> "The authorized chartering entity that approves a public school charter shall have no liability for the acts, omissions, debts or

other obligations of a public charter school, except as may be provided in the charter. A local public school district shall have no liability for the acts, omissions, debts or other obligations of a public charter school located in its district that has been approved by an authorized chartering entity other than the board of trustees of the local school district."[45]

Possible options for the establishment of charter school termination procedures include:

- Each charter establishing the procedures for closing the school.
- State Board rules specifying the elements of closure plans that apply to all charter schools.
- Legislation establishing the roles of all parties after closure and clarifying liability issues.

Charter school termination provisions could require or provide:

There are many possible options for charter school termination procedures

- Notice before a charter school may be closed, both for the revocation of a charter and voluntary closures.
- Planning and communication between the parties as closure becomes a reality.
- Procedures for the closure of the charter school and dissolution of the nonprofit corporation.
- Performing a closeout audit and inventory of property and records.
- Asset and liability distribution plans for money, real property, and personal property.
- A limitation on the liability of the chartering entity while conducting the charter school closure.
- That all assets not requiring return or transfer to donors or grantors or required for discharge of existing liabilities and operations of charter school are required to be returned to the chartering entity.

- Unless a donor or grantor specifically provides otherwise in writing, all gifts, donations and grants shall be assumed to be made to the charter school and shall be included among the assets returned to the chartering entity.

- Provide reserve funds for post-closure activities.

- Require charter schools to purchase a performance bond to cover closure.

Chapter Conclusion

This chapter has described a number of legal issues that cover the life of a charter school from its establishment, operation, and potential termination. Chartering entities, charter schools, local school boards, the State School Board, the State Charter School Board, and the Legislature may each work to better define charter school policy within the State System of Public Education.

These and other interested parties should examine the charter school legal status, liability, facility, and potential termination issues in greater detail and propose clarifications to the existing framework of charter school law. Carefully crafted rules, statutes, and charter documents may prevent parties from needing to wait until a court rules on a specific case to interpret ambiguous language or settle conflicts among different provisions.

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Chapter 6 Endnotes

1. 1998 H.B. 145, Schools for the 21st Century, sponsored by Representative Brian Allen.

2. The Utah charter school bills are:
2000 H.B. 226, Public Education Revisions, sponsored by Representative Sheryl Allen;
2001 H.B. 3, Minimum School Program Act Amendments, sponsored by Representative Marda Dillree;
S.B. 169, Charter School Amendments, sponsored by Senator Howard Stephenson; and
S.B. 182, Liability Coverage for School District and School Employees, sponsored by Senator David Gladwell;
2002 S.B. 3, Minimum School Program Act Amendments, sponsored by Senator Howard Stephenson; and
S.B. 138, Charter Schools Amendments, sponsored by Senator Howard Stephenson;
2003 H.B. 3, Minimum School Program Act Amendments, sponsored by Representative Gordon Snow; and
S.B. 57, Charter School Amendments, sponsored by Senator Howard Stephenson;
2004 H.B. 108, Insurance and Retirement for Charter School Employees, sponsored by Representative Merlynn Newbold;
H.B. 152, Charter School Governance, sponsored by Representative Marda Dillree; and
S.B. 3, Minimum School Program Act Amendments, sponsored by Senator Howard Stephenson;
2005 H.B. 3, Minimum School Program Act Amendments, sponsored by Representative Gordon Snow;
H.B. 36, Charter School Construction Amendments, sponsored by Representative James Ferrin;
H.B. 136, Charter School Enrollment, sponsored by Representative James Ferrin;
H.B. 206, Charter School Reporting, sponsored by Representative Carol Moss;
H.B. 301, Supplemental Appropriations III, sponsored by Representative Ron Bigelow;
S.B. 3, Supplemental Appropriations II, sponsored by Senator Lyle Hillyard; and
S.B. 178, Charter School Amendments, sponsored by Senator Howard Stephenson; and
2006 H.B.167, School Uniforms, sponsored by Representative Craig Frank;
H.B. 172, Local Land Use Provisions Relating to Schools, sponsored by Representative James Ferrin; and
S.B. 5, Amendments to the Minimum School Program Budget, sponsored by Senator Howard Stephenson.

3. *See Utah Code Annotated,* secs. 53A-1a-505 and 53A-1a-508 (Supp. 2006).

4. *See Utah Code Annotated,* sec. 53A-1a-511 (Supp. 2006).

5. *Utah Code Annotated*, sec. 53A-1a-503 (Supp. 2006).

6. *Ibid.*

7. *See* Black's Law Dictionary 914 (6th ed. 1990).

8. Black's Law Dictionary 1566 (6th ed. 1990).

9. *Utah Administrative Rules*, R277-470-1 (2006).

10. *Utah Administrative Rules*, R277-470-4 (2006).

11. *Ibid.*

12. *Idaho Code*, sec. 33-5204 (2006).

13. *Minnesota Annotated Statutes,* sec. 124D.10 (2005).

14. *Wisconsin Statutes*, sec. 118.40 (2006).

15. *Utah Code Annotated*, sec. 53A-1a-503.5 (Supp. 2006).

16. *Utah Code Annotated*, sec. 53A-1a-514 (Supp. 2006).

17. *Idaho Code*, sec. 33-5204 (2006).

18. *North Carolina General Statutes,* sec. 115C-238.29F (2006).

19. *Utah Code Annotated*, sec. 53A-1a-501.6 (Supp. 2006).

20. *North Carolina General Statutes,* sec. 115C-238.29F (2006).

21. *Idaho Code,* sec. 33-5204 (2006).

22. *California Education Code,* sec. 47605 (Deering 2006).

23. *Wisconsin Statutes,* sec. 118.40 (2006).

24. *Utah Code Annotated*, sec. 53A-1a-514 (Supp. 2006).

25. *North Carolina General Statutes,* sec. 115C-238.29F (2006).

26. *Idaho Code,* sec. 33-5204 (2006).

27. *Wisconsin Statutes*, sec. 118.40 (2006).

28. *Utah Code Annotated*, sec. 53A-1a-508 (Supp. 2006).

29. *Utah Code Annotated,* sec. 63A-4-204.5 (Supp. 2006).

30. *See Utah Code Annotated,* sec. 63-30d-101 et. seq. (Supp. 2006).

31. Preston C. Green III and Julie F. Mead, *Charter Schools and the Law*, Establishing New Legal Relationships (Norwood, Massachusetts: Christopher-Gordon Publishers, 2004), 30.

32. No Child Left Behind Act of 2001, 20 U.S.C. § 7221i.

33. *Utah Code Annotated,* sec. 53A-1a-507 (Supp. 2006).

34. *North Carolina General Statutes,* sec. 115C-238.29F (2006).

35. *Wisconsin Statutes,* sec. 118.40 (2006).

36. *Utah Code Annotated*, sec. 53A-1a-507 (Supp. 2006).

37. *Utah Administrative Rules*, R392-200-1 through R392-200-8.

38. *See Utah Code Annotated,* secs. 10-9a-305 and 17-27a-305 (Supp. 2006).

39. *Ibid.*

40. *Ibid.*

41. 2005 H.B. 36, Charter School Construction Amendments, sponsored by Representative James Ferrin; and
2006 H.B. 172, Local Land Use Provisions Relating to Schools, sponsored by Representative James Ferrin.

42. *See Utah Code Annotated* sec. 53A-20-104 (Supp. 2006).

43. *Ibid.*

44. *California Education Code,* sec. 47605 (Deering 2006).

45. *Idaho Code,* sec. 33-5204 (2006).

CHAPTER SEVEN
SCHOOL BUILDING COMPARISON

Summary

This chapter (1) compares a recently constructed charter school and traditional public school and (2) raises some issues the Legislature may wish to consider regarding charter school and traditional public school buildings.

The main research findings are as follows:

- Charter school and traditional public school buildings may have different costs, depending on land, material, and labor costs.
- The charter school examined in this section had lower overall facility costs than the traditional public school examined, mainly due to smaller square footage and acreage per student and a heating and cooling system with lower initial cost.
- In the early years of operation, ongoing utility costs for the examined schools are similar.

Comparison of Two School Buildings

Table 6.1 below compares two public school buildings located in Layton – North Davis Preparatory Academy (charter school) and Sand Springs Elementary School (Davis School District). Other examples of both charter schools and traditional public schools that cost more and cost less likely exist. These two schools were selected for comparison because they serve the same grade levels, were both recently built, and are located relatively close to each other. Although the information below does not include an exhaustive building cost comparison of all charter and traditional public school buildings in the state, this comparison will highlight some issues that the Legislature may wish to consider in evaluating school facilities.

Comparison Table

Table 7.1

Feature	North Davis	Sand Springs
Location	Layton	Layton
Year built	2003	2004
Grades served	K-6	K-6
Ownership	Private - Leased to school	Davis School District
Site size	2.44 acres	13.02 acres
Total building square feet	31,900	73,255
Student capacity	500	900
Number of classrooms	17	32
Classroom square feet	12,500	28,800
Estimated building life span	30-40 years	75 years
Building material type	Masonry & steel	Masonry & concrete
Community use	Case-by-case evaluation	Yes
Cooling system type	Central air	Ground source heat exchange
Heating type	Forced air	Ground source heat exchange
Estimated cooling/ heating system life span	20 years	35 years
Initial cost - land acquisition	$0.3M	$1.2M
Initial cost - site preparation and building construction (other than cooling/heating)	$3.5M	$5.8M
Initial cost - cooling & heating system	$0.2M	$1.2M
Initial cost - other (includes furnishings)	$0.4M	$1.0M
Annual ongoing cost - utilities (gas and electricity)	$25,000	$60,000

Comparison Table (continued)

***Calculations from data*:**		
Feature	**North Davis**	**Sand Springs**
Total initial cost	$4.4M	$9.2M
Total initial cost per student capacity	$8,800	$10,250
Land acquisition cost per student capacity	$610	$1,360
Initial building and site preparation cost per student capacity	$7,000	$6,410
Initial cooling & heating system cost per student capacity	$450	$1,380
Initial other cost per student capacity	$740	$1,100
Annual utility cost per student capacity	$50	$68
Total square feet per student capacity	64	81
Classroom square feet per student capacity	25	32
Total acreage per student capacity	0.0049	0.0145
Land acquisition cost per acre	$125,000	$94,000
Initial building construction and site preparation cost per square foot	$110	$79
Initial cooling & heating system cost per square foot	$7	$17
Annual utility cost per square foot	$0.78	$0.83
Note: Some numbers rounded for presentation purposes Data source: Academica West (North Davis Preparatory Academy) and Davis School District (Sand Springs Elementary School)		

North Davis Preparatory Academy (North Davis)

Sand Springs Elementary School (Sand Springs)

Types of Costs

This section summarizes building costs in the following four categories: (1) land acquisition, (2) building construction and site preparation, (3) cooling and heating systems, and (4) other initial costs, such as furnishings.

Land Acquisition

When examining land acquisition costs, it is worth noting that school districts and charter schools can directly control some factors but not may not be able to control others. In some cases, school officials may have substantial discretion as to lot size and

location. In other cases, zoning, available land, land price, other factors may limit a school's lot purchase options. For example, a school seeking land in downtown Salt Lake City will likely face a far different scenario than a school seeking land in rural Utah. A school that receives donated land would be hard to compare to a school that must pay full market price. When deciding on lot size and location, decision-makers may consider issues such as proximity to the student population, proximity to potential dangers, school building footprint size, playground space desired, general community use of school property, and community open space, among other issues.

In the case of North Davis and Sand Springs, North Davis had a substantially smaller lot and lower land acquisition costs per student, although North Davis paid more per acre. Sand Springs has about three times the amount of land per student as North Davis.

Building Construction and Site Preparation

Actual building construction costs generally constitute the largest initial cost. School building construction costs will vary based on building size, building material type, building material quality, anticipated building life span, availability of building materials, the construction labor market, and building layout and design, among other factors. In addition, different parcels of land will need different levels of preparation for construction. For example, a building constructed of materials expected to last for 30 years will likely cost less than materials expected to last for 75 years. A multi-building campus design with smaller buildings and outdoor hallways will likely cost less than a building with all indoor hallways.

North Davis had higher per-student and per-square-foot building construction costs, with less classroom square feet and total square feet per student. North Davis has an estimated life of 30-40 years, whereas Sand Springs has an estimated life of 75 years.

Cooling and Heating System Costs

Cooling and heating systems constitute an important component of ongoing facility costs. Initial and ongoing costs may differ based on system types and components, brands, quality, useful life, and installation and maintenance labor costs, as well as other factors. Some systems may cost more initially but less annually due to more frequent replacement or repairs. Different

systems may be appropriate for different sizes and types of buildings. Some systems may be more adaptable for individual rooms.

Sand Springs utilizes a ground source heat exchange system, which results in significantly larger up-front costs, with an estimated life of about 35 years. North Davis utilizes a central air and forced heated air system, with lower initial costs and an estimated life of about 20 years.

Ongoing utility costs are similar on a per-square-foot basis, with North Davis slightly lower. It is unknown if this is due to different design elements, usage patterns, or some other factor. On a per-student basis, North Davis enjoys lower annual utility costs, likely due to the issues mentioned above and to less square footage per student to light, heat and cool.

Other Initial Costs

Other initial costs are mainly composed of furnishings, such as desks, chairs, tables, shelving, as well as computers, copiers, library materials, and so forth. North Davis had lower initial other costs.

Table Summary

Sand Springs has a larger student capacity (900 to 500), acreage (13.02 to 2.44), and square footage (73,255 to 31,900) than North Davis. To better compare the two schools, Table 6.1 provides per-student-capacity, per-square-foot, and per-acre figures.

Per-student costs

North Davis had total initial costs of about $8,800 per student, compared to about $10,250 for Sand Springs. Sand Springs had lower building construction and site preparation costs ($6,410 to $7,000) which were offset by higher costs for:

- land acquisition ($1,360 to $610),
- cooling and heating system costs ($1,380 to $450), and
- other costs, such as furnishings ($1,100 to $740).

Per-square foot and per-acre costs

On a square footage basis, North Davis had higher initial building construction costs ($110 v. $79), lower cost on initial heating and cooling systems ($7 v. $17), and roughly equivalent annual ongoing heating and cooling costs ($0.78 to $0.83) compared to Sand Springs. Land acquisition costs were about

$125,000 per acre for North Davis and $94,000 per acre for Sand Springs. Both schools had a nearly identical percentage of total square footage for classroom space.

Potential Issues for Consideration

Two major charter school building issues – funding and ownership – are addressed elsewhere in this report. The following list includes other charter school and traditional public school building issues that the Legislature may wish to consider:

Building Life Span

- To what extent does shortening or lengthening the useful life of a school building affect initial and long-term costs?
- How does a building's life span correspond with anticipated increases and decreases in the student population? Will a 75-year building be at capacity in 50 years as the neighborhood population ages?
- How does a change in future usage affect long-term per-student cost estimates?
- Can a reliable time value of money analysis be performed comparing higher present initial costs to the present value of future long-term savings?

Cooling and Heating Systems

- To what extent does shortening or lengthening the useful life of a cooling and heating system affect initial and long-term costs?
- To what extent do technological advances allow greater energy efficiency? How quickly and easily can these advances be incorporated into cooling and heating systems?
- How do different systems compare for efficiency in different sizes and types of buildings?
- How flexible are systems for adjusting temperatures in different rooms?

School Size

- What is an appropriate school size? How many students should be located on a school site?
- What is the impact of school size on student learning?
- What are the cost or savings associated with increasing or decreasing school size? What are the economies of scale for a larger school size?
- What is the impact of smaller or larger lot sizes and playground areas?

Building Design

- What impact do different elements of school design have on student learning? Are different designs appropriate for different

teaching and learning approaches?

- What are the initial and long-term costs of different design elements?
- What designs are currently used throughout the state? Do more efficient designs exist?
- How do design elements vary based on curriculum, climate, or location? Are design elements adaptable?

Community Use

- To what extent are school buildings currently used for general community use (for example, elections, little league games, community theater and music events)?
- To what extent should community use of school buildings be encouraged or discouraged?
- To what extent should coordination and partnerships between schools and local governments or other community groups occur (for example, library owned by local government but on school site or adjacent site)?
- How should community use be measured and allocated in analyzing school facility costs?

Information Sharing

- Can school district prototype plans be made more readily available statewide for traditional public schools and charter schools?
- Can school districts more effectively share their substantial school building expertise with charter schools?
- Can charter schools easily share innovative building design practices with school districts?

CHAPTER EIGHT
TECHNICAL ASSISTANCE TO AND OVERSIGHT OF CHARTER SCHOOLS

Summary

The administrative help available to traditional schools through school districts is not typically available to charter schools. Charter schools receive some business and technology services through the Utah State Office of Education (USOE), but more services are needed. To provide sufficient support for charter schools and to help ensure charter schools' financial viability, the State Board of Education requests the following:

- three additional FTEs for the USOE charter school staff, including an auditor, an accountant, and a computer specialist;
- the establishment of a charter school service center similar to the regional service centers that serve rural school districts; and
- funds to aid charter schools when creating schools, including funds for:
  - legal advice for lease, construction and other contracts;
  - accounting and setup costs; and
  - community outreach programs.

Charter School Business-related Responsibilities

The viability and success of a charter school will ultimately depend on its ability to attract and retain students and to provide day-to-day operations that ensure quality of services. The following is a list of business-related responsibilities that a charter school must handle:

Finance and Accounting

- Create and manage a budget with direction from the principal and board
- Create detailed reports on school's financial status
- Manage payroll and benefits; understand federal and state employment law
- Manage contracts
- Understand state and federal education funding and accounting
- Manage accounts receivable and payable
- Ensure appropriate separation of accounting duties to avoid the potential of theft or fraud in the management of charter school assets or funds

Physical Plant

- Interface with building owners/managers

- Oversee maintenance and janitorial services
- Ensure building code, fire code and health code compliance
- Implement computer technology maintenance and support
- Manage purchasing and inventory according to government regulations
- Understand and manage risk and liability issues

Data Management

- Oversee maintenance of website
- Oversee records management and reporting including student records, staff credentials, assessment scores, etc.
- Oversee attendance reporting process
- Manage technology in the building including maintenance, repair, upgrades and professional development

Compliance

- Understand and comply with all state, federal, and local laws, rules and regulations that apply to charter schools

USOE Services to Charter Schools

The administrative help available to traditional schools through districts is not typically available to charter schools. Charters often turn directly to the Utah State Office of Education (USOE) for operational, personnel, and even instructional help and advice. Questions directly from charter schools to the USOE technology staff are frequent and workload has doubled as a result. The USOE is primarily organized and staffed around providing services to districts or consortia rather than individual schools. Clearly the USOE may be limited in available staff to provide as much help as charter schools may need in managing their daily business.

USOE provides financial training to charter schools in the form of a biannual one day conference. Instruction is divided up into beginning or introductory sessions; updates on changes to laws, funding, and other issues; and open sessions that address specific questions and needs.

Charter schools have more than doubled the number of USOE clients using the state's student and financial information systems

Currently, USOE provides charter schools, free of charge, computerized student and financial information systems. These two systems help charters and school districts comply with most state and federal reporting requirements. Charter schools have more than doubled the number of clients now using the state's student and financial information systems. The Computer Services Division is experiencing difficulties in maintaining and upgrading the systems. Installation and training are also suffering from the increased workload. When charter schools or districts choose to

use systems other than those supplied by the state, interface and compatibility problems need to be worked out. Service levels have been severely strained with the addition of so many charter schools.

Additional Resources Needed to Serve Charter Schools

Three additional FTEs

Current USOE staffing levels are insufficient to repeat training or to provide much individual school assistance during the remainder of the year. The State Board of Education is asking for three additional FTEs to help meet charter school needs as follows:

- one full-time auditor to conduct financial, statistical, compliance, and performance audits;
- one full-time accountant to aid and train charter schools in budgets, financial statements, purchasing, and payroll, etc.; and
- one full-time computer specialist to service student and financial information systems for charter schools.

High turnover of charter school technicians, untrained managers and accountants (in governmental fund accounting), and a lack of USOE staff are deterrents to successful operations of charter schools. Training and support are two critical factors in ensuring that charter school managers have the necessary skills and knowledge to operate a school.

USOE believes that to be technically viable a charter school must hire a skilled business manager who has experience with governmental fund accounting, contract with a reputable management company, or be serviced by a centralized entity to perform the aforementioned duties and responsibilities. Further, to service charter schools for technology, skilled technicians or a centralized entity should be employed to serve a consortia of charter schools.

Establish a charter school service center similar to regional service centers that serve rural school districts

The State Board of Education is also requesting funding from the Legislature to establish a charter school service center. This request is for funding to pay for the base operating costs of a service center for charter schools similar to the four regional service centers that now serve many rural school districts. State funding would cover the cost of a director, clerical support, one additional position and a facility lease. The service center will provide additional services as charter schools express an interest and a willingness to pay for them, and would alleviate many of the business and technology challenges now facing charter schools.

Technical Assistance Needed to Comply with Special Education and Other Laws

In addition to the business and technology assistance needed by charter schools, there is a great need and demand for technical assistance related to Special Education, Title I, and Section 504 of the Rehabilitation Act, as well as the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). Laws related to individualized education and placement are exact, highly prescriptive, and continually evolving. This requires ongoing expertise in order to meet the demands of federal laws and regulations.

As with fiscal matters, compliance for serving students with disabilities and for students served by Title I is complicated and full of regulations. Regular program audits are required of both programs. A state expert in these areas, serving charter schools, would ensure good practice and advance student achievement.

Monitoring and Intervention Actions to Ensure Charter Schools' Financial Viability

To ensure the financial viability of charter schools, the entity who authorized the charter school should:

- Examine key financial indicators of fiscal soundness on a regular basis
- Provide training and ongoing professional development for charter school business managers
- Initiate financial and/or personnel consequences when charter schools' boards/staff do not comply with State Board of Education rules or when they violate state law
  - Consequences might include the withholding of state funds, as is done with districts, with money returned upon compliance
- Ensure a clean and clear audit trail in all accounting and purchasing practices.

To help ensure the financial viability of charter schools, the State Board of Education requests to enlarge USOE charter school staff by three FTE as described above. The State Board of Education also requests funds to aid charter schools when creating schools, including funding for legal advice for lease, construction and other contracts, accounting and other setup costs, and community outreach programs. Such help would give charter schools a strong start.