



National Alliance for Public Charter Schools

2009 STATE LEGISLATIVE SESSION HIGHLIGHTS

Updated: July 21, 2009

OVERVIEW

Most states have now wrapped up their legislative sessions. While the comments in favor of public charter schools by President Obama and Secretary Duncan have been quite helpful for charters, the current economic recession created one of the most challenging state policy environments in years. Within this environment, the primary goal of many state charter advocates has been to defend what they already have, while still trying to make positive changes where possible.

Thus far, charter advocates have won more battles than we lost, a notable accomplishment given the tough state policy environment facing us. Below is a summary by major issue where charters have won and lost as well as where battles are still undecided. Following this summary, we provide more detailed wrap-ups for each state. We'll continue to revise this document as states make additional changes to charter law in 2009.

Caps and Moratoria

Wins:

- Delaware: An existing moratorium was allowed to lapse.
- Idaho: An attempt to place a moratorium on charters was killed.
- Illinois: An additional 60 charters are now allowed.
- Indiana: An attempt to place caps and a moratorium on charters was defeated.
- Louisiana: The state's cap of 70 charters was removed.
- Minnesota: An attempt to implement caps and a moratorium was defeated.
- Tennessee: A bill to allow an additional 40 charters and to expand the types of students eligible to attend charters was enacted.
- Utah: Language to stop the growth of charters was stricken from a bill.

Losses:

- Mississippi: An attempt to lift the state's cap passed the Senate but not the House.
- New Hampshire: State extended its current moratorium on charter growth.
- Oregon: The state enacted new restrictions on the growth of virtual public charter schools.
- Texas: Charter advocates unsuccessfully pushed to lift the state cap.

Undecided:

- Massachusetts: Pushing to lift the cap
- Michigan: Fighting to lift the cap on university-authorized charters
- North Carolina: Working to lift the cap

Authorizers

Wins:

- Illinois: Created a commission to draft a bill for a new statewide authorizer.
- Indiana: Defeated an effort to require school districts to approve charter applications that are made to non-district authorizers.
- Minnesota: Passed a bill to clarify the roles of charter authorizers, establish an approval and renewal process, and provide authorizer funding.
- Missouri: Strengthened authorizer accountability.
- New York: Defeated an effort to restrict the autonomy of SUNY.
- Ohio: Strengthened authorizer accountability.

Losses:

- Mississippi: Bill to expand eligible authorizing entities passed Senate but not House.
- Nevada: Legislation to create new statewide authorizer failed to pass.
- Oklahoma: Bill to allow Indian Tribes to serve as authorizers vetoed by governor.
- Oregon: Proposed law to create new statewide authorizer failed to pass.
- Wyoming: Legislation to create new statewide authorizer failed to pass.

Funding and Facilities

Wins:

- Alaska: Changed how funding is calculated for small charters to increase the financial sustainability of these schools.
- Arkansas: Made changes to better ensure charters will receive categorical funds.
- Colorado: Passed bills to maintain \$5 million for their per-pupil charter facilities funding program, allow charters to participate in district bond elections, and lease or purchase land from the state.
- Connecticut: Successfully defeated budget cuts to charters proposed by the governor.
- Georgia: Increased support for charter facilities.
- Hawaii: Passed a bill to allow charter facilities funding (though it wasn't funded).
- Minnesota: Thwarted an effort to limit the amount of the statewide allocation increase for lease aid.
- New Hampshire: Ensured state fully funds charters via state funding formula.
- New Mexico: Charters were given access to several funding streams for facilities.

- Ohio: Ensured governor's proposed budget cuts were restored by legislature.
- Rhode Island: Ensure state funds new charters.
- Tennessee: Enacted provisions creating a per-pupil facilities funding stream for charter schools and requiring local school boards to provide charters with all appropriate allocations under federal law or regulation.
- Texas: A funding floor was established to protect charters from fluctuations in tax revenues.
- Utah: Increased funding for kindergarten students and protected the local replacement funding and administrative costs line items from budget cuts.

Losses:

- Hawaii: Charters suffered a 10% cut, with potentially more cuts on the way.

Undecided:

- New York: Working to restore \$30 million of proposed \$50 million cut.

Special Case:

- District of Columbia: Mayor proposed to cut \$24 million in charter school facilities aid and to restrict charter school. Charter advocates rallied to the cause and heavily lobbied city council members and the mayor. As a result, city leaders restored \$16 million in facilities funding.

New Laws

Losses:

- Maine: While the Maine House passed a charter bill, the Senate did not.
- South Dakota: For the second year in a row, charter advocates were unsuccessful in their effort to enact a charter law.
- West Virginia: Charter bills were introduced in the House and Senate, but failed to move.

STATE SUMMARIES

Below we provide summaries of state legislative sessions that were completed as of this writing.

Alaska. Alaska lawmakers enacted one charter bill – SB 57 – this session. SB 57 changed how funding is calculated for small charters to increase the financial sustainability of these schools. SB 57 also requires charters with low enrollment to submit a plan for the following year detailing whether it will remain open with a low count and, if so, its anticipated funding, proposed budget, and anticipated changes to the school or staff. If the school intends to close, the school must provide a transfer plan for students and staff. Alaska lawmakers also debated a virtual charter bill, but tabled it until the 2010 legislative session.

Arkansas. Arkansas enacted SB 814 this session. This bill made several changes specific to public charter schools in the state, including:

- Specifies that open-enrollment public charter schools are their own local educational agencies.
- Amends the basis and flow of foundation funding and enhanced educational funding for open-enrollment charters in their first year of operation and the first year the school adds a new grade and for open-enrollment charters in the second year and each school year thereafter.
- Specifies how the state will provide national school lunch state categorical funding, professional development funding, and other categorical funding to open-enrollment charters.

Colorado. Overall, the 2009 session was a good one for Colorado charters. Lawmaker passed legislation to maintain \$5 million for their per-pupil charter facilities funding program, allow charters to participate in district bond elections, and lease or purchase land from the state. The state also enacted laws to give greater autonomy and flexibility to Colorado's statewide authorizer and to permit charters engage school food authorities besides their district in certain situations.

Connecticut. Charter advocates successfully defeated an effort to slash the charter school budget, which is continuously susceptible to cuts because it appears as a separate line-item in the state budget. Lawmakers also changed the state commissioner of education's legislative reporting requirement on charter schools from annually to biennially as a part of HB 6687, a general education bill.

Delaware. In Delaware, the one-year moratorium on charter school growth expired at the end of June. Lawmakers passed HB 119 which requires each school district and public charter school to establish a citizen budget oversight committee, mandates new financial reporting requirements for school districts and charter schools, and requires the state department of education to establish goals for school districts and charter schools with respect to the percentage of cumulative revenues that are used for instruction. Via changes made in the state budget, charters are now permitted to accept bids for transportation contracts and keep the difference between the state allotment for transportation and the lowest bid. The budget also allows charters the option to eliminate five staff development days to accommodate the state's 2.5% salary reduction.

Florida. In Florida, lawmakers enacted SB 278. This bill makes several changes to the state's charter law, including:

- Requires charter applicants to participate in business and financial practices training;
- Requires all charter schools and charter technical career centers to provide monthly financial statements to their sponsors;
- Requires the state commissioner of education to oversee financially deficient charter schools and charter technical career centers;
- Requires charter schools that are identified as failing financially to implement a recovery plan;
- Allows the sponsor to terminate or not renew charters with persistent financial difficulties;
- Makes charters eligible for any stimulus dollars the state receives;
- Provides standards of conduct relating to acceptance of gifts, financial disclosures, and conflicts of employment and contractual relationships;
- Requires sponsors to dispense all monies owed to charters under the federal lunch program in the same manner as other schools under their supervision; and

- Requires the state department of education to collect and compare performance data of charter schools and traditional public schools and share the results with the public and publish them on its website.

Georgia. Georgia made progress in addressing the facilities challenges facing the state's charters. Lawmakers passed HB 555 which did the following:

- Provided charters authorized by the Georgia Charter School Commission with access to money from the state's facilities fund for charters.
- Provided for the reversion of excess funds and any property purchased with dollars from the state's facilities fund for charters to the Georgia Charter Schools Commission in the event of the closing of a charter authorized by the Commission.
- Required each local board of education to make available any vacant or otherwise unused facility to locally-authorized charters at no lease cost, with any additional terms of use to be negotiated by the parties.

Hawaii. On the positive side, a bill to compel charters to comply with "state board of education policies and state department of education directives that are made in these entities' capacity as the state education agency" was defeated. However, the state slashed its budget for charters by 10% from \$61 million to \$56 million (although this amount includes an allocation by the legislature of \$4 million from the state's stimulus dollars, which the governor is unlikely to make).

The state also passed SB 496 this session. This bill allows for charter facilities funding, although the legislature did not provide an appropriation for this provision. Specifically, SB 496 calls for the Charter School Review Panel to survey all charter school facilities to determine an appropriate per-pupil facilities allocation and for Hawaii's Charter School Administrative Office to then submit a facilities funding request to the governor and legislature.

Idaho. Idaho charter supporters defeated an effort to enact a moratorium on charter growth. Lawmakers also passed the following bills:

- HB 212 requires charters authorized by the statewide authorizer to notify districts in which they are located if they are making a change to their charters that increases their enrollment by 10%. Districts must have a chance to present regarding impact.
- HB 79 provides an opportunity for charter teachers' children to be included in the 10% enrollment preference set aside reserved for charter founders' children.
- SB1165 makes it possible for rural schools (charters included) to compete for some grants.
- SB1121 requires hybrid virtual schools with a bricks and mortar setting that might impact enrollment of local districts to notify all surrounding districts of intent to charter with the statewide authorizer.
- HB 118 changes the way in which transportation funding is distributed, which could negatively impact some charters.
- HB 17 allows for changes in contracts in response to current economic conditions.

Illinois. The Illinois General Assembly took two steps in the right direction with the passage of Senate Bill 612 this session, becoming the first state to respond to President Obama's and Secretary Duncan's appeals to lift caps on charter school growth.

SB 612 increases the cap in Chicago from 30 to 75 and boosts the cap outside of Chicago from 30 to 45. Five of the new spots in Chicago are reserved for dropout recovery programs, each of which may operate up to 15 campuses within the city. The bill preserves the ability of the first 15 charters that opened in Chicago to continue their successful replication efforts.

Critical to efforts to expand chartering outside of Chicago, the bill also creates an independent charter school authorizer task force, which will submit legislation to create a new independent charter school authorizer for the 2010 session.

As compromise measures, the bill requires minor new reporting requirements as well as a requirement that 75% of all teachers become certified, with a three- to four-year grace period for charters depending on when they opened. Almost 80% of the state's charters already meet (or almost meet) this target.

Separately, and troubling for public charter schools in Illinois, the Illinois General Assembly also passed SB 1984, which requires all public charter schools to comply with the provisions of the Illinois Educational Labor Relations Act. This bill is a reaction to the current effort to unionize one public charter school outside of Chicago and three public charter schools in Chicago, at the heart of which is a legal dispute in front of the National Labor Relations Board (NLRB) about whether charters are public employers governed by the Illinois Educational Labor Relations Board (IELRB) or private employers governed by the NLRB. As a result of SB 1984, charters will be considered public employers covered by IELRB, which will allow unions to use card check procedures to unionize charters – bad policy that exists in states such as California and may become the law of the land for private employers soon via the Employee Free Choice Act currently being debated in Congress.

Indiana. Indiana charter advocates made significant strides during this legislative session, most notably defeating proposed moratorium and caps on charter growth. At the end of the session, the state budget contained several pro-charter provisions, including:

- Creates a pilot program to establish one or more virtual charter schools;
- Allows charter school access to state technology funds;
- Provides a two-year repayment forbearance on loans needed to fund the first semester operational costs of new charter schools;
- Creates new requirements for the establishment of a facilities fund incentive grant program permitting the state to apply for federal funds for charter school facilities; and
- Establishes "recovery charter schools," a special category of charter schools which specialize in educating students who are in alcohol or drug abuse recovery, are operated by an accredited hospital, and receive additional per-pupil funding to support the education of their students.

Louisiana. Louisiana charter supporters made considerable gains this session. Via HB 619, lawmakers removed the state's cap of 70 charters and established a flat authorizer oversight fee of 2% of a charter's per-pupil revenue.

Via SB 146, the state made several other changes to charter law, including:

- Requires all authorizers to use third party evaluators when assessing charter applications;
- Requires Type 2 conversion charters (which are authorized by the state board of education) to pay a share of the local school board's bond indebtedness in return for access to the local district's facility;
- Requires a majority vote by a traditional public school's faculty to convert to a charter, as opposed to the previous 2/3 vote necessary;
- Creates an admission preference for siblings of current charter students; and
- Permits religiously affiliated organizations to provide services to charter schools, including but not limited to mentoring, volunteering, fundraising, and tutoring.

Via HB 187, the state will now permit, rather than require, local school boards in the case of Type 3 charters and the state board of education in the case of Type 4 charters to seek a vote by the parents and faculty at a traditional public school in order to convert to a charter.

Lawmakers adopted several concurrent resolutions as well, including HCR 193 which authorizes a comprehensive study of the charter law.

Maine. Maine, another state currently without a charter law, made another run at passing a charter bill this session. After the Senate rejected the bill by a vote of 22 to 13, the House, in a surprise move, cast a bi-partisan vote in support of the bill 72 to 65. The bill went back to the Senate, where the Senate again rejected it, but this time by a vote of 20 to 14. While charter supporters ultimately failed in their efforts this year, some hopeful signs emerged during the debate, setting up charter advocates to make another run at a bill in 2010.

Minnesota. The 2009 legislative session in Minnesota resulted in the biggest changes to the state's charter law since the original one was passed in 1991. Charter advocates were able to both make positive changes to the law and defeat attempts to enact caps and a moratorium.

The charter reform bill made several changes, including the following:

- Overhauls authorizer roles and responsibilities;
- Allows authorizers to charge a set fee with a fee increase index established per year;
- Establishes an approval process and a five-year review cycle for authorizers and further requires all current authorizers to obtain state approval by 2011 in order to continue authorizing;
- Clarifies the roles of the authorizers and the state department of education in the charter school applicant review process;
- Prohibits sectarian organizations from serving as authorizers;
- Strengthens charter school governance by requiring training for board members and allowing for varying board structures;
- Codifies penalties for potential conflicts of interest; and,
- Recognizes and establishes criteria for affiliated building companies for charters.

Charter advocates also thwarted an effort to limit the amount of the statewide allocation increase for lease aid.

Mississippi. Charter advocates lobbied for the state to pass a bill to improve the state's charter laws, including provisions to lift the state's cap and increase the types of authorizers in the state. While the Senate passed a bill making several positive changes, the House failed to do so, and the bill died. Charter supporters are well-positioned to make a strong run at another bill in 2010.

Missouri. Missouri lawmakers enacted several provisions impacting charters via SB 291. The following is a listing of the substantive changes:

- Allows charter schools to keep either a surety bond or an insurance policy with a minimum of \$500K to protect against theft. Previously, only a surety bond would suffice.
- Requires charter sponsors to revoke a charter or take appropriate disciplinary action against a school in breach of its charter.
- Requires state department of education to commission a study comparing charter students with an equivalent group of district students and a study of charters' impact on their constituents.
- To receive funding from the state department of education, a charter school sponsor must remain in good standing by fulfilling its sponsorship obligations under the law, including "appropriate demonstration" of the following:
 - Use a minimum of 90% of its funds on charter school sponsorship activities
 - Maintain a comprehensive and fair application process to ensure only quality charters are approved
 - Negotiate good contract terms for both the charter and the sponsor with each party's respective responsibilities clearly defined.
 - Maintain good oversight
 - Employ a merit-based renewal process
- Imposes a termination date of July 2010 on a provision requiring excess dollars from the gaming proceeds for education fund to be deposited into the Elementary and Secondary Education Improvement Fund.

Additionally, SB 291 districts and charters to provide virtual courses or programs within the following parameters:

- Any grade K-12 may offer a virtual component provided it is in-line with school policy and the charter school's charter. Multiple providers may be used.
- Courses must meet the Show-Me curriculum standards and comply with state requirement for teacher certification. Additionally, information regarding the virtual course, i.e. privacy policy, usage training and software, must be available to interested parties.
- The state board of education reserves the right to request additional information relating to the course.
- Schools shall receive state funding for the courses.

Nevada. This session, charter supporters pushed several pieces of legislation. Most significantly, they lobbied for a bill to create a new statewide authorizer. While there was much bi-partisan support for the bill, time ran out before the legislature could bring the bill to the floor and enact it. Charter advocates expect to make another go at it in 2011.

New Hampshire. The biggest success this legislative session for New Hampshire charter advocates was ensuring that the state fully funds charters via the state's funding formula. On the down side, the state extended its current moratorium on the growth of charters authorized by the state board of education to June 30, 2001. Lawmakers also passed two charter-specific bills. HB 169 amended the definition of "average daily member in residence" to require that students attending approved charter schools be counted in the school district in which they legally reside. HB 688 streamlined the approval process for district-authorized charters.

New Mexico. New Mexico made significant progress this session in addressing the facilities challenges facing the state's charters. In total, lawmakers passed eight bills related to charters, four of which related to facilities:

- HB 466 mandates that all school districts share facilities funds (also referred to as HB33 funds) with public charter schools in a proportionate share to a charter's enrollment. The bill also allows local tax funds to be used as payments for approved lease-to-purchase agreements.
- SB 584 and HB 76 together provide the New Mexico Finance Authority the ability to use public bond funds to construct charter facilities. The bills identified seven charters as potential participants in this pilot program that allows funds loaned by the Finance Authority to be used for the acquisition of buildings, land and facilities.
- SB 387: extends the deadline for public charter schools to move to public buildings from 2010 to 2015; maintains the lease assistance fund at \$700 per student with an inflation index; postpones the public school facilities authority's evaluation of charter facilities for grants until after the charter has been renewed; and, requires that tax levy resolutions submitted by a district to the voters for approval contain capital improvement funding for public charter schools.
- SB 454 allows schools to use either their own training and experience (T&E) index or that of the district as it relates to teachers; however, by 2010, all charters that have been in operation for a year or more must use their own T&E index.
- HB 289 grants permission to the charter authorizers to hear public testimony through subcommittees for new charter applicants.
- SB 148 mandates three hours of training for charter school governing councils on various topics directly impacting school governance.
- SB 27 changes the date to submit letters of intent for new charter applications 180 days prior to the application submission to the 2nd Tuesday of January of the application year.

Ohio. In 2009, charter advocates were successful in one of the toughest budget battles to date. Instead of suffering crippling budget cuts of 20% to 25% specifically targeted at public charter schools, charters will only receive a cut of 0.25%, the same as for traditional public schools.

The state budget also made several changes to the charter statute, including:

- Adopts stricter guidelines governing the trigger for automatic closure of charters;
- Eliminates the requirement that a charter must be in operation for two full school years before the Ohio Department of Education (ODE) may issue its report card for the school, although it exempts the performance rating on the report cards issued in these first two years from consideration for automatic closure or any other matter based on report card ratings.

- Grants authority to the ODE to oversee and monitor all charter school sponsors and requires ODE to provide information on sponsor performance in its annual report on charter schools; and,
- Allows e-schools to use their per-pupil funding for base classroom teachers to cover computer and software costs.

Charter advocates were also able to defeat several proposed changes to the charter law that would have hampered quality charter growth in the state.

Oklahoma. Legislators passed a bill that would have allowed federally recognized Indian tribes to serve as an authorizer. The governor vetoed the bill.

Oregon. Oregon's charter supporters encountered a setback this legislative session as lawmakers enacted provisions to restrict the growth of virtual public charter schools. Via SB 767, lawmakers enacted the following provisions:

- Established a moratorium on the creation of new virtual public charter schools that don't comply with a previously enacted provision that requires 50% or more of the students who attend a virtual public charter school to reside in the school district in which the school is located;
- Established a moratorium on the expansion of existing virtual public charter schools that don't comply with the provision that requires 50% or more of the students who attend a virtual public charter school to reside in the school district in which the school is located beyond the number of students enrolled as of May 1, 2009;
- Created a work group to study virtual public charter schools and submit a report of its findings to the next session of the legislature that convenes in 2010;
- Created new requirements specific to virtual public charter schools; and,
- Created new provisions for sound financial management systems applicable to all public charter schools.

Rhode Island. Rhode Island charter advocates were successful in ensuring that the state budget includes funds for two new charters.

South Dakota. For the second year in a row, charter advocates in South Dakota made a run at enacting a charter law. Unfortunately, they met with the same unsuccessful result as last year.

Tennessee. Via SB 2133, Tennessee enacted significant changes to its charter law this session, including:

- Raises its cap from 50 charters to 90 charters, 35 of which must be located in Memphis, four of which must be located within Shelby County, and 20 of which must be located in Davidson County;
- Creates a cap of three charter schools devoted exclusively to the re-enrollment of high school students who have dropped out of school, with no more than one such charter school created in any local education agency (LEA);
- Exempts conversions and charter schools devoted exclusively to the re-enrollment of high school students who have dropped out of school from counting against the cap of 90 charters;

- Expands the types of students eligible to attend charters by adding students who are eligible for free and reduced-price lunch and who are enrolled in LEAs that have an average daily membership of 14,000 or more and three or more schools which have missed the same benchmark for adequate yearly progress for two or more consecutive years resulting in such schools being designated as high priority schools, while allowing any LEA to choose by a two-thirds vote of the local school board to allow students eligible for free or reduced-price lunch to be eligible to attend charters;
- Requires local school boards to provide charters with all appropriate allocations under federal law or regulation;
- Creates a per-pupil facilities funding stream for charter schools;
- Increases the term of a charter from five years to 10 years with interim reviews to be conducted during the 5th year of a charter's term;
- Allows the state commissioner of education to convert chronically low-performing public schools into public charter schools; and,
- Increases reporting requirements regarding accounting and student tracking for charters.

Texas. The 2009 legislative session was one of mixed results for charters in Texas. On the positive side, lawmakers passed HB 3646, which establishes a funding floor tied to the current school year plus an additional \$120 per student to minimize the impact of local tax revenue fluctuations on schools and eliminated the remaining three years of transition time for the state to switch from using a charter student's resident district funding amount to a statewide funding amount to avoid charter school inequities (Previously charters located in wealthier districts received more than others). As a result of these changes, charters will receive more money starting next year. HB 3636 also allows high-quality charters to qualify as a virtual school as a way of expanding curricular options for students and offering courses for those working full-time.

On the down side, a bill to raise the cap by 12 schools per year (including two designated for students with disabilities), streamline the replication process for effective charters, and eliminate the renewal process for effective charters was ultimately unsuccessful. While it passed the Senate, it never made it to a vote on the House floor; it was killed on a point of order during debates.

Utah. Utah charter advocates played offense and defense on charter funding and fought off a last-minute attempt to impose a moratorium on charter growth in the state. As part of the state's budget bill (HB 2), lawmakers increased funding for kindergarten students from 55% of the state's full allocation for these students to 100%. Charter supporters also protected the local replacement funding and administrative costs line items from budget cuts. However, the state made slight reductions in its education budget which impacted traditional public schools and public charter schools equally. Lawmakers also passed HB 96 which allows charters opt into the state retirement system at a time other than their founding year.

Virginia. HB1844 removed a provision from the state's charter law that allowed local districts to limit the number of charter schools in their district to 10% of the districts' schools or 2 charter schools, whichever is greater.

Washington, D.C. The big issues this year revolved around the mayor's proposals to cut \$24 million in charter school facilities aid and to restrict charter school and authorizer autonomy. Charter advocates

rallied to the cause and heavily lobbied city council members and the mayor. As a result, city leaders restored \$16 million in facilities funding and eliminated the language negatively impacting autonomy.

West Virginia. West Virginia has the distinction of being one of the 10 remaining states without a charter law. During the 2009 legislative session, however, some lawmakers in the state made a push to enact one. In the House, Republican Representative Jonathan Miller introduced both a resolution recognizing charters as a viable alternative to traditional public schools and a bill allowing charters in the state. Simultaneously, Democratic Senator Eric Wells introduced a charter bill. None of these pieces of legislation made it out of their respective chambers, but the charter debate began in earnest. A grassroots organization, West Virginians for Education Reform, will be working to increase public awareness and support for charters before the 2010 session.

Wyoming. Wyoming passed a bill to tweak the charter appeal process, but failed to enact legislation to create a new statewide authorizer.

The following states were still in session (regular or special) as of this writing: Arizona, California, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, and Wisconsin.