

CHARTER SCHOOL OPERATIONS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson Moss

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends certain provisions related to the approval, oversight, and closure of charter schools by an authorizer.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates an initial review period before a charter school receives final approval from an authorizer;
- ▶ requires a charter school to use the same accounting methods as district schools; and
- ▶ permits authorizers to:
 - request financial documents from a charter school;
 - petition a district court to appoint a receiver for a charter school on certain grounds;
 - transfer operation and control of a charter school to a high performing charter school under certain circumstances; and
 - transfer students from a closing charter school to another charter school.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 [53G-5-404](#), as last amended by Laws of Utah 2019, Chapters 83 and 293

31 [53G-5-405](#), as last amended by Laws of Utah 2019, Chapters 293 and 505

32 [53G-5-501](#), as last amended by Laws of Utah 2019, Chapter 293

33 [53G-5-503](#), as last amended by Laws of Utah 2019, Chapter 293

34 [53G-5-504](#), as last amended by Laws of Utah 2019, Chapter 293

35 ENACTS:

36 [53G-5-307](#), Utah Code Annotated 1953



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

39 Section 1. Section [53G-5-307](#) is enacted to read:

40 **[53G-5-307](#). Charter school authorization -- Initial review period.**

41 (1) An authorizer shall grant a charter school approved under this title provisional
42 approval for a three-year initial review period, beginning with the first year of the charter
43 school's operation.

44 (2) Beginning in the first year of the initial review period, the authorizer shall comply
45 with the accountability and review procedures described in Section [53G-5-406](#).

46 (3) The authorizer may extend the initial review period for one year, up to two times
47 during the initial review period.

48 (4) At the end of the initial review period, the authorizer shall:

49 (a) grant the charter school final approval; or

50 (b) terminate the charter agreement, subject to the requirements of Section [53G-5-503](#).

51 (5) The authorizer shall, under the minimum standards described in Section
52 [53G-5-205](#), base the decision to grant final approval or terminate the charter agreement on:

53 (a) the charter school's compliance with the terms of the charter agreement;

54 (b) whether students enrolled in the charter school are meeting the State Charter School
55 Board's minimum academic standards; and

56 (c) the charter school's financial viability.

57 (6) If a charter school granted provisional approval under this section participates in
58 the Charter School Credit Enhancement Program, the authorizer shall consult with the Utah

59 Charter School Finance Authority before making a decision to grant final approval.

60 Section 2. Section **53G-5-404** is amended to read:

61 **53G-5-404. Requirements for charter schools.**

62 (1) A charter school shall be nonsectarian in its programs, admission policies,
63 employment practices, and operations.

64 (2) A charter school may not charge tuition or fees, except those fees normally charged
65 by other public schools.

66 (3) A charter school shall meet all applicable federal, state, and local health, safety, and
67 civil rights requirements.

68 (4) (a) A charter school shall:

69 (i) make the same annual reports required of other public schools under this public
70 education code, including an annual financial audit report described in Section 53G-4-404;

71 [and]

72 (ii) ensure that the charter school meets the data and reporting standards described in
73 Section 53E-3-501[-]; and

74 (iii) use fund accounting methods and standardized account codes capable of producing
75 financial reports that comply with:

76 (A) generally accepted accounting principles; and

77 (B) the financial reporting requirements applicable to LEAs.

78 (b) Before, and as a condition for opening a charter school:

79 (i) a charter school shall:

80 (A) certify to the authorizer that the charter school's accounting methods meet the
81 requirements described in Subsection (4)(a)(iii); or

82 (B) if the authorizer requires, conduct a performance demonstration to verify that the
83 charter school's accounting methods meet the requirements described in Subsection (4)(a)(iii);

84 and

85 (ii) the authorizer shall certify to the state board that the charter school's accounting
86 methods meet the requirements described in Subsection (4)(a)(iii).

87 [~~(b)~~] (c) A charter school shall file the charter school's annual financial audit report
88 with the Office of the State Auditor within six months of the end of the fiscal year.

89 (d) For purposes of compliance with federal and state law governing use of public

90 education funds, including restricted funds, and making annual financial audit reports under
91 this section, a charter school is a government entity and is governed by the public education
92 code.

93 (5) (a) A charter school shall be accountable to the charter school's authorizer for
94 performance as provided in the school's charter agreement.

95 (b) To measure the performance of a charter school, an authorizer may use data
96 contained in:

97 (i) the charter school's annual financial audit report;

98 (ii) a report submitted by the charter school as required by statute; or

99 (iii) a report submitted by the charter school as required by its charter agreement.

100 (c) A charter school authorizer may not impose performance standards, except as
101 permitted by statute, that limit, infringe, or prohibit a charter school's ability to successfully
102 accomplish the purposes of charter schools as provided in Section [53G-5-104](#) or as otherwise
103 provided in law.

104 (6) A charter school may not advocate unlawful behavior.

105 (7) Except as provided in Section [53G-5-305](#), a charter school shall be organized and
106 managed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, after its
107 authorization.

108 (8) A charter school shall provide adequate liability and other appropriate insurance,
109 including general liability and errors and omissions coverage through completion of the closure
110 of a charter school under Section [53G-5-504](#).

111 (9) Beginning on July 1, 2014, a charter school, including a charter school that has not
112 yet opened, shall submit any lease, lease-purchase agreement, or other contract or agreement
113 relating to the charter school's facilities or financing of the charter school's facilities to the
114 school's authorizer and an attorney for review and advice [~~prior to~~] before the charter school
115 [~~entering into~~] enters the lease, agreement, or contract.

116 (10) A charter school may not employ an educator whose license [~~has been~~] is
117 suspended or revoked by the state board under Section [53E-6-604](#).

118 (11) (a) Each charter school shall register and maintain the charter school's registration
119 as a limited purpose entity, in accordance with Section [67-1a-15](#).

120 (b) A charter school that fails to comply with Subsection (11)(a) or Section [67-1a-15](#) is

121 subject to enforcement by the state auditor, in accordance with Section [67-3-1](#).

122 (12) (a) A charter school shall provide to the charter school's authorizer any
 123 information or documents requested by the authorizer to confirm the charter school's financial
 124 compliance with federal or state law.

125 (b) A charter school shall include in an agreement with a subsidiary, or any
 126 organization with which the charter school contracts, a provision that documents necessary to
 127 demonstrate the charter school's financial compliance with federal or state law are the property
 128 of the charter school.

129 Section 3. Section **53G-5-405** is amended to read:

130 **53G-5-405. Application of statutes and rules to charter schools.**

131 (1) A charter school shall operate in accordance with its charter agreement and is
 132 subject to this public education code and other state laws applicable to public schools, except
 133 as otherwise provided in this chapter and other related provisions.

134 (2) (a) Except as provided in Subsection (2)(b), state board rules governing the
 135 following do not apply to a charter school:

- 136 (i) school libraries;
- 137 (ii) required school administrative and supervisory services; and
- 138 (iii) required expenditures for instructional supplies.

139 (b) A charter school shall comply with rules implementing statutes that prescribe how
 140 state appropriations may be spent.

141 (3) The following provisions of this public education code, and rules adopted under
 142 those provisions, do not apply to a charter school:

143 [~~(a) Section [53G-7-1202](#), requiring the establishment of a school community council;~~]

144 [~~(b) Section [53G-4-409](#), requiring the use of activity disclosure statements;~~]

145 [~~(c) Section [53G-7-606](#), requiring notification of intent to dispose of textbooks;~~]

146 [~~(d) Section [53G-10-404](#), requiring annual presentations on adoption;~~]

147 [~~(e) Sections [53G-7-304](#) and [53G-7-306](#) pertaining to fiscal procedures of school~~
 148 ~~districts and local school boards; and]~~

149 [~~(f) Section [53E-4-408](#), requiring an independent evaluation of instructional materials.]~~

150 (a) Section [53E-4-408](#), requiring an independent evaluation of instructional materials;

151 (b) Section [53G-4-409](#), requiring the use of activity disclosure statements;

152 (c) Sections 53G-7-304 and 53G-7-306, pertaining to fiscal procedures of school
153 districts and local school boards;

154 (d) Section 53G-7-606, requiring notification of intent to dispose of textbooks;

155 (e) Section 53G-7-1202, requiring the establishment of a school community council;

156 and

157 (f) Section 53G-10-404, requiring annual presentations on adoption.

158 (4) For the purposes of Title 63G, Chapter 6a, Utah Procurement Code, a charter
159 school is considered an educational procurement unit as defined in Section 63G-6a-103.

160 (5) Each charter school shall be subject to:

161 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

162 (b) Title 63G, Chapter 2, Government Records Access and Management Act.

163 (6) A charter school is exempt from Section 51-2a-201.5, requiring accounting reports
164 of certain nonprofit corporations. A charter school is subject to the requirements of Section
165 53G-5-404.

166 (7) (a) The State Charter School Board shall, in concert with the charter schools, study
167 existing state law and administrative rules for the purpose of determining from which laws and
168 rules charter schools should be exempt.

169 (b) (i) The State Charter School Board shall present recommendations for exemption to
170 the state board for consideration.

171 (ii) The state board shall consider the recommendations of the State Charter School
172 Board and respond within 60 days.

173 Section 4. Section 53G-5-501 is amended to read:

174 **53G-5-501. Noncompliance -- Rulemaking.**

175 (1) If a charter school is found to be out of compliance with the requirements of
176 Section 53G-5-404 or the school's charter agreement, the charter school authorizer shall notify
177 the following in writing that the charter school has a reasonable time to remedy the deficiency,
178 except as otherwise provided in Subsection 53G-5-503(4):

179 (a) the charter school governing board; and

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

183 (2) (a) If the charter school does not remedy the deficiency within the established
 184 timeline, the authorizer may:

185 [~~(a)~~] (i) subject to the requirements of Subsection (4), take one or more of the
 186 following actions:

187 [~~(i)~~] (A) remove a charter school director or finance officer;

188 [~~(ii)~~] (B) remove a charter school governing board member; [~~or~~]

189 [~~(iii)~~] (C) appoint an interim director [~~or~~], mentor, or finance officer to work with the
 190 charter school; or

191 (D) appoint a governing board member;

192 [~~(b)~~] (ii) subject to the requirements of Section [53G-5-503](#), terminate the school's
 193 charter agreement~~[-];~~ or

194 (iii) transfer operation and control of the charter school to a high performing charter
 195 school, as defined in Subsection [53G-5-502\(1\)](#), including reconstituting the governing board to
 196 effectuate the transfer.

197 (b) The authorizer may prohibit the charter school governing board from removing an
 198 appointment made under Subsection (2)(a)(i), for a period of up to one year after the date of the
 199 appointment.

200 (3) The costs of an interim director [~~or~~], mentor, or finance officer appointed [~~pursuant~~
 201 ~~to~~] under Subsection (2)(a) shall be paid from the funds of the charter school for which the
 202 interim director [~~or~~], mentor, or finance officer is working.

203 (4) The authorizer shall notify the Utah Charter School Finance Authority before the
 204 authorizer takes an action described in [~~Subsections~~] Subsection (2)(a)(i) [~~through (iii)~~] if the
 205 charter school is a qualifying charter school with outstanding bonds issued in accordance with
 206 Part 6, Charter School Credit Enhancement Program.

207 (5) The state board shall make rules:

208 (a) specifying the timeline for remedying deficiencies under Subsection (1); and

209 (b) ensuring the compliance of a charter school with its approved charter agreement.

210 (6) (a) An authorizer may petition the district court where a charter school is located or
 211 incorporated to appoint a receiver, and the district court may appoint a receiver if the authorizer
 212 establishes that the charter school:

213 (i) is subject to closure under Section [53G-5-503](#); and

214 (ii) (A) has disposed, or there is a demonstrated risk that the charter school will
215 dispose, of the charter school's assets in violation of Subsection 53G-5-403(4); or
216 (B) cannot, or there is a demonstrated risk that the charter school will not, make
217 repayment of amounts owed to the federal government or the state.
218 (b) The court shall describe the powers and duties of the receiver in the court's
219 appointing order, and may amend the order from time to time.
220 (c) Among other duties ordered by the court, the receiver shall:
221 (i) ensure the protection of the charter school's assets;
222 (ii) preserve money owed to creditors; and
223 (iii) if requested by the authorizer, carry out charter school closure and procedures
224 described in Section 53G-5-504, and state board rules, as directed by the authorizer.
225 (d) If the court does not appoint a receiver:
226 (i) the authorizer may reconstitute the governing board of a charter school; or
227 (ii) if a new governing board cannot be reconstituted, the authorizer shall complete the
228 closure procedures described in Section 53G-5-504.
229 Section 5. Section **53G-5-503** is amended to read:
230 **53G-5-503. Termination of a charter agreement.**
231 (1) Subject to the requirements of Subsection (3), a charter school authorizer may
232 terminate a school's charter agreement for any of the following reasons:
233 (a) failure of the charter school to meet the requirements stated in the charter
234 agreement;
235 (b) failure to meet generally accepted standards of fiscal management;
236 (c) (i) designation as a low performing school under Title 53E, Chapter 5, Part 3,
237 School Turnaround and Leadership Development; and
238 (ii) failure to improve the school's grade under the conditions described in Title 53E,
239 Chapter 5, Part 3, School Turnaround and Leadership Development;
240 (d) violation of requirements under this chapter or another law; or
241 (e) other good cause shown.
242 (2) (a) The authorizer shall notify the following of the proposed termination in writing,
243 state the grounds for the termination, and stipulate that the charter school governing board may
244 request an informal hearing before the authorizer:

245 (i) the charter school governing board; and
246 (ii) if the charter school is a qualifying charter school with outstanding bonds issued in
247 accordance with Part 6, Charter School Credit Enhancement Program, the Utah Charter School
248 Finance Authority.

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

252 (c) If the authorizer, by majority vote, approves a motion to terminate a charter school,
253 the charter school governing board may appeal the decision to the state board.

254 (d) (i) The state board shall hear an appeal of a termination made pursuant to
255 Subsection (2)(c).

256 (ii) The state board's action is final action subject to judicial review.

257 (e) (i) If the authorizer proposes to terminate the charter agreement of a qualifying
258 charter school with outstanding bonds issued in accordance with Part 6, Charter School Credit
259 Enhancement Program, the authorizer shall conduct a hearing described in Subsection (2)(b)
260 120 days or more after notifying the following of the proposed termination:

- 261 (A) the charter school governing board of the qualifying charter school; and
- 262 (B) the Utah Charter School Finance Authority.

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

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

270 (4) (a) The state board shall make rules that require a charter school to report any
271 threats to the health, safety, or welfare of its students to the State Charter School Board in a
272 timely manner.

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

275 (5) Subject to the requirements of Subsection (3), the authorizer may terminate a

276 charter agreement immediately if good cause has been shown or if the health, safety, or welfare
277 of the students at the school is threatened.

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

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

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

282 (c) a private management company.

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

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

287 Section 6. Section **53G-5-504** is amended to read:

288 **53G-5-504. Charter school closure.**

289 (1) As used in this section, "receiving charter school" means a charter school that an
290 authorizer permits under Subsection (12)(a), to accept enrollment applications from students of
291 a closing charter school.

292 [~~(1)~~] (2) If a charter school is closed for any reason, including the termination of a
293 charter agreement in accordance with Section **53G-5-503** or the conversion of a charter school
294 to a private school, the provisions of this section apply.

295 [~~(2)~~] (3) A decision to close a charter school is made:

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

298 (b) when the state board takes final action described in Subsection **53G-5-503(2)(d)(ii)**;
299 or

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

302 [~~(3)~~] (4) (a) No later than 10 days after the day on which a decision to close a charter
303 school is made, the charter school shall:

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

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

306 (B) the State Charter School Board;

- 307 (C) if the state board did not make the decision to close, the state board;
- 308 (D) parents of students enrolled at the charter school;
- 309 (E) the charter school's creditors;
- 310 (F) the charter school's lease holders;
- 311 (G) the charter school's bond issuers;
- 312 (H) other entities that may have a claim to the charter school's assets;
- 313 (I) the school district in which the charter school is located and other charter schools
- 314 located in that school district; and

- 315 (J) any other person that the charter school determines to be appropriate; and
- 316 (ii) post notice of the decision on the Utah Public Notice Website, created in Section
- 317 [63F-1-701](#).

318 (b) The notice described in Subsection [~~(3)~~] (4)(a) shall include:

- 319 (i) the proposed date of the charter school closure;
- 320 (ii) the charter school's plans to help students identify and transition into a new school;

321 and

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

323 [~~(4)~~] (5) No later than 10 days after the day on which a decision to close a charter

324 school is made, the closing charter school shall:

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

326 (b) designate a base of operation that will be maintained throughout the charter school

327 closing, including:

- 328 (i) an office;
- 329 (ii) hours of operation;
- 330 (iii) operational telephone service with voice messaging stating the hours of operation;

331 and

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

333 operation;

334 (c) assure that the charter school will maintain insurance coverage and risk

335 management coverage throughout the transition to closure and for a period following closure of

336 the charter school as specified by the charter school's authorizer;

337 (d) assure that the charter school will complete by the set deadlines for all fiscal years

338 in which funds are received or expended by the charter school a financial audit and any other
339 procedure required by state board rule;

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

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

343 [~~5~~] (6) The closing charter school's authorizer shall oversee the closing charter
344 school's compliance with Subsection [~~4~~] (5).

345 [~~6~~] (7) (a) A closing charter school shall return any assets remaining, after all
346 liabilities and obligations of the closing charter school are paid or discharged, to the closing
347 charter school's authorizer.

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

350 [~~7~~] (8) The closing charter school's authorizer shall oversee liquidation of assets and
351 payment of debt in accordance with state board rule.

352 [~~8~~] (9) The closing charter school shall:

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

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

358 [~~9~~] (10) When the closing charter school's financial affairs are closed out and
359 dissolution is complete, the authorizer shall ensure that a final audit of the charter school is
360 completed.

361 [~~10~~] (11) On or before January 1, 2017, the state board shall, after considering
362 suggestions from charter school authorizers, make rules that:

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

364 (b) establish a charter school closure process.

365 (12) Notwithstanding the provisions of Title 53G, Chapter 6, Part 5, Charter School
366 Enrollment:

367 (a) an authorizer may permit a specified number of students from a closing charter
368 school to be enrolled in another charter school, if the receiving charter school:

369 (i) is authorized by the same authorizer as the closing charter school; and

370 (ii) agrees to accept enrollment applications from students of the closing charter
371 school; and

372 (b) a receiving charter school shall give new enrollment preference to applications
373 from students of the closing charter school.