

**AUTHORIZATION OF CHARTER SCHOOLS BY  
HIGHER EDUCATION INSTITUTIONS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: J. Stuart Adams**

House Sponsor: Gregory H. Hughes

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**LONG TITLE**

**General Description:**

This bill allows a board of trustees of a higher education institution to authorize the establishment and operation of a charter school and specifies the responsibilities of a board of trustees that authorizes a charter school.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ subject to approval by the State Board of Education, allows a board of trustees of a higher education institution to enter into an agreement with certain individuals or entities to establish and operate a charter school;
- ▶ allows a fee to be charged for a board of trustees' costs of providing oversight and technical support to a charter school;
- ▶ specifies procedures for applying for authorization of a charter school by a board of trustees of a higher education institution;
- ▶ specifies the responsibilities of a board of trustees of a higher education institution that authorizes a charter school; and
- ▶ makes technical amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill coordinates with S.B. 69, College of Eastern Utah Affiliation with Utah State

30 University, by making substantive amendments.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **53A-1a-501.3**, as last amended by Laws of Utah 2007, Chapter 344

34 **53A-1a-501.6**, as last amended by Laws of Utah 2007, Chapter 344

35 **53A-1a-502.5**, as last amended by Laws of Utah 2009, Chapter 391

36 **53A-1a-508**, as last amended by Laws of Utah 2008, Chapter 382

37 **53A-1a-512**, as last amended by Laws of Utah 2009, Chapter 165

38 **53A-1a-520**, as enacted by Laws of Utah 2008, Chapter 319

39 **63I-4-102**, as last amended by Laws of Utah 2009, Chapter 294

40 ENACTS:

41 **53A-1a-521**, Utah Code Annotated 1953

42 **Utah Code Sections Affected by Coordination Clause:**

43 **53A-1a-501.3**, as last amended by Laws of Utah 2007, Chapter 344



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

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

47 **53A-1a-501.3. Definitions.**

48 As used in this part:

49 (1) "Asset" means property of all kinds, real and personal, tangible and intangible, and

50 includes:

51 (a) cash;

52 (b) stock or other investments;

53 (c) real property;

54 (d) equipment and supplies;

55 (e) an ownership interest;

56 (f) a license;

57 (g) a cause of action; and

- 58 (h) any similar property.
- 59 (2) "Board of trustees of a higher education institution" or "board of trustees" means:
- 60 (a) the board of trustees of:
- 61 (i) the University of Utah;
- 62 (ii) Utah State University;
- 63 (iii) Weber State University;
- 64 (iv) Southern Utah University;
- 65 (v) Snow College;
- 66 (vi) Dixie State College of Utah;
- 67 (vii) the College of Eastern Utah;
- 68 (viii) Utah Valley University; or
- 69 (ix) Salt Lake Community College; or
- 70 (b) the campus board of directors of a college campus within the Utah College of

71 Applied Technology.

72 [~~2~~] (3) "Chartering entity" means the entity that authorizes the establishment of a  
73 charter school.

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

75 **53A-1a-501.6. Power and duties of State Charter School Board.**

76 (1) The State Charter School Board shall:

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

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

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

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

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

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

87 (iii) directing charter schools and persons seeking to establish charter schools to

88 sources of private funding and support;

89 (iv) reviewing and evaluating proposals to establish charter schools for the purpose of

90 supporting and strengthening proposals before an application for charter school authorization

91 is submitted to [~~the State Charter School Board or a local school board~~] a chartering entity;

92 and

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

94 (e) provide technical support, as requested, to a [~~local school board~~] chartering entity

95 relating to charter schools;

96 (f) make recommendations on legislation and rules pertaining to charter schools to the

97 Legislature and State Board of Education, respectively; and

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

99 schools.

100 (2) The State Charter School Board may:

101 (a) contract;

102 (b) sue and be sued; and

103 (c) (i) at the discretion of the charter school, provide administrative services to, or

104 perform other school functions for, charter schools authorized by the State Charter School

105 Board; and

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

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

108 **53A-1a-502.5. Charter schools -- Maximum authorized students.**

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

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

112 (b) beginning in the 2009-10 school year, an annual increase in charter school

113 enrollment capacity equal to 1.4% of total school district enrollment as of October 1 of the

114 previous school year.

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

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

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

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

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

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

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

130 **53A-1a-508. Content of a charter -- Modification of charter.**

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

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

135 (3) The charter shall include:

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

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

139 (c) the governance structure of the school;

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

142 (e) the mission and education goals of the school, the curriculum offered, and the  
143 methods of assessing whether students are meeting educational goals, to include at a minimum  
144 participation in the Utah Performance Assessment System for Students under Chapter 1, Part  
145 6, Achievement Tests;

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

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

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

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

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

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

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

158 (m) the qualifications to be required of the teachers, including the requirement of a  
159 criminal background check;

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

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

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

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

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

167 (i) employee evaluation; and

168 (ii) employment of relatives.

169 (4) A charter may be modified by mutual agreement of the [board] chartering entity

170 and the governing body of the school.

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

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

176 **53A-1a-512. Employees of charter schools.**

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

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

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

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

184 (b) Chapter 10, Educator Evaluation; and

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

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

188 (i) are licensed; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

222 or

223 (ii) under any other program.

224 (9) (a) A charter school that made an election of nonparticipation as an employer for  
225 retirement programs under Title 49, Chapter 12, Public Employees' Contributory Retirement



226 Act and under Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act, may  
227 subsequently make an irrevocable retraction of the election of nonparticipation.

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

229 (i) shall be documented by a resolution adopted by the governing body of the charter  
230 school;

231 (ii) is a one-time election;

232 (iii) is irrevocable; and

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

235 (10) The governing body of a charter school shall ensure that, prior to the beginning of  
236 each school year, each of its employees signs a document acknowledging that the employee:

237 (a) has received:

238 (i) the disclosure required under Section 63A-4-204.5 if the charter school participates  
239 in the Risk Management Fund; or

240 (ii) written disclosure similar to the disclosure required under Section 63A-4-204.5 if  
241 the charter school does not participate in the Risk Management Fund; and

242 (b) understands the legal liability protection provided to the employee and what is not  
243 covered, as explained in the disclosure.

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

245 **53A-1a-520. Accountability -- Rules.**

246 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act and  
247 after consultation with [~~the State Charter School Board~~] chartering entities, the State Board of  
248 Education shall make rules that:

249 (1) require a charter school to develop an accountability plan, approved by [~~the State  
250 Charter School Board~~] its chartering entity, during its first year of operation;

251 (2) require a [~~charter school authorizer~~] chartering entity to:

252 (a) visit a charter school at least once during:

253 (i) its first year of operation; and

- 254 (ii) the review period described under Subsection (3); and
- 255 (b) provide written reports to its charter schools after the visits; and
- 256 (3) establish a review process that is required of a charter school once every five years
- 257 by its ~~[authorizer]~~ chartering entity.

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

259 **53A-1a-521. Authorization of a charter school by a board of trustees of a higher**  
260 **education institution.**

261 (1) Subject to the approval of the State Board of Education and except as provided in  
262 Subsection (7), an individual or entity identified in Section 53A-1a-504 may enter into an  
263 agreement with a board of trustees of a higher education institution to establish and operate a  
264 charter school.

265 (2) (a) An individual or entity identified in Section 53A-1a-504 applying for  
266 authorization from a board of trustees of a higher education institution to establish and operate  
267 a charter school shall provide a copy of the application to the State Charter School Board and  
268 the local school board of the school district in which the proposed charter school shall be  
269 located either before or at the same time it files its application with the board of trustees.

270 (b) The State Charter School Board and the local school board may review the  
271 application and may offer suggestions or recommendations to the applicant or the board of  
272 trustees of a higher education institution prior to its acting on the application.

273 (c) The board of trustees of a higher education institution shall give due consideration  
274 to suggestions or recommendations made by the State Charter School Board or the local  
275 school board under Subsection (2)(b).

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

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

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

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

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

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

291 (c) (i) The school's charter may include a provision that the charter school pay an  
292 annual fee for the board of trustees' costs in providing oversight of, and technical support to,  
293 the charter school in accordance with Subsection (6).

294 (ii) An annual fee described in Subsection (5)(c)(i):

295 (A) may not exceed the product of:

296 (I) 1% of the value of the weighted pupil unit as established in statute for the current  
297 fiscal year; and

298 (II) the October 1 enrollment count of the charter school for the current fiscal year;

299 (B) shall be paid to the board of trustees' higher education institution; and

300 (C) shall be expended as directed by the board of trustees.

301 (6) A board of trustees of a higher education institution shall:

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

304 (b) monitor charter schools authorized by the board of trustees for compliance with  
305 federal and state laws, rules, and regulations; and

306 (c) provide technical support to charter schools authorized by the board of trustees to  
307 assist them in understanding and performing their charter obligations.

308 (7) (a) In addition to complying with the requirements of this section, a campus board  
309 of directors of a college campus within the Utah College of Applied Technology shall obtain

310 the approval of the Utah College of Applied Technology Board of Trustees before entering  
311 into an agreement to establish and operate a charter school.

312 (b) The Utah College of Applied Technology Board of Trustees shall establish a policy  
313 for granting approval to a campus board of directors to enter into an agreement to establish  
314 and operate a charter school.

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

316 **63I-4-102. Definitions.**

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

318 (b) "Activity" includes to:

319 (i) manufacture a good or service;

320 (ii) process a good or service;

321 (iii) sell a good or service;

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

323 (v) rent a good or service;

324 (vi) lease a good or service;

325 (vii) deliver a good or service;

326 (viii) distribute a good or service; or

327 (ix) advertise a good or service.

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

329 (i) the state; or

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

332 (b) "Agency" does not include:

333 (i) the Legislature;

334 (ii) an entity or agency of the Legislature;

335 (iii) the state auditor;

336 (iv) the state treasurer;

337 (v) the Office of the Attorney General;

- 338 (vi) the Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
- 339 (vii) the Heber Valley Railroad Authority [~~created in Title 9, Chapter 3, Part 3, Heber~~
- 340 ~~Valley Historic Railroad Authority~~];
- 341 (viii) the Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah
- 342 Science Center Authority;
- 343 (ix) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing
- 344 Corporation Act;
- 345 (x) the Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State
- 346 Fair Corporation Act;
- 347 (xi) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'
- 348 Compensation Fund;
- 349 (xii) the Utah State Retirement Office created in Title 49, Chapter 11, Utah State
- 350 Retirement Systems Administration;
- 351 (xiii) a charter school chartered by the State Charter School Board or a board of
- 352 trustees of a higher education institution under Title 53A, Chapter 1a, Part 5, The Utah
- 353 Charter Schools Act;
- 354 (xiv) the Utah Schools for the Deaf and the Blind created in Title 53A, Chapter 25b,
- 355 Utah Schools for the Deaf and the Blind;
- 356 (xv) an institution of higher education as defined in Section 53B-3-102;
- 357 (xvi) the School and Institutional Trust Lands Administration created in Title 53C,
- 358 Chapter 1, Part 2, School and Institutional Trust Lands Administration;
- 359 (xvii) the Utah Communications Agency Network created in Title 63C, Chapter 7,
- 360 Utah Communications Agency Network Act; or
- 361 (xviii) the Utah Capital Investment Corporation created in Title 63M, Chapter 1, Part
- 362 12, Utah Venture Capital Enhancement Act.
- 363 (3) "Agency head" means the chief administrative officer of an agency.
- 364 (4) "Board" means the Privatization Policy Board created in Section 63I-4-201.
- 365 (5) "Commercial activity" means to engage in an activity that can be obtained in

366 whole or in part from a private enterprise.

367 (6) "Local entity" means:

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

369 (i) county;

370 (ii) city;

371 (iii) town;

372 (iv) local school district;

373 (v) local district; or

374 (vi) special service district;

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

377 (c) an entity created by an interlocal cooperative agreement under Title 11, Chapter  
378 13, Interlocal Cooperation Act, between two or more entities described in this Subsection (6).

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

380 (a) manufactures a good or service;

381 (b) processes a good or service;

382 (c) sells a good or service;

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

384 (e) rents a good or service;

385 (f) leases a good or service;

386 (g) delivers a good or service;

387 (h) distributes a good or service; or

388 (i) advertises a good or service.

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

391 (a) contract;

392 (b) transfer of property; or

393 (c) another arrangement.

394           Section 9. **Coordinating S.B. 55 with S.B. 69 -- Modifying substantive language.**  
395           If this S.B. 55 and S.B. 69, College of Eastern Utah Affiliation with Utah State  
396 University, both pass, it is the intent of the Legislature that the Office of Legislative Research  
397 and General Counsel in preparing the database for publication delete the subsection  
398 referencing "the College of Eastern Utah" in Subsection 53A-1a-501.3(2) in S.B. 55 and  
399 renumber the remaining subsections accordingly.