

CHARTER SCHOOL CLOSING REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Susan Pulsipher

Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This bill addresses treatment of assets of a charter school.

Highlighted Provisions:

This bill:

- ▶ addresses when payments may be made from the Charter School Closure Reserve

Account;

- ▶ modifies language related to a charter school authorizer and the closure of a charter school;

- ▶ amends provisions related to how charter school assets are treated when a charter school is closed; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53F-9-307, as last amended by Laws of Utah 2022, Chapter 456

53G-5-501, as last amended by Laws of Utah 2020, Chapters 192, 408

53G-5-504, as last amended by Laws of Utah 2021, Chapters 84, 345



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

Section 1. Section **53F-9-307** is amended to read:

53F-9-307. Charter School Closure Reserve Account.

(1) As used in this section:

(a) "Account" means the Charter School Closure Reserve Account created in this section.

(b) "Charter school authorizer" or "authorizer" means an entity listed in Section **53G-5-205** that authorizes a charter school.

(2) There is created within the Income Tax Fund a special revenue fund known as the "Charter School Closure Reserve Account."

(3) The account consists of:

(a) appropriations of the Legislature;

(b) amounts deposited into the account in accordance with this section; and

(c) interest earned on money in the account.

(4) (a) The account shall earn interest.

(b) Interest earned on the account shall be deposited into the account.

(5) (a) In a fiscal year that begins on or after July 1, 2021, a charter school shall annually contribute to the account \$2 per student enrolled in the charter school until the account balance reaches \$3,000,000.

(b) (i) Beginning with the fiscal year following the first fiscal year in which the account balance reaches \$3,000,000, except as provided in Subsections (5)(b)(ii) and (iii), in any fiscal year in which the account balance is less than \$3,000,000, a charter school shall contribute to the account a prorated amount, not to exceed \$2 per student enrolled in a charter school, in accordance with Subsection (6).

(ii) Except as provided in Subsection (5)(b)(iii), if no funds have been withdrawn from the account due to a charter school closure, in a fiscal year that begins on or after July 1, 2024, in which the account balance is less than \$2,500,000, a charter school shall contribute to the account a prorated amount, not to exceed \$2 per student enrolled in a charter school, in accordance with Subsection (6).

(iii) If no funds have been withdrawn from the account due to a charter school closure,

59 in a fiscal year that begins on or after July 1, 2026, in which the account balance is less than
60 \$2,000,000, a charter school shall contribute to the account a prorated amount, not to exceed \$2
61 per student enrolled in a charter school, in accordance with Subsection (6).

62 (c) The state board shall ensure that the total contribution from charter schools
63 described in Subsection (5)(b) equals the lesser of:

64 (i) (A) in a fiscal year after the first fiscal year in which the account balance reaches
65 \$3,000,000, an amount sufficient to maintain an account balance of \$3,000,000;

66 (B) in a fiscal year that begins on or after July 1, 2024, if no funds have been
67 withdrawn from the account due to charter school closure, an amount sufficient to maintain an
68 account balance of \$2,500,000; or

69 (C) in a fiscal year that begins on or after July 1, 2026, if no funds have been
70 withdrawn from the account due to charter school closure, an amount sufficient to maintain an
71 account balance of \$2,000,000; and

72 (ii) \$2 per student enrolled in a charter school.

73 (6) The state board of education shall make rules in accordance with Title 63G,
74 Chapter 3, Utah Administrative Rulemaking Act, for:

75 (a) calculating the amounts described in Subsections (5)(b) and (c);

76 (b) a process for collecting charter school contributions to the account described in this
77 section; and

78 (c) a process for depositing charter school contributions to the account described in this
79 section into the account.

80 (7) Money in the account may only be used upon closure of a charter school that closes
81 on or after January 1, 2021:

82 (a) to pay debts that the charter school owes to:

83 (i) the state board; or

84 (ii) the state or federal government;

85 (b) after the charter school has made other reasonable attempts to resolve debts the
86 charter school owes to:

87 (i) the state board; or

88 (ii) the state or federal government; and

89 (c) after a charter school liquidates ~~all of~~ the charter school's assets remaining after:

90 (i) the charter school's liabilities and obligations are paid under Subsection
91 53G-5-504(7); and
92 (ii) the charter school authorizer assigns assets to a public school under Subsection
93 53G-5-504(7)(c).

94 (8) Money in the account may not be used to pay bond debt.

95 (9) The state board, in partnership with a charter school authorizer:

96 (a) may authorize the use of money in the account, subject to the restrictions described
97 in Subsections (7) and (8); and

98 (b) before authorizing the use of funds in the account as described in Subsection (9)(a),
99 shall investigate all reasonable alternatives for a charter school to pay debt that the charter
100 school owes to:

101 (i) the state board; and

102 (ii) the state or federal government.

103 Section 2. Section **53G-5-501** is amended to read:

104 **53G-5-501. Noncompliance -- Rulemaking.**

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

109 (a) the charter school governing board; and

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

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

115 (i) subject to the requirements of Subsection (4), take one or more of the following
116 actions:

117 (A) remove a charter school director or finance officer;

118 (B) remove a charter school governing board member;

119 (C) appoint an interim director, mentor, or finance officer to work with the charter
120 school; or

- 121 (D) appoint a governing board member;
- 122 (ii) subject to the requirements of Section 53G-5-503, terminate the school's charter
123 agreement; or
- 124 (iii) transfer operation and control of the charter school to a high performing charter
125 school, as defined in Subsection 53G-5-502(1), including reconstituting the governing board to
126 effectuate the transfer.
- 127 (b) The authorizer may prohibit the charter school governing board from removing an
128 appointment made under Subsection (2)(a)(i), for a period of up to one year after the date of the
129 appointment.
- 130 (3) The costs of an interim director, mentor, or finance officer appointed under
131 Subsection (2)(a) shall be paid from the funds of the charter school for which the interim
132 director, mentor, or finance officer is working.
- 133 (4) The authorizer shall notify the Utah Charter School Finance Authority before the
134 authorizer takes an action described in Subsection (2)(a)(i) if the charter school is a qualifying
135 charter school with outstanding bonds issued in accordance with Part 6, Charter School Credit
136 Enhancement Program.
- 137 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
138 state board shall make rules:
- 139 (a) specifying the timeline for remedying deficiencies under Subsection (1); and
140 (b) ensuring the compliance of a charter school with its approved charter agreement.
- 141 (6) (a) An authorizer may petition the district court where a charter school is located or
142 incorporated to appoint a receiver, and the district court may appoint a receiver if the authorizer
143 establishes that the charter school:
- 144 (i) is subject to closure under Section 53G-5-503; and
145 (ii) (A) has disposed, or there is a demonstrated risk that the charter school will
146 dispose, of the charter school's assets in violation of Subsection 53G-5-403(4); or
147 (B) cannot, or there is a demonstrated risk that the charter school will not, make
148 repayment of amounts owed to the federal government or the state.
- 149 (b) The court shall describe the powers and duties of the receiver in the court's
150 appointing order, and may amend the order from time to time.
- 151 (c) Among other duties ordered by the court, the receiver shall:

- 152 (i) ensure the protection of the charter school's assets;
- 153 (ii) preserve money owed to creditors; and
- 154 (iii) if requested by the authorizer, carry out charter school closure procedures
- 155 described in Section 53G-5-504, and state board rules, as directed by the authorizer.
- 156 (d) If the authorizer does not request, or the court does not appoint, a receiver:
- 157 (i) the authorizer may reconstitute the governing board of a charter school; or
- 158 (ii) if a new governing board cannot be reconstituted, the authorizer shall complete the
- 159 closure procedures described in Section 53G-5-504, including liquidation and assignment of
- 160 assets, and payment of ~~[debt]~~ liabilities and obligations in accordance with ~~[state board rule, as~~
- 161 ~~described in Section]~~ Subsection 53G-5-504(7) and state board rule.
- 162 (e) For a qualifying charter school with outstanding bonds issued in accordance with
- 163 Part 6, Charter School Credit Enhancement Program, an authorizer shall obtain the consent of
- 164 the Utah Charter School Finance Authority before the authorizer takes the following actions:
- 165 (i) petitions a district court to appoint a receiver, as described in Subsection (6)(a);
- 166 (ii) reconstitutes the governing board, as described in Subsection (6)(d)(i); or
- 167 (iii) carries out closure procedures, as described in Subsection (6)(d)(ii).

168 Section 3. Section 53G-5-504 is amended to read:

169 **53G-5-504. Charter school closure.**

170 (1) As used in this section, "receiving charter school" means a charter school that an
171 authorizer permits under Subsection ~~[(13)(a)]~~ (12)(a), to accept enrollment applications from
172 students of a closing charter school.

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

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

- 177 (a) when a charter school authorizer approves a motion to terminate described in
- 178 Subsection 53G-5-503(2)(c);
- 179 (b) when the state board takes final action described in Subsection 53G-5-503(2)(d)(ii);
- 180 or
- 181 (c) when a charter school provides notice to the charter school's authorizer that the
- 182 charter school is relinquishing the charter school's charter.

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

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

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

187 (B) the State Charter School Board;

188 (C) if the state board did not make the decision to close, the state board;

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

190 (E) the charter school's creditors;

191 (F) the charter school's lease holders;

192 (G) the charter school's bond issuers;

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

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

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

197 (ii) post notice of the decision on the Utah Public Notice Website, created in Section
198 [63A-16-601](#).

199 (b) The notice described in Subsection (4)(a) shall include:

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

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

202 and

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

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

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

207 (b) designate a base of operation that will be maintained throughout the charter school
208 closing, including:

209 (i) an office;

210 (ii) hours of operation;

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

212 and

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

214 operation;

215 (c) assure that the charter school will maintain private insurance coverage or risk
216 management coverage for covered claims that arise before closure, throughout the transition to
217 closure and for a period following closure of the charter school as specified by the charter
218 school's authorizer;

219 (d) assure that the charter school will complete by the set deadlines for all fiscal years
220 in which funds are received or expended by the charter school a financial audit and any other
221 procedure required by state board rule;

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

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

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

227 (7) (a) Unless a different order is determined by a bankruptcy court under 11 U.S.C.
228 Sec. 1001 et seq., a closing charter school shall distribute the assets of the closing charter
229 school in the following order:

230 (i) return assets donated by a private donor to the private donor if:

231 (A) the assets were donated for a specific purpose;

232 (B) the private donor restricted use of the assets to only that specific purpose; and

233 (C) the closing charter school has assets that have not been used for the specific
234 purpose;

235 (ii) distribute assets to satisfy outstanding payroll obligations for employees of the
236 closing charter school;

237 (iii) distribute assets to creditors of the closing charter school; and

238 (iv) distribute assets to satisfy any outstanding liability or obligation to the state board,
239 state, or federal government.

240 (b) A closing charter school shall return any assets remaining, after all liabilities and
241 obligations of the closing charter school are paid or discharged consistent with Subsection
242 (7)(a), to the closing charter school's authorizer.

243 ~~[(b)]~~ (c) ~~[The]~~ Upon receipt of the assets under Subsection (7)(b), the closing charter
244 school's authorizer shall:

245 (i) liquidate assets at fair market value; or

246 (ii) assign the assets to another public school.

247 ~~[(8)]~~ (d) The closing charter school's authorizer shall oversee liquidation of assets and

248 payment of ~~[debt]~~ liabilities and obligations in accordance with this section, Sections

249 53F-9-307 and 53G-5-501, and state board rule.

250 ~~[(9)]~~ (8) The closing charter school shall:

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

252 (b) submit all documentation and complete all state and federal reports required by the

253 closing charter school's authorizer or the state board, including documents to verify the closing

254 charter school's compliance with procedural requirements and satisfaction of all financial

255 issues.

256 ~~[(10)]~~ (9) When the closing charter school's financial affairs are closed out and

257 dissolution is complete, the authorizer shall ensure that a final audit of the charter school is

258 completed.

259 ~~[(11)]~~ (10) On or before January 1, 2017, the state board shall, in accordance with Title

260 63G, Chapter 3, Utah Administrative Rulemaking Act, and after considering suggestions from

261 charter school authorizers, make rules that:

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

263 (b) establish a charter school closure process.

264 ~~[(12)]~~ (11) (a) Upon termination of the charter school's charter agreement:

265 (i) notwithstanding provisions to the contrary in Title 16, Chapter 6a, Part 14,

266 Dissolution, the nonprofit corporation under which the charter school is organized and

267 managed may be unilaterally dissolved by the authorizer; and

268 (ii) the net assets of the charter school shall revert to the authorizer as described in

269 Subsection (7).

270 (b) The charter school and the authorizer shall mutually agree in writing on the

271 effective date and time of the dissolution described in Subsection ~~[(12)(a)]~~ (11)(a).

272 (c) The effective date and time of dissolution described in Subsection ~~[(12)(b)]~~ (11)(b)

273 may not exceed five years after the date of the termination of the charter agreement.

274 ~~[(13)]~~ (12) Notwithstanding the provisions of Chapter 6, Part 5, Charter School

275 Enrollment:

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

278 (i) (A) is authorized by the same authorizer as the closing charter school; or

279 (B) is authorized by a different authorizer and the authorizer of the receiving charter
280 school approves the increase in enrollment; and

281 (ii) agrees to accept enrollment applications from students of the closing charter
282 school;

283 (b) a receiving charter school shall give new enrollment preference to applications
284 from students of the closing charter school in the first school year in which the closing charter
285 school is not operational; and

286 (c) a receiving charter school's enrollment capacity is increased by the number of
287 students enrolled in the receiving charter school from the closing charter school under this
288 Subsection [~~(13)~~] (12).

289 [~~(14)~~] (13) A member of the governing board or staff of the receiving charter school
290 that is also a member of the governing board of the receiving charter school's authorizer, shall
291 recuse himself or herself from a decision regarding the enrollment of students from a closing
292 charter school as described in Subsection [~~(13)~~] (12).