

Representative Aaron Tilton proposes the following substitute bill:

PUBLIC EDUCATION CLUB AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Aaron Tilton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the State System of Public Education Code's regulation of curricular and noncurricular clubs.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ provides requirements and procedures for the authorization of curricular and noncurricular clubs;
- ▶ regulates the use of school buildings by authorized clubs;
- ▶ provides for faculty oversight of authorized clubs;
- ▶ provides requirements for club membership, including parental consent;
- ▶ requires the investigation of complaints, provides school options for violations, and establishes appeals procedures;
- ▶ allows additional rulemaking by the State Board of Education and provides additional rulemaking authority for local school governing boards;
- ▶ provides severability; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53A-3-420**, as enacted by Chapter 19, Laws of Utah 1999

32 **53A-13-101.2**, as last amended by Chapter 10, Laws of Utah 1996, Second Special
33 Session

34 ENACTS:

35 **53A-11-1201**, Utah Code Annotated 1953

36 **53A-11-1202**, Utah Code Annotated 1953

37 **53A-11-1203**, Utah Code Annotated 1953

38 **53A-11-1204**, Utah Code Annotated 1953

39 **53A-11-1205**, Utah Code Annotated 1953

40 **53A-11-1206**, Utah Code Annotated 1953

41 **53A-11-1207**, Utah Code Annotated 1953

42 **53A-11-1208**, Utah Code Annotated 1953

43 **53A-11-1209**, Utah Code Annotated 1953

44 **53A-11-1210**, Utah Code Annotated 1953

45 **53A-11-1211**, Utah Code Annotated 1953

46 **53A-11-1212**, Utah Code Annotated 1953

47 **53A-11-1213**, Utah Code Annotated 1953

48 **53A-11-1214**, Utah Code Annotated 1953

49 REPEALS:

50 **53A-3-419**, as enacted by Chapter 10, Laws of Utah 1996, Second Special Session

51

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

53 Section 1. Section **53A-3-420** is amended to read:

54 **53A-3-420. Activity disclosure statements.**

55 (1) A local school board shall require the development of activity disclosure statements
56 for each school-sponsored group[~~-club,~~] or program which involves students and faculty in

grades 9 through 12 in contests, performances, events, or other activities that require them to miss normal class time or takes place outside regular school time.

(2) The activity disclosure statements shall be disseminated to the students desiring involvement in the specific activity or to the students' parents or legal guardians or to both students and their parents.

(3) An activity disclosure statement shall contain the following information:

(a) the specific name of the ~~club~~ team, group, or activity;

(b) the maximum number of students involved;

(c) whether or not tryouts are used to select students, specifying date and time requirements for tryouts, if applicable;

(d) beginning and ending dates of the activity;

(e) a tentative schedule of the events, performances, games, or other activities with dates, times, and places specified if available;

(f) if applicable, designation of any nonseason events or activities, including an indication of the status, required, expected, suggested, or optional, with the dates, times, and places specified;

(g) personal costs associated with the activity;

(h) the name of the school employee responsible for the activity; and

(i) any additional information considered important for the students and parents to know.

Section 2. Section **53A-11-1201** is enacted to read:

Part 12. Student Clubs Act

53A-11-1201. Title.

This part is known as the "Student Clubs Act."

Section 3. Section **53A-11-1202** is enacted to read:

53A-11-1202. Definitions.

As used in this part:

(1) "Bigotry" means action or advocacy of imminent action involving:

(a) the harassment or denigration of a person or entity, including harassment or denigration based upon race, religion, national origin, gender, disability, or sexual preference;

or

88 (b) any intent to cause a person not to freely enjoy or exercise any right secured by the
89 constitution or laws of the United States or the state, except that an evaluation or prohibition
90 may not be made of the truth or falsity of any religious belief or expression of conscience
91 unless the means of expression or conduct arising therefrom violates the standards of conduct
92 outlined in this section, Section 53A-13-101.3, or 20 U.S.C. Section 4071(f).

93 (2) "Club" means any student organization that meets during noninstructional time.

94 (3) "Conscience" means a standard based upon learned experiences, a personal
95 philosophy or system of belief, religious teachings or doctrine, an absolute or external sense of
96 right and wrong which is felt on an individual basis, a belief in an external absolute, or any
97 combination of the foregoing.

98 (4) "Curricular club" means a club that is school sponsored and that may receive
99 leadership, direction, and support from the school or school district beyond providing a
100 meeting place during noninstructional time. An elementary school curricular club means a club
101 that is organized and directed by school sponsors at the elementary school. A secondary school
102 curricular club means a club:

103 (a) whose subject matter is taught or will soon be taught in a regular course;

104 (b) whose subject matter concerns the body of courses as a whole;

105 (c) in which participation is required for a particular course; or

106 (d) in which participation results in academic credit.

107 (5) (a) "Discretionary time" means school-related time for students that is not
108 instructional time.

109 (b) "Discretionary time" includes free time before and after school, during lunch and
110 between classes or on buses, and private time before athletic and other events or activities.

111 (6) (a) "Encourage criminal or delinquent conduct" means action or advocacy of
112 imminent action that violates any law or administrative rule.

113 (b) "Encourage criminal or delinquent conduct" does not include discussions in
114 compliance with concerning changing of laws or rules, or actions taken through lawfully
115 established channels to effectuate such change.

116 (7) (a) "Instructional time" means time during which a school is responsible for a
117 student and the student is required or expected to be actively engaged in a learning activity.

118 (b) "Instructional time" includes instructional activities in the classroom or study hall

during regularly scheduled hours, required activities outside the classroom, and counseling, private conferences, or tutoring provided by school employees or volunteers acting in their official capacities during or outside of regular school hours.

(8) "Involve human sexuality" includes:

(a) presenting information in violation of laws governing sex education;

(b) advocating or engaging in sexual activity outside of legally recognized marriage or forbidden by state law; or

(c) presenting or discussing information relating to the use of contraceptive devices or substances, regardless of whether the use is for purposes of contraception or personal health.

(9) "Limited open forum" means a forum created by a district for student expression within the constraints of Subsection 53A-13-101.3(2)(b).

(10) "Noncurricular club" is a student initiated group that may be authorized and allowed school building use during noninstructional time in secondary schools by a school and school governing board in accordance with the provisions of this part. A noncurricular club's meetings, ideas, and activities are not sponsored or endorsed in any way by a school governing board, the school, or by school or school district employees.

(11) "Noninstructional time" means time set aside by a school before instructional time begins or after instructional time ends, including discretionary time.

(12) "Religious club" means a club designated in its application as either being religiously based or based on expression or conduct mandated by conscience.

(13) "School" means a public school, including a charter school.

(14) "School building use" means access to a school facility or premises, including access to a limited open forum.

(15) "School governing board" means a local school board or charter school board.

Section 4. Section **53A-11-1203** is enacted to read:

53A-11-1203. Student clubs -- Limited open forum -- Authorization.

(1) (a) A school may establish and maintain a limited open forum for student clubs pursuant to the provisions of this part, State Board of Education rules, and school governing board policies.

(b) Notwithstanding the provisions under Subsection (1)(a), a school retains the right to create a closed forum at any time by allowing curricular clubs only.

150 (2) (a) A school shall review applications for authorization of clubs on a case-by-case
151 basis.

152 (b) Before granting an authorization, the school shall find:

153 (i) that the proposed club meets this part's respective requirements of a curricular club
154 or a noncurricular club; and

155 (ii) that the proposed club's purpose and activities comply with this part.

156 (c) Before granting an authorization, a school may request additional information from
157 the faculty sponsor, from students proposing the club, or from its school governing board, if
158 desired.

159 (3) A school shall grant authorization and school building use to curricular and
160 noncurricular clubs whose applications are found to meet the requirements of this part, rules of
161 the State Board of Education, and policies of the school governing board and shall limit or
162 deny authorization or school building use to proposed clubs that do not meet the requirements
163 of this part, rules of the State Board of Education, and policies of the school governing board.

164 Section 5. Section **53A-11-1204** is enacted to read:

165 **53A-11-1204. Curricular clubs -- Authorization.**

166 (1) Faculty members or students proposing a curricular club shall submit written
167 application for authorization on a form approved by the school governing board no later than
168 October 15 of the year of the club's inception.

169 (2) A school governing board may exempt a club whose membership is determined by
170 student body election or a club that is governed by an association that regulates interscholastic
171 activities from the authorization requirements under this section.

172 (3) An application for authorization of a curricular club shall include:

173 (a) the recommended club name;

174 (b) a statement of the club's purpose, goals, and activities;

175 (c) a statement of the club's categorization, which shall be included in the parental
176 consent required under Section 53A-11-1210, indicating all of the following that may apply:

177 (i) athletic;

178 (ii) business/economic;

179 (iii) agriculture;

180 (iv) art/music/performance;

181 (v) science;

182 (vi) gaming;

183 (vii) religious; and

184 (viii) other;

185 (d) the recommended meeting times, dates, and places; and

186 (e) the proposed club charter, constitution, or bylaws which shall include at least:

187 (i) the rules of organization;

188 (ii) the election of officers;

189 (iii) objective membership criteria;

190 (iv) meeting rules of order;

191 (v) procedures for amending the rules; and

192 (vi) a statement that the club will comply with the provisions of this part and all other
193 applicable laws, rules, or policies.

194 (4) A school shall approve the name of a curricular club consistent with the club's
195 purposes and its school sponsorship.

196 (5) (a) A school shall determine curriculum relatedness by strictly applying this part's
197 definition of curricular club to the club application.

198 (b) If the school finds that the proposed club is a curricular club, the school shall
199 continue to review the application as an application for authorization of a curricular club.

200 (c) If the school finds that the proposed club is a noncurricular club, the school may:

201 (i) return the application to the faculty member or students proposing the club for
202 amendment; or

203 (ii) review the application as an application for authorization of a noncurricular club.

204 (6) (a) Only curricular clubs may be authorized for elementary schools.

205 (b) A school governing body may limit, or permit a secondary school to limit, the
206 authorization of clubs at the secondary school to only curricular clubs.

207 Section 6. Section **53A-11-1205** is enacted to read:

208 **53A-11-1205. Noncurricular clubs -- Annual authorization.**

209 (1) A minimum of seven students who would qualify as members of a noncurricular
210 club are required to submit an application for authorization of the noncurricular club.

211 (2) Students proposing a noncurricular club shall submit a written application for

authorization on a form approved by the school governing board no later than October 15 of each year.

(3) An application for authorization of a curricular club shall include:

(a) the recommended club name;

(b) a statement of the club's purpose, goals, and activities;

(c) a statement of the club's categorization, which shall be included in the parental consent required under Section 53A-11-1210, indicating all of the following that may apply:

(i) athletic;

(ii) business/economic;

(iii) agriculture;

(iv) art/music/performance;

(v) science;

(vi) gaming;

(vii) religious; and

(viii) other;

(d) the recommended meeting times, dates, and places; and

(e) the proposed club charter, constitution, or bylaws, which shall include at least:

(i) the rules of organization;

(ii) the election of officers;

(iii) objective membership criteria;

(iv) meeting rules of order;

(v) procedures for amending the rules; and

(vi) a statement that the club will comply with the provisions of this part and all other applicable laws, rules, or policies.

(4) (a) A school governing board may provide for approval of a noncurricular club name in an action separate from that relating to authorization of the club itself.

(b) A school governing board may require:

(i) that a noncurricular club name shall reasonably reflect the club's purpose, goals, and activities; and

(ii) that the noncurricular club name shall be a name that would not result in or imply a violation of this part.

Section 7. Section **53A-11-1206** is enacted to read:

53A-11-1206. Clubs -- Limitations and denials.

(1) A school shall limit or deny authorization or school building use to a club or require changes prior to granting authorization or school building use:

(a) as the school determines it to be necessary to:

(i) protect the physical, emotional, psychological, or moral well-being of students and faculty;

(ii) maintain order and discipline on school premises;

(iii) prevent a material and substantial interference with the orderly conduct of a school's educational activities;

(iv) protect the rights of parents or guardians and students;

(v) maintain the boundaries of socially appropriate behavior; or

(vi) ensure compliance with all applicable laws, rules, regulations, and policies; or

(b) whose proposed charter and proposed activities indicate students or advisors in club related activities would as a substantial, material, or significant part of their conduct or means of expression:

(i) encourage criminal or delinquent conduct;

(ii) promote bigotry;

(iii) involve human sexuality; or

(iv) involve any effort to engage in or conduct mental health therapy, counseling, or psychological services for which a license would be required under state law.

(2) A school governing board has the authority to determine whether any club meets the criteria of Subsection (1).

(3) A student's spontaneous expression of sentiments or opinions otherwise identified in Subsection 53A-13-302(1) is not prohibited.

Section 8. Section **53A-11-1207** is enacted to read:

53A-11-1207. Faculty oversight of authorized clubs.

(1) A school shall make faculty assignments for each authorized curricular and noncurricular club to provide oversight consistent with this part and the needs of the school to ensure that the methods of expression, religious practices, or other conduct of the students or advisors involved do not:

(a) unreasonably interfere with the ability of school officials to maintain order and discipline;

(b) unreasonably endanger or threaten the well-being of persons or property;

(c) violate concepts of civility or propriety appropriate to a school setting; or

(d) have as an intended effect the revealing of information identified in Subsection 53A-13-302(1).

(2) (a) A school employee assigned to provide oversight to a club may not be required to do so if the assignment would violate the conscience of the employee.

(b) The decision of the employee in accordance with Subsection (2)(a) is not subject to review nor may it be used as a basis for any negative evaluation of the employee.

(3) (a) A school shall annually assign faculty members as sponsors of curricular clubs.

(b) Faculty sponsors shall organize and direct the purpose and activities of a curricular club.

(4) (a) A school shall assign faculty members to serve as supervisors for authorized noncurricular clubs.

(b) A faculty supervisor shall provide oversight to ensure compliance with the approved club charter, constitution, or bylaws and with the provisions of this part and other applicable laws, rules, and policies.

(c) The assignment of a faculty supervisor does not constitute school sponsorship of the club.

(d) A faculty supervisor assigned to a religious club may not participate in the activities of the religious club, except to perform the supervisory role required by this section.

Section 9. Section **53A-11-1208** is enacted to read:

53A-11-1208. Use of school facilities by clubs.

(1) A school shall determine and assign school building use for curricular and noncurricular clubs consistent with the needs of the school.

(2) The following rules apply to curricular clubs:

(a) in assigning school building use, the administrator may give priority to curricular clubs over noncurricular clubs; and

(b) the school may provide financial or other support to curricular clubs.

(3) The following rules apply to noncurricular clubs:

(a) a preference or priority may not be given among noncurricular clubs;

(b) (i) a school shall only provide the space for noncurricular club meetings; and

(ii) a school may not spend public funds for noncurricular clubs;

(c) a school shall establish the noninstructional times during which noncurricular clubs may meet;

(d) a school may establish the places that noncurricular clubs may meet; and

(e) a school may set the number of hours noncurricular clubs may meet per month, provided that all noncurricular clubs shall be treated equally.

Section 10. Section **53A-11-1209** is enacted to read:

53A-11-1209. Club membership.

(1) A school shall require written parental or guardian consent for student participation in all curricular and noncurricular clubs at the school.

(2) Membership in curricular clubs is governed by the following rules:

(a) student membership in a curricular club is voluntary;

(b) (i) membership may be limited to students who are currently attending the sponsoring school or school district; and

(ii) members who attend a school other than the sponsoring school shall have, in addition to the consent required under Section 53A-11-1210, specific parental or guardian permission for membership in a curricular club at another school;

(c) (i) clubs may require that prospective members try out based on objective criteria outlined in the application materials; and

(ii) try-outs may not require activities that violate the provisions of this part and other applicable laws, rules, and policies;

(d) membership may not be limited on the basis of race, gender, ethnicity, national origin, or disability; and

(e) other rules as determined by the State Board of Education, school district, or school.

(3) Membership in noncurricular clubs is governed by the following rules:

(a) student membership in a noncurricular club is voluntary;

(b) membership shall be limited to students who are currently attending the school;

(c) (i) clubs may require that prospective members try out based on objective criteria

outlined in the application materials; and

(ii) try-outs may not require activities that violate the provisions of this part and other applicable laws, rules, and policies;

(d) membership may not be limited on the basis of race, gender, ethnicity, national origin, or disability;

(e) (i) attendance or participation in club meetings or activities is limited to members, except that nonschool persons may attend on occasion to make presentations if approved in advance by the school; and

(ii) nonschool persons may not direct, conduct, control, or regularly attend meetings or activities of clubs; and

(f) other rules as determined by the State Board of Education, school district, or school.

Section 11. Section **53A-11-1210** is enacted to read:

53A-11-1210. Parental consent.

(1) A school shall require written parental or guardian consent for student participation in all curricular and noncurricular clubs at the school.

(2) The consent described in Subsection (1) shall include an activity disclosure statement containing the following information:

(a) the specific name of the club;

(b) a statement of the club's categorization, which shall be obtained from the application for authorization of a club in accordance with the provisions of Section 53A-11-1204 or 53A-11-1205, indicating all of the following that may apply:

(i) athletic;

(ii) business/economic;

(iii) agriculture;

(iv) art/music/performance;

(v) science;

(vi) gaming;

(vii) religious; and

(viii) other;

(c) the maximum number of students involved;

(d) beginning and ending dates of the activity;

(e) a tentative schedule of the club activities with dates, times, and places specified if available;

(f) personal costs associated with the club, if any;

(g) the name of the school employee responsible for the club; and

(h) any additional information considered important for the students and parents to know.

(3) All completed forms shall be filed with the school's principal, the chief administrative officer of a charter school, or their designee.

Section 12. Section **53A-11-1211** is enacted to read:

53A-11-1211. Violations -- Investigations -- School responses.

(1) A school shall investigate any report or allegation that an authorized curricular or noncurricular club is:

(a) participating in activities beyond the scope of its charter, constitution, or bylaws; or

(b) in violation of a provision of this part or another applicable law, rule, regulation, or policy.

(2) After meeting with the faculty sponsor, faculty supervisor, or faculty monitor and the students involved, if a violation is substantiated, the school may do any of the following:

(a) allow the club's original charter, constitution, or bylaws to be modified to include the activities if they are in compliance with the provisions of this part and other applicable laws, rules, regulations, or policies;

(b) instruct the sponsor, supervisor, or monitor not to allow similar violations in the future;

(c) limit or suspend the club's authorization or school building use pending further corrective action as determined by the school; or

(d) terminate the club's authorization and dissolve the club.

(3) Any limitation on expression, practice, or conduct of any student, advisor, or guest in a meeting of a curricular or noncurricular club, or limitation on school building use, shall be by the least restrictive means necessary to satisfy the school's interests as identified in this part.

(4) A club that has been terminated in accordance with Subsection (2)(d) may not reapply for authorization until the following school year.

Section 13. Section **53A-11-1212** is enacted to read:

53A-11-1212. Appeals -- Procedures.

(1) A student directly affected by a decision made in accordance with the provisions of this part may appeal the decision by writing to a person designated by the school governing board.

(2) (a) Each completed application or complaint shall be approved, denied, or investigated within five school days.

(b) If an application or complaint is denied, written reasons for the denial or results of the investigation shall be stated and, if appropriate, suggested corrections shall be made to remedy the deficiency.

(3) Each student who is denied participation in a club or school building use shall be informed at the time of the denial of the factual or legal basis for the denial, and, if appropriate, how the basis for the denial could be corrected.

(4) (a) If denied, suspended, or terminated, a club, student desirous of participating or speaking, or a complaining parent or guardian, has ten school days from the date of the action to file a written appeal from the denial, suspension, or termination to a designee authorized by the school governing board.

(b) The designee shall issue a determination within five school days from receipt of the appeal, which decision is final and constitutes satisfaction of all administrative remedies unless the time for evaluation is extended by agreement of all parties.

Section 14. Section **53A-11-1213** is enacted to read:

53A-11-1213. Rulemaking -- State Board of Education -- School governing boards.

The State Board of Education may adopt additional rules and school governing boards may adopt additional rules or policies governing clubs that do not conflict with the provisions of this part.

Section 15. Section **53A-11-1214** is enacted to read:

53A-11-1214. Severability.

If any provision of this part or the application of any provision to any person or circumstance, is held invalid, the remainder of this part shall be given effect without the invalid provision or application.

Section 16. Section **53A-13-101.2** is amended to read:

53A-13-101.2. Waivers of participation.

(1) If a parent with legal custody or other legal guardian of a student, or a secondary student, determines that the student's participation in a portion of the curriculum or in an activity would require the student to affirm or deny a religious belief or right of conscience, or engage or refrain from engaging in a practice forbidden or required in the exercise of a religious right or right of conscience, the parent, guardian, or student may request:

(a) a waiver of the requirement to participate; or

(b) a reasonable alternative that requires reasonably equivalent performance by the student of the secular objectives of the curriculum or activity in question.

(2) The school shall promptly notify a student's parent or guardian if the student makes a request under Subsection (1).

(3) If a request is made under Subsection (1), the school shall:

(a) waive the participation requirement;

(b) provide a reasonable alternative to the requirement; or

(c) notify the requesting party that participation is required.

(4) The school shall ensure that the provisions of Subsection 53A-13-101.3(3) are met in connection with any required participation under Subsection (3)(c).

(5) A student's academic or citizenship performance may not be penalized by school officials for the exercise of a religious right or right of conscience in accordance with the provisions of this section.

~~[(6) (a) As a condition for participation in a student club or organization that meets on school premises, regardless of the organization's relationship to school curriculum, a local school district may require every student to obtain written permission from either a parent with legal custody or other legal guardian.]~~

~~[(b) If a local school district requires written permission under Subsection (a), that school district shall require written permission for:]~~

~~[(i) every club or organization that meets on school premises in that school district; and]~~

~~[(ii) every student participating in a club or organization described in Subsection (i).]~~

~~[(c) The local school district shall supply the permission form, and all completed forms shall be filed with the school's principal or the principal's designee.]~~

460 Section 17. **Repealer.**

461 This bill repeals:

462 Section **53A-3-419, Limitations regarding access for student clubs and**
463 **organizations.**

Fiscal Note**Public Education Club Amendments***24-Feb-06***Bill Number HB0393S01***11:18 AM*

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst