

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 593

Introduced by Lautenbaugh, 18.

Read first time January 23, 2013

Committee: Education

A BILL

1 FOR AN ACT relating to schools; to amend section 13-903, Reissue
2 Revised Statutes of Nebraska, and sections 48-801 and
3 79-978, Revised Statutes Cumulative Supplement, 2012; to
4 adopt the Charter Schools Act; to harmonize provisions;
5 and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 16 of this act shall be known
2 and may be cited as the Charter Schools Act.

3 Sec. 2. The Legislature finds that charter schools: (1)
4 Stimulate the development of innovative programs within public
5 education; (2) provide opportunities for innovative learning and
6 assessments; (3) provide parents and students with greater options in
7 choosing schools within and outside their school districts; (4)
8 provide teachers with a vehicle for establishing schools with
9 alternative, innovative methods of educational instruction and school
10 structure and management; (5) encourage performance-based educational
11 programs; and (6) hold teachers and school administrators accountable
12 for students' educational outcomes.

13 Sec. 3. For purposes of the Charter Schools Act, charter
14 school means a public school located in a city of the metropolitan
15 class which operates under a charter granted by the State Board of
16 Education, operates independently of any school board or board of
17 education as defined in section 79-101, and is managed by a board of
18 trustees. Upon receiving a charter from the State Board of Education,
19 a charter school shall be deemed a political subdivision and its
20 board of trustees authorized to supervise and control the charter
21 school.

22 Sec. 4. Persons or entities eligible to submit an
23 application to establish a charter school include, but are not
24 limited to, a business, a corporate entity, two or more certified
25 teachers, or ten or more parents. The application may be filed in

1 conjunction with a college, a university, a museum, or another
2 similar entity. Private, denominational, and parochial schools and
3 schools which elect pursuant to section 79-1601 not to meet
4 accreditation or approval requirements are not eligible to submit an
5 application to establish a charter school.

6 Sec. 5. (1) The State Board of Education shall establish
7 by rule and regulation the requirements for receiving a charter to
8 operate a charter school. Such rules and regulations shall include,
9 but not be limited to, the following:

10 (a) A charter school shall be located in a city of the
11 metropolitan class;

12 (b) A charter school shall be open to all students on a
13 space-available basis and shall not discriminate on the basis of
14 race, color, national origin, creed, sex, ethnicity, sexual
15 orientation, mental or physical disability, age, ancestry, athletic
16 performance, special needs, proficiency in the English language, or
17 academic achievement;

18 (c) A charter school may limit enrollment to specific
19 grade levels or areas of focus of the school, such as mathematics,
20 science, or the arts;

21 (d) No admission fee or tuition shall be charged to apply
22 to or attend the charter school;

23 (e) A charter school may establish reasonable academic
24 standards as a condition for eligibility for applicants; and

25 (f) Such other requirements as the state board deems

1 necessary.

2 (2) An application to establish a charter school shall be
3 submitted each year no later than January 15.

4 Such application shall include, but not be limited to:

5 (a) The name of the applicants;

6 (b) A description of the proposed charter school's
7 organizational structure and governing body;

8 (c) A financial plan for the first year of operation;

9 (d) A description of the charter school's physical plant
10 and location;

11 (e) A description of the grade levels to be included in
12 the school;

13 (f) A description of the academic content standards the
14 charter school will adopt as provided under section 79-762.02 and the
15 curriculum to be provided; and

16 (g) A description of the requirements for enrollment in
17 the charter school and student discipline code required of students.

18 (3) The state board shall review the application and make
19 the final determination on granting or denying a charter no later
20 than March 15 of the same year. An initial charter shall be for a
21 term of five years and may be renewed for successive five-year
22 periods. The state board may condition the grant if a charter on the
23 charter school's taking certain actions or maintaining certain
24 conditions.

25 (4) No more than five charter schools shall be allowed to

1 operate in a city of the metropolitan class at any one time. The
2 total number of students attending charter schools shall not at any
3 time be greater than one thousand.

4 Sec. 6. The State Board of Education may, after notice
5 and a hearing, place a charter school on probation or revoke a
6 charter if a charter school has not fulfilled any conditions imposed
7 by the state board in connection with the grant of the charter or has
8 violated any provision of its charter. A charter school placed on
9 probation may submit a remedial plan to the state board describing
10 the actions the charter school and its board of trustees will
11 implement to correct the problems described in the notice and at the
12 hearing. If after one calendar year following submission the remedial
13 plan has not been implemented or in the opinion of the state board
14 has not succeeded in solving such problems, the state board may
15 summarily revoke the charter. The state board shall develop
16 procedures and guidelines for revocation and renewal of a school's
17 charter.

18 Sec. 7. A charter school established pursuant to the
19 Charter Schools Act shall be a body politic and corporate with all
20 powers necessary or desirable for carrying out its charter,
21 including, but not limited to, the following:

22 (1) To adopt a name and corporate seal, except that any
23 name selected must include the words charter school;

24 (2) To sue and be sued as provided in the State Tort
25 Claims Act;

1 (3) To acquire real property from public or private
2 sources by lease, lease with an option to purchase, or by gift for
3 use as a school facility;

4 (4) To receive and disburse funds for school purposes;

5 (5) To make contracts and leases for the procurement of
6 services, equipment, and supplies, except that if the board of
7 trustees intends to procure substantially all educational services
8 under contract with another person, the terms of such a contract
9 shall be approved by the Commissioner of Education, either as part of
10 the original charter or by way of an amendment thereto. The
11 commissioner shall not approve any such contract terms, the purpose
12 or effect of which is to avoid the prohibition of the Charter Schools
13 Act against operation of a charter school by a private,
14 denominational, or parochial school or a school which elects pursuant
15 to section 79-1601 not to meet accreditation or approval
16 requirements;

17 (6) To incur temporary debt in anticipation of receipt of
18 funds;

19 (7) To solicit and accept any grants or gifts for school
20 purposes; and

21 (8) To have such other powers available to a corporation
22 formed under the Nebraska Nonprofit Corporation Act that are not
23 inconsistent with the Charter Schools Act.

24 Sec. 8. No tuition and no fees pursuant to the Public
25 Elementary and Secondary Student Fee Authorization Act shall be

1 charged for any student attending a charter school. Preference for
2 enrollment in a charter school shall be given to students who reside
3 in the city of the metropolitan class in which the charter school is
4 located. If the total number of students who are eligible to apply to
5 and attend a charter school who reside in such city plus siblings of
6 students already attending the charter school is greater than the
7 number of spaces available, the charter school may conduct an
8 admission lottery to fill all of the spaces in that charter school
9 from among such students.

10 Sec. 9. A student may withdraw from a charter school at
11 any time and enroll in the school district in which the student
12 resides, in an option school district pursuant to the enrollment
13 option program established under sections 79-234 to 79-246, or in a
14 private, denominational, or parochial school or a school which elects
15 pursuant to section 79-1601 not to meet accreditation or approval
16 requirements. A student may be expelled from a charter school based
17 on criteria determined by the board of trustees, with the advice of
18 the principal and teachers, and approved by the State Board of
19 Education.

20 Sec. 10. A charter school may be located in part of an
21 existing public school building, in space provided on a private work
22 site, in a public building, or any other suitable location. A charter
23 school may own, lease, or rent its space.

24 Sec. 11. (1) A charter school shall operate in accordance
25 with its charter, the fire and life safety provisions of law

1 applicable to public schools in Nebraska, and the performance,
2 testing, and assessment requirements of the Quality Education
3 Accountability Act.

4 (2) Employees of a charter school shall be considered
5 employees of a political subdivision for purposes of the Political
6 Subdivisions Tort Claims Act and public employees for purposes of the
7 Industrial Relations Act. A board of trustees of a charter school
8 shall be considered a governing body for purposes of the Political
9 Subdivisions Tort Claims Act and a public employer for purposes of
10 the Industrial Relations Act.

11 (3) The Class V School Employees Retirement Act shall
12 apply to employees of a charter school.

13 (4) Each school board or board of education shall grant a
14 leave of absence to any teacher employed by the school district
15 requesting such leave in order to teach in a charter school. A
16 teacher may request a leave of absence for such purpose for a maximum
17 of two years. At the end of the two-year period, the teacher may (a)
18 make a request to the school board or board of education of the
19 school district that such leave be extended for an additional two
20 years, which approval shall not be unreasonably withheld, or (b) he
21 or she may return to his or her employment with such school district.
22 If such request is granted, at the end of the fourth year the teacher
23 may either return to employment with such school district or, if he
24 or she chooses to continue teaching at the charter school, resign
25 from the school district.

1 Sec. 12. The board of trustees of a charter school, in
2 consultation with the teachers, shall determine the charter school's
3 curriculum and develop the school's annual budget.

4 Sec. 13. The Class V school district in which a charter
5 school is located shall provide transportation to the charter school
6 for students living in such school district who attend the charter
7 school, on the same terms and conditions as transportation is
8 provided to students attending the public schools of such school
9 district. Students attending the charter school who do not reside in
10 the Class V school district in which the charter school is located
11 shall be eligible for transportation as provided for students
12 pursuant to the option enrollment program established under sections
13 79-234 to 79-246.

14 Sec. 14. (1) Each charter school shall submit to the
15 State Board of Education, to each parent or guardian of its enrolled
16 students, and to any person who requests it an annual report. The
17 annual report shall be issued no later than November 1 of each year
18 for the preceding school year. The annual report shall be in such
19 form as may be prescribed by the State Board of Education and shall
20 include at least the following components:

21 (a) A discussion of progress made toward the achievement
22 of the goals set forth in the charter; and

23 (b) A financial statement setting forth by appropriate
24 categories the revenue and expenditures for the year just ended.

25 (2) The State Department of Education shall post each

1 charter school's annual report on the department's web site.

2 Sec. 15. An individual or a group may file a complaint
3 with a charter school's board of trustees concerning any claimed
4 violation of the Charter Schools Act by a charter school. If, after
5 presenting such complaint to the trustees, the individual or group
6 believes the complaint has not been adequately addressed, they may
7 submit the complaint to the Commissioner of Education who shall
8 investigate such complaint and make a formal response.

9 Sec. 16. (1) The school district of residence of each
10 student attending a charter school shall annually pay to the charter
11 school an amount equal to the school district's actual per pupil cost
12 for the preceding fiscal year times the number of students residing
13 in such district who attend such charter school. The State Department
14 of Education shall calculate such actual per pupil cost based upon
15 information submitted by the school district. Such payments shall be
16 made within thirty days after the beginning of the district's school
17 fiscal year.

18 (2) When a student withdraws or is expelled from a
19 charter school during the school year of the school district of
20 residence, the charter school shall reimburse the school district of
21 residence, for each withdrawing or expelled student, a pro rata
22 amount of the payment under subsection (1) of this section, based on
23 the number of complete months remaining in the school year of the
24 school district of residence.

25 Sec. 17. Section 13-903, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 13-903 For purposes of the Political Subdivisions Tort
3 Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610,
4 unless the context otherwise requires:

5 (1) Political subdivision shall include villages, cities
6 of all classes, counties, school districts, learning communities,
7 charter schools, public power districts, and all other units of local
8 government, including entities created pursuant to the Interlocal
9 Cooperation Act or Joint Public Agency Act. Political subdivision
10 shall not be construed to include any contractor with a political
11 subdivision;

12 (2) Governing body shall mean the village board of a
13 village, the city council of a city, the board of commissioners or
14 board of supervisors of a county, the board of directors of a public
15 power district, the governing board or other governing body of an
16 entity created pursuant to the Interlocal Cooperation Act or Joint
17 Public Agency Act, the board of trustees of a charter school, and any
18 duly elected or appointed body holding the power and authority to
19 determine the appropriations and expenditures of any other unit of
20 local government;

21 (3) Employee of a political subdivision shall mean any
22 one or more officers or employees of the political subdivision or any
23 agency of the subdivision and shall include members of the governing
24 body, duly appointed members of boards or commissions when they are
25 acting in their official capacity, volunteer firefighters, and

1 volunteer rescue squad personnel. Employee shall not be construed to
2 include any contractor with a political subdivision; and

3 (4) Tort claim shall mean any claim against a political
4 subdivision for money only on account of damage to or loss of
5 property or on account of personal injury or death, caused by the
6 negligent or wrongful act or omission of any employee of the
7 political subdivision, while acting within the scope of his or her
8 office or employment, under circumstances in which the political
9 subdivision, if a private person, would be liable to the claimant for
10 such damage, loss, injury, or death but shall not include any claim
11 accruing before January 1, 1970.

12 Sec. 18. Section 48-801, Revised Statutes Cumulative
13 Supplement, 2012, is amended to read:

14 48-801 As used in the Industrial Relations Act, unless
15 the context otherwise requires:

16 (1) Certificated employee has the same meaning as in
17 section 79-824;

18 (2) Commission means the Commission of Industrial
19 Relations;

20 (3) Commissioner means a member of the commission;

21 (4) Governmental service means all services performed
22 under employment by the State of Nebraska or any political or
23 governmental subdivision thereof, including public corporations,
24 municipalities, and public utilities;

25 (5) Industrial dispute includes any controversy between

1 public employers and public employees concerning terms, tenure, or
2 conditions of employment; the association or representation of
3 persons in negotiating, fixing, maintaining, changing, or seeking to
4 arrange terms or conditions of employment; or refusal to discuss
5 terms or conditions of employment;

6 (6) Instructional employee means an employee of a
7 community college who provides direct instruction to students;

8 (7) Labor organization means any organization of any kind
9 or any agency or employee representation committee or plan, in which
10 public employees participate and which exists for the purpose, in
11 whole or in part, of dealing with public employers concerning
12 grievances, labor disputes, wages, rates of pay, hours of employment,
13 or conditions of work;

14 (8) Metropolitan statistical area means a metropolitan
15 statistical area as defined by the United States Office of Management
16 and Budget;

17 (9) Municipality means any city or village in Nebraska;

18 (10) Noncertificated and noninstructional school employee
19 means a school district, educational service unit, or community
20 college employee who is not a certificated or instructional employee;

21 (11) Public employee includes any person employed by a
22 public employer;

23 (12) Public employer means the State of Nebraska or any
24 political or governmental subdivision of the State of Nebraska except
25 the Nebraska National Guard or state militia. Public employer

1 includes a board of trustees of a charter school;

2 (13) Public utility includes any person or governmental
3 entity, including any public corporation, public power district, or
4 public power and irrigation district, which carries on an intrastate
5 business in this state and over which the government of the United
6 States has not assumed exclusive regulation and control, that
7 furnishes transportation for hire, telephone service, telegraph
8 service, electric light, heat, or power service, gas for heating or
9 illuminating, whether natural or artificial, or water service, or any
10 one or more thereof; and

11 (14) Supervisor means any public employee having
12 authority, in the interest of the public employer, to hire, transfer,
13 suspend, lay off, recall, promote, discharge, assign, reward, or
14 discipline other public employees, or responsibility to direct them,
15 to adjust their grievances, or effectively to recommend such action,
16 if in connection with such action the exercise of such authority is
17 not of a merely routine or clerical nature but requires the use of
18 independent judgment.

19 Sec. 19. Section 79-978, Revised Statutes Cumulative
20 Supplement, 2012, is amended to read:

21 79-978 For purposes of the Class V School Employees
22 Retirement Act, unless the context otherwise requires:

23 (1) Retirement system or system means the School
24 Employees' Retirement System of (corporate name of the school
25 district as described in section 79-405) as provided for by the act;

1 (2) Board means the board of education of the school
2 district;

3 (3) Trustee means a trustee provided for in section
4 79-980;

5 (4) Employee means the following enumerated persons
6 receiving compensation from the school district: (a) Regular teachers
7 and administrators employed on a written contract basis; ~~and~~—(b)
8 regular employees, not included in subdivision (4)(a) of this
9 section, hired upon a full-time basis, which basis shall contemplate
10 a workweek of not less than thirty hours; and (c) employees of a
11 charter school operating pursuant to the Charter Schools Act;

12 (5) Member means any employee included in the membership
13 of the retirement system or any former employee who has made
14 contributions to the system and has not received a refund;

15 (6) Annuitant means any member receiving an allowance;

16 (7) Beneficiary means any person entitled to receive or
17 receiving a benefit by reason of the death of a member;

18 (8) Membership service means service on or after
19 September 1, 1951, as an employee of the school district and a member
20 of the system for which compensation is paid by the school district.
21 Credit for more than one year of membership service shall not be
22 allowed for service rendered in any fiscal year. Beginning September
23 1, 2005, a member shall be credited with a year of membership service
24 for each fiscal year in which the member performs one thousand or
25 more hours of compensated service as an employee of the school

1 district. An hour of compensated service shall include any hour for
2 which the member is compensated by the school district during periods
3 where no service is performed due to vacation or approved leave. If a
4 member performs less than one thousand hours of compensated service
5 during a fiscal year, one-tenth of a year of membership service shall
6 be credited for each one hundred hours of compensated service by the
7 member in such fiscal year. In determining a member's total
8 membership service, all periods of membership service, including
9 fractional years of membership service in one-tenth-year increments,
10 shall be aggregated;

11 (9) Prior service means service rendered prior to
12 September 1, 1951, for which credit is allowed under section 79-999,
13 service rendered by retired employees receiving benefits under
14 preexisting systems, and service for which credit is allowed under
15 sections 79-990, 79-991, 79-994, 79-995, and 79-997;

16 (10) Creditable service means the sum of the membership
17 service and the prior service, measured in one-tenth-year increments;

18 (11) Compensation means salary or wages payable by the
19 school district before reduction for contributions picked up under
20 section 414(h) of the Internal Revenue Code, elective contributions
21 made pursuant to section 125 or 403(b) of the code, or amounts not
22 currently includible in income by reason of section 132(f)(4) of the
23 code, subject to the applicable limitations of section 401(a)(17) of
24 the code;

25 (12) Military service means service in the uniformed

1 services as defined in 38 U.S.C. 4301 et seq., as such provision
2 existed on March 27, 1997;

3 (13) Accumulated contributions means the sum of amounts
4 contributed by a member of the system together with regular interest
5 credited thereon;

6 (14) Regular interest means interest (a) on the total
7 contributions of the member prior to the close of the last preceding
8 fiscal year, (b) compounded annually, and (c) at rates to be
9 determined annually by the board, which shall have the sole,
10 absolute, and final discretionary authority to make such
11 determination, except that the rate for any given year in no event
12 shall exceed the actual percentage of net earnings of the system
13 during the last preceding fiscal year;

14 (15) Retirement date means the date of retirement of a
15 member for service or disability as fixed by the board;

16 (16) Normal retirement date means the end of the month
17 during which the member attains age sixty-five and has completed at
18 least five years of membership service;

19 (17) Early retirement date means that month and year
20 selected by a member having at least ten years of creditable service
21 which includes a minimum of five years of membership service and who
22 has attained age fifty-five;

23 (18) Retirement allowance means the total annual
24 retirement benefit payable to a member for service or disability;

25 (19) Annuity means annual payments, for both prior

1 service and membership service, for life as provided in the Class V
2 School Employees Retirement Act;

3 (20) Actuarial tables means:

4 (a) For determining the actuarial equivalent of any
5 annuities other than joint and survivorship annuities, a unisex
6 mortality table using twenty-five percent of the male mortality and
7 seventy-five percent of the female mortality from the 1994 Group
8 Annuity Mortality Table with a One Year Setback and using an interest
9 rate of eight percent compounded annually; and

10 (b) For joint and survivorship annuities, a unisex
11 retiree mortality table using sixty-five percent of the male
12 mortality and thirty-five percent of the female mortality from the
13 1994 Group Annuity Mortality Table with a One Year Setback and using
14 an interest rate of eight percent compounded annually and a unisex
15 joint annuitant mortality table using thirty-five percent of the male
16 mortality and sixty-five percent of the female mortality from the
17 1994 Group Annuity Mortality Table with a One Year Setback and using
18 an interest rate of eight percent compounded annually;

19 (21) Actuarial equivalent means the equality in value of
20 the retirement allowance for early retirement or the retirement
21 allowance for an optional form of annuity, or both, with the normal
22 form of the annuity to be paid, as determined by the application of
23 the appropriate actuarial table, except that use of such actuarial
24 tables shall not effect a reduction in benefits accrued prior to
25 September 1, 1985, as determined by the actuarial tables in use prior

1 to such date;

2 (22) Fiscal year means the period beginning September 1
3 in any year and ending on August 31 of the next succeeding year;

4 (23) Primary beneficiary means the person or persons
5 entitled to receive or receiving a benefit by reason of the death of
6 a member; and

7 (24) Secondary beneficiary means the person or persons
8 entitled to receive or receiving a benefit by reason of the death of
9 all primary beneficiaries prior to the death of the member. If no
10 primary beneficiary survives the member, secondary beneficiaries
11 shall be treated in the same manner as primary beneficiaries.

12 Sec. 20. Original section 13-903, Reissue Revised
13 Statutes of Nebraska, and sections 48-801 and 79-978, Revised
14 Statutes Cumulative Supplement, 2012, are repealed.