

SENATE  
STATE OF MINNESOTA  
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 1094

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| DATE       | D-PG  | OFFICIAL STATUS  |
|------------|-------|--|
| 04/05/2011 | 1187  | Introduction and first reading<br>Referred to Education  |
| 02/23/2012 | 3942  | Chief author stricken, shown as co-author Olson<br>Chief author added Chamberlain<br>Author added Bonoff |
| 03/08/2012 | 4261a | Comm report: To pass as amended and re-refer to Local Government and Elections                           |
| 03/22/2012 | 4764  | Comm report: To pass as amended  |
|            | 4787a | Joint rule 2.03, referred to Rules and Administration  |

A bill for an act  
relating to education; creating education boards; allowing school boards to  
reorganize as education boards; amending Minnesota Statutes 2010, sections  
123B.045; 124D.10, subdivision 17; Minnesota Statutes 2011 Supplement,  
section 124D.10, subdivisions 3, 8; proposing coding for new law in Minnesota  
Statutes, chapter 123A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[123A.80] EDUCATION BOARDS.**

Subdivision 1. **Definitions.** An education board has the powers and duties of a  
school board as defined in sections 123B.02 and 123B.09. An education board approves,  
oversees, and holds accountable a system of schools that provides for the division of the  
oversight of schools from their operation, improving accountability and the conditions for  
innovation. The education board provides for a system of public schooling through the  
supervision of performance contracts or agreements with the school sites organized as  
site-governed schools as defined in section 123B.045, area learning centers as defined in  
section 123A.06, contract alternative schools as defined in section 123A.05, or chartered  
schools as defined in section 124D.10.

Subd. 2. **Conversion to education board.** A school board, as defined in sections  
123B.02 and 123B.09, may become an education board by adopting a resolution to convert  
and converting all of the school sites in that district to site-governed schools as defined  
in section 123B.045, or a combination of site-governed schools, area learning centers as  
defined in section 123A.06, contract alternative schools as defined in section 123A.05, or  
chartered schools as defined in section 124D.10.

Subd. 3. **Elected conversion.** (a) The eligible voters of any school district may  
petition the county auditor to convert a school board into an education board. The petition

2.1 must be signed by a number of registered voters within the district at least equal to 15  
2.2 percent of those voting in the last general election.

2.3 (b) Upon receipt of a valid petition, the proposal shall be submitted to voters at the  
2.4 next general election. The proposals for conversion to an education board shall be stated  
2.5 on the ballot substantially as follows: "Shall the school board of the district convert to an  
2.6 education board? A school board operates schools through a central office; an education  
2.7 board oversees agreements with schools that are responsible for their own operation." Two  
2.8 choices in order "Yes" and "No" must be clearly available to the voter.

2.9 (c) If a majority of the votes cast on the question of conversion to an education  
2.10 board is in the affirmative, a school board must convert its schools by September 1 of the  
2.11 calendar year following the election. The school board shall convert to an education  
2.12 board at the first board meeting following conversion of all schools and shall remain in  
2.13 effect unless abandoned by a majority of voters at a subsequent election at which an  
2.14 alternative is submitted to the electorate.

2.15 Subd. 4. **Purpose of education boards.** The purpose of an education board is  
2.16 to change the relationship between a district's board and its schools by dividing the  
2.17 oversight of schools from their operation and improving accountability while improving  
2.18 the conditions for innovation. Education boards improve pupil learning by:

2.19 (1) creating schools that combine the accountability for a school's performance  
2.20 with site-level authority over its function;

2.21 (2) ensuring that a variety of quality public school options are available for all  
2.22 school-age persons within district boundaries, including the publication of requests for  
2.23 proposals nationally or internationally for new school creation;

2.24 (3) promoting innovation among school providers by seeking innovative curricular,  
2.25 pedagogical, organizational models, leadership models, evaluation designs, significant use  
2.26 of digital technology, and other innovations;

2.27 (4) assessing the needs of the community and providing learning models to address  
2.28 current needs and opportunities; and

2.29 (5) seeking to maximize the range of skills and expertise available for schooling  
2.30 in the district by partnering with teachers, school leaders, and private organizations to  
2.31 lead and manage schools.

2.32 Subd. 5. **Duties.** The education board has all the powers and duties of school boards  
2.33 including:

2.34 (1) seeking input from families including students, the community, teachers, and  
2.35 administrators to determine the models of schools needed by the students and to approve  
2.36 school sites consistent with the needs of students in the community;

(2) seeking applications from district staff and publishing requests for proposals nationally and internationally for new school proposals;

(3) approving sites as site-governed, area learning center, contract alternative, or chartered to implement the plan. Education boards may use the provisions of the joint powers statute as defined in section 471.59 to enter into agreements with organizations to implement the plan;

(4) developing a performance agreement with each site, including the accountability to the education board;

(5) allocating the revenue earned by the attending pupils as provided by law to the sites attended by the pupils;

(6) providing oversight of the performance agreements; and

(7) holding sites accountable for the performance indicators in the performance contract.

Subd. 6. **Facilities.** (a) The education board shall direct all revenue received by the district under sections 123B.53, 123B.55, 123B.57, 123B.58, 123B.59, 123B.591, 123B.63, 126C.10, subdivision 13, 126C.40, and 126C.46 for facility construction, purchase, and maintenance as allowed under each section. Any facility constructed or purchased as part of a school site is property of the school district.

(b) Upon termination or expiration of a board's contract with a school site, the education board may reassign or sell the facilities used by that school. Up to five percent of any net revenue generated by the sale of facilities by the education board may be retained by the board for administrative purposes. The remaining revenue must be used to construct, purchase, improve, or maintain the district's facilities or be distributed on a per-pupil basis to the schools overseen by the education board.

(c) The education board may lease a facility to a charter school that it authorizes consistent with section 124D.10, subdivision 17.

Subd. 7. **Relationship with school site and limit of powers.** The education board shall set learning objectives, provide financing, and evaluate results pursuant to the performance agreement with the school site. Neither the education board nor any of its members shall dictate the appointment of any person to office or employment by the school site, nor shall it control school decisions as to learning strategies or methods. Except for the purpose of inquiry, the education board and its members shall deal with and control school sites through the governance body of the school only.

Subd. 8. **Area learning centers.** Area learning centers shall be operated consistent with section 123A.06 but shall also be afforded the autonomy and revenue provided to site-governed schools as defined in section 123B.045.

Subd. 9. **Revenue to schools.** Each school site under this section shall be allocated the revenue earned by the students in attendance consistent with section 123A.05, 123A.06, 123B.045, or 124D.10. A minimum of 95 percent of local, state, and federal revenue, excluding revenue under subdivision 6, received must be allocated to school sites. The district may retain additional funds, as part of an agreement, to provide specific services for the site, including legal counsel, finance, contract oversight, districtwide and out-of-district special education programs, and other services. These schools may also raise added revenue through grants, gifts, or other methods of fund-raising. Other than for charter schools, the district shall maintain separate accounts for each site. Revenue shall not cancel at the end of the year but shall be carried forward to the following year.

Subd. 10. **Exemption from statutes and rules.** Except as outlined in this section, an education board and the schools under its direction are exempt from and subject to the same laws and rules as are chartered schools under section 124D.10, except that section 123B.045 shall apply to site-governed schools and area learning centers. Education boards must comply with section 123B.09.

Subd. 11. **Notice to commissioner.** The school board shall inform the commissioner of its decision to convert to an education board at least 90 days prior to the conversion. The education board shall inform the commissioner as to which sites are to be site-governed, area learning center, contract alternative, or chartered schools consistent with the provisions of applicable sections. If the education board intends to approve sites as chartered schools, the education board shall first be approved as an authorizer of chartered schools as provided for in section 124D.10.

Sec. 2. Minnesota Statutes 2010, section 123B.045, is amended to read:

**123B.045 DISTRICT-CREATED SITE-GOVERNED SCHOOLS.**

Subdivision 1. **Authority.** (a) A school or education board may approve site-governed schools under this section by requesting site-governing school proposals. The request for proposals must include what types of schools or education innovations the board intends to create. A school board that has adopted a conversion resolution under section 123A.80, subdivision 2, or must convert to an education board under section 123A.80, subdivision 3, may require each school site to submit (1) an initial proposal and (2) an amended proposal if the initial proposal was returned under paragraph (c). A current site may submit a proposal to create a different model for the site if 60 percent or more of the teachers at the site support the proposal. A group of licensed district professionals from one or multiple district sites may submit a proposal. The group submitting the proposal must include parents or other community members in the development of the

proposal. A proposal may request approval for a model of a school not included in the request for proposal of the board.

(b) The school or education board and the applicable bargaining unit representing district employees must enter into memoranda of understanding specifying how applicable sections of current contracts will enable the provisions of subdivision 2, paragraph (a), clauses (7) and (8), to be implemented. An agreement by the exclusive representative of the teachers is not required for approval of a site council's proposal if no waivers from the employment contract are being requested.

(c) Within 60 days of receipt of the application, the school or education board shall determine whether to approve, deny, or return the application to the applicants for further information or development. A school board converting to an education board under section 123A.80 may not deny a school site's initial proposal.

(d) Upon approval of the proposal, an agreement between the district and the site council shall be developed identifying the powers and duties delegated to the site and outlining the details of the proposal including the provisions of subdivisions 2, 3, and 5. Any powers or duties not specifically delegated to the school site in the agreement remains with the school or education board.

**Subd. 2. Roles and responsibilities of site-governed schools.** (a) Site-governed schools approved by the school or education board have the following autonomy and responsibilities at the discretion of the site:

(1) to create the site-governing council of the school. The council shall include teachers, administrators, parents, students if appropriate, community members, and other representatives of the community as determined by the site-governing council. Teachers may comprise a majority of the site-governing council at the option of a majority of the teachers at the site. The number of members on the site-governing council and the composition shall be included in the proposal approved by the school board;

(2) to determine the leadership model for the site including: selecting a principal, operating as a teacher professional practices model with school leadership functions performed by one or more teachers or administrators at the school or other model determined by the site;

(3) to determine the budget for the site and the allocation and expenditure of the revenue based on provisions of subdivision 3;

(4) to determine the learning model and organization of the school consistent with the application approved by the school or education board;

(5) to select and develop its curriculum and determine formative and summative assessment practices;

(6) to set policies for the site including student promotion, attendance, discipline, graduation requirements which may exceed the school or education board standards, and other such rules as approved by the school or education board consistent with the mission, goals, and learning program of the school site;

(7) to determine the length of the school day and year and employee work rules covered by the terms and conditions of the employment contract;

(8) to select teachers and other staff consistent with current law and collective bargaining agreements and memoranda of understanding provided for in subdivision 1, paragraph (b). At least 70 percent of the teachers must be selected by the site prior to final approval of the agreement. Prior to requesting the district to employ staff not currently employed by the district, the site must first select current district staff including those on requested and unrequested leave as provided for in sections 122A.40 and 122A.41. The school or education board shall be the legal employer of all staff at the site and all teachers and other staff members of the applicable bargaining units. Teachers and other employees may be required to sign an individual work agreement with the site-governing council committing themselves to the mission and learning program of the school and the requirements of the site-governing council; and

(9) to fulfill other provisions as agreed to by the district and site-governing council.

(b) If a self-governed school created under this section is supervised by a principal, that principal must be licensed, consistent with section 123B.147, subdivision 2.

**Subd. 3. Revenue to self-governed school.** (a) The revenue that shall be allocated by the site includes the general education revenue generated by the students at the site from state, local, and private sources, referendum revenue, federal revenue from the Elementary and Secondary Education Act, Individuals with Disabilities Education Act, Carl Perkins Act, and other federal programs as agreed to by the school board and site council.

(b) The district may retain an administrative fee for managing the federal programs, private revenues, and general administrative functions including school or education board, superintendent, district legal counsel, finance, accountability and self-governed school contract oversight, facilities maintenance, districtwide special education programs, and other such services as agreed to by the site and school or education board. The administrative fee shall be included in the agreement.

(c) As part of the agreement, the district may provide specific services for the site and may specify the amount to be paid for each service and retain the revenues for that amount. The formula or procedures for determining the amount of revenue to be allocated to the site each year shall be consistent with this subdivision and incorporated in the site budget annually following a timeline and process that is included in the agreement with

the school board. The site is responsible for allocating revenue for all staff at the site and for the other provisions of the agreement with the ~~district~~ school or education board.

(d) All unspent revenue shall be carried over to following years for the sole use of the site.

**Subd. 4. Exemption from statutes and rules.** Except as outlined in this section, site-governed schools established under this section are exempt from and subject to the same laws and rules as are chartered schools under section 124D.10, except that the schools shall be subject to chapters 13, 13D, and 179A, and sections 122A.40, 122A.41, 122A.50, and 122A.51.

**Subd. 5. Performance standards.** (a) The school or education board and the site council shall include in the agreement performance standards and expectations that shall include at least the following:

(1) student achievement targets on multiple indicators including either a growth model or value-added growth model;

(2) the criteria and process to be followed if it is determined that the site failed to comply with district oversight and accountability requirements as outlined in the agreement; and

(3) other performance provisions as agreed to.

(b) All agreements shall be filed with the commissioner. The initial agreement shall be for up to three years, shall be reviewed annually, and may be renewed by the ~~district~~ school or education board for additional terms of up to five years based on the performance of the school.

**Subd. 6. Board termination of self-governed school authority.** (a) The ~~district~~ school or education board may terminate the agreement for one or more of the following reasons:

(1) failure of the site to meet the provisions specified in the agreement in subdivision 5;

(2) violations of law; or

(3) other good cause shown.

(b) Site-governed schools that are terminated or not renewed for reasons other than cause may request to convert to charter school status as provided for in section 124D.10 and, if chartered by the board, shall become the owner of all materials, supplies, and equipment purchased during the period the school was a site-governed school.

**Sec. 3.** Minnesota Statutes 2011 Supplement, section 124D.10, subdivision 3, is amended to read:

Subd. 3. **Authorizer.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

"Application" to receive approval as an authorizer means the proposal an eligible authorizer submits to the commissioner under paragraph (c) before that authorizer is able to submit any affidavit to charter to a school.

"Application" under subdivision 4 means the charter school business plan a school developer submits to an authorizer for approval to establish a charter school that documents the school developer's mission statement, school purposes, program design, financial plan, governance and management structure, and background and experience, plus any other information the authorizer requests. The application also shall include a "statement of assurances" of legal compliance prescribed by the commissioner.

"Affidavit" means a written statement the authorizer submits to the commissioner for approval to establish a charter school under subdivision 4 attesting to its review and approval process before chartering a school.

(b) The following organizations may authorize one or more charter schools:

(1) a school board; education board; intermediate school district school board; education district organized under sections 123A.15 to 123A.19;

(2) a charitable organization under section 501(c)(3) of the Internal Revenue Code of 1986, excluding a nonpublic sectarian or religious institution, any person other than a natural person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the nonpublic sectarian or religious institution, and any other charitable organization under this clause that in the federal IRS Form 1023, Part IV, describes activities indicating a religious purpose, that:

(i) is a member of the Minnesota Council of Nonprofits or the Minnesota Council on Foundations;

(ii) is registered with the attorney general's office; and

(iii) is incorporated in the state of Minnesota and has been operating continuously for at least five years but does not operate a charter school;

(3) a Minnesota private college, notwithstanding clause (2), 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;

(4) 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 authorize one or more charter schools if the charter school has operated



for at least three years under a different authorizer and if the nonprofit corporation has existed for at least 25 years; or

(5) single-purpose authorizers that are charitable, nonsectarian organizations formed under section 501(c)(3) of the Internal Revenue Code of 1986 and incorporated in the state of Minnesota whose sole purpose is to charter schools. Eligible organizations interested in being approved as an authorizer under this paragraph must submit a proposal to the commissioner that includes the provisions of paragraph (c) and a five-year financial plan. Such authorizers shall consider and approve applications using the criteria provided in subdivision 4 and shall not limit the applications it solicits, considers, or approves to any single curriculum, learning program, or method.

(c) An eligible authorizer under this subdivision must apply to the commissioner for approval as an authorizer before submitting any affidavit to the commissioner to charter a school. The application for approval as a charter school authorizer must demonstrate the applicant's ability to implement the procedures and satisfy the criteria for chartering a school under this section. The commissioner must approve or disapprove an application within 45 business days of the application deadline. If the commissioner disapproves the application, the commissioner must notify the applicant of the specific deficiencies in writing and the applicant then has 20 business days to address the deficiencies to the commissioner's satisfaction. After the 20 business days expire, the commissioner has 15 business days to make a final decision to approve or disapprove the application. Failing to address the deficiencies to the commissioner's satisfaction makes an applicant ineligible to be an authorizer. The commissioner, in establishing criteria for approval, must consider the applicant's:

- (1) capacity and infrastructure;
- (2) application criteria and process;
- (3) contracting process;
- (4) ongoing oversight and evaluation processes; and
- (5) renewal criteria and processes.

(d) An applicant must include in its application to the commissioner to be an approved authorizer at least the following:

- (1) how chartering schools is a way for the organization to carry out its mission;
- (2) a description of the capacity of the organization to serve as an authorizer, including the personnel who will perform the authorizing duties, their qualifications, the amount of time they will be assigned to this responsibility, and the financial resources allocated by the organization to this responsibility;

(3) a description of the application and review process the authorizer will use to make decisions regarding the granting of charters;

(4) a description of the type of contract it will arrange with the schools it charters that meets the provisions of subdivision 6;

(5) the process to be used for providing ongoing oversight of the school consistent with the contract expectations specified in clause (4) that assures that the schools chartered are complying with both the provisions of applicable law and rules, and with the contract;

(6) a description of the criteria and process the authorizer will use to grant expanded applications under subdivision 4, paragraph (j);

(7) the process for making decisions regarding the renewal or termination of the school's charter based on evidence that demonstrates the academic, organizational, and financial competency of the school, including its success in increasing student achievement and meeting the goals of the charter school agreement; and

(8) an assurance specifying that the organization is committed to serving as an authorizer for the full five-year term.

(e) A disapproved applicant under this section may resubmit an application during a future application period.

(f) If the governing board of an approved authorizer that has chartered multiple schools votes to withdraw as an approved authorizer for a reason unrelated to any cause under subdivision 23, the authorizer must notify all its chartered schools and the commissioner in writing by July 15 of its intent to withdraw as an authorizer on June 30 in the next calendar year. The commissioner may approve the transfer of a charter school to a new authorizer under this paragraph after the new authorizer submits an affidavit to the commissioner.

(g) The authorizer must participate in department-approved training.

(h) An authorizer that chartered a school before August 1, 2009, must apply by June 30, 2012, to the commissioner for approval, under paragraph (c), to continue as an authorizer under this section. For purposes of this paragraph, an authorizer that fails to submit a timely application is ineligible to charter a school.

(i) The commissioner shall review an authorizer's performance every five years in a manner and form determined by the commissioner and may review an authorizer's performance more frequently at the commissioner's own initiative or at the request of a charter school operator, charter school board member, or other interested party. The commissioner, after completing the review, shall transmit a report with findings to the authorizer. If, consistent with this section, the commissioner finds that an authorizer has not fulfilled the requirements of this section, the commissioner may subject the authorizer

to corrective action, which may include terminating the contract with the charter school board of directors of a school it chartered. The commissioner must notify the authorizer in writing of any findings that may subject the authorizer to corrective action and the authorizer then has 15 business days to request an informal hearing before the commissioner takes corrective action. If the commissioner terminates a contract between an authorizer and a charter school under this paragraph, the commissioner may assist the charter school in acquiring a new authorizer.

(j) The commissioner may at any time take corrective action against an authorizer, including terminating an authorizer's ability to charter a school for:

(1) failing to demonstrate the criteria under paragraph (c) under which the commissioner approved the authorizer;

(2) violating a term of the chartering contract between the authorizer and the charter school board of directors;

(3) unsatisfactory performance as an approved authorizer; or

(4) any good cause shown that provides the commissioner a legally sufficient reason to take corrective action against an authorizer.

Sec. 4. Minnesota Statutes 2011 Supplement, section 124D.10, subdivision 8, is amended to read:

Subd. 8. **Federal, state, and local requirements.** (a) A charter school shall meet all federal, state, and local health and safety requirements applicable to school districts.

(b) A school must comply with statewide accountability requirements governing standards and assessments in chapter 120B.

(c) A school authorized by a school or education board may be located in any district, unless the school or education board of the district of the proposed location disapproves by written resolution.

(d) A charter school must be nonsectarian in its programs, admission policies, employment practices, and all other operations. An authorizer may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or a religious institution. A charter school student must be released for religious instruction, consistent with section 120A.22, subdivision 12, clause (3).

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

(f) 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

12.1 of age. Instruction may be provided to people younger than five years and older than  
12.2 18 years of age.

12.3 (g) A charter school may not charge tuition.

12.4 (h) A charter school is subject to and must comply with chapter 363A and section  
12.5 121A.04.

12.6 (i) A charter school is subject to and must comply with the Pupil Fair Dismissal  
12.7 Act, sections 121A.40 to 121A.56, and the Minnesota Public School Fee Law, sections  
12.8 123B.34 to 123B.39.

12.9 (j) A charter school is subject to the same financial audits, audit procedures, and  
12.10 audit requirements as a district. Audits must be conducted in compliance with generally  
12.11 accepted governmental auditing standards, the federal Single Audit Act, if applicable,  
12.12 and section 6.65. A charter school is subject to and must comply with sections 15.054;  
12.13 118A.01; 118A.02; 118A.03; 118A.04; 118A.05; 118A.06; 471.38; 471.391; 471.392; and  
12.14 471.425. The audit must comply with the requirements of sections 123B.75 to 123B.83,  
12.15 except to the extent deviations are necessary because of the program at the school.  
12.16 Deviations must be approved by the commissioner and authorizer. The Department of  
12.17 Education, state auditor, legislative auditor, or authorizer may conduct financial, program,  
12.18 or compliance audits. A charter school determined to be in statutory operating debt under  
12.19 sections 123B.81 to 123B.83 must submit a plan under section 123B.81, subdivision 4.

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

12.21 (l) A charter school must comply with chapters 13 and 13D; and sections 120A.22,  
12.22 subdivision 7; 121A.75; and 260B.171, subdivisions 3 and 5.

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

12.25 (n) A charter school offering online courses or programs must comply with section  
12.26 124D.095.

12.27 (o) A charter school and charter school board of directors are subject to chapter 181.

12.28 (p) A charter school must comply with section 120A.22, subdivision 7, governing  
12.29 the transfer of students' educational records and sections 138.163 and 138.17 governing  
12.30 the management of local records.

12.31 (q) A charter school that provides early childhood health and developmental  
12.32 screening must comply with sections 121A.16 to 121A.19.

12.33 (r) A charter school that provides school-sponsored youth athletic activities must  
12.34 comply with section 121A.38.

12.35 Sec. 5. Minnesota Statutes 2010, section 124D.10, subdivision 17, is amended to read:

13.1            Subd. 17. **Leased space.** A charter school may lease space from an independent or  
13.2 special school or education board eligible to be an authorizer, other public organization,  
13.3 private, nonprofit nonsectarian organization, private property owner, or a sectarian  
13.4 organization if the leased space is constructed as a school facility. The department must  
13.5 review and approve or disapprove leases in a timely manner.