



CHARTER SCHOOLS AND SENATE BILL 63

The South Dakota Department of Education has introduced SB 63. The legislation has several components, all of which aim to allow the creation of charter schools in South Dakota. This issue brief provides an overview of charter schools, provides a summary of South Dakota's legislation and details other implications of the proposed law.

CHARTER SCHOOLS: A BRIEF OVERVIEW

Charter schools are semi-independent, publicly funded schools that operate under a written contract. In general, charters are freed from rules and regulations affecting traditional public schools, provided they accomplish the goals established by the contract. According to the U.S. Department of Education, the charter schools replace "rules-based governance with performance-based accountability."ⁱ

Minnesota passed the nation's first charter school law in 1991. Since then, 40 states and the District of Columbia have passed laws enabling charter schools to operate.ⁱⁱ The alternatively structured schools gained momentum with the passage of No Child Left Behind and its school choice components, which created several categories of federal incentives to assist with the costs of starting charter schools.

In the majority of states, the local school board must approve a charter. However, some states have cast aside the autonomy of local public school districts to allow multiple authorizers. For example, Minnesota allows local school boards, intermediate school boards, cooperatives, nonprofits, public or private colleges to create a publicly funded school to serve elementary and high school students.

Currently, more than 4,600 charter schools serve more than 1.4 million students. Nation wide, 819 entities have authorized charter schools. Charter schools are often viewed as circumventing local school boards, but local school districts are the most active participants in the creation of charter schools. Nationwide, nearly 90 percent of all authorizers have been local school boards.ⁱⁱⁱ

THE EFFECTIVENESS OF CHARTER SCHOOLS

Charter schools have been decried as the profiteering, hailed as much-needed competition and elevated as the last-best-chance to reinvent struggling schools. Opinions aside, charter school advocates have historically professed to a single, clear mission: to improve student outcomes. However, research has yet to show a conclusive academic argument for charters.

For example, a recent Stanford University study of charter schools in 16 states found that just 17 percent of charters perform better than public schools and 37 percent actually perform worse. According to Stanford researchers, charters were more effective than public schools in fostering achievement gains for students living in poverty.^{iv} The National Center for Education Statistics offered similar conclusions – no significant improvement from public school counterparts - from a study charter school student scores on national assessment tests, though the study did say that charters authorized by local school boards do perform better than charters authorized by other agents.^v

Research on charters is still developing, and most studies caution drawing broad conclusions from the findings. Despite the absence of conclusive data, the number of charter schools continues to increase. Authorizers, including public school boards, continue to be lured by the prospect of overhauling school culture, serving special student populations and testing innovative approaches that may not be ready to implement district-wide.

ASBSD'S POSITION ON CHARTER SCHOOLS

Anticipating the eventual legislative discussion on charter schools and other school choice initiatives, school board delegates adopted a standing position on school choice in 2007. The standing position does not direct ASBSD to support charter school legislation, but instead positions ASBSD to advocate on behalf of certain elements that must be present in charter school laws.

ASBSD's standing position on school choice states [emphasis added]:

ASBSD supports school choice with accountability. South Dakota's parents and taxpayers deserve transparency in the use of public funds. Individuals or entities receiving tax dollars to support elementary and secondary education – including funds provided to charter schools or to individuals through vouchers or tax credits - should meet the same legislatively established standards and accountability requirements as public schools.

Education entities receiving public funds should uphold the promise of public education, ensuring equal access to a quality public education without charge for tuition. Public funds should support schools that operate as nonsectarian entities open to all students regardless of ethnicity, national origin, gender or disability. To ensure the safety of students and staff, publicly funded education entities must maintain appropriate health and safety standards.

South Dakota's public education system, through South Dakota's open enrollment laws, provides parents and students the choice to attend any of South Dakota's high quality public schools. Local school boards have the responsibility to respond to the needs of their community by authorizing innovative programs and initiatives designed to enhance student outcomes. Charter schools, whether traditionally structured or technologically driven, should only be established under the authority of local school boards.

SENATE BILL 63

During the 2008 and 2009 legislative sessions, lawmakers introduced legislation to allow for the authorization of charter schools. ASBSD opposed those efforts largely because the legislation allowed entities other than local school boards to issue charter school contracts, which would have circumvented the will of locally elected school boards.

Senate Bill 63 is a different piece of legislation. It's broken into two main parts, each detailed below. ASBSD is neither supporting nor opposing Senate Bill 63. Our duty to our membership is to provide accurate information and to represent the positions and resolutions adopted by school board members during the annual delegate assembly.

PART ONE: SOUTH DAKOTA'S 'RACE TO THE TOP' APPLICATION

The 10-page piece of legislation devotes about one page to South Dakota's 'Race to the Top' application (Sections 26 – 33). 'Race to the Top' is a federal competitive grant that provides financial incentive for states to adopt education reform policies and seek innovative ways to improve education.

South Dakota's application focuses on the creation of a charter school that will give enrollment priority to American Indian students. The school, which will also be a residential facility, will be chartered by the State Board of Education and likely serve grades 9 through 12 and provide two additional years of education beyond high school.

Under normal circumstances, ASBSD would oppose legislation granting the State Board of Education authority to establish a charter school. However, three important facts override our opposition.

First, the legislation is very specific to the Race to the Top competition, down to the citation of the federal authorizing law. Without a successful application, the school doesn't open. Second, the state's intention is to create a residential facility with student dormitories and provide classes beyond high school – a design that falls well outside of the K-12 structure. Finally, the legislation does not preclude a K-12 district from applying for to operate the newly created residential school.

PART TWO: CHARTERS ALLOWED UNDER THE CONTROL OF SCHOOL BOARDS

The lengthy piece of legislation is mostly devoted to providing local school boards the option of creating a charter school. Sections of particular interest are outlined below.

- SECTION 3: Makes it clear that the sponsor of a charter school can only be the school board of the district in which the charter school will reside.
- SECTION 2: Stipulates that charters schools must not be sectarian, religious, home-based or for-profit. Also says that existing non-public schools can't be converted to a charter school.
- SECTION 4: Gives charter schools complete autonomy from state laws and DOE rules relating to public schools, except those spelled out in the legislation. Also states that charters must: comply with health, safety, civil rights and insurance requirements; must measure student progress; must submit data to DOE; must keep financial records; must be subject to audits; and must provide for special education per state and federal law.
- SECTION 5: Personnel must undergo criminal background checks.
- SECTION 6: Charters must keep employee resumes on file and provide for the parental inspection of the resumes.
- SECTION 8: States that an initial contract with a charter is good for five years, but may be revoked at any time if the conditions of the charter are not being met.
- SECTIONS 12 & 13: Outlines enrollment conditions, including fair admission practices. Also states that charters can't limit admission based on academic potential, behavior records, or other discriminatory practices.
- SECTION 19: Says charters are designed to receive federal and state dollars, but grants local school boards authority to devote local resources.
- SECTION 21: Says that employee contracts can not be collectively bargained.
- SECTION 22: Eliminates continuing contract for employees.

THE LAW VS. ASBSD POSITION: A COMPARISON

Senate Bill 63 meets the standards established under the membership-approved standing position on school choice. While ASBSD will not actively support the bill, we do see areas of the legislation that would need to be changed in order to ensure maximum governance flexibility for school boards.

- SECTION 3: This section provides that those wanting to start a charter must apply to the local school board. However, it also states that if the board rejects the application, the board must provide technical assistance to improve the application. ASBSD believes that this section must be strengthened to clarify that the school board need no provide a continuous loop of technical assistance.
- SECTION 8: The law allows local school boards to revoke charters for schools that are not performing according to contract. While revocation should be an option, local school boards should have a range of options to drive improvements in charter schools that may not be performing according to the charter contract.

SB 63 VS. OTHER CHARTER LAWS

Those behind the charter school movement can be loosely characterized into two groups - one side tends to be against public schools, favoring publicly funded private education; the other believes in, and wants to improve, public education.

As stated previously in this brief, local school boards are the most frequent authorizers of charter schools. Many school boards view charter schools as a way to improve student achievement and empower local governance by escaping ever-increasing state regulations. However, those against public schools have pushed for greater influence by the private sector and sought to create alternatives to public schools.

Advocates for public school alternatives have created organizations to advance their cause. One group, the National Alliance for Public Charter Schools, is particularly active in putting forth "model" legislation that pushes charter schools beyond the authority of local school boards. The organization's "model" charter authorizing law is detailed below in comparison to SB 63.

SENATE BILL 63 COMPARED TO "MODEL" CHARTER SCHOOL LAW	
"MODEL" CHARTER LAW COMPONENT ^{vi}	SENATE BILL 63
No caps on the growth of public charter schools in the state	- same as "model law" -
Wide variety of public charters allowed, including new start-ups and school conversions	Allows new starts ups and conversions of existing public schools
Multiple authorizers, including non-local school board authorizers, private and non-profits	Only local school boards may authorize
Authorizer accountability system that ensures authorizers are held accountable to a state-level entity	The local school board is the authorizer and is accountable to the local citizenry
Transparent charter application	- same as "model law" -
Charter school monitoring and data collection	- same as "model law" -
Process for renewal, non-renewal and closure	- same as "model law" -
Performance-based contracts for charter school operators	- same as "model law" -
Fiscally and legally independent charter school boards	Charter school advisory councils that make recommendations to local school boards
Clear student enrollment and lottery procedures	Clear enrollment procedures; if requests exceed enrollment, local board designs equitable assignment procedure
Exceptions from many state laws	- same as "model law" -
Automatic collective bargaining exception	- same as "model law" -
Allows for multi-school charter contracts and multi-charter boards	Determination left to the local school board
Extra-curricular and interscholastic activities access	Nothing prohibiting access
Clear identification of special education responsibilities	- same as "model law" -
Equitable operational funding and equal access to all state and federal categorical funding	Students are counted in district's fall enrollment
Equitable access to capital funding, including per-pupil facility allowance equal to the statewide average of per-pupil capital costs	Local board may contribute funding, but no facility allowance included
Employee participation in relevant retirement systems	Employees participate in South Dakota Retirement System

ⁱ U.S. Department of Education. Retrieved January 5, 2010, from <http://www.ed.gov/programs/charter/index.html>

ⁱⁱ Education Commission of the States. Retrieved January 5, 2010, from <http://mb2.ecs.org/reports/Report.aspx?id=81>

ⁱⁱⁱ National Association of Charter School Authorizers. "08 Authorizing Report". 2008. Retrieved January 5, 2010, from <http://www.qualitycharters.org/i4a/pages/index.cfm?pageid=3914>

^{iv} Stanford University. "Multiple Choice: Charter School Performance in 16 States." 2009. Retrieved January 5, 2010 from http://credo.stanford.edu/reports/MULTIPLE_CHOICE_CREDO.pdf

^v National Center for Education Statistics. The Nation's Report Card: American's Charter Schools. 2005. Retrieved January 5, 2010, from <http://nces.ed.gov/nationsreportcard/pdf/studies/2005456.pdf>

^{vi} National Alliance for Public Charter Schools. A New Model Law for Supporting the Growth of High-Quality Public Charter Schools. Retrieved January 15, 2010, from www.publiccharters.org.