

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIRST LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1028

Introduced by Louden, 49.

Read first time January 20, 2010

Committee: Education

A BILL

1 FOR AN ACT relating to schools; to amend section 79-902, Reissue
2 Revised Statutes of Nebraska; to adopt the Charter
3 Schools Act; to harmonize provisions; and to repeal
4 the original section.

5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 of this act shall be known
2 and may be cited as the Charter Schools Act.

3 Sec. 2. For purposes of the Charter Schools Act:

4 (1) Applicant means a person or entity described in
5 section 4 of this act;

6 (2) Board means the State Board of Education; and

7 (3) Charter school means a school reporting directly to
8 the State Board of Education, not under the jurisdiction of a
9 school board as defined in section 79-101, and operated pursuant to
10 a charter issued under the act.

11 Sec. 3. The board shall receive and review applications
12 for charter schools submitted under the Charter Schools Act and
13 issue and revoke charters as provided in the act.

14 Sec. 4. A group of at least three Nebraska residents or
15 a Nebraska nonprofit organization may apply to operate a charter
16 school. An application must be filed on or before January 1
17 with operation of the proposed charter school to begin no later
18 than the beginning of the next school year, based on the school
19 calendar of the school district within the boundaries of which the
20 proposed charter school is located. The application shall include
21 the following:

22 (1) The names and addresses of the applicants. If the
23 applicants are individuals, the application shall include their
24 social security numbers. If the applicant is a Nebraska nonprofit
25 corporation, the application shall include the name, address, and

1 social security number of at least one individual who will serve as
2 registered agent for the applicant for all correspondence and any
3 other purposes relating to the Charter School Act;

4 (2) Notarized letters of intent signed by parents who
5 intend to send their children to the charter school, indicating
6 that the charter school will serve no fewer than five students in
7 prekindergarten through grade eight;

8 (3) A notarized statement signed by at least one teacher
9 holding a teaching certificate issued under sections 79-806 to
10 79-815 in which the teacher agrees to teach in the charter school
11 and to accept responsibility for completing the reports required
12 under the Charter School Act; and

13 (4) A map demonstrating that the proposed location of
14 the charter school is more than seven miles from the nearest
15 elementary attendance site operated by the school district within
16 the boundaries of which the charter school will be located or
17 operated by an adjacent school district;

18 (5) Proof of adequate liability insurance;

19 (6) The method that the applicant will use to provide
20 adequate internal financial controls for the charter school; and

21 (7) Such other information as the board requires.

22 Sec. 5. The board shall review and make a decision
23 on each application on or before April 1 immediately following
24 submission of the application. The board may issue a charter or
25 deny the application. If the board denies the application, it shall

1 notify the applicant in writing of the reasons for denial.

2 An initial charter shall be granted for a term of three
3 years. The charter may be renewed annually if the charter school
4 meets academic growth requirements under section 8 of this act.

5 Sec. 6. A charter school may hire, establish compensation
6 for, and provide for termination of employees of the charter
7 school. The charter school may execute an agreement with one or
8 more other charter schools or with one or more public schools
9 to participate in a group health insurance program, a group life
10 insurance program, or both. If the charter school is unable to
11 execute any such agreement, the charter school may participate in
12 the program of group life and health insurance established under
13 sections 84-1601 to 84-1615.

14 Sec. 7. (1) Charter schools are subject to the
15 requirements of the Special Education Act and the federal
16 Individuals with Disabilities Education Act, 20 U.S.C. 1401 et
17 seq., as such federal act existed on January 1, 2010.

18 (2) Charter schools are subject to all requirements
19 relating to fire safety, life safety, and hazardous materials
20 contained in statutes, rules, regulations, ordinances enacted by
21 the city or village, if any, in which the charter school is
22 located, and resolutions having the force of law adopted by the
23 county in which the charter school is located.

24 (3) Charter schools are subject to the requirements of
25 the Quality Education Accountability Act and the federal No Child

1 Left Behind Act, 20 U.S.C. 6301 et seq., as such federal act
2 existed on January 1, 2010, to which accredited schools in Nebraska
3 are subject.

4 Sec. 8. In order for a charter school to qualify for
5 automatic charter renewal, the average annual improvement of
6 individual students' test scores for students enrolled in a charter
7 school must meet or exceed those for the nearest public elementary
8 school, except that a charter school operating under an initial
9 charter shall have three years to meet the requirement of this
10 section. Students who have no applicable individual assessment
11 record for the preceding year shall take the applicable assessment
12 in the autumn of their first year of attendance at a charter school
13 to determine their base measurement.

14 Sec. 9. The board may revoke a charter school's charter
15 before its renewal date under the following circumstances:

16 (1) Failure to maintain the minimum number of students
17 required under the Charter Schools Act;

18 (2) Failure to maintain the buildings, grounds, or
19 facilities of the charter school in a safe condition;

20 (3) Failure to correct within a reasonable time clearly
21 identified financial accountability errors identified by the
22 Auditor of Public Accounts or the board; or

23 (4) Gross negligence on the part of an employee or any
24 other person responsible for operating or maintaining the charter
25 school.

1 Sec. 10. The Auditor of Public Accounts shall make an
2 annual audit of the financial books and records of each charter
3 school operating under the Charter Schools Act and shall provide
4 a report to the Clerk of the Legislature and the board of the
5 financial condition of each such school. Each member of the
6 Legislature shall receive a copy of such report by making a request
7 for it to the Auditor of Public Accounts. Expenses of the audit
8 shall be paid by the charter school.

9 Sec. 11. Each charter school shall receive funding from
10 the school district in which the charter school is located in
11 an amount equal to one hundred percent of the district average
12 cost per elementary pupil, adjusted for inflation, multiplied by
13 the number of students in the charter school. The district shall
14 provide transportation reimbursement with respect to charter school
15 students at the rates and under the conditions required by section
16 79-611.

17 Sec. 12. The board, with the assistance of the State
18 Department of Education, shall adopt and promulgate rules and
19 regulations to carry out the Charter Schools Act.

20 Sec. 13. Section 79-902, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 79-902 For purposes of the School Employees Retirement
23 Act, unless the context otherwise requires:

24 (1) Accumulated contributions means the sum of all
25 amounts deducted from the compensation of a member and credited

1 to his or her individual account in the School Retirement
2 Fund together with regular interest thereon, compounded monthly,
3 quarterly, semiannually, or annually;

4 (2) Beneficiary means any person in receipt of a school
5 retirement allowance or other benefit provided by the act;

6 (3) Member means any person who has an account in the
7 School Retirement Fund;

8 (4) County school official means (a) until July 1, 2000,
9 the county superintendent or district superintendent and any person
10 serving in his or her office who is required by law to have
11 a teacher's certificate and (b) on or after July 1, 2000, the
12 county superintendent, county school administrator, or district
13 superintendent and any person serving in his or her office who is
14 required by law to have a teacher's certificate;

15 (5) Creditable service means prior service for which
16 credit is granted under sections 79-926 to 79-929, service credit
17 purchased under sections 79-933.03 to 79-933.06 and 79-933.08,
18 and all service rendered while a contributing member of the
19 retirement system. Creditable service includes working days, sick
20 days, vacation days, holidays, and any other leave days for which
21 the employee is paid regular wages as part of the employee's
22 agreement with the employer. Creditable service does not include
23 lump-sum payments to the employee upon termination or retirement
24 in lieu of accrued benefits for such days, eligibility and vesting
25 credit, nor service years for which member contributions are

1 withdrawn and not repaid. Creditable service also does not include
2 service rendered by a member for which the retirement board
3 determines that the member was paid less in compensation than the
4 minimum wage as provided in the Wage and Hour Act or service which
5 the board determines was rendered with the intent to defraud the
6 retirement system;

7 (6) Disability retirement allowance means the annuity
8 paid to a person upon retirement for disability under section
9 79-952;

10 (7) Employer means the State of Nebraska or any
11 subdivision thereof or agency of the state or subdivision
12 authorized by law to hire school employees or to pay their
13 compensation;

14 (8) Fiscal year means any year beginning July 1 and
15 ending June 30 next following;

16 (9) Regular interest means interest fixed at a rate equal
17 to the daily treasury yield curve for one-year treasury securities,
18 as published by the Secretary of the Treasury of the United States,
19 that applies on July 1 of each year, which may be credited monthly,
20 quarterly, semiannually, or annually as the board may direct;

21 (10) School employee means a contributing member who
22 earns service credit pursuant to section 79-927. For purposes of
23 this section, contributing member means the following persons who
24 receive compensation from a public school: (a) Regular employees;
25 (b) regular employees having retired pursuant to the School

1 Employees Retirement Act who subsequently provide compensated
2 service on a regular basis in any capacity; and (c) regular
3 employees hired by a public school on an ongoing basis to assume
4 the duties of other regular employees who are temporarily absent.
5 Substitute employees shall not be considered school employees;

6 (11) Prior service means service rendered as a school
7 employee in the public schools of the State of Nebraska prior to
8 July 1, 1945;

9 (12) Public school means any and all schools offering
10 instruction in elementary or high school grades, as defined in
11 section 79-101, which schools are supported by public funds and are
12 wholly under the control and management of the State of Nebraska
13 or any subdivision thereof, including (a) schools or other entities
14 established, maintained, and controlled by the school boards of
15 local school districts, except Class V school districts, (b) any
16 educational service unit, and (c) any other educational institution
17 wholly supported by public funds, except schools under the control
18 and management of the Board of Trustees of the Nebraska State
19 Colleges, the Board of Regents of the University of Nebraska, or
20 the community college boards of governors for any community college
21 areas. For purposes of the School Employees Retirement Act only and
22 for no other purposes, public school includes a charter school as
23 defined in section 2 of this act;

24 (13) Retirement means qualifying for and accepting a
25 school or disability retirement allowance granted under the School

1 Employees Retirement Act;

2 (14) Retirement board or board means the Public Employees
3 Retirement Board;

4 (15) Retirement system means the School Retirement System
5 of the State of Nebraska;

6 (16) Required deposit means the deduction from a member's
7 compensation as provided for in section 79-958 which shall be
8 deposited in the School Retirement Fund;

9 (17) School year means one fiscal year which includes
10 not less than one thousand instructional hours or, in the case of
11 service in the State of Nebraska prior to July 1, 1945, not less
12 than seventy-five percent of the then legal school year;

13 (18) Service means employment as a school employee and
14 shall not be deemed interrupted by (a) termination at the end of
15 the school year of the contract of employment of an employee in a
16 public school if the employee enters into a contract of employment
17 in any public school, except a school in a Class V school district,
18 for the following school year, (b) temporary or seasonal suspension
19 of service that does not terminate the employee's employment,
20 (c) leave of absence authorized by the employer for a period
21 not exceeding twelve months, (d) leave of absence because of
22 disability, or (e) military service when properly authorized by
23 the retirement board. Service does not include any period of
24 disability for which disability retirement benefits are received
25 under sections 79-951 to 79-953;

1 (19) School retirement allowance means the total of the
2 savings annuity and the service annuity or formula annuity paid a
3 person who has retired under sections 79-931 to 79-935. The monthly
4 payments shall be payable at the end of each calendar month during
5 the life of a retired member. The first payment shall include all
6 amounts accrued since the effective date of the award of annuity.
7 The last payment shall be at the end of the calendar month in which
8 such member dies or in accordance with the payment option chosen by
9 the member;

10 (20) Service annuity means payments for life, made in
11 equal monthly installments, derived from appropriations made by the
12 State of Nebraska to the retirement system;

13 (21) State deposit means the deposit by the state in the
14 retirement system on behalf of any member;

15 (22) State school official means the Commissioner of
16 Education and his or her professional staff;

17 (23) Savings annuity means payments for life, made in
18 equal monthly payments, derived from the accumulated contributions
19 of a member;

20 (24) Emeritus member means a person (a) who has entered
21 retirement under the provisions of the act, including those persons
22 who have retired since July 1, 1945, under any other regularly
23 established retirement or pension system as contemplated by section
24 79-916, (b) who has thereafter been reemployed in any capacity
25 by a public school, a Class V school district, or a school

1 under the control and management of the Board of Trustees of the
2 Nebraska State Colleges, the Board of Regents of the University of
3 Nebraska, or a community college board of governors or has become
4 a state school official or county school official subsequent to
5 such retirement, and (c) who has applied to the board for emeritus
6 membership in the retirement system. The school district or agency
7 shall certify to the retirement board on forms prescribed by the
8 retirement board that the annuitant was reemployed, rendered a
9 service, and was paid by the district or agency for such services;

10 (25) Actuarial equivalent means the equality in value of
11 the aggregate amounts expected to be received under different forms
12 of payment. The determinations shall be based on the 1994 Group
13 Annuity Mortality Table reflecting sex-distinct factors blended
14 using twenty-five percent of the male table and seventy-five
15 percent of the female table. An interest rate of eight percent
16 per annum shall be reflected in making these determinations except
17 when a lump-sum settlement is made to an estate. If the lump-sum
18 settlement is made to an estate, the interest rate will be
19 determined by the Moody's Triple A Bond Index as of the prior June
20 30, rounded to the next lower quarter percent;

21 (26) Retirement date means (a) if the member has
22 terminated employment, the first day of the month following the
23 date upon which a member's request for retirement is received on
24 a retirement application provided by the retirement system or (b)
25 if the member has filed an application but has not yet terminated

1 employment, the first day of the month following the date on which
2 the member terminates employment. An application may be filed no
3 more than ninety days prior to the effective date of the member's
4 initial benefit;

5 (27) Disability retirement date means the first day of
6 the month following the date upon which a member's request for
7 disability retirement is received on a retirement application
8 provided by the retirement system if the member has terminated
9 employment in the school system and has complied with sections
10 79-951 to 79-954 as such sections refer to disability retirement;

11 (28) Retirement application means the form approved by
12 the retirement system for acceptance of a member's request for
13 either regular or disability retirement;

14 (29) Eligibility and vesting credit means credit for
15 years, or a fraction of a year, of participation in a Nebraska
16 government plan for purposes of determining eligibility for
17 benefits under the School Employees Retirement Act. Such credit
18 shall not be included as years of creditable service in the benefit
19 calculation;

20 (30)(a) Final average compensation means the sum of the
21 member's total compensation during the three twelve-month periods
22 of service as a school employee in which such compensation was the
23 greatest divided by thirty-six.

24 (b) If a member has such compensation for less than
25 thirty-six months, his or her final average compensation shall be

1 determined by dividing his or her total compensation in all months
2 by the total number of months of his or her creditable service
3 therefor.

4 (c) Payments under the Retirement Incentive Plan pursuant
5 to section 79-855 and Staff Development Assistance pursuant to
6 section 79-856 shall not be included in the determination of final
7 average compensation;

8 (31) Plan year means the twelve-month period beginning on
9 July 1 and ending on June 30 of the following year;

10 (32) Current benefit means (a) until July 1, 2000, the
11 initial benefit increased by all adjustments made pursuant to
12 section 79-947.02 and (b) on or after July 1, 2000, the initial
13 benefit increased by all adjustments made pursuant to the School
14 Employees Retirement Act;

15 (33) Initial benefit means the retirement benefit
16 calculated at the time of retirement;

17 (34) Surviving spouse means (a) the spouse married to
18 the member on the date of the member's death or (b) the spouse
19 or former spouse of the member if survivorship rights are provided
20 under a qualified domestic relations order filed with the board
21 pursuant to the Spousal Pension Rights Act. The spouse or former
22 spouse shall supersede the spouse married to the member on the
23 date of the member's death as provided under a qualified domestic
24 relations order. If the benefits payable to the spouse or former
25 spouse under a qualified domestic relations order are less than

1 the value of benefits entitled to the surviving spouse, the spouse
2 married to the member on the date of the member's death shall be
3 the surviving spouse for the balance of the benefits;

4 (35)(a) Compensation means gross wages or salaries
5 payable to the member for personal services performed during the
6 plan year and includes (i) overtime pay, (ii) member retirement
7 contributions, (iii) retroactive salary payments paid pursuant to
8 court order, arbitration, or litigation and grievance settlements,
9 and (iv) amounts contributed by the member to plans under sections
10 125, 403(b), and 457 of the Internal Revenue Code as defined in
11 section 49-801.01 or any other section of the code which defers or
12 excludes such amounts from income.

13 (b) Compensation does not include (i) fraudulently
14 obtained amounts as determined by the retirement board, (ii)
15 amounts for unused sick leave or unused vacation leave converted
16 to cash payments, (iii) insurance premiums converted into cash
17 payments, (iv) reimbursement for expenses incurred, (v) fringe
18 benefits, (vi) bonuses for services not actually rendered,
19 including, but not limited to, early retirement inducements, cash
20 awards, and severance pay, or (vii) beginning on September 4, 2005,
21 employer contributions made for the purposes of separation payments
22 made at retirement and early retirement inducements as provided for
23 in section 79-514.

24 (c) Compensation in excess of the limitations set forth
25 in section 401(a)(17) of the Internal Revenue Code as defined

1 in section 49-801.01 shall be disregarded. For an employee who
2 was a member of the retirement system before the first plan year
3 beginning after December 31, 1995, the limitation on compensation
4 shall not be less than the amount which was allowed to be taken
5 into account under the retirement system as in effect on July 1,
6 1993.

7 (d)(i) In the determination of compensation for members
8 on or after July 1, 2002, through June 30, 2005, that part of
9 a member's compensation for the fiscal year which exceeds the
10 member's compensation with the same employer for the preceding
11 fiscal year by more than ten percent shall be excluded unless
12 (A) the member experienced a substantial change in employment
13 position or (B) the excess compensation occurred as the result
14 of a collective-bargaining agreement between the employer and
15 a recognized collective-bargaining unit or category of school
16 employee.

17 (ii) For purposes of this subdivision:

18 (A) Category of school employee means either all
19 employees of the employer who are administrators or certificated
20 teachers, or all employees of the employer who are not
21 administrators or certificated teachers, or both; and

22 (B) Recognized collective-bargaining unit means a group
23 of employees similarly situated with a similar community of
24 interest appropriate for bargaining recognized as such by a school
25 board.

1 (e) (i) In the determination of compensation for members
2 on or after July 1, 2005, that part of a member's compensation
3 for the plan year which exceeds the member's compensation with
4 the same employer for the preceding plan year by more than seven
5 percent of the compensation base during the sixty months preceding
6 the member's retirement shall be excluded unless (A) the member
7 experienced a substantial change in employment position, (B) as
8 verified by the school board, the excess compensation above seven
9 percent occurred as the result of a collective-bargaining agreement
10 between the employer and a recognized collective-bargaining unit
11 or category of school employee, and the percentage increase
12 in compensation above seven percent shall not be excluded for
13 employees outside of a collective-bargaining unit or within the
14 same category of school employee, or (C) the excess compensation
15 occurred as the result of a districtwide permanent benefit change
16 made by the employer for a category of school employee in
17 accordance with subdivision (35) (a) (iv) of this section.

18 (ii) For purposes of this subdivision:

19 (A) Category of school employee means either all
20 employees of the employer who are administrators or certificated
21 teachers, or all employees of the employer who are not
22 administrators or certificated teachers, or both;

23 (B) Compensation base means (I) for current members
24 employed with the same employer, the member's compensation for the
25 plan year ending June 30, 2005, or (II) for members newly hired or

1 hired by a separate employer on or after July 1, 2005, the member's
2 compensation for the first full plan year following the member's
3 date of hiring. Thereafter, the member's compensation base shall
4 be increased each plan year by the lesser of seven percent of the
5 member's preceding plan year's compensation base or the member's
6 actual annual compensation increase during the preceding plan year;
7 and

8 (C) Recognized collective-bargaining unit means a group
9 of employees similarly situated with a similar community of
10 interest appropriate for bargaining recognized as such by a school
11 board;

12 (36) Termination of employment occurs on the date on
13 which the member experiences a bona fide separation from service of
14 employment with the member's current employer, the date of which
15 separation is determined by the employer. The employer shall notify
16 the board of the date on which such a termination has occurred.
17 Termination of employment does not include ceasing employment if
18 the member subsequently provides service on a regular basis in
19 any capacity for any school district other than a Class V school
20 district within one hundred eighty calendar days after ceasing
21 employment or if the board determines that a purported termination
22 was not a bona fide separation from service with the employer;

23 (37) Disability means an inability to engage in a
24 substantially gainful activity by reason of any medically
25 determinable physical or mental impairment which can be expected to

1 result in death or be of a long and indefinite duration;

2 (38) Substitute employee means a person hired by a public
3 school as a temporary employee on an intermittent basis to assume
4 the duties of regular employees due to the temporary absence of the
5 regular employees. Substitute employee does not mean a person hired
6 as a regular employee on an ongoing basis to assume the duties of
7 other regular employees who are temporarily absent;

8 (39) Participation means qualifying for and making
9 required deposits to the retirement system during the course of a
10 plan year;

11 (40) Regular employee means an employee hired by a public
12 school or under contract in a regular full-time or part-time
13 position who works a full-time or part-time schedule on an ongoing
14 basis for fifteen or more hours per week; and

15 (41) Temporary employee means an employee hired by a
16 public school who is not a regular employee.

17 Sec. 14. Original section 79-902, Reissue Revised
18 Statutes of Nebraska, is repealed.