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CHARTER SCHOOL REVISIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to charter schools.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ enacts provisions related to the powers and duties of charter school authorizers;
- ▶ requires the State Board of Education to adopt rules establishing minimum standards for a charter school application or charter school compliance;
- ▶ amends provisions related to the status and powers of the State Charter School Board;
- ▶ repeals outdated provisions;
- ▶ repeals provisions related to State Board of Education approval of an application for a charter school authorized by:
 - the State Charter School Board; or
 - a board of trustees of a higher education institution; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **53G-5-102**, as renumbered and amended by Laws of Utah 2018, Chapter 3

31 **53G-5-202**, as renumbered and amended by Laws of Utah 2018, Chapter 3

32 **53G-5-304**, as renumbered and amended by Laws of Utah 2018, Chapter 3

33 **53G-5-305**, as renumbered and amended by Laws of Utah 2018, Chapter 3

34 **53G-5-306**, as renumbered and amended by Laws of Utah 2018, Chapter 3

35 **53G-5-503**, as renumbered and amended by Laws of Utah 2018, Chapter 3

36 ENACTS:

37 **53G-5-205**, Utah Code Annotated 1953



39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **53G-5-102** is amended to read:

41 **53G-5-102. Definitions.**

42 As used in this chapter:

43 (1) "Asset" means property of all kinds, real and personal, tangible and intangible, and
44 includes:

- 45 (a) cash;
- 46 (b) stock or other investments;
- 47 (c) real property;
- 48 (d) equipment and supplies;
- 49 (e) an ownership interest;
- 50 (f) a license;
- 51 (g) a cause of action; and
- 52 (h) any similar property.

53 (2) "Board of trustees of a higher education institution" or "board of trustees" means:

- 54 (a) the board of trustees of:
 - 55 (i) the University of Utah;
 - 56 (ii) Utah State University;
 - 57 (iii) Weber State University;
 - 58 (iv) Southern Utah University;

- 59 (v) Snow College;
- 60 (vi) Dixie State University;
- 61 (vii) Utah Valley University; or
- 62 (viii) Salt Lake Community College; or
- 63 (b) the board of directors of a technical college described in Section 53B-2a-108.

64 (3) "Charter agreement" or "charter" means an agreement made in accordance with
 65 Section 53G-5-303 that authorizes the operation of a charter school.

66 (4) "Charter school authorizer" or "authorizer" means [~~the State Charter School Board,~~
 67 ~~a local school board, or a board of trustees of a higher education institution that authorizes the~~
 68 ~~establishment of a charter school]~~ an entity listed in Section 53G-5-205.

69 (5) "Governing board" means the board that operates a charter school.

70 Section 2. Section 53G-5-202 is amended to read:

71 **53G-5-202. Status and powers of State Charter School Board.**

72 [~~(1) The State Charter School Board shall:~~]

73 [~~(a) authorize and promote the establishment of charter schools, subject to the~~
 74 ~~provisions in this chapter and other related provisions;]~~

75 [~~(b) annually review and evaluate the performance of charter schools authorized by the~~
 76 ~~State Charter School Board and hold the schools accountable for their performance;]~~

77 [~~(c) monitor charter schools authorized by the State Charter School Board for~~
 78 ~~compliance with federal and state laws, rules, and regulations;]~~

79 [~~(d) provide technical support to charter schools and persons seeking to establish~~
 80 ~~charter schools by:]~~

81 [~~(i) identifying and promoting successful charter school models;]~~

82 [~~(ii) facilitating the application and approval process for charter school authorization;]~~

83 [~~(iii) directing charter schools and persons seeking to establish charter schools to~~
 84 ~~sources of private funding and support;]~~

85 [~~(iv) reviewing and evaluating proposals to establish charter schools for the purpose of~~
 86 ~~supporting and strengthening proposals before an application for charter school authorization is~~
 87 ~~submitted to a charter school authorizer; and]~~

88 [~~(v) assisting charter schools to understand and carry out their charter obligations;]~~

89 [~~(e) provide technical support, as requested, to a charter school authorizer relating to~~

90 charter schools;]

91 [~~(f)~~ make recommendations on legislation and rules pertaining to charter schools to the
92 Legislature and State Board of Education, respectively; and]

93 [~~(g)~~ make recommendations to the State Board of Education on the funding of charter
94 schools.]

95 [~~(2)~~] The State Charter School Board may:

96 [~~(a)~~ contract;]

97 (1) enter into contracts;

98 [~~(b)~~] (2) sue and be sued; and

99 [~~(c)~~ ~~(i)~~] (3) (a) at the discretion of the charter school, provide administrative services
100 to, or perform other school functions for, charter schools authorized by the State Charter
101 School Board; and

102 [~~(ii)~~] (b) charge fees for the provision of services or functions.

103 Section 3. Section **53G-5-205** is enacted to read:

104 **53G-5-205. Charter school authorizers -- Power and duties -- Charter application**
105 **minimum standard.**

106 (1) The following entities are charter school authorizers:

107 (a) the State Charter School Board;

108 (b) a local school board; or

109 (c) a board of trustees of an institution in the state system of higher education as
110 described in Section [53B-1-102](#).

111 (2) A charter school authorizer may authorize the establishment of a charter school.

112 (3) A charter school authorizer shall:

113 (a) authorize and promote the establishment of charter schools, subject to the
114 provisions in this part;

115 (b) annually review and evaluate the performance of charter schools authorized by the
116 authorizer and hold a charter school accountable for the school's performance;

117 (c) monitor charter schools authorized by the authorizer for compliance with federal
118 and state laws, rules, and regulations;

119 (d) make recommendations on legislation and rules pertaining to charter schools to the
120 Legislature and State Board of Education, respectively; and

- 121 (e) make recommendations to the State Board of Education on the funding of charter
122 schools.
- 123 (4) A charter school authorizer may:
- 124 (a) provide technical support to charter schools and persons seeking to establish charter
125 schools by:
- 126 (i) identifying and promoting successful charter school models;
127 (ii) facilitating the application and approval process for charter school authorization;
128 (iii) directing charter schools and persons seeking to establish charter schools to
129 sources of private funding and support;
- 130 (iv) reviewing and evaluating proposals to establish charter schools for the purpose of
131 supporting and strengthening proposals before an application for charter school authorization is
132 submitted to a charter school authorizer; or
- 133 (v) assisting charter schools to understand and carry out their charter obligations; or
- 134 (b) provide technical support, as requested, to a charter school authorizer relating to
135 charter schools.
- 136 (5) The State Board of Education shall, in accordance with Title 63, Chapter 3, Utah
137 Administrative Rulemaking Act, make rules establishing minimum standards that a charter
138 school authorizer is required to apply when:
- 139 (a) evaluating a charter school application; or
140 (b) monitoring charter school compliance.
- 141 (6) The minimum standards described in Subsection (1) shall include:
- 142 (a) reasonable consequences for an authorizer that fails to comply with statute or board
143 rule;
- 144 (b) a process for an authorizer to review:
- 145 (i) the skill and expertise of a proposed charter school's governing board; and
146 (ii) the functioning operation of the charter school governing board of an authorized
147 charter school;
- 148 (c) a process for an authorizer to review the financial viability of a proposed charter
149 school and of an authorized charter school;
- 150 (d) a process to evaluate:
- 151 (i) how well an authorizer's authorized charter school complies with the charter

152 school's charter agreement;

153 (ii) whether an authorizer's authorized charter school maintains reasonable academic
154 standards; and

155 (iii) standards that an authorizer is required to meet to demonstrate the authorizer's
156 capacity to oversee, monitor, and evaluate the charter schools the authorizer authorizes.

157 (7) The State Board of Education shall ensure that the minimum standards do not
158 significantly hinder a charter school's authority or flexibility to innovate.

159 Section 4. Section **53G-5-304** is amended to read:

160 **53G-5-304. Charter schools authorized by the State Charter School Board --**
161 **Application process -- Prohibited basis of application denial.**

162 (1) (a) An applicant seeking authorization of a charter school from the State Charter
163 School Board shall provide a copy of the application to the local school board of the school
164 district in which the proposed charter school shall be located either before or at the same time it
165 files its application with the State Charter School Board.

166 (b) The local board may review the application and may offer suggestions or
167 recommendations to the applicant or the State Charter School Board prior to its acting on the
168 application.

169 (c) The State Charter School Board shall give due consideration to suggestions or
170 recommendations made by the local school board under Subsection (1)(b).

171 (d) The State Charter School Board shall review and, by majority vote, either approve
172 or deny the application.

173 ~~[(e) The State Board of Education shall, by majority vote, within 60 days after action~~
174 ~~by the State Charter School Board under Subsection (1)(d):]~~

175 ~~[(i) approve or deny an application approved by the State Charter School Board; or]~~

176 ~~[(ii) hear an appeal, if any, of an application denied by the State Charter School Board.]~~

177 ~~[(f) The State Board of Education's action under Subsection (1)(d) is final action~~
178 ~~subject to judicial review.]~~

179 ~~[(g)]~~ (e) A charter school application may not be denied on the basis that the
180 establishment of the charter school will have any or all of the following impacts on a public
181 school, including another charter school:

182 (i) an enrollment decline;

183 (ii) a decrease in funding; or

184 (iii) a modification of programs or services.

185 (2) The State Board of Education shall, in accordance with Title 63G, Chapter 3, Utah
186 Administrative Rulemaking Act, make a rule providing a timeline for the opening of a charter
187 school following the approval of a charter school application by the State Charter School
188 Board.

189 (3) After approval of a charter school application and in accordance with Section
190 [53G-5-303](#), the applicant and the State Charter School Board shall set forth the terms and
191 conditions for the operation of the charter school in a written charter agreement.

192 (4) The State Charter School Board shall, in accordance with State Board of Education
193 rules, establish and make public the State Charter School Board's:

194 (a) application requirements, in accordance with Section [53G-5-302](#);

195 (b) application process, including timelines, in accordance with this section; and

196 (c) minimum academic, financial, and enrollment standards.

197 Section 5. Section [53G-5-305](#) is amended to read:

198 **53G-5-305. Charters authorized by local school boards -- Application process --**
199 **Local school board responsibilities.**

200 (1) (a) An applicant identified in Section [53G-5-302](#) may submit an application to a
201 local school board to establish and operate a charter school within the geographical boundaries
202 of the school district administered by the local school board.

203 (b) (i) The principal, teachers, or parents of students at an existing public school may
204 submit an application to the local school board to convert the school or a portion of the school
205 to charter status.

206 (A) If the entire school is applying for charter status, at least two-thirds of the licensed
207 educators employed at the school and at least two-thirds of the parents or guardians of students
208 enrolled at the school must have signed a petition approving the application prior to its
209 submission to the charter school authorizer.

210 (B) If only a portion of the school is applying for charter status, the percentage is
211 reduced to a simple majority.

212 (ii) The local school board may not approve an application submitted under Subsection
213 (1)(b)(i) unless the local school board determines that:

214 (A) students opting not to attend the proposed converted school would have access to a
215 comparable public education alternative; and

216 (B) current teachers who choose not to teach at the converted charter school or who are
217 not retained by the school at the time of its conversion would receive a first preference for
218 transfer to open teaching positions for which they qualify within the school district, and, if no
219 positions are open, contract provisions or board policy regarding reduction in staff would
220 apply.

221 (2) (a) An existing public school that converts to charter status under a charter granted
222 by a local school board may:

223 (i) continue to receive the same services from the school district that it received prior to
224 its conversion; or

225 (ii) contract out for some or all of those services with other public or private providers.

226 (b) Any other charter school authorized by a local school board may contract with the
227 board to receive some or all of the services referred to in Subsection (3)(a).

228 (c) Except as specified in a charter agreement, local school board assets do not transfer
229 to an existing public school that converts to charter status under a charter granted by a local
230 school board under this section.

231 (3) (a) (i) A public school that converts to a charter school under a charter granted by a
232 local school board shall receive funding:

233 (A) through the school district; and

234 (B) on the same basis as it did prior to its conversion to a charter school.

235 (ii) The school may also receive federal money designated for charter schools under
236 any federal program.

237 (b) (i) A local school board-authorized charter school operating in a facility owned by
238 the school district and not paying reasonable rent to the school district shall receive funding:

239 (A) through the school district; and

240 (B) on the same basis that other district schools receive funding.

241 (ii) The school may also receive federal money designated for charter schools under
242 any federal program.

243 (c) Subject to the provisions in Section 53G-6-504, a charter school authorized by a
244 local school board shall receive funding as provided in Title 53F, Chapter 2, Part 7, Charter

245 School Funding.

246 (d) (i) A charter school authorized by a local school board, but not described in
247 Subsection (3)(a), (b), or (c) shall receive funding:

248 (A) through the school district; and

249 (B) on the same basis that other district schools receive funding.

250 (ii) The school may also receive federal money designated for charter schools under
251 any federal program.

252 (4) (a) A local school board that receives an application for a charter school under this
253 section shall, within 45 days, either accept or reject the application.

254 (b) If the board rejects the application, it shall notify the applicant in writing of the
255 reason for the rejection.

256 (c) The applicant may submit a revised application for reconsideration by the board.

257 (d) If the local school board refuses to authorize the applicant, the applicant may seek a
258 charter from [~~the State Charter School Board under Section 53G-5-304~~] another authorizer.

259 (5) The State Board of Education shall make a rule providing for a timeline for the
260 opening of a charter school following the approval of a charter school application by a local
261 school board.

262 (6) After approval of a charter school application and in accordance with Section
263 53G-5-303, the applicant and the local school board shall set forth the terms and conditions for
264 the operation of the charter school in a written charter agreement.

265 (7) A local school board shall:

266 (a) annually review and evaluate the performance of charter schools authorized by the
267 local school board and hold the schools accountable for their performance;

268 (b) monitor charter schools authorized by the local school board for compliance with
269 federal and state laws, rules, and regulations; and

270 (c) provide technical support to charter schools authorized by the local school board to
271 assist them in understanding and performing their charter obligations.

272 (8) A local school board may terminate a charter school it authorizes as provided in
273 Sections 53G-5-501 and 53G-5-503.

274 (9) In addition to the exemptions described in Sections 53G-5-405, 53G-7-202, and
275 53G-5-407, a charter school authorized by a local school board is:

276 (a) not required to separately submit a report or information required under this public
277 education code to the State Board of Education if the information is included in a report or
278 information that is submitted by the local school board or school district; and

279 (b) exempt from the requirement under Section 53G-5-404 that a charter school shall
280 be organized and managed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation
281 Act.

282 (10) Before a local school board accepts a charter school application, the local school
283 board shall, in accordance with State Board of Education rules, establish and make public the
284 local school board's:

- 285 (a) application requirements, in accordance with Section 53G-5-302;
- 286 (b) application process, including timelines, in accordance with this section; and
- 287 (c) minimum academic, financial, and enrollment standards.

288 Section 6. Section 53G-5-306 is amended to read:

289 **53G-5-306. Charter schools authorized by a board of trustees of a higher**
290 **education institution -- Application process -- Board of trustees responsibilities.**

291 (1) [~~Subject to the approval of the State Board of Education and except~~] Except as
292 provided in Subsection [~~(8)~~] (7), an applicant identified in Section 53G-5-302 may enter into
293 an agreement with a board of trustees of a higher education institution authorizing the applicant
294 to establish and operate a charter school.

295 (2) (a) An applicant applying for authorization from a board of trustees to establish and
296 operate a charter school shall provide a copy of the application to the State Charter School
297 Board and the local school board of the school district in which the proposed charter school
298 will be located either before or at the same time the applicant files the application with the
299 board of trustees.

300 (b) The State Charter School Board and the local school board may review the
301 application and offer suggestions or recommendations to the applicant or the board of trustees
302 before acting on the application.

303 (c) The board of trustees shall give due consideration to suggestions or
304 recommendations made by the State Charter School Board or the local school board under
305 Subsection (2)(b).

306 [~~(3)~~] (a) ~~If a board of trustees approves an application to establish and operate a charter~~

307 school, the board of trustees shall submit the application to the State Board of Education.]

308 [~~(b)~~ The State Board of Education shall, by majority vote, within 60 days of receipt of
309 the application, approve or deny an application approved by a board of trustees.]

310 [~~(c)~~ The State Board of Education's action under Subsection ~~(3)~~(b) is final action
311 subject to judicial review.]

312 [(4)] (3) The State Board of Education shall make a rule providing a timeline for the
313 opening of a charter school following the approval of a charter school application by a board of
314 trustees.

315 [(5)] (4) After approval of a charter school application, the applicant and the board of
316 trustees shall set forth the terms and conditions for the operation of the charter school in a
317 written charter agreement.

318 [(6)] (5) (a) The school's charter may include a provision that the charter school pay an
319 annual fee for the board of trustees' costs in providing oversight of, and technical support to,
320 the charter school in accordance with Subsection [(7)] (6).

321 (b) In the first two years that a charter school is in operation, an annual fee described in
322 Subsection [(6)] (5)(a) may not exceed the product of 3% of the revenue the charter school
323 receives from the state in the current fiscal year.

324 (c) Beginning with the third year that a charter school is in operation, an annual fee
325 described in Subsection [(6)] (5)(a) may not exceed the product of 1% of the revenue a charter
326 school receives from the state in the current fiscal year.

327 (d) An annual fee described in Subsection [(6)] (5)(a) shall be:

328 (i) paid to the board of trustees' higher education institution; and

329 (ii) expended as directed by the board of trustees.

330 [(7)] (6) A board of trustees shall:

331 (a) annually review and evaluate the performance of charter schools authorized by the
332 board of trustees and hold the schools accountable for their performance;

333 (b) monitor charter schools authorized by the board of trustees for compliance with
334 federal and state laws, rules, and regulations; and

335 (c) provide technical support to charter schools authorized by the board of trustees to
336 assist them in understanding and performing their charter obligations.

337 [(8)] (7) (a) In addition to complying with the requirements of this section, a technical

338 college board of directors described in Section 53B-2a-108 shall obtain the approval of the
339 Utah System of Technical Colleges Board of Trustees before entering into an agreement to
340 establish and operate a charter school.

341 (b) If a technical college board of directors approves an application to establish and
342 operate a charter school, the technical college board of directors shall submit the application to
343 the Utah System of Technical Colleges Board of Trustees.

344 (c) The Utah System of Technical Colleges Board of Trustees shall, by majority vote,
345 within 60 days of receipt of an application described in Subsection [~~8~~] (7)(b), approve or deny
346 the application.

347 (d) The Utah System of Technical Colleges Board of Trustees may deny an application
348 approved by a technical college board of directors if the proposed charter school does not
349 accomplish a purpose of charter schools as provided in Section 53G-5-104.

350 (e) A charter school application may not be denied on the basis that the establishment
351 of the charter school will have any or all of the following impacts on a public school, including
352 another charter school:

- 353 (i) an enrollment decline;
- 354 (ii) a decrease in funding; or
- 355 (iii) a modification of programs or services.

356 [~~9~~] (8) (a) Subject to the requirements of this chapter and other related provisions, a
357 technical college board of directors may establish:

- 358 (i) procedures for submitting applications to establish and operate a charter school; or
- 359 (ii) criteria for approval of an application to establish and operate a charter school.

360 (b) The Utah System of Technical Colleges Board of Trustees may not establish policy
361 governing the procedures or criteria described in Subsection [~~9~~] (8)(a).

362 [~~10~~] (9) Before a technical college board of directors accepts a charter school
363 application, the technical college board of directors shall, in accordance with State Board of
364 Education rules, establish and make public:

- 365 (a) application requirements, in accordance with Section 53G-5-302;
- 366 (b) the application process, including timelines, in accordance with this section; and
- 367 (c) minimum academic, financial, and enrollment standards.

368 Section 7. Section 53G-5-503 is amended to read:

369 **53G-5-503. Termination of a charter.**

370 (1) Subject to the requirements of Subsection (3), a charter school authorizer may
371 terminate a school's charter for any of the following reasons:

372 (a) failure of the charter school to meet the requirements stated in the charter;

373 (b) failure to meet generally accepted standards of fiscal management;

374 [~~(c)~~] ~~subject to Subsection (8), failure to make adequate yearly progress under the No~~
375 ~~Child Left Behind Act of 2001, 20 U.S.C. Sec. 6301 et seq.;~~

376 [~~(d)~~] (c) (i) designation as a low performing school under Title 53E, Chapter 5, Part 3,
377 School Turnaround and Leadership Development; and

378 (ii) failure to improve the school's grade under the conditions described in Title 53E,
379 Chapter 5, Part 3, School Turnaround and Leadership Development;

380 [~~(e)~~] (d) violation of requirements under this chapter or another law; or

381 [~~(f)~~] (e) other good cause shown.

382 (2) (a) The authorizer shall notify the following of the proposed termination in writing,
383 state the grounds for the termination, and stipulate that the governing board may request an
384 informal hearing before the authorizer:

385 (i) the governing board of the charter school; and

386 (ii) if the charter school is a qualifying charter school with outstanding bonds issued in
387 accordance with Part 6, Charter School Credit Enhancement Program, the Utah Charter School
388 Finance Authority.

389 (b) Except as provided in Subsection (2)(e), the authorizer shall conduct the hearing in
390 accordance with Title 63G, Chapter 4, Administrative Procedures Act, within 30 days after
391 receiving a written request under Subsection (2)(a).

392 (c) If the authorizer, by majority vote, approves a motion to terminate a charter school,
393 the governing board of the charter school may appeal the decision to the State Board of
394 Education.

395 (d) (i) The State Board of Education shall hear an appeal of a termination made
396 pursuant to Subsection (2)(c).

397 (ii) The State Board of Education's action is final action subject to judicial review.

398 (e) (i) If the authorizer proposes to terminate the charter of a qualifying charter school
399 with outstanding bonds issued in accordance with Part 6, Charter School Credit Enhancement

400 Program, the authorizer shall conduct a hearing described in Subsection (2)(b) 120 days or
401 more after notifying the following of the proposed termination:

402 (A) the governing board of the qualifying charter school; and

403 (B) the Utah Charter School Finance Authority.

404 (ii) Prior to the hearing described in Subsection (2)(e)(i), the Utah Charter School
405 Finance Authority shall meet with the authorizer to determine whether the deficiency may be
406 remedied in lieu of termination of the qualifying charter school's charter.

407 (3) An authorizer may not terminate the charter of a qualifying charter school with
408 outstanding bonds issued in accordance with Part 6, Charter School Credit Enhancement
409 Program, without mutual agreement of the Utah Charter School Finance Authority and the
410 authorizer.

411 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
412 the State Board of Education shall make rules that require a charter school to report any threats
413 to the health, safety, or welfare of its students to the State Charter School Board in a timely
414 manner.

415 (b) The rules under Subsection (4)(a) shall also require the charter school report to
416 include what steps the charter school has taken to remedy the threat.

417 (5) Subject to the requirements of Subsection (3), the authorizer may terminate a
418 charter immediately if good cause has been shown or if the health, safety, or welfare of the
419 students at the school is threatened.

420 (6) If a charter is terminated during a school year, the following entities may apply to
421 the charter school's authorizer to assume operation of the school:

422 (a) the school district where the charter school is located;

423 (b) the governing board of another charter school; or

424 (c) a private management company.

425 (7) (a) If a charter is terminated, a student who attended the school may apply to and
426 shall be enrolled in another public school under the enrollment provisions of Chapter 6, Part 3,
427 School District Residency, subject to space availability.

428 (b) Normal application deadlines shall be disregarded under Subsection (7)(a).

429 ~~[(8) Subject to the requirements of Subsection (3), an authorizer may terminate a~~
430 ~~charter pursuant to Subsection (1)(c) under the same circumstances that local educational~~

431 ~~agencies are required to implement alternative governance arrangements under 20 U.S.C. Sec.~~
432 ~~6316.]~~

433 Section 8. **Effective date.**

434 This bill takes effect on January 1, 2019.

Legislative Review Note
Office of Legislative Research and General Counsel