

Public Charter Schools in Montana: A Comparison of 2013 Legislation

Prepared by Pad McCracken, Research Analyst, for the Education and Local Government Interim Committee
December 2013

Introduction

During the 2013 Session, two bills creating public charter schools progressed through the Montana Legislature, but ultimately died in process. HB 315 failed on 3rd reading in the House 49-50. Two weeks later SB 374 was introduced in the Senate. After clearing the Senate Education Committee, SB 374 was amended heavily through a substitute bill on the Senate floor; the introduced bill of 41 pages was reduced to 4 pages. As amended, SB 374 passed 3rd reading in the Senate, but was tabled in the House Education Committee.

The table on the following pages allows a side-by-side comparison of each of the two bills in their final versions broken down by elements common to many public charter school laws found in other states. The far-right column allows a comparison with ARM 10.55.604, the administrative rule section that details how school districts may seek variances to standards, including variances creating public charter schools.

Other considerations

The legal review comments for HB 315 note that the bill as drafted “may raise potential constitutional issues associated with Article X of the Montana Constitution.” The potential issues identified were: (1) possible conflict with the “Board of Public Education’s exercise of general supervision of the public school system as specified in Article X, section 9(3)(a)” through the creation of a public charter school commission with statewide chartering authority and jurisdiction; and (2) possible conflict with Article X, section 8, which states that “supervision and control of schools in each school district shall be vested in a board of trustees to be elected by law” through the creation of a separate and possibly unelected governing board for public charter schools.

HB 315 also received a local government fiscal note that stated “The fiscal impact of the bill on local governments is unknown.” The funding mechanisms for charter schools in other states are varied. HB 315 proposed to provide to a charter school the identical amount that a pupil’s resident district would have spent on the pupil’s behalf and then deduct that same amount from state payments to the resident district. This spurred debate on the role of fixed versus variable costs for school districts.¹

Webster’s dictionary defines charter school as “a tax-supported school established by a charter between a granting body (as a school board) and an outside group (as of teachers and parents) which operates the school without most local and state educational regulations so as to achieve set goals.” Public charter schools created under SB 374 as amended or the ones possible through current ARM 10.55.604 do not fit this standard definition.

¹ Fixed costs are those that do not vary with enrollment; variable costs are those that do.

ELEMENT	HB 315, Third reading (Knudsen)	SB 374, Third reading (Lewis)	ARM 10.55.604
OUTCOME	Failed on 3 rd reading in the House 49-50	Tabled in House Education Committee	In effect
STATEWIDE OVERSIGHT	Created public charter school commission; 9 members, appointed 3 each by governor, senate president, and speaker of the house; no more than 5 of same political party, geographic diversity, no more than two public employees one of whom can be BPE member ² ; staggered terms Commission may accept donations and submits budget requests	Must meet or exceed the requirements of the Montana Constitution, state law, and accreditation standards except as specifically approved through a variance to standards by BPE	Through the variance to standards process; BPE with recommendations from Superintendent of Public Instruction and Variance to Standards Review Board
AUTHORIZERS	Public charter school commission; school district trustees registered with the commission; colleges and universities approved by the commission Authorizers funded by oversight fee paid by charter schools, not to exceed 2% of the school's state per-pupil finding	None (can be viewed as district self-authorization via trustees and electors)	None (can be viewed as BPE with recommendations from Superintendent of Public Instruction and Variance to Standards Review Board)
FORMATION	Authorizer issues RFP which requires applicant to provide extensive school plan Authorizer reviews charter proposals and approves or denies Authorizer enters into contract with governing board of successful applicant	Majority vote of trustees and petition of at least 10%, 20%, and 30% of qualified electors of 1 st , 2 nd , and 3 rd class districts respectively	Application by school district trustees Approved ultimately by BPE through Variance to Standards process
CAPS (limits on number of charter schools created)	None	None	None
ACCREDITATION	Not required	Required; BPE	Required; BPE

² Intent unclear—Board of Public Education (BPE) members not necessarily public employees

ELEMENT	HB 315, Third reading (Knudsen)	SB 374, Third reading (Lewis)	ARM 10.55.604
GOVERNANCE	Governing board is party to contract with authorizer and elected or selected pursuant to charter application	District trustees	District trustees
STUDENT ENROLLMENT	Open to students statewide up to capacity, then lottery; preference may be given to previous enrollees and siblings and a limited number of children of employees and governing board members	Unrestricted for district residents	Unrestricted for district residents
TEACHER CERTIFICATION	Not required	Required	Required
BACKGROUND CHECKS FOR EMPLOYEES	Yes	Yes	Yes
COLLECTIVE BARGAINING	Not required ³	Yes	Yes
PUBLIC RETIREMENT FOR EMPLOYEES	No ⁴	Yes	Yes
ACCOUNTABILITY & ASSESSMENT	Must meet or exceed state accountability and assessment requirements Authorizer issues annual performance report for each school Commission issues annual report on all public charter schools	Same requirements as other public schools	Same requirements as other public schools
CHARTER RENEWAL, NONRENEWAL, REVOCATION	Initial charter contract is 5 years; charter applies to authorizer for renewal Authorizer may revoke charter for violations of contract or failure to meet performance expectations, safety standards, of fiscal management standards	At discretion of district trustees	Per variance to standards process or district may discontinue operation of charter school at trustees' discretion

³ “Public charter school employees may not be required to be members of any existing collective bargaining agreement between a school district and its employees.” (page 23, lines 18-19)

⁴ Optional participation of charter school employees in public employee retirement plans was amended out of introduced bill.

ELEMENT	HB 315, Third reading (Knudsen)	SB 374, Third reading (Lewis)	ARM 10.55.604
FUNDING	<p>“For each student attending a public charter school, the superintendent of public instruction shall pay to that public charter school an amount equal to the per-pupil average, but not the per-ANB average, of total school expenditures for the student's resident school district for the previous school year.”</p> <p>Identical amount deducted from resident district’s aid payments.</p>	Funded through regular school district funding formula	Funded through regular school district funding formula
OPEN MEETING	Subject to open meeting and public records laws	Subject to open meeting and public records laws	Subject to open meeting and public records laws
HEALTH & SAFETY	Subject to health and safety requirements of other public schools	Subject to health and safety requirements of other public schools	Subject to health and safety requirements of other public schools
COMMUNITY INVOLVEMENT	Application must provide evidence of community support and describe organizational structure including advisory bodies or parent/teacher councils	Must have plan to consider community and staff input	Must have plan to consider community and staff input
AUTONOMY	Charters are granted an exemption from provisions of Title 20, MCA, except as explicitly set forth in the bill	Charters may include special programs as part of curriculum, be organized around a special emphasis or theme, and may utilize innovative educational practices	Through the variance to standards process
DISTANCE LEARNING	No restrictions	Charter must use Montana Digital Academy exclusively	Determined by district trustees