

HB0313S01 compared with HB0313

~~{deleted text}~~ shows text that was in HB0313 but was deleted in HB0313S01.

Inserted text shows text that was not in HB0313 but was inserted into HB0313S01.

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Representative Daniel McCay proposes the following substitute bill:

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 and consolidates 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- ▶ repeals outdated provisions;

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- ▶ 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.

Utah Code Sections Affected:

AMENDS:

[53F-2-702, as renumbered and amended by Laws of Utah 2018, Chapter 2](#)

[53F-2-704, as enacted by Laws of Utah 2018, Chapter 2](#)

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

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

[53G-5-302, as renumbered and amended by Laws of Utah 2018, Chapter 3](#)

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

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

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

[53G-5-409, as renumbered and amended by Laws of Utah 2018, Chapter 3](#)

[53G-5-502, as renumbered and amended by Laws of Utah 2018, Chapter 3](#)

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

[53G-5-504, as renumbered and amended by Laws of Utah 2018, Chapter 3](#)

ENACTS:

53G-5-205, Utah Code Annotated 1953

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

[Section 1. Section 53F-2-702 is amended to read:](#)

53F-2-702. Funding for charter schools.

[\(1\)\(a\) Charter schools shall receive funding as described in this section, except Subsections \(2\) through \(6\) do not apply to charter schools described in Subsection \(1\)\(b\).](#)

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~~[(b)]~~ Charter schools authorized by local school boards that are converted from district schools or operate in district facilities without paying reasonable rent shall receive funding as prescribed in Section ~~53G-5-305~~.

~~[(2)]~~ [(1)] Except as described in Section 53F-2-302, a charter school shall receive state funds, as applicable, on the same basis as a school district receives funds.

~~[(3)]~~ [(2)] (a) As described in Section 53F-2-703, the State Board of Education shall distribute charter school levy per pupil revenues to charter schools.

(b) As described in Section 53F-2-704, and subject to future budget constraints, the Legislature shall provide an appropriation for charter schools for each charter school student enrolled on October 1 to supplement the allocation of charter school levy per pupil revenues described in Subsection ~~[(3)]~~ [(2)](a).

{

~~[(4)]~~ [(3)] Charter schools are eligible to receive federal funds if they meet all applicable federal requirements and comply with relevant federal regulations.

~~[(5)]~~ [(4)] The State Board of Education shall distribute funds for charter school students directly to the charter school.

~~[(6)]~~ [(5)] (a) Notwithstanding Subsection ~~[(2)]~~ [(1)], a charter school is not eligible to receive state transportation funding.

(b) The board shall also adopt rules relating to the transportation of students to and from charter schools, taking into account Sections 53F-2-403 and 53G-6-405.

(c) The governing board of the charter school may provide transportation through an agreement or contract with the local school board, a private provider, or parents.

~~[(7)]~~ [(6)] (a) (i) In accordance with Section 53F-2-705, the State Charter School Board may allocate grants for start-up costs to charter schools from money appropriated for charter school start-up costs.

(ii) The governing board of a charter school that receives money from a grant under Section 53F-2-705 shall use the grant for expenses for planning and implementation of the charter school.

(b) The State Board of Education shall coordinate the distribution of federal money appropriated to help fund costs for establishing and maintaining charter schools within the state.

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~~(8)~~1(7) (a) A charter school may receive, hold, manage and use any devise, bequest, grant, endowment, gift, or donation of any property made to the school for any of the purposes of Title 53G, Chapter 5, Charter Schools, or related provisions.

(b) It is unlawful for any person affiliated with a charter school to demand or request any gift, donation, or contribution from a parent, teacher, employee, or other person affiliated with the charter school as a condition for employment or enrollment at the school or continued attendance at the school.

Section 2. Section 53F-2-704 is amended to read:

53F-2-704. Charter school levy state guarantee.

(1) As used in this section:

(a) "Charter school levy per pupil revenues" means the same as that term is defined in Section 53F-2-703.

(b) "Charter school students' average local revenues" means the amount determined as follows:

(i) for each student enrolled in a charter school on the previous October 1, calculate the district per pupil local revenues of the school district in which the student resides;

(ii) sum the district per pupil local revenues for each student enrolled in a charter school on the previous October 1; and

(iii) divide the sum calculated under Subsection (1)(a)(ii) by the number of students enrolled in charter schools on the previous October 1.

(c) "District local property tax revenues" means the sum of a school district's revenue received from the following:

(i) a voted local levy imposed under Section 53F-8-301;

(ii) a board local levy imposed under Section 53F-8-302, excluding revenues expended for:

(A) pupil transportation, up to the amount of revenue generated by a .0003 per dollar of taxable value of the school district's board local levy; and

(B) the K-3 Reading Improvement Program, up to the amount of revenue generated by a .000121 per dollar of taxable value of the school district's board local levy;

(iii) a capital local levy imposed under Section 53F-8-303; and

(iv) a guarantee described in Section 53F-2-601, 53F-2-602, 53F-3-202, or 53F-3-203.

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(d) "District per pupil local revenues" means, using data from the most recently published school district annual financial reports and state superintendent's annual report, an amount equal to district local property tax revenues divided by the sum of:

- (i) a school district's average daily membership; and
- (ii) the average daily membership of a school district's resident students who attend charter schools.

(e) "Resident student" means a student who is considered a resident of the school district under Title 53G, Chapter 6, Part 3, School District Residency.

(f) "Statewide average debt service revenues" means the amount determined as follows, using data from the most recently published state superintendent's annual report:

- (i) sum the revenues of each school district from the debt service levy imposed under Section 11-14-310; and
- (ii) divide the sum calculated under Subsection (1)(f)(i) by statewide school district average daily membership.

(2) (a) Subject to future budget constraints, the Legislature shall provide an appropriation for charter schools for each charter school student enrolled on October 1 to supplement the allocation of charter school levy per pupil revenues described in Subsection 53F-2-702~~(3)~~(2)(a).

(b) Except as provided in Subsection (2)(c), the amount of money provided by the state for a charter school student shall be the sum of:

- (i) charter school students' average local revenues minus the charter school levy per pupil revenues; and
- (ii) statewide average debt service revenues.

(c) If the total of charter school levy per pupil revenues distributed by the State Board of Education and the amount provided by the state under Subsection (2)(b) is less than \$1,427, the state shall provide an additional supplement so that a charter school receives at least \$1,427 per student under Subsection 53F-2-702~~(3)~~(2).

(d) (i) If the appropriation provided under this Subsection (2) is less than the amount prescribed by Subsection (2)(b) or (c), the appropriation shall be allocated among charter schools in proportion to each charter school's enrollment as a percentage of the total enrollment in charter schools.

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(ii) If the State Board of Education makes adjustments to Minimum School Program allocations as provided under Section 53F-2-205, the allocation provided in Subsection (2)(d)(i) shall be determined after adjustments are made under Section 53F-2-205.

(3) (a) Except as provided in Subsection (3)(b), of the money provided to a charter school under Subsection 53F-2-702~~(3)~~(2), 10% shall be expended for funding school facilities only.

(b) Subsection (3)(a) does not apply to an online charter school.

Section ~~53G-5-102~~3. Section **53G-5-102** is amended to read:

53G-5-102. Definitions.

As used in this chapter:

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

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

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

(a) the board of trustees of:

- (i) the University of Utah;
- (ii) Utah State University;
- (iii) Weber State University;
- (iv) Southern Utah University;
- (v) Snow College;
- (vi) Dixie State University;
- (vii) Utah Valley University; or
- (viii) Salt Lake Community College; or

(b) the board of directors of a technical college described in Section 53B-2a-108.

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

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

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

Section ~~{2}~~4. Section **53G-5-202** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(g) make recommendations to the State Board of Education on the funding of charter~~

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schools:]

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

~~[(a) contract;]~~

(1) enter into contracts;

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

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

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

Section ~~{3}~~5. Section **53G-5-205** is enacted to read:

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

(1) The following entities are **eligible to authorize** charter ~~{school authorizers}~~schools:

(a) the State Charter School Board;

(b) a local school board; or

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

~~(2) A charter school authorizer ~~{may authorize the establishment of}~~shall:~~

(a) **annually review and evaluate the performance of charter schools authorized by the authorizer and hold** a charter school~~};~~

~~(3) A charter school authorizer shall:~~

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

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

~~(c)b~~ monitor charter schools authorized by the authorizer for compliance with federal and state laws, rules, and regulations.

(3) A charter school authorizer may:

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

~~{d}~~b make recommendations on legislation and rules pertaining to charter schools to

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the Legislature and State Board of Education, respectively;~~{and}~~

~~{e}c~~ make recommendations to the State Board of Education on the funding of charter schools~~{,};~~

~~{~~ (4) A charter school authorizer may:

~~{~~ ~~{a}d~~ provide technical support to charter schools and persons seeking to establish charter schools by:

(i) identifying and promoting successful charter school models;

(ii) facilitating the application and approval process for charter school authorization;

(iii) directing charter schools and persons seeking to establish charter schools to

sources of ~~{private}~~ funding and support;

(iv) reviewing and evaluating proposals to establish charter schools for the purpose of supporting and strengthening proposals before an application for charter school authorization is submitted to a charter school authorizer; or

(v) assisting charter schools to understand and carry out their charter obligations; or

~~{b}e~~ provide technical support, as requested, to ~~{a}~~ another charter school authorizer relating to charter schools.

~~{5}4~~ The State Board of Education shall, in accordance with Title 63, Chapter 3, Utah Administrative Rulemaking Act, make rules establishing minimum standards that a charter school authorizer is required to apply when:

(a) evaluating a charter school application; or

(b) monitoring charter school compliance.

~~{6}5~~ The minimum standards described in Subsection (1) shall include:

(a) reasonable consequences for an authorizer that fails to comply with statute or board rule;

(b) a process for an authorizer to review:

(i) the skill and expertise of a proposed charter school's governing board; and

(ii) the functioning operation of the charter school governing board of an authorized charter school;

(c) a process for an authorizer to review the financial viability of a proposed charter school and of an authorized charter school;

(d) a process to evaluate:

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(i) how well an authorizer's authorized charter school complies with the charter school's charter agreement;

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

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

~~{(7) The State Board of Education shall ensure that the minimum standards do not significantly hinder a charter school's authority or flexibility to innovate.}~~ Section 6. Section

53G-5-302 is amended to read:

53G-5-302. Charter school application -- Applicants -- Contents.

(1) (a) An application to establish a charter school may be submitted by:

- (i) an individual;
- (ii) a group of individuals; or
- (iii) a nonprofit legal entity organized under Utah law.

(b) An authorized charter school may apply under this chapter for a charter from another charter school authorizer.

(2) A charter school application shall include:

(a) the purpose and mission of the school;

(b) except for a charter school authorized by a local school board, a statement that, after entering into a charter agreement, the charter school will be organized and managed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act;

(c) a description of the governance structure of the school, including:

(i) a list of the governing board members that describes the qualifications of each member; and

(ii) an assurance that the applicant shall, within 30 days of authorization, ~~provide the authorizer with the results of~~ complete a background check for each member consistent with Section 53G-5-408;

(d) a description of the target population of the school that includes:

- (i) the projected maximum number of students the school proposes to enroll;
- (ii) the projected school enrollment for each of the first three years of school operation;

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- (iii) the ages or grade levels the school proposes to serve;
- (e) academic goals;
- (f) qualifications and policies for school employees, including policies that:
 - (i) comply with the criminal background check requirements described in Section 53G-5-408;
 - (ii) require employee evaluations; and
 - (iii) address employment of relatives within the charter school;
 - (g) a description of how the charter school will provide, as required by state and federal law, special education and related services;
 - (h) for a public school converting to charter status, arrangements for:
 - (i) students who choose not to continue attending the charter school; and
 - (ii) teachers who choose not to continue teaching at the charter school;
 - (i) a statement that describes the charter school's plan for establishing the charter school's facilities, including:
 - (i) whether the charter school intends to lease or purchase the charter school's facilities; and
 - (ii) financing arrangements;
 - (j) a market analysis of the community the school plans to serve;
 - ~~[(k) a capital facility plan;]~~
 - ~~[(+)]~~ [(k)] a business plan;
 - ~~[(m)]~~ [(l)] other major issues involving the establishment and operation of the charter school; and
 - ~~[(n)]~~ [(m)] the signatures of the governing board members of the charter school.
- (3) A charter school authorizer may require a charter school application to include:
 - (a) the charter school's proposed:
 - (i) curriculum;
 - (ii) instructional program; or
 - (iii) delivery methods;
 - (b) a method for assessing whether students are reaching academic goals, including, at a minimum, administering the statewide assessments described in Section 53E-4-301;
 - (c) a proposed calendar;

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- (d) sample policies;
- (e) a description of opportunities for parental involvement;
- (f) a description of the school's administrative, supervisory, or other proposed services that may be obtained through service providers; or
- (g) other information that demonstrates an applicant's ability to establish and operate a charter school.

Section ~~(4)~~7. Section **53G-5-304** is amended to read:

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

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

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

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

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

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

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

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

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

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

- (i) an enrollment decline;
- (ii) a decrease in funding; or

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(iii) a modification of programs or services.

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

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

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

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

Section ~~5~~8. Section **53G-5-305** is amended to read:

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

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

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

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

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

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

(A) students opting not to attend the proposed converted school would have access to a

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comparable public education alternative; and

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

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

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

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

(b) Any other charter school authorized by a local school board may contract with the board to receive some or all of the services referred to in Subsection ~~[(3)]~~ [(2)](a).

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

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

~~[(A) through the school district; and]~~

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

~~[(ii) The school may also receive federal money designated for charter schools under any federal program.]~~

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

~~[(A) through the school district; and]~~

~~[(B) on the same basis that other district schools receive funding.]~~

~~[(ii) The school may also receive federal money designated for charter schools under any federal program.]~~

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

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

~~[(A) through the school district; and]~~

~~[(B) on the same basis that other district schools receive funding:]~~

~~[(ii) The school may also receive federal money designated for charter schools under any federal program.]~~

~~[(4)]~~ [(3)] (a) A local school board that receives an application for a charter school under this section shall, within 45 days, either accept or reject the application.

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

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

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

~~[(5)]~~ [(4)] The State Board of Education shall make a rule providing for a timeline for the opening of a charter school following the approval of a charter school application by a local school board.

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

~~[(7) A local school board shall:]~~

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

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

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

~~[(8)]~~ [(6)] A local school board may terminate a charter school it authorizes as provided in Sections 53G-5-501 and 53G-5-503.

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

(a) not required to separately submit a report or information required under this public

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education code to the State Board of Education if the information is included in a report or information that is submitted by the local school board or school district; and

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

~~[(10)]~~ (8) Before a local school board accepts a charter school application, the local school board shall, in accordance with State Board of Education rules, establish and make public the local school board's:

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

Section ~~{6}~~ 9. Section **53G-5-306** is amended to read:

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

(1) [~~Subject to the approval of the State Board of Education and except~~] Except as provided in Subsection ~~[(8)]~~ ~~(7)~~ (6), an applicant identified in Section 53G-5-302 may enter into an agreement with a board of trustees of a higher education institution authorizing the applicant to establish and operate a charter school.

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

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

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

~~[(3) (a) If a board of trustees approves an application to establish and operate a charter school, the board of trustees shall submit the application to the State Board of Education.]~~

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

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

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

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

[(6)] (5) (a) The school's charter may include a provision that the charter school pay an annual fee for the board of trustees' costs in providing oversight of, and technical support to, the charter school in accordance with ~~Subsection [(7)]~~ [Section 53G-5-205](#).

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

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

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

- (i) paid to the board of trustees' higher education institution; and
- (ii) expended as directed by the board of trustees.

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

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

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

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

[(8)] ~~[(7)]~~ (a) In addition to complying with the requirements of this section, a technical college board of directors described in Section 53B-2a-108 shall obtain the approval

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of the Utah System of Technical Colleges Board of Trustees before entering into an agreement to establish and operate a charter school.

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

(c) The Utah System of Technical Colleges Board of Trustees shall, by majority vote, within 60 days of receipt of an application described in Subsection ~~[(8)]~~ ~~(~~7~~6)~~(b), approve or deny the application.

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

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

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

~~[(9)]~~ ~~(~~8~~7)~~ (a) Subject to the requirements of this chapter and other related provisions, a technical college board of directors may establish:

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

(b) The Utah System of Technical Colleges Board of Trustees may not establish policy governing the procedures or criteria described in Subsection ~~[(9)]~~ ~~(~~8~~7)~~(a).

~~[(10)]~~ ~~(~~9~~8)~~ Before a technical college board of directors accepts a charter school application, the technical college board of directors shall, in accordance with State Board of Education rules, establish and make public:

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

Section 10. Section 53G-5-409 is amended to read:

53G-5-409. Regulated transactions and relationships -- Definitions --

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Rulemaking.

(1) As used in this section:

(a) "Charter school officer" means:

(i) a member of a charter school's governing board;

(ii) a member of a board or an officer of a nonprofit corporation under which a charter school is organized and managed; or

(iii) the chief administrative officer of a charter school.

(b) (i) "Employment" means a position in which a person's salary, wages, pay, or compensation, whether as an employee or contractor, is paid from charter school funds.

(ii) "Employment" does not include a charter school volunteer.

(c) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

(2) (a) Except as provided in Subsection (2)(b), a relative of a charter school officer may not be employed at a charter school.

(b) If a relative of a charter school officer is to be considered for employment in a charter school, the charter school officer shall:

(i) disclose the relationship, in writing, to the other charter school officers;

(ii) submit the employment decision to the charter school's governing board for the approval, by majority vote, of the charter school's governing board;

(iii) abstain from voting on the issue; and

(iv) be absent from [any] the portion of the meeting [when] where the employment is being considered and determined.

(3) (a) Except as provided in Subsections (3)(b) and (3)(c), a charter school officer or a relative of a charter school officer may not have a financial interest in a contract or other transaction involving a charter school in which the charter school officer serves as a charter school officer.

(b) If a charter school's governing board considers entering into a contract or executing a transaction in which a charter school officer or a relative of a charter school officer has a financial interest, the charter school officer shall:

(i) disclose the financial interest, in writing, to the other charter school officers;

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(ii) submit the contract or transaction decision to the charter school's governing board for the approval, by majority vote, of the charter school's governing board;

(iii) abstain from voting on the issue; and

(iv) be absent from [any] the portion of the meeting [when] where the contract or transaction is being considered and determined.

(c) The provisions in Subsection (3)(a) do not apply to a reasonable contract of employment for:

(i) the chief administrative officer of a charter school; or

(ii) a relative of the chief administrative officer of a charter school whose employment is approved in accordance with the provisions in Subsection (2).

(4) The State Board of Education or State Charter School Board may not operate a charter school.

Section 11. Section 53G-5-502 is amended to read:

53G-5-502. Voluntary school improvement process.

(1) As used in this section, "high performing charter school" means a charter school that:

(a) satisfies all requirements of state law and State Board of Education rules;

(b) has operated for at least three years meeting the terms of the school's charter agreement; and

~~[(c) has students performing at or above the academic performance standard in the school's charter agreement.]~~

(c) is in good standing with the charter school's authorizer.

(2) (a) Subject to Subsection (2)(b), a governing board may voluntarily request the charter school's authorizer to place the school in a school improvement process.

(b) A governing board shall provide notice and a hearing on the governing board's intent to make a request under Subsection (2)(a) to parents and guardians of students enrolled in the charter school.

(3) An authorizer may grant a governing board's request to be placed in a school improvement process if the governing board has provided notice and a hearing under Subsection (2)(b).

(4) An authorizer that has entered into a school improvement process with a governing

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board shall:

- (a) enter into a contract with the governing board on the terms of the school improvement process;
- (b) notify the State Board of Education that the authorizer has entered into a school improvement process with the governing board;
- (c) make a report to a committee of the State Board of Education regarding the school improvement process; and

(d) notify the Utah Charter School Finance Authority that the authorizer has entered into a school improvement process with the governing board if the charter school is a qualifying charter school with outstanding bonds issued in accordance with Part 6, Charter School Credit Enhancement Program.

(5) Upon notification under Subsection (4)(b), and after the report described in Subsection (4)(c), the State Board of Education shall notify charter schools and the school district in which the charter school is located that the governing board has entered into a school improvement process with the charter school's authorizer.

(6) A high performing charter school or the school district in which the charter school is located may apply to the governing board to assume operation and control of the charter school that has been placed in a school improvement process.

(7) A governing board that has entered into a school improvement process shall review applications submitted under Subsection (6) and submit a proposal to the charter school's authorizer to:

(a) terminate the school's charter, notwithstanding the requirements of Section 53G-5-503; and

(b) transfer operation and control of the charter school to:

- (i) the school district in which the charter school is located; or
- (ii) a high performing charter school.

(8) Except as provided in Subsection (9) and subject to Subsection (10), an authorizer may:

(a) approve a governing board's proposal under Subsection (7); or

(b) (i) deny a governing board's proposal under Subsection (7); and

(ii) (A) terminate the school's charter in accordance with Section 53G-5-503;

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- (B) allow the governing board to submit a revised proposal; or
- (C) take no action.

(9) An authorizer may not take an action under Subsection (8) for a qualifying charter school with outstanding bonds issued in accordance with Part 6, Charter School Credit Enhancement Program, without mutual agreement of the Utah Charter School Finance Authority and the authorizer.

(10) (a) An authorizer that intends to transfer operation and control of a charter school as described in Subsection (7)(b) shall request approval from the State Board of Education.

(b) (i) The State Board of Education shall consider an authorizer's request under Subsection (10)(a) within 30 days of receiving the request.

(ii) If the State Board of Education denies an authorizer's request under Subsection (10)(a), the authorizer may not transfer operation and control of the charter school as described in Subsection (7)(b).

(iii) If the State Board of Education does not take action on an authorizer's request under Subsection (10)(a) within 30 days of receiving the request, an authorizer may proceed to transfer operation and control of the charter school as described in Subsection (7)(b).

Section ~~(7)~~12. Section **53G-5-503** is amended to read:

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

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

- (a) failure of the charter school to meet the requirements stated in the charter;
- (b) failure to meet generally accepted standards of fiscal management;

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

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

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

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

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

(2) (a) The authorizer shall notify the following of the proposed termination in writing,

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state the grounds for the termination, and stipulate that the governing board may request an informal hearing before the authorizer:

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

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

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

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

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

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

(e) (i) If the authorizer proposes to terminate the charter of a qualifying charter school with outstanding bonds issued in accordance with Part 6, Charter School Credit Enhancement Program, the authorizer shall conduct a hearing described in Subsection (2)(b) 120 days or more after notifying the following of the proposed termination:

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

(B) the Utah Charter School Finance Authority.

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

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

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

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manner.

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

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

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

- (a) the school district where the charter school is located;
- (b) the governing board of another charter school; or
- (c) a private management company.

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

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

~~[(8) Subject to the requirements of Subsection (3), an authorizer may terminate a charter pursuant to Subsection (1)(c) under the same circumstances that local educational agencies are required to implement alternative governance arrangements under 20 U.S.C. Sec. 6316.]~~

Section 13. Section 53G-5-504 is amended to read:

53G-5-504. Charter school closure.

(1) If a charter school is closed for any reason, including the termination of a charter in accordance with Section 53G-5-503 or the conversion of a charter school to a private school, the provisions of this section apply.

(2) A decision to close a charter school is made:

(a) when a charter school authorizer approves a motion to terminate described in Subsection 53G-5-503(2)(c);

(b) when the State Board of Education takes final action described in Subsection 53G-5-503(2)(d)(ii); or

(c) when a charter school provides notice to the charter school's authorizer that the charter school is relinquishing the charter school's charter.

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(3) (a) No later than 10 days after the day on which a decision to close a charter school is made, the charter school shall:

(i) provide notice to the following, in writing, of the decision:

(A) if the charter school made the decision to close, the charter school's authorizer;

(B) the State Charter School Board;

(C) if the State Board of Education did not make the decision to close, the State Board of Education;

(D) parents of students enrolled at the charter school;

(E) the charter school's creditors;

(F) the charter school's lease holders;

(G) the charter school's bond issuers;

(H) other entities that may have a claim to the charter school's assets;

(I) the school district in which the charter school is located and other charter schools located in that school district; and

(J) any other person that the charter school determines to be appropriate; and

(ii) post notice of the decision on the Utah Public Notice Website, created in Section 63F-1-701.

(b) The notice described in Subsection (3)(a) shall include:

(i) the proposed date of the charter school closure;

(ii) the charter school's plans to help students identify and transition into a new school;

and

(iii) contact information for the charter school during the transition.

(4) ~~[After a decision to close a charter school is made]~~ No later than 10 days after the day on which a decision to close a charter school is made, the closing charter school shall:

(a) designate a custodian for the protection of student files and school business records;

(b) ~~[maintain]~~ designate a base of operation that will be maintained throughout the charter school closing, including:

(i) an office;

(ii) hours of operation;

(iii) operational telephone service with voice messaging stating the hours of operation;

and

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(iv) a designated individual to respond to questions or requests during the hours of operation;

(c) assure that the charter school will maintain insurance coverage and risk management coverage throughout the transition to closure and for a period following closure of the charter school as specified by the charter school's authorizer;

(d) assure that the charter school will complete by the set deadlines for all fiscal years in which funds are received or expended by the charter school a financial audit [or] and any other procedure required by board rule [immediately after the decision to close is made];

(e) inventory all assets of the charter school; and

(f) list all creditors of the charter school and specifically identify secured creditors and assets that are security interests.

(5) The closing charter school's authorizer shall oversee the closing charter school's compliance with Subsection (4).

(6) (a) A closing charter school shall return any assets remaining, after all liabilities and obligations of the closing charter school are paid or discharged, to the closing charter school's authorizer.

(b) The closing charter school's authorizer shall liquidate assets at fair market value or assign the assets to another public school.

(7) The closing charter school's authorizer shall oversee liquidation of assets and payment of debt in accordance with board rule.

(8) The closing charter school shall:

(a) comply with all state and federal reporting requirements; and

(b) submit all documentation and complete all state and federal reports required by the closing charter school's authorizer or the State Board of Education, including documents to verify the closing charter school's compliance with procedural requirements and satisfaction of all financial issues.

(9) When the closing charter school's financial affairs are closed out and dissolution is complete, the authorizer shall ensure that a final audit of the charter school is completed.

(10) On or before January 1, 2017, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall, after considering suggestions from charter school authorizers, make rules that:

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(a) provide additional closure procedures for charter schools; and

(b) establish a charter school closure process.

Section 14. Effective date.

This bill takes effect on January 1, 2019.

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Legislative Review Note

Office of Legislative Research and General Counsel