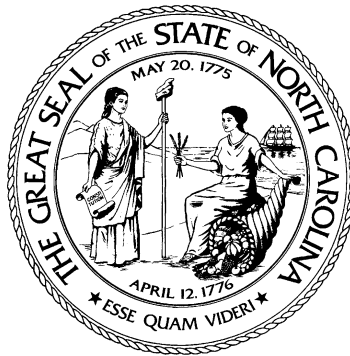


**HOUSE SELECT COMMITTEE ON THE LEGAL
ASPECTS OF USING LOTTERY PROCEEDS FOR
CHARTER SCHOOL FUNDING**



***REPORT TO THE
2009 GENERAL ASSEMBLY
OF NORTH CAROLINA***

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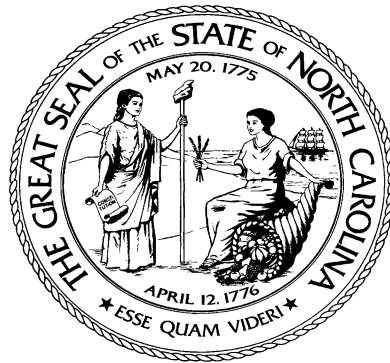
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STATE OF NORTH CAROLINA

HOUSE SELECT COMMITTEE ON THE LEGAL ASPECTS OF USING
LOTTERY PROCEEDS FOR CHARTER SCHOOL FUNDING



November 18, 2008

TO THE MEMBERS OF THE 2009 North Carolina House of Representatives:

Attached for your consideration is the report of the House Select Committee on the Legal Aspects of Using Lottery Proceeds for Charter School Funding established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2007 General Assembly.

Respectfully submitted,

Representative Winkie Wilkins
Chair

**HOUSE SELECT COMMITTEE ON THE LEGAL ASPECTS OF USING
LOTTERY PROCEEDS FOR CHARTER SCHOOL FUNDING**

Membership List

<u>MEMBER</u>	<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
Rep. Winkie Wilkins, Chair	Nancy Brantley	851-0850	1301 LB	71
Rep. Larry Bell	Carolyn Edwards	733-5863	538 LOB	12
Rep. Susan Fisher	Lynn Tennant	715-2013	420 LOB	30
Rep. David Lewis	Marie Strickland	715-3015	509 LOB	114
Rep. Marvin Lucas	Thelma Utley	733-5775	417-A LOB	20
Rep. Pat McElraft	Mary Marchman	733-6275	603 LOB	113
Rep. Marian McLawhorn	Susan Burleson	733-5757	1217 LB	34
Rep. Charles Thomas	Rosa Kelley	715-3013	418-C LOB	117
Rep. Alice Graham Underhill	Judy Veorse	733-5853	1206 LB	17
Rep. Laura Wiley	Susan Brothers	733-5877	513 LOB	88
Staff:				
Ms. Drupti Chauhan	Research	733-2578	545 LOB	
Dr. Shirley Iorio	Research	733-2578	545 LOB	



**Office of Speaker Joe Hackney
North Carolina House of Representatives
Raleigh, North Carolina 27601**

**HOUSE SELECT COMMITTEE ON THE LEGAL ASPECTS OF USING
LOTTERY PROCEEDS FOR CHARTER SCHOOL FUNDING**

Section 1. The House Select Committee on the Legal Aspects of Using Lottery Proceeds for Charter School Funding (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2007 General Assembly.

Section 2. The Committee consists of the ten Members of the House of Representatives listed. Committee members serve at the pleasure of the Speaker of the House of Representatives. The Speaker of the House of Representatives may dissolve the Committee at any time.

Committee Members

Representative W. A. Wilkins, Chair	Representative Pat McElraft
Representative Larry M. Bell	Representative Marian N. McLawhorn
Representative Susan C. Fisher	Representative Charles C. Thomas
Representative David R. Lewis	Representative Alice Graham Underhill
Representative Marvin W. Lucas	Representative Laura I. Wiley

Section 3. The Committee shall review existing statutes relating to charter schools funding with emphasis on the legal aspects of the use of net revenues of the North Carolina State Lottery/Education Lottery Fund by Charter Schools. Some legal aspects for examination on the use of revenues from the Education Lottery Fund for charter schools include:

1. The use of Education Lottery Funds for school construction, renovation, and physical plant expansion.
2. The Committee will examine the general statutes that established the North Carolina Education Lottery, and may use that information for background as a part of this study.
3. The Committee may review other recent studies of charter schools for referral to the 2009 General Assembly on how the State's interest is protected by current funding formulas, or, to consider the impact of changes in legislation.

Section 4. The Committee shall meet upon the call of the chair. A quorum of the Committee shall be a majority of its members.

Section 5. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1.

Section 7. The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of the chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Committee.

Section 9. The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

Section 10. The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2008, by filing a copy of the report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before December 31, 2008, by filing the final report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee terminates on December 31, 2008, or upon the filing of its final report, whichever occurs first.

Effective this 18th day of February, 2008.



Joe Hackney

COMMITTEE PROCEEDINGS

The House Select Committee on the Legal Aspects of Using Lottery Proceeds for Charter School Funding held 4 meetings.

April 10, 2008

Overview of Charter Schools

- Jack Moyer, Director, Office of Charter Schools
- NC Department of Public Instruction

Overview of Charter School Funding

- Brian Mattheson, Fiscal Research Division
- Ryan Blackledge, Bill Drafting Division
- Ken Phelps, School Planning Section, NC Department of Public Instruction

April 30, 2008

1996 Charter School Legislation

- Rep. Leo Daughtry

Asset Distribution upon Revocation or Relinquishment of Charter School License

NC Department of Public Instruction

- Paul LeSieur, Director, School Business Services

Current Methods of Funding Charter School Capital Needs

NC Department of Public Instruction

- Jack Moyer, Director, Office of Charter Schools

The Magellan Charter School, Raleigh, NC

- Bruce Boucher, Chair, Board of Directors
- Mary Griffin, Principal

Millennium Charter Academy, Mt. Airy, NC

- Kirby McCrary, Administrator

Roxboro Community School, Roxboro, NC

- Sam Kennington, Administrator
- Mark Phillips, Budget Coordinator and Member of Board of Directors
- Lacy Winstead, Building Coordinator and Member of Board of Directors
- Art Kruger, Loan Officer, Roxboro Savings Bank

October 7, 2008

State Indebtedness and Creating a Collateral Fund for Charter School Facility Funding

NC Department of State Treasurer

- Dora Fazzini, Director, Capital Facilities Finance Section, State and Local Government Finance Division

Past Efforts to Obtain Charter School Facility Funding and Current Federal Initiatives

NC Department of Public Instruction

- Jack Moyer, Director, Office of Charter Schools

November 18, 2008

Adoption of Report

SUMMARY OF COMMITTEE PROCEEDINGS

House Select Committee on the Legal Aspects of Using Lottery Proceeds for Charter School Funding

April 10, 2008 – 2:30 pm – Room 1425, Legislative Building

Jack Moyer, Director, Office of Charter Schools, Department of Public Instruction, presented an overview of charter schools. He stated that between 1997 and 2007, 371 charter school applications were submitted, 138 were approved, 27 were voluntarily relinquished, and 12 were revoked. He also stated that at present, 98 charter schools are operating. Mr. Moyer responded to several questions asked by members of the committee.

Brian Matteson, Analyst, Fiscal Research Division, gave an overview of State and local funding for charter schools. He explained that charter schools receive funding from the State in the form of base and supplemental allotments. State funds are used to support a charter school's day-to-day operations but cannot be used to purchase real property or mobile classroom units. He stated that private funds, however, may be used for purchase of land or construction of a charter school.

Ryan Blackledge, Bill Drafting Division, presented an overview of public school funding. He said that, in the past, it had been the policy of the State that the facilities requirements for a public education system be met by local governments. He mentioned that within the past 20 years, the State has started contributing some funds to help with the construction of public school buildings.

Ken Phelps, Architect and School Planning Consultant, School Planning Division, Department of Public Instruction, next talked about the current funding sources for public school construction, renovation and expansion. He mentioned the following funding sources: 2006-2007 local bonds that amounted to about \$3 billion; 2007-2008 local bonds that amounted to \$939 million; and certificates of participation in 2007 that amounted to \$223 million.

There were questions from committee members and some committee discussion around the various issues and presentations.

House Select Committee on the Legal Aspects of Using Lottery Proceeds for Charter School Funding

April 30, 2008 – 2:00 pm – Room 1425, Legislative Building

Representative Leo Daughtry, who in 1996 guided the House through its original charter school bill, talked about the history and the issues of the charter school legislation. He stated that there is a need for charter schools to have the ability to build their school buildings and his hope is that this would be made possible through lottery funds or some other source that has been set aside for public schools.

Paul LeSieur, Director, School Business Services, Department of Public Instruction, talked about the close-out procedure that is provided to the charter school upon revocation or relinquishment of a charter school license. He mentioned that all of the

closing charter school's outstanding obligations and debts must be repaid by the charter school, the parent company, or the school's board of directors. These debts are not the responsibility of the Department of Public Instruction or the State of North Carolina. He stated that when a charter school closes, they can sell the assets they have to pay off any debts. They are responsible for making contact with the local education agency to work with them on the distribution of the assets. If there are funds left over, the funds, along with any computers, desk, and other equipment, are transferred to the school system in which the charter is located if the funds came from the State or the assets were purchased with State funds.

Next, the heads of three different charter schools shared their funding mechanisms with the committee. Mary Griffin, Principal, Magellan Charter School in Raleigh, gave the history of the charter school and pointed out that because the majority of their budget goes toward staff and educational materials, they rely heavily on parent volunteers. Bruce Boucher, Chair, Board of Directors, Magellan Charter School, explained how the school's funds are allocated each year and how the charter school went about acquiring land and financing their building.

Kirby McCrary, Headmaster, Millennium Charter Academy in Mount Airy, gave the history and growth of the charter school since 2000. Hugh Campbell, Board Member of the charter school, spoke about the success of Millennium Charter Academy. He also explained how a drop in the county's growth rate has directly impacted their local funding and the rate of giving from their benefactors. He said the charter school is meeting its capital needs through private funding, a \$4.2 million USDA grant, and hopefully, with additional lottery funds if they become available.

Sam Kennington, Principal, Roxboro Community School, gave background information regarding the charter school and Lacy Winstead, Building Coordinator and Board Member, gave information regarding the land and building renovations. Mark Phillips, Budget Coordinator and Board Member, provided details regarding the funding of the Roxboro Community School.

There were questions from committee members and some committee discussion around the various issues and presentations.

**House Select Committee on the Legal Aspects of Using Lottery Proceeds for Charter School Funding
October 7, 2008 – 1:00 pm – Room 1228, Legislative Building**

Dora Fazzini, Director, Capital Facilities Finance Section, State Treasurer's Office, spoke about the State debt and creating a collateral fund for charter school facility funding. She mentioned that the North Carolina Capital Facilities Finance Agency had been involved with charter schools for several years. She explained that the State debt falls into three categories: General Obligation Debt, Special Indebtedness, and Revenue Bonds. She mentioned that one of the things the State Treasurer's Office looks at is the impact of all debt, or different kinds of debt, on the State's debt capacity. Ms. Fazzini stated that charter schools are eligible to borrow through the Agency, and to date the Agency has accrued about \$50 million in financings for charter schools.

Jack Moyer, Director of Charter Schools, Department of Public Instruction, spoke next about the past efforts to obtain charter school facility funding and current federal initiatives. Regarding charter school facility funding, Mr. Moyer addressed the issue that several years ago, the local commissioners in Mt. Airy designated some funds for a charter school in that area. He said that according to statute funds cannot be given to charter schools unless funds are also given to traditional schools. Because the local commissioners were not willing to give to the traditional schools, the matter was dropped. Regarding federal initiatives, Mr. Moyer spoke about the Charter School Credit Enhancement Program. This federal program was designed to help non-profits and other organizations work with charter schools to leverage the funds they were given and set up loans that could help them with capital improvements and new buildings. As of this year, this program is no longer funded.

There were questions from committee members and some committee discussion around the various issues and presentations.

**House Select Committee on the Legal Aspects of Using Lottery Proceeds for
Charter School Funding
November 18, 2008 – 2:00 pm – Room 1228, Legislative Building**

The meeting opened with a discussion about the draft of the final report of the Committee. Chairman Wilkins commented that because the Committee faced a stumbling block regarding the definition of charter schools and whether they are public or private entities, the report does not include any recommendations of legislation.

After some Committee discussion, Representative McLawhorn moved that the Committee accept the report, which will be presented to the members of the 2009 North Carolina House of Representatives. The report was seconded and adopted unanimously.

COMMITTEE FINDINGS

The House Select Committee on the Legal Aspects of Using Lottery Proceeds for Charter School Funding makes the following findings to the 2009 General Assembly.

The Committee finds that current State law provides for charter schools to receive funding from the State for operating expenses. Operating expenses include operational and financing leases for real property or mobile classroom units for use as school facilities as well as payments for loans obtained by the charter schools for facilities or equipment. However, current State law prohibits State funds from being used to obtain any interest in real property or mobile classroom units. The private non-profit corporation, which establishes and governs the charter school and holds the charter granted by the State Board of Education, may own real property obtained through non-State sources.

The Committee also finds that when a charter is relinquished by the private non-profit corporation or is revoked by the State Board of Education, the charter school's outstanding obligations and debts must be repaid. The legal entity that is responsible for repaying these outstanding obligations and debts is the private non-profit corporation which held the charter granted by the State Board of Education. Any State funds or assets purchased by State money that are left over after the debts are paid return to the local education agency in which the charter school was located.

The Committee finds that several statutes may need to be modified if State funds and specifically State lottery proceeds were to be used to obtain an interest in real property for the charter schools. These include:

- G.S. 115C-238.29(H)(a1) which prohibits State funds from being used to obtain an interest real property or mobile classroom units for charter schools.
- G.S. 115C-546.2(d) which sets forth allocations from lottery proceeds for school construction capital projects but makes no provisions for charter schools.
- G.S. 18C-164 which provides for the allocation of lottery proceeds for school construction but makes no provisions for charter schools.

Finally, the Committee finds that constitutional issues under the North Carolina State Constitution could arise if State funds were used to obtain an interest in real property for charter schools because the legal entity that would own the real property would be the private non-profit corporation that holds the charter granted by the State Board of Education. The provisions of the North Carolina State Constitution that could be implicated are:

- Article I, Section 32 which prohibits private emoluments.
- Article V, Section 2, Paragraph 1 which provides that taxes may only be levied and used for a public purpose.
- Article V, Section 3, Paragraphs 2 and 3 which prohibit the State from ensuring the debt of private entities.