

Early History of Utah Charter Schools



Early History of Charter Schools in Utah

Few people know or remember the early history of charter schools in Utah – and many of those who do are no longer involved with charter schools. The road to their legal existence was a long and arduous one. It is amazing how close and how many times the original push for their existence was nearly defeated along the way.

Following is a letter composed by Brian Allen in February, 2006, then a member of the Utah State Charter School Board. Mr. Allen was also ‘the sponsor of the original legislation’ that allowed for the existence of the original eight pilot Utah charter schools. As his letter reveals, there was much opposition by the education establishment. As he points out, the education establishment nearly succeeded in defeating the bill. His letter also discusses that, even after passage, the Utah education establishment (via the Utah School Boards Association) filed an unsuccessful lawsuit challenging the constitutionality of the law – taking it all the way to the Utah Supreme Court.

The purpose of the letter was to give members of the 2006 Utah State Legislature a historical perspective of charter schools due to charter school legislation under consideration at that time, including charter school funding.

February 20, 2006

TO: Members of the Utah Legislature

FROM: Brian Allen – Member, State Charter School Board

Re: Charter School History and Funding – A Personal Perspective

As the sponsor and House Co-Chair of the Charter Schools Task Force in 1997 and as the House sponsor of the 1998 bill that created the pilot program for the first eight charter schools in Utah, I thought it might be helpful if you had a little historical perspective on Charter Schools and their associated funding.

During the interim of 1997, a diverse group of interests representing parents, teachers and administrators converged and spent the summer wrangling over the details of charter schools, their role in education, and if developed how they should look in Utah. I can tell you that it was not easy to come to an agreement but, by some quirk of fate, we were able to finally agree on a pilot of eight schools. In drafting the bill and considering funding, the original bill was purposefully designed with a funding inequity against charter schools. This was done because we believed, at that time, that most, if not all of those schools would be chartered at the district level and they would enjoy the benefit of existing facilities and having the district handle the seemingly endless number of reports that needed to be submitted to the State Office of Education. Additionally, the three-year pilot was limited to a total of eight schools with an evaluation at the end of the pilot period. One financial note; besides the WPU, the charter schools were also treated as a small school district for administrative support funding. When there were eight schools, this worked well because they split up an amount equivalent to 45 WPUs. The downside to this approach is that as the number of schools increased, the amount of funding diminished, assuming, as would happen in a small district, that there would be some economies of scale. However, it doesn't really work that way in the charter world since you have a different governing board for each school. It should also be noted that there was a hold-harmless provision in the appro-

priation process that allowed for the local district to continue receiving funding for students who left for a charter school.

As the bill moved through the session, it became apparent that, although we had consensus in our task force from the district representatives, in general the broader school boards and district administrator communities did not support the bill. However, since the bill was a very carefully crafted consensus, we did not feel comfortable about changing the formula or basic philosophy of the legislation. It was hoped that once the bill passed that the concerns would fade and we would see charter schools advance.

In my legislative career, the bill was the most difficult and challenging bill I had the opportunity to sponsor, but in the end it passed both houses and was signed by Governor Leavitt. Almost immediately following the signature of the Governor, the State School Boards Association, with the encouragement of district administrators, filed a lawsuit in District Court seeking a declaratory judgment to prevent the legislation from becoming law. The court ruled against the School Boards Association, affirming that while the State School Board has general control and supervision over education, the Utah Legislature has the constitutional right and ability to craft an educational solution or create school districts and charter schools. The School Boards Association appealed the decision and the appellate court affirmed the decision of the lower court. That decision was appealed to the Utah Supreme Court who again affirmed the decision of the lower and appellate court.

Charter schools in Utah became a reality as seven schools were approved in the pilot program. Of those seven schools, ~3 were chartered by districts and the balance were chartered by the State School Board. (Of those seven today, two are still chartered by their districts.) As these schools were coming on-line, the charter school movement was receiving support from the Federal Government in the form of start-up grants, money that the schools could use to build or lease facilities and purchase furnishings and supplies.

After the initial three-year pilot, in 2001, Senator Howard Stephenson sponsored SB169, which affirmed the success of the pilot by sun-setting the pilot program and authorizing the State School Board to approve up to four schools per year and allowing the local school districts to approve as many as they want. Clearly the legislative preference was for local school districts to be the chartering entity. This would help insure that charter schools would get some local funding support to help with facilities costs and on-going administrative funding support. Unfortunately, the die was cast regarding local support when the initial lawsuit was filed by the local associations. Even when a local school district did grant a charter, unless it was a district initiative, there was very little support, and almost no financial assistance given to the founders of the charter school. It should also be noted that in 2001, very few founding groups were successful in convincing a local school district to sponsor a school.

In 2002, based on the seeming lack of support for charter schools among the local school districts, Senator Stephenson sponsored SB138. This bill raised the number of schools that could be sponsored by the State School Board to eight per year and also allowed for the creation of six New Century High Schools, an education initiative supported by Governor Leavitt. Again, local school districts were allowed to sponsor as many schools as they desired. Once again, however, the local districts resisted the creation of any charter schools. In fact, they also increased pressure on the State School Board discouraging them from wanting to look at charter schools.

In 2003, Senator Stephenson sponsored SB57. SB57 was an legislative acknowledgment that charter schools were getting little or no support from local districts on facilities costs. This bill created a Char-

ter School Building Sub-account in the School Revolving Loan Fund and appropriated \$1.5 million into that sub-account. I do not know if any schools ever received funding from this account, but I don't believe so. Fortunately, the Federal government was providing start-up grants to new charter schools and that was helping the existing schools meet their facilities needs. This bill also increased to 24, the allowable number of charter schools that could be chartered by the State School Board. However, founders interested in starting a charter school still found little support at the state level and almost no support at the local level. In some cases, when founders were denied by local school boards and subsequently approached the State Board for a charter, the State Board remanded the application back to the local district, forcing them to approve the charter. As you can imagine, this did not create a cooperative environment and the schools received no financial support from the district. In fact, charter schools had trouble obtaining permission to salvage materials from schools that were scheduled for demolition and many usable items ended up in a construction site garbage heap. Additionally, there were some school districts who publicly announced that they would never approve an application for a charter school.

Parents hoping to start a charter school turned once again to the legislature for help. Representative Marda Dillree sponsored HB152 to help address the needs of charter school advocates. HB152 created a State Charter School Board that would review and recommend charters to the State Board of Education for final approval. This bill also raised the level of accountability for charter schools and charged the Charter School Board with oversight of state chartered schools. Additionally, the legislation provided a mechanism for locally chartered schools to transfer their charter to the State Charter School Board. As the board was installed and the process defined, most of the locally chartered schools switched to a state sponsored charter hoping to find a more supportive venue for their school. However, this transfer to the State Charter School Board further isolated the local districts from any financial responsibility for these students, creating further. The legislation continued to authorize eight additional schools per year and further clarified that this was a cumulative number. This allowed for the State Charter School board to approve up to 32 schools. One other item of note is that, in the appropriation process, a formula was developed for the replacement of the local levy funding that a school might have received were it a local district funded school.

Because it had been quite difficult for founding groups to receive approval for their charters, there was a significant pent-up demand for charter schools. The State Charter School Board reviewed 21 applications for 18 available slots. We ultimately approved 16 of those schools. Each of those schools qualified for federal start-up funding. Another important development occurred in 2004, and that was the appointment of Dr. Patti Harrington as the State School Superintendent. Dr. Harrington has proven to be very supportive of charter schools and has worked with the State Charter School Board and charter school advocates on charter school issues. One of the major initiatives was an evaluation of the funding received by charter schools in comparison to the funding enjoyed by the local district schools. The State Charter School Board commissioned a study by the Utah Foundation to review funding parity. The State Office of Education also began looking at the issue. At the conclusion of the study, two major items of funding disparity were noted; first, the administrative funding component had decreased and been diluted enough that it didn't begin to cover the additional administrative costs incurred simply to comply with the multitude of reports that are required, and secondly, the formula that was implemented by the Legislature for the local levy replacement was flawed and resulted in a deficiency in funding of over \$400 per pupil, hence the funding request currently sitting before the Legislature.

While there is a widely held sentiment that the original intent of Charter Schools was for them to do more with less, I don't believe, as the original House sponsor of the legislation, that Charter Schools were envisioned to be quite so financially disadvantaged. I was fairly certain that the Charter Schools could get by without transportation funding and that they could build or lease facilities for less than the districts are doing per square foot. But I also believed, at that time, that local districts would be more engaged in the charter school process, enabling them to help with some of the facility costs. There are still other State education funding sources that charter schools do not access. I do believe that Charter Schools are an important component of the State's educational system and I believe they are doing more with less based on test scores and parental satisfaction surveys. Fundamentally the question about facilities funding needs to be addressed. Property tax funding from one district to another varies widely and the funding formula presented attempts to achieve a balance in that funding for charter schools. Additionally I believe that the request for additional administrative funding is legitimate based on the current reporting requirements. I think it should also be noted that some of the flexibility I had hoped that the charter schools would enjoy is severely restricted by the rigidity of the State Core and the number of statutory mandates. If there could be some relief for schools in this area it might allow them to re-deploy funding to help achieve better academic results and continue to work toward young men and women who are better prepared to move onto college and the workplace and better suited to pursue their dreams.

Brian Allen

Additional Historical Notes:

Historical Note #1:

Below is the historical track, given in the Utah Legislature website, of H.B. 145, 1st substitute on its road to passage. Note that the original bill was substituted and amended in order to pass (i.e. concessions were made along the way to acquire enough votes to pass). Note particularly, that the bill passed the Utah Senate by a single vote (15 'aye' votes are needed for a bill to pass the Utah State senate). Also, though not given in the historical track below, the audio of the floor discussion of the bill on the House floor states that the bill passed out of the House standing committee by the narrow vote of 5-4-4, meaning 5 votes 'for', 4 votes 'against', and 4 committee member 'absent'.

This information updated at 24 March 1998, 12:41 PM. While we make every effort to keep the information current and accurate, it may be updated at any time.

H.B. 145 Substitute Schools for the 21st Century (Allen, B.)	
01/29/98 Number by Short Title	LRGC
02/02/98 Bill Distributed	LRGC
02/02/98 House read 1st time (Introduced)	HSTRUL
02/13/98 Number	HSTRUL
02/13/98 Bill Distributed	HSTRUL
02/13/98 House Bill sent to Fiscal Analyst	HSTRUL

02/13/98 House received from General Counsel	HSTRUL
02/18/98 House received fiscal note from Fiscal	HSTRUL
02/18/98 House sent to standing committee	HSTEDU
02/24/98 House comm rpt fav/substitute/ amended	HSUB
02/24/98 House read 2nd time	H3RDHB
02/24/98 3rd Reading Calendar to Rules Comm	HSTRUL
02/25/98 House under suspension of the rules	HSTRUL
02/25/98 House read 2nd time	HSTRUL
02/25/98 House Rules Comm to 3rd reading calendar	H3RDHB
02/26/98 House read 3rd time	H3RDHB
02/27/98 House amended	H3RDHB
02/27/98 House passed 3rd reading	SINTRO 48 24 3
02/27/98 House sent to Senate	SINTRO
02/27/98 Senate/read 1st (Introduced)	SPRES
02/27/98 Senate/placed on 2nd	S2ND
02/27/98 Senate/read 2nd & 3rd (Suspension)	S3RD
02/27/98 Senate/pass 2nd & 3rd (Suspension)	SPRES 15 9 5
02/27/98 Senate/signed by President to House	HSPKR
02/27/98 House received from Senate	HSPKR
02/27/98 House signed by Speaker/enrolled	LRGCEN
03/02/98 Received from House for enrolling	LRGCEN
03/02/98 Senate/recalled by Senate	SSEC
03/02/98 House sent to Senate	SSEC
03/02/98 Senate/ received from House	SPRES
03/02/98 Senate/pass 3rd	SPRES
03/02/98 Senate/signed by President to House	HSPKR
03/02/98 House received from Senate	HCLERK
03/02/98 House signed by Speaker/enrolled	LRGCEN
03/02/98 Received from House for enrolling	LRGCEN
03/03/98 Enroll draft	LRGCEN
03/09/98 Pass review forward for enrolling	HCLERK
03/10/98 House sent to Governor	EGOV
03/20/98 Governor signed	LTGOV

Historical Note #2:

S.B. 169, (2001 legislature) which allowed for the formation of charter schools beyond the original 8 pilot Utah charter schools (including Thomas Edison Charter School), also faced stiff opposition. For example, the House Education Standing committee nearly defeated the bill. A motion was made to delay to bill for a least a year and that motion was narrowly defeated by an 8 to 7 vote (if that motion

had passed, it is difficult to know how long it would have taken for the bill to come back – but it would have been a minimum of one year).

Historical Note #3:

After the passage of S.B. 169 in 2001, three new charter school applications were submitted to their local school districts, as required in the bill, and were all subsequently denied. Following the process outlined in S.B. 169, those three applicants, which included the original Thomas Edison Charter School (TECS) applicants, petitioned the Utah State Board of Education (USBE) to grant approval for their schools and were ultimately granted approval in September 2001. The other two applicants approved were Timpanogos Academy and John Hancock Charter School, both in Utah County.

However, the approval of the TECS application was not straight forward since there was a strong, concerted effort by the Cache County District to convince the USBE to deny the TECS application. However, that story is told elsewhere.