

**CHARTER SCHOOL AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: James A. Ferrin

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Charter Schools Act regarding the authorization, oversight, and termination of charter schools.

**Highlighted Provisions:**

This bill:

- ▶ removes the cap on the number of charter schools that the State Charter School Board may authorize;
- ▶ removes a time limitation imposed on the State Charter School Board for approving or denying a charter school application;
- ▶ prohibits charter schools from being denied due to certain impacts on public schools;
- ▶ allows charter schools to give additional enrollment preferences;
- ▶ modifies the content requirements for a charter school's charter;
- ▶ allows a chartering entity to take certain actions if a charter school fails to remedy deficiencies within an established timeline, including:
  - removing a school director or finance officer;
  - removing governing board members;
  - appointing an interim director or mentor to work with the charter school; or
  - terminating the charter school;
- ▶ provides for the appeal of a chartering entity's decision to terminate a charter school to the State Board of Education, and provides that the State Board of Education's action is final action subject to judicial review;

- ▶ allows a private management company to operate a charter school, if the school is terminated during a school year;
- ▶ provides that State Board of Education rules governing licensing of administrative and supervisory personnel do not apply to charter schools; and
- ▶ makes technical amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 53A-1a-501.6**, as enacted by Chapter 251, Laws of Utah 2004
- 53A-1a-504**, as last amended by Chapter 224, Laws of Utah 2000
- 53A-1a-505**, as last amended by Chapter 251, Laws of Utah 2004
- 53A-1a-506**, as last amended by Chapter 259, Laws of Utah 2001
- 53A-1a-508**, as last amended by Chapter 251, Laws of Utah 2004
- 53A-1a-509**, as last amended by Chapter 251, Laws of Utah 2004
- 53A-1a-510**, as last amended by Chapter 251, Laws of Utah 2004
- 53A-1a-512**, as last amended by Chapters 251 and 330, Laws of Utah 2004
- 53A-1a-513**, as last amended by Chapter 257, Laws of Utah 2004
- 53A-1a-515**, as last amended by Chapter 251, Laws of Utah 2004

REPEALS:

- 53A-1a-502**, as last amended by Chapter 251, Laws of Utah 2004

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

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

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

(1) The State Charter School Board shall:

(a) authorize and promote the establishment of charter schools, subject to the ~~limitations in Sections 53A-1a-502 and~~ procedures in Section 53A-1a-505;

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

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

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

(i) identifying and promoting successful charter school models;

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

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

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

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

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

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

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

(2) The State Charter School Board may:

(a) contract;

(b) sue and be sued; and

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

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

Section 2. Section **53A-1a-504** is amended to read:

**53A-1a-504. Proposal.**

(1) A proposal to establish a charter school may be made by an individual or groups of individuals, including teachers and parents or guardians of students who will attend the school, or a not-for-profit legal entity organized under the laws of this state.

(2) (a) The principal, teachers, or parents of students at an existing public school may submit a proposal to convert the school or a portion of the school to charter status.

(b) (i) At least 2/3 of the licensed educators employed at the school and at least two-thirds of the parents or guardians of students enrolled at the school must have signed a petition approving the proposal prior to its submission to the [sponsoring] chartering entity if the entire school is applying for charter status.

(ii) The percentage is reduced to a simple majority if the conversion is for only a portion of the school.

(c) A proposal submitted under Subsection (2)(a) must first be approved by the local school board based on its determination that:

(i) students opting not to attend the proposed converted school would have access to a comparable public education alternative; and

(ii) current teachers who choose not to teach at the converted charter school or who are not retained by the school at the time of its conversion would receive a first preference for transfer to open teaching positions for which they qualify within the school district. If no positions are open, contract provisions or board policy regarding reduction in staff would apply.

(3) A parochial school or home school is not eligible for charter school status.

Section 3. Section **53A-1a-505** is amended to read:

**53A-1a-505. Application process -- Contract.**

(1) (a) An applicant seeking authorization of a charter school[~~, including a New Century High School,~~] from the State Charter School Board shall provide a copy 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 Charter School Board.

(b) The local board may review the application and may offer suggestions or recommendations to the applicant or the State Charter School Board prior to its acting on the application.

(c) The State Charter School Board shall give due consideration to suggestions or recommendations made by the local school board under Subsection (1)(b).

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

(e) The State Board of Education shall, by majority vote, within 60 days after action by the State Charter School Board under Subsection (1)(d):

(i) approve or deny an application approved by the State Charter School Board; or

(ii) hear an appeal, if any, of an application denied by the State Charter School Board.

(f) The State Board of Education's action under Subsection (1)(d) is final action subject to judicial review.

(g) A charter school application may not be denied on the basis that the establishment of the charter school will have any or all of the following impacts on a public school, including another charter school:

(i) an enrollment decline;

(ii) a decrease in funding; or

(iii) a modification of programs or services.

(2) The State Board of Education shall make a rule providing a timeline for the opening of a charter school following the approval of a charter school application by the State Charter School Board.

(3) (a) After approval of a charter school application, the applicant and the State Charter School Board shall set forth the terms and conditions for the operation of the charter school in a written contractual agreement.

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

(4) (a) A school holding a charter granted by a local school board may request a charter

from the State Charter School Board.

(b) This section shall govern the application and approval of a charter requested under Subsection (4)(a).

~~[(c) The restrictions on the number of charter schools authorized by the State Charter School Board in Section 53A-1a-502 do not apply to a school requesting a charter under Subsection (4)(a).]~~

Section 4. Section **53A-1a-506** is amended to read:

**53A-1a-506. Eligible students.**

(1) All resident students of the state qualify for admission to a charter school, subject to the limitations set forth in this section.

(2) (a) A charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or the school.

(b) (i) If the number of applications exceeds the capacity of a program, class, grade level, or the school, then students shall be selected on a random basis, except that the school may give preference to:

(A) a student of a parent who has actively participated in the development of the school  
~~[and to];~~

(B) siblings of students presently enrolled in the school[-];

(C) a student of a parent who is employed by the school;

(D) students articulating between charter schools offering similar programs that are governed by the same governing body; and

(E) students articulating from one charter school to another pursuant to an articulation agreement between the charter schools that is approved by the State Charter School Board.

(ii) The school may give preference to students who reside within the school district in which the school is located.

(c) When a public school converts to charter status, the school shall give enrollment preference to students who would have otherwise attended it as a regular public school.

(3) A charter school may not discriminate in its admission policies or practices on the same basis as other public schools may not discriminate in their admission policies and practices.

Section 5. Section **53A-1a-508** is amended to read:

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

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

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

(3) The charter shall include:

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

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

(c) the governance structure of the school;

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

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

(f) admission and dismissal procedures, including suspension procedures;

(g) procedures to review complaints of parents regarding the operation of the school;

(h) the opportunity for parental involvement at the school;

(i) how the school will provide adequate liability and other appropriate insurance for the school, its governing body, and its employees;

(j) the proposed school calendar, including the length of the school day and school year;

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

(l) the district within which the school will be located and the address of the school's physical facility, if known at the time the charter is signed;

(m) the qualifications to be required of the teachers;

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

(o) the school's intention to create a library;

(p) a description of school administrative and supervisory services;

(q) fiscal procedures to be used by the school; and

(r) the school's policies and procedures regarding:

~~[(i) employee termination;]~~

~~[(ii)]~~ (i) employee evaluation; and

~~[(iii)]~~ (ii) employment of relatives.

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

Section 6. Section **53A-1a-509** is amended to read:

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

(1) (a) ~~[(i)]~~ If a charter school is found to be out of compliance with the requirements of Section 53A-1a-507 or the school's charter, the chartering entity 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).

~~[(ii) Subsections 53A-1a-510(2)(a) and (b) do not apply to a notification of noncompliance taken under Subsection (1)(a)(i).]~~

(b) If the school does not remedy the deficiency within the established timeline, the chartering entity may:

(i) remove a school director or finance officer;

(ii) remove governing board members;

(iii) appoint an interim director or mentor to work with the charter school; or

(iv) terminate the school's charter.

(c) The costs of an interim director or mentor appointed pursuant to Subsection (1)(b) shall be paid from the funds of the charter school for which the interim director or mentor is working.

(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 (1)(a); and
- (b) ensuring the compliance of a charter school with its approved charter.

Section 7. Section **53A-1a-510** is amended to read:

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

(1) A chartering entity may terminate a school's 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, 20 U.S.C. Sec. 6301 et seq.;

- (d) violation of law; or
- (e) other good cause shown.

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

(b) The chartering entity shall conduct the hearing in accordance with Title 63, Chapter 46b, Administrative Procedures Act, within 30 days after receiving a written request under Subsection (2)(a).

(c) If the chartering entity, by majority vote, approves a motion to terminate a charter school, the governing body of the charter school may appeal the decision to the State Board of Education.

(d) (i) The State Board of Education shall hear an appeal of a termination made pursuant to Subsection (2)(c).

(ii) The State Board of Education's action is final action subject to judicial review.

(3) ~~[(a)]~~ The chartering entity 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)]~~ (4) If a charter is terminated ~~[under Subsection (3)(a),]~~ during a school year:

(a) the school district in which the school is located may assume operation of the school~~[-]; or~~

(b) a private management company may be hired to operate the school.

~~[(4)]~~ (5) (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)]~~ (5)(a).

~~[(5)]~~ (6) A chartering entity 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 8. Section **53A-1a-512** is amended to read:

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

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

(2) The school's governing body shall determine the level of compensation and all terms and conditions of employment, except as otherwise provided in Subsections ~~[(6)]~~ (7) and ~~[(7)]~~ (8) and under this part.

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

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

(b) Chapter 10, Educator Evaluation; and

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

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

(i) are licensed; or

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

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

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

~~[(5)]~~ (6) (a) An employee of a school district may request a leave of absence in order to work in a charter school upon approval of the local school board.

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

~~[(6)]~~ (7) Except as provided under Subsection ~~[(7)]~~ (8), an employee of a charter school shall be a member of a retirement system under Title 49, Utah State Retirement and Insurance Act.

~~[(7)]~~ (8) (a) At the time of application for a charter school, whether ~~[sponsored by the state]~~ the chartering entity is the State Charter School Board or a school district, a proposed charter school may make an election of nonparticipation as an employer for retirement programs under Title 49, Chapter 12, Public Employees' Contributory Retirement Act and under Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act.

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

(c) An election provided under this Subsection ~~[(7)]~~ (8):

(i) is a one-time election made at the time specified under Subsection ~~[(7)]~~ (8)(a) or (b);  
(ii) shall be documented by a resolution adopted by the governing body of the charter school;

(iii) is irrevocable; and

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

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

- (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act; or
- (ii) under any other program.

Section 9. Section **53A-1a-513** is amended to read:

**53A-1a-513. Funding for charter schools.**

(1) (a) Charter schools shall receive funding as described in this section, except Subsections (2) through (7) do not apply to charter schools described in Subsection (1)(b).

(b) Charter schools [~~sponsored~~] authorized by local school boards that are converted from district schools or operate in district facilities without paying reasonable rent shall receive funding as prescribed in Section 53A-1a-515.

(2) (a) Except as provided in Subsection (2)(b), a charter school shall receive state funds, as applicable, on the same basis as a school district receives funds.

(b) In distributing funds under Title 53A, Chapter 17a, Minimum School Program Act, to charter schools, charter school pupils shall be weighted, where applicable, as follows:

- (i) .55 for kindergarten pupils;
- (ii) .9 for pupils in grades 1-6;
- (iii) .99 for pupils in grades 7-8; and
- (iv) 1.2 for pupils in grades 9-12.

(c) The State Board of Education shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to administer Subsection (2)(b), including hold harmless provisions to maintain a charter elementary school's funding level for a period of two years after the effective date of the distribution formula.

(d) Subsection (2)(b) does not apply to funds appropriated to charter schools to replace local property tax revenues.

(3) The State Board of Education shall adopt rules to provide for the distribution of monies to charter schools under this section.

(4) (a) The Legislature shall provide an appropriation for charter schools for each of their

students to replace some of the local property tax revenues that are not available to charter schools. 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 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; and

(ii) dividing the sum by the total average daily membership of the districts' schools.

(b) Of the monies provided to a charter school under Subsection (4)(a), 10% shall be expended for funding school facilities only.

(5) Charter schools are eligible to receive federal funds if they meet all applicable federal requirements and comply with relevant federal regulations.

(6) The State Board of Education shall distribute funds for charter school students directly to the charter school.

(7) (a) Notwithstanding Subsection (2), a charter school is not eligible to receive state transportation funding.

(b) The board shall also adopt rules relating to the transportation of students to and from charter schools, taking into account Sections 53A-2-210 and 53A-17a-127.

(c) The governing body of the charter school may provide transportation through an agreement or contract with the local school board, a private provider, or with parents.

(8) (a) (i) The state superintendent of public instruction may allocate grants for both start-up and ongoing costs to eligible charter school applicants from monies appropriated for the implementation of this part.

(ii) Applications for the grants shall be filed on a form determined by the state superintendent and in conjunction with the application for a charter.

(iii) The amount of a grant may vary based upon the size, scope, and special circumstances of the charter school.

(iv) The governing board of the charter school shall use the grant to meet the expenses of the school as established in the school's charter.

(b) The State Board of Education shall coordinate the distribution of federal monies appropriated to help fund costs for establishing and maintaining charter schools within the state.

(9) (a) A charter school may receive, hold, manage and use any devise, bequest, grant, endowment, gift, or donation of any property made to the school for any of the purposes of this part.

(b) It is unlawful for any person affiliated with a charter school to demand or request any gift, donation, or contribution from a parent, teacher, employee, or other person affiliated with the charter school as a condition for employment or enrollment at the school or continued attendance at the school.

(10) The State Office of Education shall use up to \$1,044,000 of funding provided for new growth to fund additional growth needs in charter schools in fiscal year 2005.

Section 10. Section **53A-1a-515** is amended to read:

**53A-1a-515. Charters authorized 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.

~~[(2) These schools are in addition to the limited number of charter schools authorized by the State Charter School Board in Section 53A-1a-502.]~~

~~[(3)]~~ (2) (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 authorized 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)]~~ (3) (a) (i) A public school that converts to a charter school under 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) A local school board-authorized charter school operating in a facility owned by the school district 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 authorized by a local school board shall receive funding as provided in Section 53A-1a-513.

~~[(5)]~~ (4) (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 authorize the applicant, the applicant may seek a charter from the State Charter School Board under Section 53A-1a-505.

~~[(6)]~~ (5) The State Board of Education shall make a rule providing for a timeline for the opening of a charter school following the approval of a charter school application by a local school board.

~~[(7)]~~ (6) (a) After approval of a charter school application, the applicant and the local school board shall set forth the terms and conditions for the operation of the charter school in a written contractual agreement.

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

~~[(8)]~~ (7) A local school board shall:

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

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

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

~~[(9)]~~ (8) A local school board may terminate a charter school it authorizes as provided in Sections 53A-1a-509 and 53A-1a-510.

~~[(10)]~~ (9) The governing body of a local school board-authorized charter school shall be independent of the local school board except as otherwise specifically provided in this chapter.

**Section 11. Repealer.**

This bill repeals:

**Section 53A-1a-502, State Charter School Board to authorize the establishment of charter schools.**