

**CHARTER SCHOOL AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Howard A. Stephenson**

**This act modifies the State System of Public Education Code by expanding the number of charter schools that the State Board of Education may sponsor, removing enrollment limitations on charter schools sponsored by local school boards, specifying requirements for charter schools, and expanding a school building loan program to include charter school buildings. This act modifies procedures for seeking charter school sponsorship, the required contents of a charter, and reasons for terminating a charter. This act eliminates a reporting requirement and imposes a requirement to conduct criminal background checks on charter school employees and certain volunteers. This act creates the Charter School Building Subaccount within the School Building Revolving Account and authorizes the state superintendent of public instruction to make loans to charter schools for charter school building construction and renovation. This act appropriates \$1,500,000 from the School Building Revolving Loan Account for fiscal year 2003-04 only, to the Charter School Building Subaccount. This act provides that certain charter schools sponsored by local school boards shall receive funding through the school district and makes technical amendments. This act takes effect on July 1, 2003.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**53A-1a-502**, as last amended by Chapter 313, Laws of Utah 2002

**53A-1a-505**, as last amended by Chapter 313, Laws of Utah 2002

**53A-1a-508**, as last amended by Chapter 313, Laws of Utah 2002

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**53A-1a-510**, as last amended by Chapter 313, Laws of Utah 2002

**53A-1a-515**, as last amended by Chapter 313, Laws of Utah 2002

**53A-21-102**, as last amended by Chapter 234, Laws of Utah 2001

**53A-21-104**, as repealed and reenacted by Chapter 326, Laws of Utah 1996

ENACTS:

**53A-1a-512.5**, Utah Code Annotated 1953

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

Section 1. Section **53A-1a-502** is amended to read:

**53A-1a-502. Authorization for the State Board of Education to sponsor charter schools.**

(1) (a) [~~The Legislature authorizes the~~] The State Board of Education [~~to~~] may sponsor [~~up to~~]:

(i) [~~16~~] effective July 1, 2003, 24 charter schools; [~~and~~]

(ii) effective each subsequent July 1, an additional eight charter schools; and

~~(ii)~~ (iii) six New Century High Schools, magnet charter schools focused on math, science, and technology.

~~[(b) (i) The State Board of Education shall evaluate the charter school program and submit an evaluation report to the Education Interim Committee by October 31, 2002.]~~

~~[(ii) The report shall include a recommendation of whether or not the program should be expanded further.]~~

~~[(c)]~~ (b) (i) The charter schools authorized under [Subsection] Subsections (1)(a)(i) and (1)(a)(ii) may be established only after an applicant:

(A) has sought and been denied sponsorship by a local school board under Section 53A-1a-515; and

(B) subsequently seeks and is granted sponsorship by the State Board of Education under Section 53A-1a-505.

(ii) (A) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the State Board of Education shall make a rule providing a timeline that would allow an applicant denied sponsorship by a local school board to apply for and receive sponsorship approval by the State Board of Education and begin planning or operating in the same school year as anticipated in its original application to the local school board.

(B) The timeline shall be consistent with the application and approval process set out in

Section 53A-1a-515.

(2) Charter schools are considered to be part of the state's public education system.

(3) A charter school may be established by creating a new school or converting an existing public school to charter status.

Section 2. Section **53A-1a-505** is amended to read:

**53A-1a-505. Sponsors of charter schools -- Application process -- Contract.**

(1) (a) An applicant for a charter school ~~[shall]~~ may seek sponsorship of its charter from the State Board of Education~~[, except as otherwise provided in Section 53A-1a-515.]~~ only after the applicant has sought and been denied sponsorship by a local school board.

(b) Subsection (1)(a) does not apply to an applicant for a New Century High School as described in Section 53A-1a-502.

(2) (a) ~~[(i) The]~~ Except as provided in Subsection (2)(b), an applicant seeking sponsorship of a charter from the State Board of Education shall [also] provide [a copy] notice of the application to the local school board of the school district in which the proposed charter school shall be located either before or at the same time it files its application with the state board.

(b) (i) An applicant seeking sponsorship of a New Century High School from the State Board of Education who has not sought and been denied sponsorship by a local school board shall provide a copy of the application to the local school board of the school district in which the proposed New Century High School shall be located either before or at the same time it files its application with the state board.

(ii) The local board shall review the application and may offer suggestions or recommendations to the applicant or the state board prior to its acting on the application.

(iii) The state board shall give due consideration to suggestions or recommendations made by the local school board under Subsection (2)~~[(a)]~~(b)(ii).

~~[(b)]~~ (c) The State Board of Education shall review and, by majority vote, either approve or deny the application within 60 days after the application is received by the board.

~~[(c)]~~ (d) The state board's action under Subsection (2)~~[(b)]~~(c) is final action subject to

judicial review.

(3) (a) ~~[The]~~ After approval of a charter school application, the applicant and the state board shall set forth the terms and conditions for the operation of the charter school in a written contractual agreement.

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

Section 3. Section **53A-1a-508** is amended to read:

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

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

(2) The governing body of the charter school and the State Board of Education shall sign the charter, except as otherwise provided under Section 53A-1a-515.

(3) The charter shall include:

(a) the age or grade levels to be served by the school;

(b) the projected maximum number of students to be enrolled in the school and the projected enrollment in each of the first three years of operations;

~~[(b)]~~ (c) the governance structure of the school;

~~[(c)]~~ (d) the financial plan for the school and the provisions which will be made for auditing the school under Subsection 53A-1a-507(4)(a);

~~[(d)]~~ (e) the mission and education goals of the school, the curriculum offered, and the methods of assessing whether students are meeting educational goals, to include at a minimum participation in the Utah Performance Assessment System for Students under Chapter 1, Part 6, Achievement Tests;

~~[(e)]~~ (f) admission and dismissal procedures, including suspension procedures;

~~[(f)]~~ (g) procedures to review complaints of parents regarding the operation of the school;

~~[(g)]~~ (h) the opportunity for parental involvement at the school;

~~[(h)]~~ (i) how the school will provide adequate liability and other appropriate insurance for the school, its governing body, and its employees, including ~~[its ability]~~ whether the school

intends to participate in the state's risk management insurance program;

~~[(†)]~~ (j) the proposed school calendar, including the length of the school day and school year;

~~[(†)]~~ (k) whether any agreements have been entered into or plans developed with school districts regarding participation of charter school students in extracurricular activities within the school districts;

~~[(†)]~~ (l) the ~~[physical facility in]~~ district within which the school will be located~~[-if known at the time of application,]~~ and ~~[its]~~ the address of the school's physical facility, if known at the time the charter is signed;

~~[(†)]~~ (m) the qualifications to be required of the teachers; and

~~[(†)]~~ (n) in the case of an existing public school converting to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach at the school after its conversion to charter status.

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

Section 4. Section **53A-1a-509** is amended to read:

**53A-1a-509. Noncompliance -- Rulemaking.**

~~[(1) The governing body of a charter school shall make annual progress reports to the State Board of Education, the local school board of the district in which the school is located, and the Legislature through its Education Interim Committee.]~~

~~[(2) The report shall contain at least the following information:]~~

~~[(a) the school's progress toward achieving its goals as set out in the charter; and]~~

~~[(b) financial records of the school, including revenues, expenditures, and employee salary and benefit levels.]~~

~~[(3)]~~ (1) (a) If a charter school is found to be out of compliance with the requirements of Section 53A-1a-507 ~~[or Subsections 53A-1a-509(1) and (2), then]~~, the State Board of Education shall notify the school's governing board in writing that the school has a reasonable time to remedy the deficiency, except as otherwise provided in Subsection 53A-1a-510(3)(a).

(b) (i) If the school does not remedy the deficiency within the established timeline, ~~[then]~~ the State Board of Education may terminate the school's charter.

(ii) Subsections 53A-1a-510(2)(a) and (b) do not apply to an action taken under this Subsection ~~[(3)]~~ (1).

~~[(4)]~~ (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the State Board of Education shall make rules:

- (a) specifying the timeline for remedying deficiencies under Subsection ~~[(3)]~~ (1)(a); and
- (b) ensuring the compliance of a charter school with its approved charter.

Section 5. Section **53A-1a-510** is amended to read:

**53A-1a-510. Termination of a charter.**

(1) The State Board of Education may terminate a school's charter ~~[during the term of the charter]~~ for any of the following reasons:

- (a) failure of the school to meet the requirements stated in the charter;
- (b) failure to meet generally accepted standards of fiscal management;
- (c) subject to Subsection (5), failure to make adequate yearly progress under the No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425;

~~[(c)]~~ (d) violation of law; or

~~[(d)]~~ (e) other good cause shown.

(2) (a) The board shall notify the governing body of the school of the proposed action in writing, state the grounds for the action, and stipulate that the governing body may request an informal hearing before the board.

(b) The board shall conduct the hearing within 30 days after receiving a written request under Subsection (2)(a).

(3) (a) The board may terminate a charter immediately if good cause has been shown or if the health, safety, or welfare of the students at the school is threatened.

(b) If a charter is terminated under Subsection (3)(a), the school district in which the school is located may assume operation of the school.

(4) (a) If a charter is terminated, a student who attended the school may apply to and

shall be enrolled in another public school under the enrollment provisions of Title 53A, Chapter 2, Part 2, District of Residency, subject to space availability.

(b) Normal application deadlines shall be disregarded under Subsection (4)(a).

(5) The State Board of Education may terminate a charter pursuant to Subsection (1)(c) under the same circumstances that local educational agencies are required to implement alternative governance arrangements under 20 U.S.C. Sec. 6316.

Section 6. Section **53A-1a-512.5** is enacted to read:

**53A-1a-512.5. Criminal background checks on school personnel -- Notice --**

**Payment of cost -- Request for review.**

(1) The chief administrative officer of a charter school:

(a) shall require a potential employee or a volunteer who will be given significant unsupervised access to a student in connection with the volunteer's assignment to submit to a criminal background check as a condition for employment or appointment; and

(b) where reasonable cause exists, may require an existing employee or volunteer to submit to a criminal background check.

(2) The applicant, volunteer, or employee shall receive written notice that the background check has been requested.

(3) (a) Fingerprints of the individual shall be taken, and the Criminal Investigations and Technical Services Division of the Department of Public Safety, established in Section 53-10-103, shall release the individual's full record of criminal convictions to the administrator requesting the information.

(b) The division shall maintain a separate file of fingerprints submitted under Subsection (3)(a) and notify the State Office of Education when a new entry is made against a person whose fingerprints are held in the file regarding:

(i) any matters involving an alleged sexual offense;

(ii) any matters involving an alleged felony or class A misdemeanor drug offense; or

(iii) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person.

(c) The cost of maintaining the separate file shall be paid by the State Office of Education from fees charged to those submitting fingerprints.

(4) The chief administrative officer or governing body of a charter school shall consider only those convictions which are job-related in deciding whether to employ, appoint, or dismiss an employee, applicant, or volunteer.

(5) (a) The charter school shall pay the cost of the background check, except as otherwise provided in Subsection (5)(b), and the monies collected shall be credited to the Criminal Investigations and Technical Services Division to offset its expenses.

(b) The charter school may require an applicant to pay the costs of a background check as a condition for consideration for employment or appointment, if the applicant:

(i) has passed an initial review;

(ii) is one of a pool of no more than five candidates for a position; and

(iii) has not been the subject of a criminal background check of similar scope during the preceding two years that was requested by a potential employer or the State Board of Education.

(6) The Criminal Investigations and Technical Services Division shall, upon request, seek additional information from regional or national criminal data files in responding to inquiries under this section.

(7) (a) The applicant, volunteer, or employee shall have the opportunity to respond to any information received as a result of the background check.

(b) A charter school shall resolve any request for review by an applicant, volunteer, or employee seeking employment or employed by the charter school through normal administrative procedures established by the charter school.

(8) If a person is denied employment or is dismissed from employment because of information obtained through a criminal background check, the person shall receive written notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons under the procedures set forth in Subsection (7).

(9) Information obtained under this part is confidential and may only be disclosed as provided in this section.



Section 7. Section **53A-1a-515** is amended to read:

**53A-1a-515. Charters sponsored by local school boards.**

(1) Individuals and entities identified in Section 53A-1a-504 may enter into an agreement with a local school board to establish and operate a charter school within the geographical boundaries of the school district administered by the board~~[, subject to the same requirements established in Sections 53A-1a-504 through 53A-1a-514, except as otherwise provided in this section]~~.

(2) These schools are in addition to the limited number of charter schools authorized under the sponsorship of the State Board of Education in Section 53a-1a-502.

(3) (a) An existing public school that converts to charter status under a charter granted by a local school board may:

(i) continue to receive the same services from the school district that it received prior to its conversion; or

(ii) contract out for some or all of those services with other public or private providers.

(b) Any other charter school sponsored by a local school board may contract with the board to receive some or all of the services referred to in Subsection (3)(a).

(4) (a) (i) A public school that converts to a charter school under [~~Subsection (3)(a)~~] a charter granted by a local school board shall receive funding:

(A) through the school district; and

(B) on the same basis as it did prior to its conversion to a charter school.

(ii) The school may also receive federal monies designated for charter schools under any federal program.

~~[(b) (i) Any other charter school sponsored by a local school board shall receive funding as provided under Subsection (4)(a), except as otherwise provided in Subsection (4)(b)(ii).]~~

~~[(ii) If the charter school is not operating out of]~~

(b) (i) A local school board-sponsored charter school operating in a facility owned by the school district~~[, then the funding provisions of Section 53A-1a-513 apply.]~~ and not paying reasonable rent to the school district shall receive funding:

(A) through the school district; and

(B) on the same basis that other district schools receive funding.

(ii) The school may also receive federal monies designated for charter schools under any federal program.

(c) Any other charter school sponsored by a local school board shall receive funding as provided in Section 53A-1a-513.

(5) (a) A local school board that receives an application for a charter school under this section shall, within 45 days, either accept or reject the application.

(b) If the board rejects the application, it shall notify the applicant in writing of the reason for the rejection.

(c) The applicant may submit a revised application for reconsideration by the board.

(d) If the local school board refuses to sponsor the applicant, the applicant may seek a charter from the State Board of Education under Section 53A-1a-505.

(e) The local board's action under Subsection (5)(d) is final action subject to judicial review.

~~[(6) A local school board is limited in the number of charter schools it may sponsor under this section as follows:]~~

~~[(a) there is no limitation on the number of existing public schools within a school district that may convert to charter status under this section; and]~~

~~[(b) the number of charter schools not converted from existing public schools is limited to an enrollment equal to 4% of the school district's student population as reported in the most recent annual statistical report required under Section 53A-3-403.]~~

~~[(7)]~~ (6) A local school board may terminate a charter school it sponsors under this section for the same reasons and under the same procedures followed by the State Board of Education under ~~[Subsection]~~ Section 53A-1a-509~~[(3)]~~.

(7) The governing body of a local school board-sponsored charter school shall be independent of the local school board except as otherwise specifically provided in this chapter.

Section 8. Section **53A-21-102** is amended to read:

**53A-21-102. Capital Outlay Foundation Program -- Loan Program.**

(1) There is established [a] the Capital Outlay Foundation Program to provide revenues to school districts for the purposes of capital outlay bonding, construction, and renovation.

(2) There is established [a] the Capital Outlay Loan Program to provide:

(a) short-term help to school districts to meet district needs for school building construction and renovation[-]; and

(b) assistance to charter schools to meet school building construction and renovation needs.

(3) School districts shall use the monies provided to them under the foundation and loan programs solely for school district capital outlay and debt service purposes.

Section 9. Section **53A-21-104** is amended to read:

**53A-21-104. School Building Revolving Account -- Access to the account.**

(1) There is created a nonlapsing "School Building Revolving Account" administered within the Uniform School Fund by the state superintendent of public instruction in accordance with rules adopted by the State Board of Education.

(2) Monies received by a school district from the School Building Revolving Account may not exceed the district's bonding limit minus its outstanding bonds.

(3) In order to receive monies from the account, a school district must do the following:

(a) levy a tax of at least .0024 for capital outlay and debt service;

(b) contract with the state superintendent of public instruction to repay the monies, with interest at a rate established by the state superintendent, within five years of their receipt, using future state building monies or local revenues or both;

(c) levy sufficient ad valorem taxes under Section 11-14-19 to guarantee annual loan repayments, unless the state superintendent of public instruction alters the payment schedule to improve a hardship situation; and

(d) meet any other condition established by the State Board of Education pertinent to the loan.

(4) (a) The state superintendent shall establish a committee, including representatives

from state and local education entities, to:

- (i) review requests by school districts for loans under this section; and
- (ii) make recommendations regarding approval or disapproval of the loan applications to

the state superintendent.

(b) If the committee recommends approval of a loan application under Subsection (4)(a)(ii), the committee's recommendation shall include:

- (i) the recommended amount of the loan;
- (ii) the payback schedule; and
- (iii) the interest rate to be charged.

(5) (a) There is established within the School Building Revolving Account the Charter School Building Subaccount.

(b) The Charter School Building Subaccount shall consist of:

- (i) money appropriated to the subaccount by the Legislature;
- (ii) money received from the repayment of loans made from the subaccount; and
- (iii) interest earned on monies in the subaccount.

(c) The state superintendent of public instruction shall make loans to charter schools from the Charter School Building Subaccount to pay for the costs of constructing or renovating charter school buildings.

(6) (a) The state superintendent of public instruction shall establish a committee, which shall include individuals who have expertise or experience in finance, real estate, and charter school administration, one of whom shall be nominated by the governor to:

- (i) review requests by charter schools for loans under this section; and
- (ii) make recommendations regarding approval or disapproval of the loan applications to

the state superintendent.

(b) If the committee recommends approval of a loan application under Subsection (6)(a)(ii), the committee's recommendation shall include:

- (i) the recommended amount of the loan;
- (ii) the payback schedule; and

(iii) the interest rate to be charged.

**Section 10. Appropriation.**

(1) There is appropriated for fiscal year 2003-04 only, \$1,500,000 from the School Building Revolving Account to the Charter School Building Subaccount.

(2) The monies appropriated in Subsection (1) are nonlapsing.

**Section 11. Effective date.**

This act takes effect on July 1, 2003.