

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

400R0339

## SENATE BILL NO. 63

Introduced by: The Committee on Education at the request of the Department of Education

1 FOR AN ACT ENTITLED, An Act to authorize the establishment of charter schools.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Any applicant seeking to establish a public charter school shall submit a written  
4 application on a form prescribed by the Department of Education to a proposed sponsor as  
5 prescribed in section 3 of this Act. The application shall include a detailed business plan for the  
6 charter school, a mission statement for the charter school, a description of the charter school's  
7 organizational structure that shall include an advisory council with between five and nine  
8 members, a financial plan for the first three years of operation of the charter school, a  
9 description of the charter school's hiring policy, the name of the charter school's applicants and  
10 requested sponsor, a description of the charter school's facility and the location of the school,  
11 a description of the grades being served, an assurance that state content standards are addressed  
12 and federal and state academic accountability measures are met, and an outline of criteria  
13 designed to measure the effectiveness of the school.

14 Section 2. A charter school shall be a public, nonsectarian, nonreligious, nonhome based,  
15 and nonprofit school. No charter may be granted under this Act that would convert any existing



1 private, parochial, or nonpublic school to a charter school. A charter school shall be organized  
2 and operated as a division of its sponsoring school district. A school district may contract with  
3 a private company to operate the charter school.

4 Section 3. The sponsor of a charter school shall be the school board, as defined in chapter  
5 13-8, of the school district in which the school resides. An applicant for a charter school shall  
6 submit its application to a school board. The school board shall either accept or reject  
7 sponsorship of the charter school within ninety days. Acceptance shall be based on the  
8 completeness of the application and whether the applicant demonstrates it can meet the mission  
9 of the charter. If the school board rejects the application, the school board shall notify the  
10 applicant in writing of the reasons for the rejection. The applicant may request, and the school  
11 board shall provide, technical assistance to improve the application, at which time the applicant  
12 may submit a revised application for reconsideration by the school board. No school board may  
13 sponsor a charter school solely for the purpose of maintaining a fall enrollment above the  
14 minimum fall enrollment pursuant to § 13-6-97.

15 Section 4. The charter of a charter school shall provide for the following:

- 16 (1) Compliance with federal, state, and local rules, regulations, and statutes relating to  
17 health, safety, civil rights, and insurance. The Department of Education shall publish  
18 a list of relevant rules, regulations, and statutes to notify charter schools of their  
19 responsibilities under this subdivision;
- 20 (2) That the charter school is nonsectarian in its programs, admission policies,  
21 employment practices, and all other operations;
- 22 (3) That the charter school provides a comprehensive program of instruction for at least  
23 a kindergarten program or any grade between grades one and twelve. However, a  
24 charter school may offer this curriculum with an emphasis on a specific learning

- 1 philosophy or style or certain subject areas such as mathematics, language arts,  
2 science, fine arts, performance arts, or world languages;
- 3 (4) That the charter school designs an approved method to measure pupil progress  
4 toward the academic content standards adopted by the Board of Education;
- 5 (5) That, except as otherwise provided in this Act and in its charter, the charter school  
6 is exempt from all statutes and rules relating to schools, governing boards, and school  
7 districts;
- 8 (6) That, except as otherwise provided in this Act, the charter school is subject to the  
9 same financial and electronic data submission requirements as any other school  
10 district;
- 11 (7) That the charter school has a uniform system of financial records that is subject to  
12 review by the auditor general to ensure that the provisions of the uniform system of  
13 financial records that relate to charter schools are in accordance with commonly  
14 accepted accounting principles used by private business. A school's charter may  
15 include an exception to the requirements of this subdivision if the school board  
16 determines the exception is necessary and if the Department of Education approves  
17 the exception;
- 18 (8) That the Department of Education or the auditor general may conduct financial,  
19 program, or compliance audits;
- 20 (9) Compliance with all federal and state laws relating to the education of children with  
21 disabilities in the same manner as a school district;
- 22 (10) That the charter school provides for an advisory council that is responsible for policy  
23 recommendations to the sponsoring entity; and
- 24 (11) That the charter school provides a minimum number of instructional hours pursuant

1 to § 13-26-1 unless the charter school is operating on an alternative calendar  
2 approved by its sponsor.

3 Section 5. Each applicant seeking to establish a charter school shall comply with the  
4 provisions of § 13-10-12. The criminal records check shall be completed before the issuance of  
5 a charter. Each person engaged in instructional work at a charter school directly as a classroom,  
6 laboratory, or other teacher or indirectly as a supervisory teacher, speech therapist, or principal  
7 shall comply with the provisions of § 13-10-12. No charter school may employ a teacher whose  
8 certificate has been revoked. All other personnel shall also comply with the provisions of  
9 § 13-10-12. Before employing a person, the charter school shall make documented, good faith  
10 efforts to contact previous employers of the person to obtain information and recommendations  
11 that may be relevant to the person's fitness for employment.

12 Section 6. A charter school shall keep on file the resumes of all current and former  
13 employees who, within the last three years, have provided instruction to pupils at the charter  
14 school. Resumes shall include an individual's educational and teaching background and  
15 experience in a particular academic content subject area. Resumes of former employees shall  
16 be kept for no less than three years. A charter school shall inform parents and guardians of the  
17 availability of the resume information and shall make the resume information available for  
18 inspection on request of parents and guardians of pupils enrolled at the charter school. Nothing  
19 in this section requires any charter school to release personally identifiable information in  
20 relation to any teacher or employee including the teacher's or employee's address, salary, social  
21 security number, or telephone number.

22 Section 7. The charter of a charter school may be amended at the request of the advisory  
23 council of the charter school and on the approval of the sponsor.

24 Section 8. An approved plan to establish a charter school is effective for five years from the

1 first day of operation. At the conclusion of the first four years of operation, the charter school  
2 may apply for renewal. In addition to any other requirements, the application for renewal shall  
3 include a detailed business plan for the charter school. The sponsor may deny the request for  
4 renewal if, in its judgment, the charter school has failed to complete the obligations of the  
5 contract or has failed to comply with this Act. A sponsor shall give written notice of its intent  
6 not to renew the charter school's request for renewal to the charter school at least nine months  
7 before the expiration of the approved plan. A sponsor shall review a charter at two-year intervals  
8 and may revoke a charter at any time if the charter school breaches one or more provisions of  
9 its charter. At least ninety days before the effective date of the proposed revocation, the sponsor  
10 shall give written notice to the operator of the charter school of its intent to revoke the charter.  
11 Notice of the sponsor's intent to revoke the charter shall be delivered personally to the operator  
12 of the charter school or sent by certified mail, return receipt requested, to the address of the  
13 charter school. The notice shall incorporate a statement of reasons for the proposed revocation  
14 of the charter. The sponsor shall allow the charter school at least ninety days to correct the  
15 problems associated with the reasons for the proposed revocation of the charter. The final  
16 determination of whether to revoke the charter shall be made at a public hearing called for such  
17 purpose.

18 Section 9. After renewal of the charter at the end of the five-year period described in section  
19 8 of this Act, the charter may be renewed for a successive period of five years if the charter  
20 school and its sponsor deem that the school is in compliance with its own charter and this Act.

21 Section 10. No school board or school district employee who has control over personnel  
22 actions may take unlawful reprisal against another employee of the school district because the  
23 employee is directly or indirectly involved in an application to establish a charter school. No  
24 school board or school district employee may take unlawful reprisal against an educational

1 program of the school or the school district because an application to establish a charter school  
2 proposes the conversion of all or a portion of the educational program to a charter school. As  
3 used in this section, the term, unlawful reprisal, means an action that is taken by a school board  
4 or a school district employee as a direct result of a lawful application to establish a charter  
5 school and that is adverse to another employee or an education program and:

6 (1) With respect to a school district employee, results in one or more of the following:

7 (a) Disciplinary or corrective action;

8 (b) Detail, transfer, or reassignment;

9 (c) Suspension, demotion, or dismissal;

10 (d) An unfavorable performance evaluation;

11 (e) A reduction in pay, benefits, or awards;

12 (f) Elimination of the employee's position without a reduction in force by reason  
13 of lack of moneys or work; or

14 (g) Other significant changes in duties or responsibilities that are inconsistent with  
15 the employee's salary or employment classification; or

16 (2) With respect to an educational program, results in one or more of the following:

17 (a) Suspension or termination of the program;

18 (b) Transfer or reassignment of the program to a less favorable department;

19 (c) Relocation of the program to a less favorable site within the school or school  
20 district; or

21 (d) Significant reduction or termination of funding for the program.

22 Section 11. Each charter school shall secure insurance for liability and property loss through  
23 the school's sponsoring entity.

24 Section 12. A charter school shall enroll all eligible pupils who submit a timely application,

1 unless the number of applications exceeds the capacity of a program, class, grade level, or  
2 building. A charter school shall give enrollment preference to pupils returning to the charter  
3 school in the second or any subsequent year of its operation. A charter school that is sponsored  
4 by a school board shall give enrollment preference to eligible pupils who reside within the  
5 boundaries of the school district where the charter school is physically located. If capacity is  
6 insufficient to enroll all pupils who submit a timely application, the charter school shall select  
7 pupils through an equitable selection process.

8 Section 13. A charter school may limit admission to pupils within a given age group or grade  
9 level. However, no charter school may limit admission based on academic potential or  
10 achievement, behavior records, ethnicity, national origin, religion, gender, sexual orientation,  
11 income level, disabling condition, proficiency in the English language, athletic ability, or special  
12 cost considerations with regard to the education of special needs students.

13 Section 14. A charter school may not admit any pupil who has been expelled from another  
14 educational institution or who is in the process of being expelled from another educational  
15 institution. Once a student is admitted to a charter school, the school is subject to and shall  
16 follow all procedures pursuant to chapter 13-32 regarding discipline and expulsion of the  
17 admitted student.

18 Section 15. If a teacher was granted a leave of absence by a public school district board of  
19 education prior to employment by a charter school, a teacher does not lose any right of  
20 certification, retirement status, salary status, or any other benefits provided by law, upon the  
21 teacher's return to the public school district.

22 Section 16. A teacher employed by a charter school who submits an employment application  
23 to the school district where the teacher was employed immediately before employment at the  
24 charter school shall be given employment preference by the school district if all of the following

1 conditions are met:

- 2 (1) The teacher submits an employment application to the school district no later than  
3 three years or the length of the leave absence approved pursuant to subdivision (3)  
4 of this section, whichever is less, after ceasing employment with the school district;
- 5 (2) A suitable position is available at the school district; and
- 6 (3) The teacher requested and was granted a leave of absence prior to employment by the  
7 charter school.

8 Section 17. A charter school shall participate in the state retirement system.

9 Section 18. If a pupil who was previously enrolled in a charter school enrolls in a public  
10 school in this state, the public school shall accept credits earned by the pupil in courses or  
11 instructional programs at the charter school in a uniform and consistent manner and according  
12 to the same criteria that are used to accept academic credits from other public schools. A public  
13 school may refuse to admit any pupil who has been expelled from a charter school or who is in  
14 the process of being expelled from a charter school.

15 Section 19. Although it is the intent of this Act that any charter school organized pursuant  
16 to this Act be eligible to apply for and receive federal grant funding, nothing in this Act may be  
17 construed to imply the charter school is ineligible for federal or state funding to the same degree  
18 and pursuant to the same circumstances as any other public school. A charter school may receive  
19 local funding if approved by the sponsoring school board.

20 Section 20. Any enrolled student as defined in § 13-13-10.4 who attends a charter school  
21 created pursuant to this Act shall, for the purposes of distributing state aid to education, be  
22 counted in the fall enrollment of the school district in which the public charter school is located.

23 Section 21. Employee contracts of charter schools may not be collectively bargained.

24 Section 22. A charter school may choose to not renew a teacher's contract upon giving

1 written notice of nonrenewal by April fifteenth, but is not required to give further process or a  
2 reason for nonrenewal. Acceptance by the teacher of an offer from the charter school to enter  
3 into a new contract with the teacher shall be in the manner specified in the offer. Failure of the  
4 teacher to accept the offer in the manner specified constitutes the termination of the existing  
5 contract between the teacher and the charter school at the end of its term.

6 Section 23. Any charter school organized pursuant to this Act is subject to all public sector  
7 labor relations statutes not otherwise inconsistent with the provisions of this Act. School  
8 districts are not allowed to collectively bargain the number of charter schools allowed in a  
9 school district.

10 Section 24. Any charter school organized pursuant to this Act is subject to the same audit  
11 provisions that apply to any other public school.

12 Section 25. Any charter school organized pursuant to this Act shall provide an annual report  
13 to its sponsoring entity and to the Department of Education.

14 Section 26. The Department of Education shall initiate a pilot charter school for American  
15 Indian students from federally recognized tribes contingent on the department applying for and  
16 receiving a federal grant under the American Recovery and Reinvestment Act of 2009, Division  
17 A, Section 14006, Pub. L. No. 111-5 as amended to January 1, 2010.

18 Section 27. Any applicant seeking to establish the pilot charter school shall submit a written  
19 application to the South Dakota Board of Education. The application shall include the content  
20 described in section 1 of the Act.

21 Section 28. The South Dakota Board of Education may approve the application if it meets  
22 the requirements of this Act as specified in section 27 of this Act and may approve the charter  
23 if the applicant is qualified to operate the pilot charter school. If the board rejects the  
24 application, the board shall notify the applicant in writing of the reasons for the rejection. An

1 applicant may submit a revised application for reconsideration by the board.

2 Section 29. The pilot charter school shall meet the requirements described in sections 4, 5,  
3 6, 7,8, 9, 10, 14, 15, 16, 17, 18, 19, 21, 22, 24, and 25 of this Act.

4 Section 30. The pilot charter school is exempt from the requirements described in sections  
5 2, 3, 11, 12, 13, 20, and 23 of this Act.

6 Section 31. The pilot charter school shall be a public, nonsectarian, nonreligious, nonhome  
7 based, and nonprofit school. No charter may be granted under this Act that would convert any  
8 existing private, parochial, or nonpublic school to the pilot charter school.

9 Section 32. American Indian students from federally recognized tribes shall be given  
10 enrollment priority at the pilot charter school. In its first year of operation, the pilot charter  
11 school may either enroll students on a first-come, first-served basis or through a lottery selection  
12 process if the total number of applicants exceeds the number of spaces available at the pilot  
13 charter school. In subsequent years of its operation, the pilot charter school shall give preference  
14 to:

15 (1) Students who have been admitted to the pilot charter school through an appropriate  
16 admission process and remain in attendance through subsequent grades; and

17 (2) Siblings of students already admitted to or attending the pilot charter school.

18 Section 33. Students enrolled at the pilot charter school shall be counted for fall enrollment  
19 by their resident school district. The resident school district shall remit the per student amount  
20 it receives to the pilot charter school.