

124D.10 CHARTER SCHOOLS.

Subdivision 1. **Purposes.** (a) The purpose of this section is to:

- (1) improve pupil learning;
- (2) increase learning opportunities for pupils;
- (3) encourage the use of different and innovative teaching methods;
- (4) require the measurement of learning outcomes and create different and innovative forms of measuring outcomes;
- (5) establish new forms of accountability for schools; or
- (6) create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.

(b) This section does not provide a means to keep open a school that otherwise would be closed. Applicants in these circumstances bear the burden of proving that conversion to a charter school fulfills a purpose specified in this subdivision, independent of the school's closing.

Subd. 2. **Applicability.** This section applies only to charter schools formed and operated under this section.

Subd. 2a. **Charter School Advisory Council.** (a) A Charter School Advisory Council is established under section 15.059 except that the term for each council member shall be three years. The advisory council is composed of seven members from throughout the state who have demonstrated experience with or interest in charter schools. The members of the council shall be appointed by the commissioner. The advisory council shall bring to the attention of the commissioner any matters related to charter schools that the council deems necessary and shall:

- (1) encourage school boards to make full use of charter school opportunities;
- (2) encourage the creation of innovative schools;
- (3) provide leadership and support for charter school sponsors to increase the innovation in and the effectiveness, accountability, and fiscal soundness of charter schools;
- (4) serve an ombudsman function in facilitating the operations of new and existing charter schools;
- (5) promote timely financial management training for newly elected members of a charter school board of directors and ongoing training for other members of a charter school board of directors; and

(6) facilitate compliance with auditing and other reporting requirements. The advisory council shall refer all its proposals to the commissioner who shall provide time for reports from the council.

(b) The Charter School Advisory Council under this subdivision expires June 30, 2007.

Subd. 3. **Sponsor.** (a) A school board; intermediate school district school board; education district organized under sections 123A.15 to 123A.19; charitable organization under section 501(c)(3) of the Internal Revenue Code of 1986 that is a member of the Minnesota Council of Nonprofits or the Minnesota Council on Foundations, registered with the attorney general's office, and reports an end-of-year fund balance of at least \$2,000,000; Minnesota private college that grants two- or four-year degrees and is registered with the Minnesota Office of Higher Education under chapter 136A; community college, state university, or technical college, governed by the Board of Trustees of the Minnesota State Colleges and Universities; or the University of Minnesota may sponsor one or more charter schools.

(b) A nonprofit corporation subject to chapter 317A, described in section 317A.905, and exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code of 1986, may sponsor one or more charter schools if the charter school has operated for at least three years under a different sponsor and if the nonprofit corporation has existed for at least 25 years.

Subd. 4. **Formation of school.** (a) A sponsor may authorize one or more licensed teachers under section 122A.18, subdivision 1, to operate a charter school subject to approval by the commissioner. A board must vote on charter school application for sponsorship no later than 90 days after receiving the application. The school must be organized and operated as a cooperative under chapter 308A or nonprofit corporation under chapter 317A and the provisions under the applicable chapter shall apply to the school except as provided in this section. Notwithstanding sections 465.717 and 465.719, a school district may create a corporation for the purpose of creating a charter school.

(b) Before the operators may form and operate a school, the sponsor must file an affidavit with the commissioner stating its intent to authorize a charter school. The affidavit must state the terms and conditions under which the sponsor would authorize a charter school and how the sponsor intends to oversee the fiscal and student performance of the charter school and to comply with the terms of the written contract between the sponsor and the charter school board of directors under subdivision 6. The commissioner must approve or disapprove the sponsor's proposed authorization within 90 days of receipt of the affidavit. Failure to obtain commissioner approval precludes a sponsor from authorizing the charter school that was the subject of the affidavit.

(c) The operators authorized to organize and operate a school, before entering into a contract or other agreement for professional or other services, goods, or facilities, must incorporate as a cooperative under chapter 308A or as a nonprofit corporation under chapter 317A and must establish a board of directors composed of at least five members until a timely election for members of the charter school board of directors is held according to the school's articles and bylaws. A charter school board of directors must be composed of at least five members. Any staff members who are employed at the school, including teachers providing instruction under a contract with a cooperative, and all parents of children enrolled in the school may participate in the election for members of the school's board of directors. Licensed teachers employed at the school, including teachers providing instruction under a contract with a cooperative, must be a majority of the members of the board of directors before the school completes its third year of operation, unless the commissioner waives the requirement for a majority of licensed teachers on the board. Board of director meetings must comply with chapter 13D.

(d) The granting or renewal of a charter by a sponsoring entity must not be conditioned upon the bargaining unit status of the employees of the school.

(e) A sponsor may authorize the operators of a charter school to expand the operation of the charter school to additional sites or to add additional grades at the school beyond those described in the sponsor's application as approved by the commissioner only after submitting a supplemental application to the commissioner in a form and manner prescribed by the commissioner. The supplemental application must provide evidence that:

- (1) the expansion of the charter school is supported by need and projected enrollment;
- (2) the charter school is fiscally sound;
- (3) the sponsor supports the expansion; and
- (4) the building of the additional site meets all health and safety requirements to be eligible for lease aid.

(f) The commissioner annually must provide timely financial management training to newly elected members of a charter school board of directors and ongoing training to other members of a charter school board of directors. Training must address ways to:

- (1) proactively assess opportunities for a charter school to maximize all available revenue sources;
- (2) establish and maintain complete, auditable records for the charter school;
- (3) establish proper filing techniques;

(4) document formal actions of the charter school, including meetings of the charter school board of directors;

(5) properly manage and retain charter school and student records;

(6) comply with state and federal payroll record-keeping requirements; and

(7) address other similar factors that facilitate establishing and maintaining complete records on the charter school's operations.

Subd. 4a. **Conflict of interest.** (a) A member of a charter school board of directors is prohibited from serving as a member of the board of directors or as an employee or agent of or a contractor with a for-profit entity with whom the charter school contracts, directly or indirectly, for professional services, goods, or facilities. A violation of this prohibition renders a contract voidable at the option of the commissioner. A member of a charter school board of directors who violates this prohibition shall be individually liable to the charter school for any damage caused by the violation.

(b) An individual may serve as a member of the board of directors if no conflict of interest under paragraph (a) exists.

(c) A member of a charter school board of directors that serves as a member of the board of directors or as an employee or agent of or a contractor with a nonprofit entity with whom the charter school contracts, directly or indirectly, for professional services, goods, or facilities, must disclose all potential conflicts to the commissioner.

(d) The conflict of interest provisions under this subdivision do not apply to compensation paid to a teacher employed by the charter school who also serves as a member of the board of directors.

(e) The conflict of interest provisions under this subdivision do not apply to a teacher who provides services to a charter school through a cooperative formed under chapter 308A when the teacher also serves on the charter school board of directors.

Subd. 5. **Conversion of existing schools.** A board may convert one or more of its existing schools to charter schools under this section if 60 percent of the full-time teachers at the school sign a petition seeking conversion. The conversion must occur at the beginning of an academic year.

Subd. 6. **Contract.** The sponsor's authorization for a charter school must be in the form of a written contract signed by the sponsor and the board of directors of the charter school. The contract must be completed within 90 days of the commissioner's approval of the sponsor's

proposed authorization. The contract for a charter school must be in writing and contain at least the following:

- (1) a description of a program that carries out one or more of the purposes in subdivision 1;
- (2) specific outcomes pupils are to achieve under subdivision 10;
- (3) admission policies and procedures;
- (4) management and administration of the school;
- (5) requirements and procedures for program and financial audits;
- (6) how the school will comply with subdivisions 8, 13, 16, and 23;
- (7) assumption of liability by the charter school;
- (8) types and amounts of insurance coverage to be obtained by the charter school;
- (9) the term of the contract, which may be up to three years;

(10) if the board of directors or the operators of the charter school provide special instruction and services for children with a disability under sections 125A.03 to 125A.24, and 125A.65, a description of the financial parameters within which the charter school will operate to provide the special instruction and services to children with a disability; and

(11) the process and criteria the sponsor intends to use to monitor and evaluate the fiscal and student performance of the charter school, consistent with subdivision 15.

Subd. 6a. **Audit report.** The charter school must submit an audit report to the commissioner by December 31 each year. The charter school, with the assistance of the auditor conducting the audit, must include with the report a copy of all charter school agreements for corporate management services. If the entity that provides the professional services to the charter school is exempt from taxation under section 501 of the Internal Revenue Code of 1986, that entity must file with the commissioner by February 15 a copy of the annual return required under section 6033 of the Internal Revenue Code of 1986. If the commissioner receives as part of the audit report a management letter indicating that a material weakness exists in the financial reporting systems of a charter school, the charter school must submit a written report to the commissioner explaining how the material weakness will be resolved. Upon the request of an individual, the charter school must make available in a timely fashion the minutes of meetings of members, the board of directors, and committees having any of the authority of the board of directors, and statements showing the financial result of all operations and transactions affecting income and surplus during the school's last annual accounting period and a balance sheet containing a summary of its assets and liabilities as of the closing date of the accounting period.

Subd. 7. **Public status; exemption from statutes and rules.** A charter school is a public school and is part of the state's system of public education. Except as provided in this section, a charter school is exempt from all statutes and rules applicable to a school, a board, or a district, although it may elect to comply with one or more provisions of statutes or rules.

Subd. 8. **State and local requirements.** (a) A charter school shall meet all applicable state and local health and safety requirements.

(b) A school sponsored by a school board may be located in any district, unless the school board of the district of the proposed location disapproves by written resolution.

(c) A charter school must be nonsectarian in its programs, admission policies, employment practices, and all other operations. A sponsor may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or a religious institution.

(d) Charter schools must not be used as a method of providing education or generating revenue for students who are being home-schooled.

(e) The primary focus of a charter school must be to provide a comprehensive program of instruction for at least one grade or age group from five through 18 years of age. Instruction may be provided to people younger than five years and older than 18 years of age.

(f) A charter school may not charge tuition.

(g) A charter school is subject to and must comply with chapter 363A and section 121A.04.

(h) A charter school is subject to and must comply with the Pupil Fair Dismissal Act, sections 121A.40 to 121A.56, and the Minnesota Public School Fee Law, sections 123B.34 to 123B.39.

(i) A charter school is subject to the same financial audits, audit procedures, and audit requirements as a district. Audits must be conducted in compliance with generally accepted governmental auditing standards, the Federal Single Audit Act, if applicable, and section 6.65. A charter school is subject to and must comply with sections 15.054; 118A.01; 118A.02; 118A.03; 118A.04; 118A.05; 118A.06; 123B.52, subdivision 5; 471.38; 471.391; 471.392; 471.425; 471.87; 471.88, subdivisions 1, 2, 3, 4, 5, 6, 12, 13, and 15; 471.881; and 471.89. The audit must comply with the requirements of sections 123B.75 to 123B.83, except to the extent deviations are necessary because of the program at the school. Deviations must be approved by the commissioner. The Department of Education, state auditor, or legislative auditor may conduct financial, program, or compliance audits. A charter school determined to be in statutory operating debt under sections 123B.81 to 123B.83 must submit a plan under section 123B.81, subdivision 4.

(j) A charter school is a district for the purposes of tort liability under chapter 466.

(k) A charter school must comply with sections 13.32; 120A.22, subdivision 7; 121A.75; and 260B.171, subdivisions 3 and 5.

(l) A charter school is subject to the Pledge of Allegiance requirement under section 121A.11, subdivision 3.

Subd. 9. Admission requirements. A charter school may limit admission to:

(1) pupils within an age group or grade level;

(2) people who are eligible to participate in the graduation incentives program under section 124D.68; or

(3) residents of a specific geographic area where the percentage of the population of non-Caucasian people of that area is greater than the percentage of the non-Caucasian population in the congressional district in which the geographic area is located, and as long as the school reflects the racial and ethnic diversity of the specific area.

A charter school shall enroll an eligible pupil who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, pupils must be accepted by lot. If a charter school is the only school located in a town serving pupils within a particular grade level, then pupils that are residents of the town must be given preference for enrollment before accepting pupils by lot. If a pupil lives within two miles of a charter school and the next closest public school is more than five miles away, the charter school must give those pupils preference for enrollment before accepting other pupils by lot.

A charter school shall give preference for enrollment to a sibling of an enrolled pupil and to a foster child of that pupil's parents before accepting other pupils by lot.

A charter school may not limit admission to pupils on the basis of intellectual ability, measures of achievement or aptitude, or athletic ability.

Subd. 10. Pupil performance. A charter school must design its programs to at least meet the outcomes adopted by the commissioner for public school students. In the absence of the commissioner's requirements, the school must meet the outcomes contained in the contract with the sponsor. The achievement levels of the outcomes contained in the contract may exceed the achievement levels of any outcomes adopted by the commissioner for public school students.

Subd. 11. Employment and other operating matters. A charter school must employ or contract with necessary teachers, as defined by section 122A.15, subdivision 1, who hold valid licenses to perform the particular service for which they are employed in the school. The charter school's state aid may be reduced under section 127A.42 if the school employs a teacher who is not appropriately licensed or approved by the board of teaching. The school may employ

necessary employees who are not required to hold teaching licenses to perform duties other than teaching and may contract for other services. The school may discharge teachers and nonlicensed employees. A person, without holding a valid administrator's license, may perform administrative, supervisory, or instructional leadership duties.

The board of directors also shall decide matters related to the operation of the school, including budgeting, curriculum and operating procedures.

Subd. 12. **Pupils with a disability.** A charter school must comply with sections 125A.02, 125A.03 to 125A.24, and 125A.65 and rules relating to the education of pupils with a disability as though it were a district.

Subd. 13. **Length of school year.** A charter school must provide instruction each year for at least the number of days required by section 120A.41. It may provide instruction throughout the year according to sections 124D.12 to 124D.127 or 124D.128.

Subd. 14. **Annual public reports.** A charter school must report at least annually to its sponsor and the commissioner the information required by the sponsor or the commissioner. The reports are public data under chapter 13.

Subd. 15. **Review and comment.** (a) The department must review and comment on the evaluation, by the sponsor, of the performance of a charter school before the charter school's contract is renewed for another contract term. The sponsor must submit to the commissioner timely information for the review and comment.

(b) A sponsor shall monitor and evaluate the fiscal and student performance of the school, and may for this purpose annually assess a charter school: (1) in its first, second, or third year of operation up to \$30 per student up to a maximum of \$10,000; and (2) in its fourth or a subsequent year of operation up to \$10 per student up to a maximum of \$3,500.

Subd. 16. **Transportation.** (a) A charter school after its first fiscal year of operation by March 1 of each fiscal year and a charter school by July 1 of its first fiscal year of operation must notify the district in which the school is located and the Department of Education if it will provide its own transportation or use the transportation services of the district in which it is located for the fiscal year.

(b) If a charter school elects to provide transportation for pupils, the transportation must be provided by the charter school within the district in which the charter school is located. The state must pay transportation aid to the charter school according to section 124D.11, subdivision 2.

For pupils who reside outside the district in which the charter school is located, the charter school is not required to provide or pay for transportation between the pupil's residence and

the border of the district in which the charter school is located. A parent may be reimbursed by the charter school for costs of transportation from the pupil's residence to the border of the district in which the charter school is located if the pupil is from a family whose income is at or below the poverty level, as determined by the federal government. The reimbursement may not exceed the pupil's actual cost of transportation or 15 cents per mile traveled, whichever is less. Reimbursement may not be paid for more than 250 miles per week.

At the time a pupil enrolls in a charter school, the charter school must provide the parent or guardian with information regarding the transportation.

(c) If a charter school does not elect to provide transportation, transportation for pupils enrolled at the school must be provided by the district in which the school is located, according to sections 123B.88, subdivision 6, and 124D.03, subdivision 8, for a pupil residing in the same district in which the charter school is located. Transportation may be provided by the district in which the school is located, according to sections 123B.88, subdivision 6, and 124D.03, subdivision 8, for a pupil residing in a different district. If the district provides the transportation, the scheduling of routes, manner and method of transportation, control and discipline of the pupils, and any other matter relating to the transportation of pupils under this paragraph shall be within the sole discretion, control, and management of the district.

Subd. 17. **Leased space.** A charter school may lease space from a board eligible to be a sponsor or other public or private nonprofit nonsectarian organization. If a charter school is unable to lease appropriate space from an eligible board or other public or private nonprofit nonsectarian organization, the school may lease space from another nonsectarian organization if the Department of Education, in consultation with the Department of Administration, approves the lease. If the school is unable to lease appropriate space from public or private nonsectarian organizations, the school may lease space from a sectarian organization if the leased space is constructed as a school facility and the Department of Education, in consultation with the Department of Administration, approves the lease.

Subd. 18. **Authority to raise initial working capital.** A sponsor may authorize a charter school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary for it to raise working capital. A sponsor may not authorize a school before the commissioner has approved the authorization.

Subd. 19. **Disseminate information.** The sponsor, the operators, and the Department of Education must disseminate information to the public on how to form and operate a charter school and how to utilize the offerings of a charter school. Particular groups to be targeted include low-income families and communities, and students of color.

Subd. 20. **Leave to teach in a charter school.** If a teacher employed by a district makes a written request for an extended leave of absence to teach at a charter school, the district must grant the leave. The district must grant a leave not to exceed a total of five years. Any request to extend the leave shall be granted only at the discretion of the school board. The district may require that the request for a leave or extension of leave be made up to 90 days before the teacher would otherwise have to report for duty. Except as otherwise provided in this subdivision and except for section 122A.46, subdivision 7, the leave is governed by section 122A.46, including, but not limited to, reinstatement, notice of intention to return, seniority, salary, and insurance.

During a leave, the teacher may continue to aggregate benefits and credits in the Teachers' Retirement Association account by paying both the employer and employee contributions based upon the annual salary of the teacher for the last full pay period before the leave began. The retirement association may impose reasonable requirements to efficiently administer this subdivision.

Subd. 21. **Collective bargaining.** Employees of the board of directors of a charter school may, if otherwise eligible, organize under chapter 179A and comply with its provisions. The board of directors of a charter school is a public employer, for the purposes of chapter 179A, upon formation of one or more bargaining units at the school. Bargaining units at the school must be separate from any other units within the sponsoring district, except that bargaining units may remain part of the appropriate unit within the sponsoring district, if the employees of the school, the board of directors of the school, the exclusive representative of the appropriate unit in the sponsoring district, and the board of the sponsoring district agree to include the employees in the appropriate unit of the sponsoring district.

Subd. 22. **Teacher and other employee retirement.** (a) Teachers in a charter school must be public school teachers for the purposes of chapters 354 and 354a.

(b) Except for teachers under paragraph (a), employees in a charter school must be public employees for the purposes of chapter 353.

Subd. 23. **Causes for nonrenewal or termination of charter school contract.** (a) The duration of the contract with a sponsor must be for the term contained in the contract according to subdivision 6. The sponsor may or may not renew a contract at the end of the term for any ground listed in paragraph (b). A sponsor may unilaterally terminate a contract during the term of the contract for any ground listed in paragraph (b). At least 60 days before not renewing or terminating a contract, the sponsor shall notify the board of directors of the charter school of the proposed action in writing. The notice shall state the grounds for the proposed action in reasonable detail and that the charter school's board of directors may request in writing an informal hearing

before the sponsor within 14 days of receiving notice of nonrenewal or termination of the contract. Failure by the board of directors to make a written request for a hearing within the 14-day period shall be treated as acquiescence to the proposed action. Upon receiving a timely written request for a hearing, the sponsor shall give reasonable notice to the charter school's board of directors of the hearing date. The sponsor shall conduct an informal hearing before taking final action. The sponsor shall take final action to renew or not renew a contract by the last day of classes in the school year. If the sponsor is a local board, the school's board of directors may appeal the sponsor's decision to the commissioner.

(b) A contract may be terminated or not renewed upon any of the following grounds:

- (1) failure to meet the requirements for pupil performance contained in the contract;
- (2) failure to meet generally accepted standards of fiscal management;
- (3) violations of law; or
- (4) other good cause shown.

If a contract is terminated or not renewed under this paragraph, the school must be dissolved according to the applicable provisions of chapter 308A or 317A, except when the commissioner approves the decision of a different eligible sponsor to authorize the charter school.

(c) If at the end of a contract term, either the sponsor or the charter school board of directors wants to voluntarily terminate the contract, a change in sponsors is allowed if the commissioner approves the decision of a different eligible sponsor to authorize the charter school. The party intending to terminate the contract must notify the other party and the commissioner of its intent at least 90 days before the date on which the contract ends. The sponsor that is a party to the existing contract at least must inform the approved different eligible sponsor about the fiscal and student performance of the school. If no different eligible sponsor is approved, the school must be dissolved according to applicable law and the terms of the contract.

(d) The commissioner, after providing reasonable notice to the board of directors of a charter school and the existing sponsor, and after providing an opportunity for a public hearing, may terminate the existing sponsorial relationship if the charter school has a history of:

- (1) financial mismanagement; or
- (2) repeated violations of the law.

Subd. 23a. **Related party lease costs.** (a) A charter school is prohibited from entering a lease of real property with a related party as defined in subdivision 26, unless the lessor is a

nonprofit corporation under chapter 317A or a cooperative under chapter 308A, and the lease cost is reasonable under section 124D.11, subdivision 4, clause (1).

(b) A lease of real property to be used for a charter school, not excluded in paragraph (a), must contain the following statement: "This lease is subject to Minnesota Statutes, section 124D.10, subdivision 23a."

(c) If a charter school enters into as lessee a lease with a related party and the charter school subsequently closes, the commissioner has the right to recover from the lessor any lease payments in excess of those that are reasonable under section 124D.11, subdivision 4, clause (1).

Subd. 24. Pupil enrollment upon nonrenewal or termination of charter school contract. If a contract is not renewed or is terminated according to subdivision 23, a pupil who attended the school, siblings of the pupil, or another pupil who resides in the same place as the pupil may enroll in the resident district or may submit an application to a nonresident district according to section 124D.03 at any time. Applications and notices required by section 124D.03 must be processed and provided in a prompt manner. The application and notice deadlines in section 124D.03 do not apply under these circumstances. The closed charter school must transfer the student's educational records within ten business days of closure to the student's school district of residence where the records must be retained or transferred under section 120A.22, subdivision 7.

Subd. 25. Extent of specific legal authority. (a) The board of directors of a charter school may sue and be sued.

(b) The board may not levy taxes or issue bonds.

(c) The commissioner, a sponsor, members of the board of a sponsor in their official capacity, and employees of a sponsor are immune from civil or criminal liability with respect to all activities related to a charter school they approve or sponsor. The board of directors shall obtain at least the amount of and types of insurance required by the contract, according to subdivision 6.

Subd. 26. Definitions. For purposes of this section and section 124D.11:

(1) A "related party" is an affiliate or close relative of the other party in question, an affiliate of a close relative, or a close relative of an affiliate.

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(3) "Close relative" means an individual whose relationship by blood, marriage, or adoption to another individual is no more remote than first cousin.

(4) "Person" means an individual or entity of any kind.

(5) "Control" includes the terms "controlling," "controlled by," and "under common control with" and means the possession, direct or indirect, of the power to direct or cause the direction of the management, operations, or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

History: 1991 c 265 art 3 s 38; art 9 s 3; 1992 c 499 art 12 s 1; 1993 c 224 art 9 s 2-12; art 14 s 16; 1994 c 465 art 2 s 1; 1994 c 647 art 9 s 1,2; 1Sp1995 c 3 art 9 s 2; art 16 s 13; 1996 c 412 art 4 s 2; 1Sp1997 c 4 art 5 s 5-9; 1998 c 397 art 2 s 2-21,164; art 11 s 3; 1998 c 398 art 2 s 4; art 5 s 3,55; 1999 c 241 art 5 s 7-11; 2000 c 489 art 6 s 18-23; 1Sp2001 c 6 art 2 s 20-26,66; 2002 c 352 s 10; 2003 c 120 s 3; 2003 c 130 s 12; 1Sp2003 c 9 art 2 s 21-25; art 12 s 10,11; 2005 c 107 art 2 s 60; 1Sp2005 c 5 art 2 s 59-62; 2006 c 263 art 2 s 15; 2007 c 146 art 2 s 23-25,47