**South Carolina General Assembly**

122nd Session, 2017-2018

**S. 445**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Hembree

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Introduced in the Senate on February 21, 2017

Currently residing in the Senate Committee on **Education**

Summary: Charter School Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/21/2017 Senate Introduced and read first time ([Senate Journal‑page 7](file:///h:\sj\20170221.docx))

2/21/2017 Senate Referred to Committee on **Education** ([Senate Journal‑page 7](file:///h:\sj\20170221.docx))

4/27/2017 Senate Committee report: Favorable with amendment **Education** ([Senate Journal‑page 47](file:///h:\sj\20170427.docx))

4/28/2017 Scrivener's error corrected

3/7/2018 Senate Recommitted to Committee on **Education** ([Senate Journal‑page 3](file:///h:\sj\20180307.docx))

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=445&session=122&summary=B) at the website

**VERSIONS OF THIS BILL**

[2/21/2017](file:///p:\pprever\2017-18\445_20170221.docx)

[2/22/2017](file:///p:\pprever\2017-18\445_20170222.docx)

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~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 27, 2017

**S. 445**

Introduced by Senator Hembree

S. Printed 4/27/17--S. [SEC 4/28/17 2:55 PM]

Read the first time February 21, 2017.

**THE COMMITTEE ON EDUCATION**

To whom was referred a Bill (S. 445) to amend Section 59‑40‑40, as amended, Code of Laws of South Carolina, 1976, relating to definitions in the South Carolina Charter Schools Act of 1996, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Section 59‑40‑40 of the 1976 Code, as last amended by Act 164 of 2012, is further amended to read:

“Section 59‑40‑40. As used in this chapter:

(1) A ‘charter school’ means a public, nonreligious, nonhome‑based, nonprofit corporation forming a school that operates by sponsorship of a public school district, the South Carolina Public Charter School District, or a public or independent institution of higher learning, but is accountable to the board of trustees, or in the case of technical colleges, the area commission, of the sponsor which grants its charter. Nothing in this chapter prohibits charter schools from offering virtual services pursuant to state law and subsequent regulations defining virtual schools.

(2) A charter school:

(a) is, for purposes of state law and the state constitution, considered a public school and part of the South Carolina Public Charter School District, the local school district in which it is located, or is sponsored by a public or independent institution of higher learning;

(b) is subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education services; however, an applicant may seek to form a single gender charter school without regard to the gender makeup of that proposed charter school;

(c) must be administered and governed by a governing body in a manner agreed to by the charter school applicant and the sponsor, the governing body to be selected as provided in Section 59‑40‑50(B)(9);

(d) may not charge tuition or other charges pursuant to Section 59‑19‑90(8) except as may be allowed by the sponsor and is comparable to the charges of the local school district in which the charter school is located;

(e) is subject to the same fixed asset inventory requirements as are traditional public schools.

(3) ‘Applicant’ means the person who or nonprofit corporate entity that desires to form a charter school and files the necessary application with the South Carolina Public Charter School District Board of Trustees, the local school board of trustees in which the charter school is to be located, or the board of trustees or area commission of a public or independent institution of higher learning. The applicant also must be the person who or the nonprofit corporate entity that applies to the Secretary of State to organize the charter school as a nonprofit corporation.

(4) ‘Sponsor’ means the South Carolina Public Charter School District Board of Trustees, the local school board of trustees in which the charter school is to be located, as provided by law, a board of a public institution of higher learning as defined in Section 59‑103‑5, or a board of an independent institution of higher learning as defined in Section 59‑113‑50, from which the charter school applicant requested its charter and which granted approval for the charter school’s existence. Only those public or independent institutions of higher learning, as defined in this subsection, who ~~register with~~ apply with and are approved to be a sponsor by the South Carolina ~~Department~~ Board of Education may serve as charter school sponsors, and the South Carolina Department of Education shall maintain a directory of those institutions. The sponsor of a charter school is the charter school’s Local Education Agency (LEA) and a charter school is a school within that LEA. The sponsor retains responsibility for special education and shall ensure that students enrolled in its charter schools are served in a manner consistent with LEA obligations under applicable federal, state, and local law.

(5) ‘Certified teacher’ means a person currently certified by the State of South Carolina to teach in a public elementary or secondary school or who currently meets the qualifications outlined in Sections 59‑27‑10 and 59‑25‑115.

(6) ‘Noncertified teacher’ means an individual ~~considered appropriately qualified for the subject matter taught and who has completed at least one year of study at an accredited college or university~~ who does not meet the definition of ‘certified teacher’ and meets the qualifications outlined in Section 59‑25‑115 and any federal requirements.

(7) ‘Charter committee’ means the governing body of a charter school formed by the applicant to govern through the application process and until the election of a board of directors is held. After the election, the board of directors of the corporation must be organized as the governing body and the charter committee is dissolved.

(8) ‘Local school district’ means any school district in the State except the South Carolina Public Charter School District and does not include special school districts.

(9) ‘Charter school contract’ means a fixed term, renewable contract between a charter school and a sponsor that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

(10) ‘Resident public school’ means the school, other than a charter school, within whose attendance boundaries the charter school student’s custodial parent or legal guardian resides.

(11) ‘Education service provider’ means a nonprofit charter management organization, for‑profit education management organization, or any other entity or person with which a charter public school contracts for educational program implementation or a substantial part of school operations.”

SECTION 2. Section 59‑40‑50 of the 1976 Code, as last amended by Act 219 of 2016, is further amended to read:

“Section 59‑40‑50. (A) Except as otherwise provided in this chapter, a charter school is exempt from all provisions of law and regulations applicable to a public school, a school board, or a district, although a charter school may elect to comply with one or more of these provisions of law or regulations.

(B) A charter school must:

(1) adhere to the same health, safety, civil rights, and disability rights requirements as are applied to public schools operating in the same school district or, in the case of the South Carolina Public Charter School District or a public or independent institution of higher learning sponsor, the local school district in which the charter school is located;

(2) meet, but may exceed, the same minimum student attendance requirements as are applied to public schools;

(3) adhere to the same financial audits, audit procedures, and audit requirements as are applied to public schools and adhere to Generally Accepted Accounting Principles (GAAP) creating an appropriate system of internal control and ensuring compliance with applicable state and federal funding guidelines and accounting requirements including the SCDE Funding Manual;

(4) be considered a school district for purposes of tort liability under South Carolina law, except that the tort immunity does not include acts of intentional or wilful racial discrimination by the governing body or employees of the charter school. Employees of charter schools must be relieved of personal liability for any tort or contract related to their school to the same extent that employees of traditional public schools in their school district or, in the case of the South Carolina Public Charter School District or a public or independent institution of higher learning sponsor, the local school district in which the charter school is located are relieved;

(5) in its discretion hire noncertified teachers in a ratio of up to twenty‑five percent of its entire teacher staff; however, if it is a converted charter school, it shall hire in its discretion noncertified teachers in a ratio of up to ten percent of its entire teacher staff. ~~However, in either a new or converted charter school, a teacher teaching in the core academic areas as defined by the federal No Child Left Behind law must be certified in those areas or possess a baccalaureate or graduate degree in the subject he or she is hired to teach.~~ All noncertified teachers and certified teachers who teach courses outside of their certification area must demonstrate a high level of competency through completion of college‑level work, advanced certification, or credentialing. Part‑time noncertified teachers are considered pro rata in calculating this percentage based on the hours which they are expected to teach;

(6) hire or contract for, in its discretion, administrative staff, including a school leader, to oversee the daily operation of the school. At least one of the administrative staff must be certified or experienced in the field of school administration;

(7) admit all children eligible to attend public school to a charter school, subject to space limitations, except in the case of an application to create a single gender charter school or, in the case of a charter school designated as an Alternative Education Campus, pursuant to Section 59‑40‑111, with an explicit mission and purpose of specializing in providing evidence‑based, specific educational or behavioral health services for educationally disadvantaged students with a demonstrated need for such services. Demonstrated need may include, but not be limited to, as documented in an Individualized Education Program (IEP), 504 plan, a medical or psychological diagnosis, or documentation that the student is not meeting grade‑specific standards in literacy as documented by the student’s school. For purposes of this section, educationally disadvantaged students are those students as defined by the Every Student Succeeds Act (ESSA). Evidence‑based services must include, but are not limited to, services to students who need evidence‑based, specialized, multi‑sensory instruction in literacy or other services included in the students’ IEP or 504 plan. This specialized mission and purpose must be defined in the school’s charter and charter contract as approved by the sponsor and as allowed by ESSA. However, it is required that the racial composition of the charter school enrollment reflect that of the local school district in which the charter school is located or that of the targeted student population of the local school district that the charter school proposes to serve, to be defined for the purposes of this chapter as differing by no more than twenty percent from that population. This requirement is also subject to the provisions of Section 59‑40‑70(D). If the number of applications exceeds the capacity of a program, class, grade level, or building, students must be accepted by lot, and there is no appeal to the sponsor. In the case of a charter school designated as an Alternative Education Campus, pursuant to Section 59‑40‑111, that is serving educationally disadvantaged students, if the number of applicants exceeds the capacity of a program, class, grade level, or building, students may be accepted by weighted lot as allowed by ESSA with mission‑aligned preference and the process clearly described in their charter and charter contract approved by their sponsor, and there is no appeal to the sponsor;

(8) not limit or deny admission or show preference in admission decisions to any individual or group of individuals, except in the case of an application to create a single gender charter school, in which case gender may be the only reason to show preference or deny admission to the school; a charter school may give enrollment priority to a sibling of a pupil currently enrolled and attending, or who, within the last six years, attended the school for at least one complete academic year. A public charter school shall give enrollment preference to students enrolled in the public charter school the previous school year. An enrollment preference for returning students excludes those students from entering into a lottery. A charter school also may give priority to children of a charter school employee and children of the charter committee, if priority enrollment for children of employees and of the charter committee does not constitute more than twenty percent of the enrollment of the charter school. In the case of a charter school designated as an Alternative Education Campus, pursuant to Section 59‑40‑111, mission‑aligned preference may be given to educationally disadvantaged students as specifically defined in their charter and charter contract approved by their sponsor and as allowed by ESSA. In addition, a charter school located on a federal military installation or base where the appropriate authorities have made buildings, facilities, and grounds on the installation or base available for use by the charter school as its principal location also may give enrollment priority to otherwise eligible students who are dependents of military personnel living in military housing on the base or installation or who are currently stationed at the base or installation not to exceed fifty percent of the total enrollment of the charter school. This priority is in addition to the other priorities provided by this item, but no child may be counted more than once for purposes of determining the percentage makeup of each priority;

(9) ~~consist of~~ be governed by a board of directors of seven or more individuals with the exact number specified in or fixed in accordance with the bylaws~~.~~;

(a) Members of a board of directors may serve a term of two years, and may serve additional terms. ~~A choice of the membership of the board must take place every two years.~~ The charter school’s bylaws must provide for the board members’ terms to be staggered so that all seats are not subject to election and appointment at the same time. Fifty percent of the members of the board as specified by the bylaws must be individuals who have a background in K‑12 education or in business, and the bylaws of the charter school also must provide for the manner of selection of these members. In addition, at least fifty percent of the members of the board as specified by the bylaws must be elected by the employees and the parents or guardians of students enrolled in the charter school. Parents or legal guardians shall have one vote for each student enrolled in the charter school. All board members must be residents of the State of South Carolina. A person who has been convicted of a felony must not be elected to a board of directors. If the board of directors consists of an odd number of members, the extra member must be an individual who has a background in K‑12 education or in business~~;~~.

(b) A governing board shall adopt a conflict of interest policy and a code of ethics consistent with Chapter 13, Title 8 and this chapter.

(c) An individual entitled to vote for members of the board of directors of a charter school may not be considered a member of the nonprofit corporation for purposes of Chapter 33, Title 31.

(d) A single nonprofit corporation may hold more than one charter contract, and the board of directors of the nonprofit corporation may oversee more than one charter school; provided, however, that each school overseen by a single governing board must be separate and distinct from any others. For purposes of financial accountability, the comingling of a school’s funds is prohibited, and academic performance must be reported separately. The bylaws must give each school fair representation on the nonprofit board of directors.

(e) The bylaws of a charter school may provide for exemption from the election requirement in this section as provided for in the South Carolina Nonprofit Corporation Act, Article 8, Chapter 31. The charter school shall still follow all other requirements of this chapter including compliance with the South Carolina Freedom of Information Act, and state ethics and government accountability laws;

(10) be subject to the South Carolina Freedom of Information Act, including the charter school and its governing body. A board of directors of a charter school shall notify its sponsor of any regular meeting of the board at least forty‑eight hours prior to the date on which it is to occur;

(11) be subject to the ethics and government accountability requirements for public members and public employees as contained in Chapter 13, Title 8. For purposes of this subsection, employees of the charter school board are considered public employees. The charter contract in accordance with Section 59‑40‑60(B) must contain a statement of assurance of ethical compliance on behalf of the school. A charter school board shall adopt a policy on antinepotism for the board and staff to follow; and

(12) participate in the state’s annual academic accountability assessments and related reporting and accountability requirements.

(C)(1) If a charter school denies admission to a student, the student may appeal the denial to the sponsor. The decision is binding on the student and the charter school.

(2) If a charter school suspends or expels a student, other charter schools or the local school district in which the charter school is located has the authority but not the obligation to refuse admission to the student.

(3)(a) A charter school is eligible for federally-sponsored, state‑sponsored, or district‑sponsored interscholastic leagues, competitions, awards, scholarships, grants, and recognition programs for students, educators, administrators, staff, and schools to the same extent as all other public schools.

(b) A charter school student is eligible to compete for, and if selected, participate in any extracurricular activities not offered by the student’s charter school which are offered at the resident public school he would otherwise attend. A charter school student is eligible to compete for, and if selected, participate in an activity governed by the South Carolina High School League offered at the resident public school he would otherwise attend if the league‑governed activity is not offered at the student’s charter school.

(c) A charter school student is eligible for extracurricular activities at the student’s resident public school consistent with eligibility standards as applied to full‑time students of the resident public school.

(d) A school district or resident public school may not impose additional requirements on a charter school student to participate in extracurricular activities that are not imposed on full‑time students of the resident public school.

(e) Charter school students shall pay the same fees as other students to participate in extracurricular activities.

(f) Charter school students shall be eligible for the same fee waivers for which other students are eligible.

(D) The State is not responsible for student transportation to a charter school unless the charter school is designated by the local school district as the only school selected within the local school district’s attendance area. However, a charter school may enter into a contract with a school district or a private provider to provide transportation to the charter school students.

(E) The South Carolina Public Charter School District Board of Trustees may ~~not~~ use program funding for transportation to reduce barriers to enrollment and provide equity and access.”

SECTION 3. Section 59‑40‑55 of the 1976 Code, as last amended by Act 288 of 2014, is further amended to read:

“Section 59‑40‑55. (A) In order to promote the quality of charter school outcomes and oversight, the charter school sponsor shall adopt national industry standards of quality charter schools and shall authorize and implement practices consistent with those standards.

(B) A charter school sponsor shall:

(1) approve charter applications according to Section 59‑40‑70 that meet the requirements specified in Sections 59‑40‑50 and 59‑40‑60;

(2) decline to approve charter applications according to Section 59‑40‑70(C);

(3) negotiate and execute sound charter contracts with each approved charter school including, but not limited to, specific outcome‑based expectations concerning academics, operations, and finance based on the school’s charter;

(4) monitor, in accordance with charter contract terms, the performance and legal/fiscal compliance of charter schools to include collecting and analyzing data to support ongoing evaluation according to the charter contract;

(5) conduct or require oversight activities that enable the sponsor to fulfill its responsibilities outlined in this chapter, including conducting appropriate inquiries and investigations, only if those activities are consistent with the intent of this chapter, adhere to the terms of the charter contact, and do not unduly inhibit the autonomy granted to public charter schools;

(6) ~~collect~~ produce, in accordance with Section 59‑40‑140(H), an annual outcomes‑based performance report aligned with federal and state accountability with data collected from each of its sponsored charter schools and submit the reports to the Department of Education. The sponsor shall avoid making duplicative data entry requests from their charter schools or creating duplicative reporting requirements for data to which they already have access from the state’s pupil accounting system, fiscal reporting, or other databases. Nothing in this section, however, shall limit the sponsor from obtaining academic performance data from the charter schools it sponsors;

(7) notify the charter school of perceived problems if its performance or legal compliance appears to be unsatisfactory and provide reasonable opportunity for the school to remedy the problem, unless the problem warrants revocation and revocation timeframes apply. The sponsor shall notify a charter school’s leader and board chair by means of electronic or telephonic communications at least forty‑eight hours before the sponsor’s regularly scheduled board meeting if the charter school is going to be on the board agenda as an action or informational item;

(8) take appropriate corrective actions or exercise sanctions short of revocation in response to apparent deficiencies in charter school performance or legal compliance. These actions or sanctions may include requiring a school to develop and execute a corrective action plan within a specified timeframe;

(9) determine whether each charter contract merits renewal, nonrenewal, or revocation based on Section 59‑40‑110, including school‑level performance data and the terms of the charter contract;

(10) provide to parents and the general public information about charter schools authorized by the sponsor as an enrollment option within the district in which the charter school is located to the same extent and through the same means as the district in which the charter school is located provides and publicizes information about all public schools in the district. A charter school shall notify its sponsor of its enrollment procedures and dates of its enrollment period no less than ~~sixty~~ thirty days before the first day of its ~~enrollment~~ application period and the sponsor shall monitor the application, lottery, and enrollment procedures and compliance; and

(11) permanently close any charter school at the conclusion of the school year after receiving the lowest performance level rating as defined by the ~~federal~~ state’s accountability system for three consecutive years in accordance with Section 59‑40‑110(E).

(C) The South Carolina Public Charter School District may retain no more than two percent of the total state appropriations for each charter school it authorizes to cover the costs for overseeing its charter schools. SCPCSD is allowed to withhold funds from state categorical funds only to cover its direct costs for administering and overseeing the funds, not to exceed two percent of state categorical funds. The sponsor’s administrative fee does not include costs incurred in delivering services that a charter school may purchase at its discretion from the sponsor. The sponsor’s fee is not applicable to federal money or grants received by the charter school. The sponsor shall use its funding provided pursuant to this section exclusively for the purpose of fulfilling sponsor obligations in accordance with this chapter. The sponsor also shall maintain a reserve fund in compliance with state and federal laws, GAAP, and the sponsor’s stated policies.”

SECTION 4. Section 59‑40‑60 of the 1976 Code, as last amended by Act 288 of 2014, is further amended to read:

“Section 59‑40‑60. (A) An approved charter application constitutes an agreement between the charter school and the sponsor.

(B) A contract between the charter school and the sponsor must be executed and must reflect all provisions outlined in the application as well as the roles, powers, responsibilities, and performance expectations for each party to the contract. A contract must include the proposed enrollment procedures and dates of the enrollment period of the charter school. All agreements regarding the release of the charter school from school district policies must be contained in the contract. The Department of Education shall develop a contract template to be used by charter schools and the sponsor. The template must serve as a foundation for the development of a contract between the charter school and the sponsor.

(C) A material revision of the terms of the contract between the charter school and the sponsor may not be made unilaterally and must be made only with the ~~approval~~ agreement of both parties. Requests to amend the charter contract or charter must be approved by the board of the school in a written resolution and sent to the sponsor in writing. A request by a charter school to significantly expand the original charter to serve additional grades or an additional campus requires the sponsor to review the charter school’s annual evaluation results including the school’s academic performance as set forth in Section 59‑40‑110, and the charter school shall notify the local school district in which it is physically located and hold a public meeting prior to submitting the request to amend to inform and engage the community they intend to serve. The sponsor must take action on the amendment request within one hundred twenty days. If the sponsor does not take action on the requested amendments within one hundred twenty days, the amendments are considered approved.

(D) Except as provided in subsection (F), an applicant who wishes to form a charter school shall:

(1) organize the charter school as a nonprofit corporation pursuant to the laws of this State;

(2) form a charter committee for the charter school which includes one or more teachers; and

(3) submit a letter of intent and a written charter school application to the board of trustees or area commission from which the committee is seeking sponsorship.

(E) A charter committee is responsible for and has the power to:

(1) submit a letter of intent and an application to operate as a charter school, sign a charter school contract, and ensure compliance with all of the requirements for charter schools provided by law;

(2) employ and contract with teachers and nonteaching employees, contract for services, and develop pay scales, performance criteria, and discharge policies for its employees. All teachers whether certified or noncertified must undergo the background checks and other investigations required for certified teachers, as provided by law, before they may teach in the charter school; ~~and~~

(3) decide all other matters related to the operation of the charter school, including budgeting, curriculum, and operating procedures~~.~~;

(4) hold public meetings informing and engaging the community they intend to serve; provided, an existing charter school replicating their model or significantly expanding beyond their original charter also shall hold public meetings informing and engaging the community they intend to serve; and

(5) determine how the governance and operations of the school will transfer from the charter committee to the school leader and board for its first year of operation, and must ensure no charter committee member has committed a felony that would prevent them from serving on a charter governing board.

(F) ~~The~~ A charter school application, based on an application ~~template~~ with compliance guidelines and evaluation rubric aligned to the application developed by the State Department of Education, must include the following components, along with any additional addendums required by the sponsor in accordance with Section 59‑40‑70(A)(1):

(1) an executive summary, not to exceed ~~two~~ five pages highlighting the need for the school, the vision of the school, the governance structure, the organizational capacity or potential of the applicant group, replication of any existing schools, and any key partners or contracted management agreements;

(2) the mission statement of the charter school, which must be consistent with the principles of the General Assembly’s purposes pursuant to Section 59‑40‑20;

(3) the goals, objectives, and academic performance standards to be achieved by the charter school, and a description of the charter school’s admission policies and procedures;

(4) evidence that an adequate number of parents or legal guardians with students eligible to attend the proposed school pursuant to Section 59‑40‑50 support the formation of a charter school and justify the projected per pupil allocation in the application budget;

(5) a description of the charter school’s educational program, including how it will meet or exceed the academic performance standards and expectations, including academic standards adopted by the State Board of Education and how the instructional design, learning environment, class size and structure, curriculum, and teaching methods enable each pupil to achieve these standards;

(6) a description of the charter school’s plan for evaluating pupil achievement and progress toward accomplishment of the school’s achievement standards in addition to state assessments, the timeline for meeting these standards, and the procedures for taking corrective action if that pupil achievement falls below the standards;

(7) evidence that the plan for the charter school is economically sound, a proposed budget for the term of the charter, a description of the manner in which an annual audit of the financial and administrative operations of the charter school, including any services provided by the sponsor, is to be conducted;

(8) a description of the governance and operation of the charter school, including a detailed school start‑up plan, résumés and background information on the charter committee members, the capacity and experience of the school leadership and management team, any involvement with the replication of existing successful public charter schools, any proposed management company or educational service provider responsibilities, and the nature and extent of parental, professional educator, and community involvement in the governance and operation of the charter school;

(9) a description of how the charter school plans to ensure that the enrollment of the school is similar to the racial composition of the local school district in which the charter school is to be located or the targeted student population of the local school district that the charter school proposes to serve and provide assurance that the school does not conflict with any school district desegregation plan or order in effect for the school district in which the charter school is to be located;

(10) a description of how the charter school plans to meet the transportation needs of its pupils;

(11) a description of the building, facilities, and equipment and how they shall be obtained;

(12) an explanation of the relationship that shall exist between the proposed charter school and its employees, including a staffing chart aligned with the budget and student enrollment projections, descriptions of evaluation procedures, and evidence that the terms and conditions of employment have been addressed with affected employees;

(13) a description of a reasonable grievance and termination procedure, as required by this chapter, including notice and a hearing before the governing body of the charter school. The application must state whether or not the provisions of Article 5, Chapter 25, Title 59 apply to the employment and dismissal of teachers at the charter school;

(14) a description of student rights and responsibilities, including behavior and discipline standards, and a reasonable hearing procedure, including notice and a hearing before the board of directors of the charter school before expulsion;

(15) an assumption of liability by the charter school for the activities of the charter school and an agreement that the charter school must indemnify and hold harmless the sponsor, its servants, agents, and employees, from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from injury to persons or property or otherwise which arises out of the act, failure to act, or negligence of the charter school, its agents and employees, in connection with or arising out of the activity of the charter school; ~~and~~

(16) a description of the types and amounts of insurance coverage to be obtained by the charter school; and

(17) in the case of a proposed public charter school that intends to contract with an education service provider as defined in Section 59‑40‑40, the application must also include evidence of the education service provider’s success; a draft of the service contract setting forth the scope of services and resources to be provided by the service provider, performance evaluation measures and timelines, the fees to be paid to the service provider, the methods of contract oversight and enforcement, and the conditions for renewal and termination of the contract; disclosure of any existing or potential conflicts of interest between the school’s governing board or school employees and the proposed service provider or any affiliated business entities; a description of how the governing board will have reasonable access to records necessary for oversight; how the board will evaluate the education service provider contract; and how the sponsor will have reasonable access to records necessary to oversee the public charter school.

(G) Nothing in this section shall require a charter school applicant to provide a list of prospective or tentatively enrolled students or prospective employees with the application.

(H) For the replication of existing highly effective charter schools that currently operate one or more charter schools, a sponsor wishing to consider applications to replicate shall develop and publicly post a replication process with an application that is aligned with subsection (F) and Section 59‑40‑70. At a minimum, the replication application must require an applicant to provide:

(1) evidence of past performance including how the existing school or schools are highly effective in educating students and closing achievement gaps;

(2) amendments to the school’s current charter to align with all components of subsection (F) or submission of an updated document including all components of subsection (F);

(3) documentation of how the replication of the school will provide educational opportunities that meet the needs of the students in the proposed community with related evidence of support from the community and prospective student interest;

(4) the vision and capacity for growth including financial and organizational capacity to open and operate multiple highly effective schools;

(5) the composition of the leadership team, school leadership development plan, multi‑school staffing needs, and school staff structure;

(6) a plan for providing centralized support services and making decisions with respect to key functions, including curriculum, professional development, culture, and staffing;

(7) the governance and legal status, including compliance with applicable statutory and sponsor requirements for composition of charter school governing boards; and

(8) notice to the local delegation and local school district of the county in which a proposed charter school is to be located upon submission of a replication application.”

SECTION 5. Section 59‑40‑70 of the 1976 Code, as last amended by Act 288 of 2014, is further amended to read:

“Section 59‑40‑70. (A)(1) An applicant shall submit a letter of intent ~~at least ninety days before submitting an application~~ no later than the first business day in November to the board of trustees or area commission from which it is seeking sponsorship and a copy to the South Carolina Department of Education. No later than the first business day in December, a sponsor shall provide the following information to any applicant submitting a letter of intent:

(a) any sponsor required application addendums;

(b) a sample charter contract;

(c) the submission procedures, including how to submit electronically if required;

(d) the sponsor’s application evaluation process with any evaluation criteria beyond the application rubric published by the department; and

(e) the sponsor’s preopening requirements.

(2) An applicant shall submit the application, with all required addendums and attachments, no later than the first business day in March to the board of trustees or area commission from which it is seeking sponsorship and one copy to the South Carolina Department of Education. In the case of the South Carolina Public Charter School District or a public or independent institution of higher learning sponsor, the applicant shall provide notice of the application to the local school board of trustees in which the charter school will be located for informational purposes only. The school district or the public or independent institution of higher learning from which the applicant is seeking sponsorship may request clarifying additional information, that is reasonable and necessary, from the applicant and shall specify if the response is to be provided verbally in a meeting, in a formal capacity interview, at a public hearing, or in writing. The State Department of Education shall provide guidance on compliance to both sponsors and applicants. The charter committee shall publicly post electronic versions of all application components after the completion check and the final application with any additional amendments, if approved, within fourteen business days.

(3) The applicant shall notify the local delegation and the local school district of a county in which a proposed charter school is to be located upon submission of a charter school application and also shall provide a copy of the charter school application upon request by a member of the local delegation and the local school district. A charter school replicating their model or significantly expanding beyond their original charter also must notify the local delegations and the local school district in which a proposed charter school is to be located.

(4) Upon agreement with the charter committee and the sponsor, submission dates or deadlines of the letter of intent and application may be waived by the sponsor and all subsequent review stages and hearing dates must be adjusted within the timeline.

(B)(1) The board of trustees or area commission from which the applicant is seeking sponsorship shall rule on the application for a charter school in a public hearing, upon reasonable public notice, ~~within ninety days after receiving the application~~ no later than the final business day in June. If there is no ruling ~~within ninety days~~ before the final business day in June, the application is considered approved. Once the application has been approved by the board of trustees or area commission, the charter school may open at the beginning of the following year. However, before a charter school may open, the State Department of Education shall verify the accuracy of the financial data for the school within forty‑five days after approval.

(2) The sponsor shall review the application for completeness and provide notice to the applicant of any missing application components no later than the third business day of March. Applicants receiving notification of an incomplete application shall have two business days after receiving written notification of an incomplete application to submit the components needed to complete the application. At a public hearing, incomplete applications may be denied by the sponsor without further evaluation.

(3) At least ten business days before the public hearing at which an application is to be considered, the sponsor must provide to the applicant written notice of the public hearing, which must contain the date, location, and time of the hearing. At least five business days before the public hearing, the sponsor must provide the applicant a written evaluation report using the rubric aligned with the department application and any published sponsor evaluation criteria.

(C) A board of trustees or area commission shall deny an application only if the application does not meet the requirements specified in Section 59‑40‑50 or 59‑40‑60, fails to meet the spirit and intent of this chapter, or adversely affects, as defined in regulation, the other students in the district in which the charter school is to be located, or if, based on the totality of information provided by the applicant, the board of trustees or area commission determines that the applicant has failed to demonstrate a substantial likelihood that it has the capacity to establish a viable school based on national industry standards of quality charter school authorization. It shall provide, within ten days, a written explanation of the reasons for denial, citing specific standards related to provisions of Section 59‑40‑50 or 59‑40‑60 that the application violates. This written explanation immediately must be sent to the charter committee and filed with the State Board of Education.

(D) In the event that the racial composition of an applicant’s or charter school’s enrollment differs from the enrollment of the local school district in which the charter school is to be located or the targeted student population of the local school district by more than twenty percent, despite its best efforts, the board of trustees or area commission from which the applicant is seeking sponsorship shall consider the applicant’s or the charter school’s recruitment efforts and racial composition of the applicant pool in determining whether the applicant or charter school is operating in a nondiscriminatory manner. A finding by the board of trustees or area commission that the applicant or charter school is operating in a racially discriminatory manner justifies the denial of a charter school application or the revocation of a charter as provided in this section or in Section 59‑40‑110, as may be applicable. A finding by the board of trustees or area commission that the applicant is not operating in a racially discriminatory manner justifies approval of the charter without regard to the racial percentage requirement if the application is acceptable in all other aspects.

(E) If the board of trustees or area commission from which the applicant is seeking sponsorship denies a charter school application, the charter applicant may appeal the denial to the Administrative Law Court pursuant to Section 59‑40‑90.

(F) If the board of trustees or area commission approves the application, it becomes the charter school’s sponsor and shall sign the approved application. The sponsor shall submit a copy of the approved charter and charter contract to the State Board of Education.

(G) If a local school board of trustees has information that an approved application by the South Carolina Public Charter School District or a public or independent institution of higher learning sponsor adversely affects the other students in its district, as defined in regulation, or that the approval of the application fails to meet the spirit and intent of this chapter, the local school board of trustees may appeal the granting of the charter to the Administrative Law Court. The Administrative Law Court, within forty‑five days, may affirm or reverse the application for action by the South Carolina Public Charter School District or the public or independent institution of higher learning in accordance with an order of the state board.”

SECTION 6. Section 59‑40‑80 of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

“Section 59‑40‑80. (A) A sponsor may conditionally authorize a charter school ~~before the applicant has secured its space~~ to allow an applicant to amend its application to correct ministerial errors in the application or to set mutually agreed upon preopening benchmarks regarding enrollment, equipment, facilities, and personnel ~~if the applicant indicates such authority is necessary for it to meet the requirements of this chapter~~. A decision by the sponsor to provide or not provide conditional approval is not appealable. If the charter school does not meet the conditions of the approval the opening of the school may be extended by one year or the sponsor may rescind the conditional approval and proceed with the denial of the charter application. Conditional authorization does not give rise to any equitable or other claims based on reliance, notwithstanding any promise, parole, written, or otherwise, contained in the authorization or acceptance of it, whether preceding or following the conditional authorization.

(B) A charter committee with an approved or conditionally approved charter application may request, in writing, an extension of one or more years to open from their sponsor. A sponsor must take action on the request to delay opening within one hundred twenty days of receiving the written request. The decision of the sponsor is final and may not be appealed.”

SECTION 7. Section 59‑40‑110 of the 1976 Code, as last amended by Act 288 of 2014, is further amended to read:

“Section 59‑40‑110. (A) A charter must be approved or renewed for a period of ten school years and is considered an accredited public school by the State Board of Education upon approval by the sponsor and with the subsequent submission of the annual report in Section 59‑40‑140 each year for the term of the charter; however, the charter only may be revoked or not renewed under the provisions of subsection (C) ~~of this section~~. The ten year term of the charter begins with the first school year in which students are enrolled and does not include the preoperational period. The sponsor annually shall evaluate the conditions outlined in subsection (C). The annual evaluation results must be used in making a determination for nonrenewal or revocation.

(B) A charter renewal application must be submitted to the school’s sponsor one hundred twenty calendar days before the end of the school year for the term of the charter contract, and it must contain:

(1) a report on the progress of the charter school in achieving the goals, objectives, pupil achievement standards, and other terms of the initially approved charter application;

(2) a financial statement that discloses the costs of administration, instruction, and other spending categories for the charter school that is understandable to the general public and that allows comparison of these costs to other schools or other comparable organizations, in a format required by the State Board of Education; and

(3) any proposed material changes to the current charter or charter school contract to be implemented in the next ten‑year charter term.

(C) A charter must be revoked or not renewed by the sponsor if it determines that the charter school:

(1) committed a material violation of the conditions, standards, performance expectations, or procedures provided for in the charter application or charter school contract, or both;

(2) failed to meet the academic performance standards and expectations as defined in the charter application or charter school contract, or both;

(3) failed to maintain its books and records according to generally accepted accounting principles or failed to create an appropriate system of internal control, or both; or

(4) violated any provision of law from which the charter school was not specifically exempted.

(D) A sponsor summarily may revoke any charter school that is determined by the sponsor to pose an imminent threat of harm to the health or safety of students, or both, based on documented and clear and convincing data.

(E) Any charter school shall automatically and permanently close at the conclusion of the school year in which the school first becomes subject to automatic closure for receiving the lowest performance level rating as defined by the ~~federal~~ State’s accountability system for three consecutive years beginning with student achievement data from the ~~2013‑2014~~ 2017‑2018 School Year. The determination of closure is considered final. Automatic closure shall not apply to any charter school serving fifty percent or more students with disabilities or any charter school designated as an Alternative Education Campus (AEC) by its sponsor as outlined in Section 59‑40‑111.

(F) At least sixty days before not renewing or terminating a charter school, the sponsor shall notify in writing the charter school’s governing body of the proposed action. The notification shall state the grounds for the proposed action in reasonable detail. Termination must follow the procedure provided for in this section.

(G) The existence of another charter granting authority must not be grounds for the nonrenewal or revocation of a charter. Grounds for nonrenewal or revocation must be only those specified of this section.

(H) The charter school’s governing body may request in writing a hearing before the sponsor within fourteen days of receiving notice of nonrenewal or termination of the charter. Failure by the school’s governing body to make a written request for a hearing within fourteen days must be treated as acquiescence to the proposed action. Upon receiving a timely written request for a hearing, the sponsor shall give reasonable notice to the school’s governing body of the hearing date. The sponsor shall conduct a hearing before taking final action. The sponsor shall take final action to renew or not renew a charter by the last day of classes in the last school year for which the charter school is authorized.

(I) A charter school seeking renewal may submit a renewal application to another charter granting authority if the charter school has not committed a material violation of the provisions specified in this section and the sponsor refuses to renew the charter. In such cases the charter school shall continue to receive local funding pursuant to Section 59‑40‑140(A). However, the charter school is not eligible to receive one hundred percent of the base student cost from the State. The charter school only is eligible to receive the percentage of the base student cost previously received as a school in its former district.

(J) A decision to revoke or not to renew a charter school may be appealed to the Administrative Law Court pursuant to the provisions of Section 59‑40‑90. Upon appeal to the Administrative Law Court, there is no automatic stay of the revocation or nonrenewal decision. Pending resolution of the appeal, the charter school also may move before the Administrative Law Court for imposition of a stay of the revocation or nonrenewal on the grounds that an unusual hardship to the charter school will result from the execution of the sponsor’s decision.

(K) Prior to any public charter school closure, the sponsor shall develop a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and net assets in accordance with the requirements of this chapter. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the school and the sponsor. In the event of a public charter school closure for any reason, the sponsor shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol.”

SECTION 8. Section 59‑40‑115 of the 1976 Code, as last amended by Act 288 of 2014, is further amended to read:

“Section 59‑40‑115. (A) Termination of Charter. A charter school may terminate its contract with a sponsor before the ten‑year term of contract if ~~all parties under contract with~~ the sponsor and the charter school agree to the ~~dissolution~~ termination.

(B) Transfer of Charter. A charter school ~~that terminates its contract with a sponsor directly may seek application for the length of time remaining on its original contract from another sponsor~~ may apply in writing to transfer its charter to a different sponsor for the length of time remaining on its original contract effective as of July first of the following fiscal year, subject to written agreement of its current sponsor, which will not be unreasonably withheld. A sponsor of a charter school may not take prejudicial action against the charter school as a consequence of the charter school seeking or securing sponsorship from a different sponsor.”

SECTION 9. Section 59‑40‑140(D) of the 1976 Code, as last amended by Act 164 of 2012, is further amended to read:

“(D) Notwithstanding subsection (C), the proportionate share of state and federal resources generated by students or staff serving them must be directed to the sponsor. After receipt of federal or state categorical aid funds, sponsors shall, within ten business days, supply to the charter school the proportional share of each categorical fund for which the charter school qualifies. If the sponsor fails to do so, the Department of Education may fine the sponsor an amount equivalent to the withheld amounts. Fines imposed must be remitted to the charter school from which the amounts were withheld. For funding transparency, the sponsor, as the LEA, shall post on their website an annual accounting of federal revenue disaggregated by source and expenditures disaggregated by use at the sponsor level related to the charter schools.”

SECTION 10. Section 59‑40‑150 of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

“Section 59‑40‑150. (A) The Department of Education shall disseminate information to the public, directly and through sponsors, on how to form and operate a charter school and how to utilize the offerings of a charter school. The department shall develop the application, compliance guidance, and evaluation rubric with input from sponsors and charter school stakeholders and publish it annually by the final business day of June each year. The application must include language and guidance for existing charter schools replicating their model.

(B) At least annually, the department shall provide ~~upon request a~~ an online directory of all charter schools authorized under this chapter with information concerning the educational goals of each charter school, the success of each charter school in meeting its educational goals, and links to the school’s website with procedures to apply for admission to each charter school.

(C) The department shall bear the cost of complying with this section.”

SECTION 11. Section 59‑40‑170 of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

“Section 59‑40‑170. The Department of Education shall make available, ~~upon request~~ on its website, a list, updated at least annually, of vacant and unused buildings and vacant and unused portions of buildings that are owned by school districts in this State and that may be suitable for the operation of a charter school. The department shall make the list available to applicants for charter schools and to existing charter schools. The list must include the address of each building, a short description of the building, and the name of the owner of the building. Nothing in this section requires the owner of a building on the list to sell or lease the building or a portion of the building to a charter school or to any other school or to any other prospective buyer or tenant. However, if a school district declares a building surplus and chooses to sell or lease the building, a charter school’s board of directors or a charter committee operating or applying to be located within the district must be given the first refusal to purchase or lease the building under the same or better terms and conditions as it would be offered to the public.”

SECTION 12. Section 59‑40‑175 of the 1976 Code, as added by Act 164 of 2012, is amended to read:

“Section 59‑40‑175. (A) There is created in the state treasury the Charter School Facility Revolving Loan Program. This loan program is comprised of federal funds obtained by the State for charter school facilities, other funds appropriated or transferred to the fund by the State, and privately donated funds. Funds deposited to the Charter School Facility Revolving Loan Program must remain available for the purposes of the program until appropriated or reverted by the General Assembly. The State Treasurer may approve loans from monies in the Charter School Revolving Loan Program to a charter school, upon application by the charter school. Money loaned to a charter school pursuant to this section must be used for construction, purchase, renovation, and maintenance of public charter school facilities. The State Treasurer shall establish guidelines and procedures for application, approval, allocation, and repayment regarding loans from these monies. The Office of State Treasurer may be reimbursed from the program for costs associated with the administration of these loans.

(B) Additionally, the State Treasurer may use money in the Charter School Facility Revolving Loan Program, as specified by the General Assembly, to create a debt reserve fund to enhance the ability of a charter school to obtain favorable financing terms on bonds issued on behalf of the charter school for the purpose of financing charter school capital construction, purchase, renovation or maintenance. In using monies from the Charter School Facility Revolving Loan Program for credit enhancement, the State Treasurer shall maintain a reasonable ratio of leverage not to exceed 15:1 of dollars of outstanding bonded debt by the charter schools to dollars provided from the Charter School Facility Revolving Loan Program as credit enhancement. The State Treasurer shall establish guidelines and procedures for application, approval, allocation, and the duration of the credit enhancements with input from stakeholders. The State Treasurer may approve a credit enhancement instrument from monies in the Charter School Revolving Loan Program to a charter school, upon application by the charter school.”

SECTION 13. Section 59‑40‑180 of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

“Section 59‑40‑180. The State Board of Education shall promulgate regulations and develop guidelines necessary to implement the provisions of this chapter, including standards to determine compliance with this chapter ~~and an application process to include a timeline for submission of~~. Any guidelines for applications ~~that will~~ in an appeal process must allow for final decisions~~, including Administrative Law Court appeal,~~ by December first of the year preceding the charter school’s opening.”

SECTION 14. Section 59‑40‑230(A) of the 1976 Code, as last amended by Act 164 of 2012, is further amended to read:

“(A)(1) The South Carolina Public Charter School District must be governed by a board of trustees consisting of not more than nine members:

(~~1~~a) two appointed by the Governor;

(~~2~~b) one appointed by the Speaker of the House of Representatives;

(~~3~~c) one appointed by the President Pro Tempore of the Senate; and

(~~4~~d) five to be appointed by the Governor upon the recommendation of the:

(~~a~~i) South Carolina Association of School Administrators;

(~~b~~ii) South Carolina Chamber of Commerce;

(~~c~~iii) South Carolina Education Oversight Committee;

(~~d~~iv) South Carolina School Boards Association; and

(~~e~~v) South Carolina Alliance of Black Educators.

(2) The seven members appointed by the Governor pursuant to this subsection are subject to advice and consent of the Senate. Membership of the committee must reflect representatives from each of the entities in item ~~(4)~~ (1)(d) or their designee as reflected in their recommendation.

(3) Each member of the board of trustees shall serve terms of three years, except that, for the initial members, two appointed by the Governor, one by the Speaker of the House, and one by the President Pro Tempore of the Senate, shall serve terms of one year and three appointed by the Governor shall serve terms of two years. A member of the board may be removed after appointment pursuant to Section 1‑3‑240. In making appointments, every effort must be made to ensure that all geographic areas of the State are represented and that the membership reflects urban and rural areas of the State as well as the ethnic diversity of the State. Upon a board vacancy for any reason, the board immediately shall notify the appropriate appointing body.”

SECTION 15. Section 59‑40‑200 of the 1976 Code is repealed.

SECTION 16. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

HARVEY S. PEELER, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on February 21, 2017State Expenditure**

This bill amends sections of the South Carolina Charter Schools Act of 1996. The following is a section-by-section analysis of the statutes modified by the bill that may affect state expenditures.

**Section 2.** This section allows the Public Charter School District Board of Trustees to use existing program funding for transportation to reduce barriers to enrollment and provide equity and access. The bill does not specify any new appropriations or allocations for transportation funding. Due to the permissive nature of this provision, any impact on the Public Charter School District’s expenditures would depend on transportation decisions and funding reallocations made by the Board of Trustees from current appropriations. Therefore, this section would have no expenditure impact on the general fund, other funds, or federal funds.

**Section 3.** This section limits the ability of the Public Charter School District to retain up to 2 percent of state appropriations by excluding state categorical funds specifically designated for classroom, teacher, or technology use. Current categorical appropriations and allocations to the Public Charter School District from which the district currently retains 2 percent total $6,410,967. For context, total appropriations for the district amount to $152,434,438. This section would limit the district’s ability to retain $128,220, and correspondingly, shift the receipt of these same funds to the thirty-four public charter schools.

**Section 5.** The Department of Education is required to post electronic versions of all charter school applications within thirty days after submission. The department indicates that they typically receive approximately twenty applications each year. The number of pages per application generally exceeds 125 plus additional pages for required addendums and attachments. The department indicates that the posting requirement will not materially increase expenditures of the department. As a result, this section would not have an expenditure impact on the general fund, other funds, or federal funds.

**Section 10.** The Department of Education is required to provide an online directory of all charter schools with links to the schools’ websites. Currently, the department publishes a listing of charter schools that includes the name, year opened, grades, contact information, and sponsor. The new requirements for the online directory will not materially affect the department’s duties. Therefore, this section would not have an expenditure impact on the general fund, other funds, or federal funds.

**Section 12.** The State Treasurer may use funds in the Charter School Facility Revolving Loan Program (Loan Program) to create a debt reserve fund to obtain favorable financing terms on bonds issued on behalf of a charter school. The State Treasurer’s Office indicates that they will begin to approve loans to charter schools from the $1,100,000 appropriated to the Loan Program very soon. The Department of Education will assist in reviewing charter school building requirements and monitoring draw requests by the charter schools as construction, renovation, and maintenance needs are addressed. Agency activities performed to create a debt reserve fund will be conducted in the normal course of business. As a result, this section would not have an expenditure impact on the general fund, other funds, or federal funds. However, the State Treasurer’s Office indicates that if the Loan Program funds are expanded by a material amount, they may require additional staff to continue to provide this service to the charter schools.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 59‑40‑40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN THE SOUTH CAROLINA CHARTER SCHOOLS ACT OF 1996, SO AS TO REVISE CERTAIN DEFINITIONS; TO AMEND SECTION 59‑40‑50, AS AMENDED, RELATING TO THE POWERS AND DUTIES OF CHARTER SCHOOL BOARDS, SO AS TO REVISE AND ADD REQUIREMENTS CONCERNING NONCERTIFIED TEACHER QUALIFICATIONS, GOVERNANCE, NEPOTISM, AND USE OF PROGRAM FUNDING FOR TRANSPORTATION; TO AMEND SECTION 59‑40‑55, AS AMENDED, RELATING TO CHARTER SCHOOL SPONSORS, SO AS TO REVISE REQUIREMENTS CONCERNING CHARTER SCHOOL CONTRACTS, REPORTING REQUIREMENTS, NOTIFICATION OF IDENTIFIED PROBLEMS, ADMISSIONS PROCEDURES, LIMITS ON STATE APPROPRIATIONS SCHOOLS MAY RECEIVE, AND RESERVE FUNDS, AMONG OTHER THINGS; TO AMEND SECTION 59‑40‑60, AS AMENDED, RELATING TO CHARTER SCHOOL FORMATION PROCEDURES, SO AS TO REVISE REQUIREMENTS CONCERNING CHARTER AMENDMENT PROCEDURES, PUBLIC MEETINGS, AND TRANSFER OF GOVERNANCE AND OPERATIONS OF NEW CHARTER SCHOOLS FROM CHARTER COMMITTEES TO CHARTER SCHOOL LEADERS AND BOARDS; TO AMEND SECTION 59‑40‑70, AS AMENDED, RELATING TO CHARTER SCHOOL APPLICATION PROCEDURES, SO AS TO REVISE PROCEDURES CONCERNING SUBMISSION OF LETTERS OF INTENT, POWERS OF SCHOOL BOARDS TO REQUEST INFORMATION FROM CHARTER APPLICANTS, APPLICATION MATERIALS REQUIRED FOR SUBMISSION, AND SPONSOR REVIEW OF APPLICATIONS AND RESPONSES TO APPLICATIONS, AMONG OTHER THINGS; TO AMEND SECTION 59‑40‑80, AS AMENDED, RELATING TO CONDITIONAL AUTHORIZATIONS OF CHARTER SCHOOLS, SO AS TO ALLOW CERTAIN AMENDMENTS TO CHARTER SCHOOL APPLICATIONS OR FORM AGREEMENTS CONCERNING PREOPENING BENCHMARKS REGARDING ENROLLMENT, TO PROVIDE SPONSOR DECISIONS TO GRANT OR DENY CONDITIONAL APPROVAL ARE NOT SUBJECT TO APPEAL, AND TO PROVIDE OPTIONAL OUTCOMES FOR CONDITIONALLY APPROVED CHARTER SCHOOLS THAT FAIL TO MEET CONDITIONS FOR CHARTER APPROVAL; TO AMEND SECTION 59‑40‑110, AS AMENDED, RELATING TO DURATIONS, RENEWALS, REVOCATIONS, AND TERMINATIONS OF CHARTERS, SO AS TO PROVIDE CHARTER SCHOOLS MUST BE CONSIDERED ACCREDITED PUBLIC SCHOOLS UPON CHARTER APPROVAL AND SUBMISSION OF REQUIRED ANNUAL REPORTS, AND TO SPECIFY THE EVENT THAT BEGINS THE TEN‑YEAR TERMS OF CHARTERS; TO AMEND SECTION 59‑40‑115, AS AMENDED, RELATING TO TERMINATION OF CONTRACTS WITH SPONSORS, SO AS TO PROVIDE CIRCUMSTANCES IN WHICH CHARTERS MAY SEEK AND OBTAIN ALTERNATE SPONSORS, AMONG OTHER THINGS; TO AMEND SECTION 59‑40‑140, AS AMENDED, RELATING TO CHARTER SCHOOL FUNDING, SO AS TO REQUIRE REPORTS OF CERTAIN FEDERAL FUNDS RETAINED BY SPONSORS; TO AMEND SECTION 59‑40‑150, AS AMENDED, RELATING TO DUTIES OF THE STATE DEPARTMENT OF EDUCATION TO DISSEMINATE INFORMATION ABOUT CHARTER SCHOOLS’ FORMATION AND OPERATION AND TO PROVIDE A DIRECTORY OF AUTHORIZED CHARTER SCHOOLS, SO AS TO REVISE THE SPECIFIC REQUIREMENTS OF THESE DUTIES; TO AMEND SECTION 59‑40‑170, AS AMENDED, RELATING TO THE DUTY OF THE DEPARTMENT TO MAINTAIN AND PROVIDE A LIST OF SCHOOL BUILDINGS SUITABLE AND AVAILABLE FOR CHARTER SCHOOL USE, SO AS TO PROVIDE THE LIST BE MADE AVAILABLE ONLINE AND BE UPDATED AT LEAST ANNUALLY; TO AMEND SECTION 59‑40‑175, AS AMENDED, RELATING TO THE CHARTER SCHOOL FACILITY REVOLVING LOAN PROGRAM, SO AS TO PROVIDE THE STATE TREASURER MAY USE PROGRAM FUNDS TO CREATE A DEBT RESERVE FUND TO ENHANCE THE ABILITY OF CHARTER SCHOOLS TO OBTAIN FAVORABLE FINANCING TERMS ON CERTAIN BONDS TO FINANCE CHARTER SCHOOL CAPITAL PROJECTS AND CREDIT ENHANCEMENTS, AND TO PROVIDE RELATED REQUIREMENTS AND PROCEDURES; TO AMEND SECTION 59‑40‑180, AS AMENDED, RELATING TO DUTIES OF THE DEPARTMENT TO PROMULGATE CERTAIN REGULATIONS AND GUIDELINES, SO AS TO REVISE REQUIREMENTS CONCERNING GUIDELINES FOR APPLICATIONS PROCEDURES; TO AMEND SECTION 59‑40‑230, AS AMENDED, RELATING TO SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT BOARD OF TRUSTEES, SO AS TO REVISE REQUIREMENTS CONCERNING VACANCIES ON THE BOARD; AND TO REPEAL SECTION 59‑40‑200 RELATING TO THE EFFECT OF ESTABLISHMENT OF SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICTS ON PENDING AND FUTURE APPLICATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 59‑40‑40 of the 1976 Code, as last amended by Act 164 of 2012, is further amended to read:

“Section 59‑40‑40. As used in this chapter:

(1) A ‘charter school’ means a public, nonreligious, nonhome‑based, nonprofit corporation forming a school that operates by sponsorship of a public school district, the South Carolina Public Charter School District, or a public or independent institution of higher learning, but is accountable to the board of trustees, or in the case of technical colleges, the area commission, of the sponsor which grants its charter. Nothing in this chapter prohibits charter schools from offering virtual services pursuant to state law and subsequent regulations defining virtual schools.

(2) A charter school:

(a) is, for purposes of state law and the state constitution, considered a public school and part of the South Carolina Public Charter School District, the local school district in which it is located, or is sponsored by a public or independent institution of higher learning;

(b) is subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education services; however, an applicant may seek to form a single gender charter school without regard to the gender makeup of that proposed charter school;

(c) must be administered and governed by a governing body in a manner agreed to by the charter school applicant and the sponsor, the governing body to be selected as provided in Section 59‑40‑50(B)(9);

(d) may not charge tuition or other charges pursuant to Section 59‑19‑90(8) except as may be allowed by the sponsor and is comparable to the charges of the local school district in which the charter school is located;

(e) is subject to the same fixed asset inventory requirements as are traditional public schools.

(3) ‘Applicant’ means the person who or nonprofit corporate entity that desires to form a charter school and files the necessary application with the South Carolina Public Charter School District Board of Trustees, the local school board of trustees in which the charter school is to be located, or the board of trustees or area commission of a public or independent institution of higher learning. The applicant also must be the person who or the nonprofit corporate entity that applies to the Secretary of State to organize the charter school as a nonprofit corporation.

(4) ‘Sponsor’ means the South Carolina Public Charter School District Board of Trustees, the local school board of trustees in which the charter school is to be located, as provided by law, a board of a public institution of higher learning as defined in Section 59‑103‑5, or a board of an independent institution of higher learning as defined in Section 59‑113‑50, from which the charter school applicant requested its charter and which granted approval for the charter school’s existence. Only those public or independent institutions of higher learning, as defined in this subsection, who ~~register with~~ apply with and are approved to be a sponsor by the South Carolina ~~Department~~ Board of Education may serve as charter school sponsors, and the department shall maintain a directory of those institutions. The sponsor of a charter school is the charter school’s Local Education Agency (LEA) and a charter school is a school within that LEA. The sponsor retains responsibility for special education and shall ensure that students enrolled in its charter schools are served in a manner consistent with LEA obligations under applicable federal, state, and local law.

(5) ‘Certified teacher’ means a person currently certified by the State of South Carolina to teach in a public elementary or secondary school or who currently meets the qualifications outlined in Sections 59‑27‑10 and 59‑25‑115.

(6) ‘Noncertified teacher’ means an individual ~~considered appropriately qualified for the subject matter taught and who has completed at least one year of study at an accredited college or university~~ who does not meet the definition of ‘certified teacher’ and meets the qualifications outlined in Section 59‑25‑115 and any federal requirements.

(7) ‘Charter committee’ means the governing body of a charter school formed by the applicant to govern through the application process and until the election of a board of directors is held. After the election, the board of directors of the corporation must be organized as the governing body and the charter committee is dissolved.

(8) ‘Local school district’ means any school district in the State except the South Carolina Public Charter School District and does not include special school districts.

(9) ‘Charter school contract’ means a fixed term, renewable contract between a charter school and a sponsor that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

(10) ‘Resident public school’ means the school, other than a charter school, within whose attendance boundaries the charter school student’s custodial parent or legal guardian resides.”

SECTION 2. Section 59‑40‑50 of the 1976 Code, as last amended by Act 219 of 2016, is further amended to read:

“Section 59‑40‑50. (A) Except as otherwise provided in this chapter, a charter school is exempt from all provisions of law and regulations applicable to a public school, a school board, or a district, although a charter school may elect to comply with one or more of these provisions of law or regulations.

(B) A charter school must:

(1) adhere to the same health, safety, civil rights, and disability rights requirements as are applied to public schools operating in the same school district or, in the case of the South Carolina Public Charter School District or a public or independent institution of higher learning sponsor, the local school district in which the charter school is located;

(2) meet, but may exceed, the same minimum student attendance requirements as are applied to public schools;

(3) adhere to the same financial audits, audit procedures, and audit requirements as are applied to public schools and adhere to Generally Accepted Accounting Principles (GAAP) creating an appropriate system of internal control;

(4) be considered a school district for purposes of tort liability under South Carolina law, except that the tort immunity does not include acts of intentional or wilful racial discrimination by the governing body or employees of the charter school. Employees of charter schools must be relieved of personal liability for any tort or contract related to their school to the same extent that employees of traditional public schools in their school district or, in the case of the South Carolina Public Charter School District or a public or independent institution of higher learning sponsor, the local school district in which the charter school is located are relieved;

(5) in its discretion hire noncertified teachers in a ratio of up to twenty‑five percent of its entire teacher staff; however, if it is a converted charter school, it shall hire in its discretion noncertified teachers in a ratio of up to ten percent of its entire teacher staff. ~~However, in either a new or converted charter school, a teacher teaching in the core academic areas as defined by the federal No Child Left Behind law must be certified in those areas or possess a baccalaureate or graduate degree in the subject he or she is hired to teach.~~ All noncertified teachers and certified teachers who teach courses outside of their certification area must demonstrate a high level of competency through completion of college‑level work, advanced certification, or credentialing. Part‑time noncertified teachers are considered pro rata in calculating this percentage based on the hours which they are expected to teach;

(6) hire or contract for, in its discretion, administrative staff, including a school leader, to oversee the daily operation of the school. At least one of the administrative staff must be certified or experienced in the field of school administration;

(7) admit all children eligible to attend public school to a charter school, subject to space limitations, except in the case of an application to create a single gender charter school or, in the case of a charter school designated as an Alternative Education Campus, pursuant to Section 59‑40‑111, with an explicit mission and purpose of specializing in providing evidence‑based, specific educational or behavioral health services for educationally disadvantaged students with a demonstrated need for such services. Demonstrated need may include, but not be limited to, as documented in an Individualized Education Program (IEP), 504 plan, a medical or psychological diagnosis, or documentation that the student is not meeting grade‑specific standards in literacy as documented by the student’s school. For purposes of this section, educationally disadvantaged students are those students as defined by the Every Student Succeeds Act (ESSA). Evidence‑based services must include, but are not limited to, services to students who need evidence‑based, specialized, multi‑sensory instruction in literacy or other services included in the students’ IEP or 504 plan. This specialized mission and purpose must be defined in the school’s charter and charter contract as approved by the sponsor and as allowed by ESSA. However, it is required that the racial composition of the charter school enrollment reflect that of the local school district in which the charter school is located or that of the targeted student population of the local school district that the charter school proposes to serve, to be defined for the purposes of this chapter as differing by no more than twenty percent from that population. This requirement is also subject to the provisions of Section 59‑40‑70(D). If the number of applications exceeds the capacity of a program, class, grade level, or building, students must be accepted by lot, and there is no appeal to the sponsor. In the case of a charter school designated as an Alternative Education Campus, pursuant to Section 59‑40‑111, that is serving educationally disadvantaged students, if the number of applicants exceeds the capacity of a program, class, grade level, or building, students may be accepted by weighted lot as allowed by ESSA with mission‑aligned preference and the process clearly described in their charter and charter contract approved by their sponsor, and there is no appeal to the sponsor;

(8) not limit or deny admission or show preference in admission decisions to any individual or group of individuals, except in the case of an application to create a single gender charter school, in which case gender may be the only reason to show preference or deny admission to the school; a charter school may give enrollment priority to a sibling of a pupil currently enrolled and attending, or who, within the last six years, attended the school for at least one complete academic year. A public charter school shall give enrollment preference to students enrolled in the public charter school the previous school year. An enrollment preference for returning students excludes those students from entering into a lottery. A charter school also may give priority to children of a charter school employee and children of the charter committee, if priority enrollment for children of employees and of the charter committee does not constitute more than twenty percent of the enrollment of the charter school. In the case of a charter school designated as an Alternative Education Campus, pursuant to Section 59‑40‑111, mission‑aligned preference may be given to educationally disadvantaged students as specifically defined in their charter and charter contract approved by their sponsor and as allowed by ESSA. In addition, a charter school located on a federal military installation or base where the appropriate authorities have made buildings, facilities, and grounds on the installation or base available for use by the charter school as its principal location also may give enrollment priority to otherwise eligible students who are dependents of military personnel living in military housing on the base or installation or who are currently stationed at the base or installation not to exceed fifty percent of the total enrollment of the charter school. This priority is in addition to the other priorities provided by this item, but no child may be counted more than once for purposes of determining the percentage makeup of each priority;

(9) ~~consist of~~ be governed by a board of directors of seven or more individuals with the exact number specified in or fixed in accordance with the bylaws.

(a) Members of a board of directors may serve a term of two years, and may serve additional terms. ~~A choice of the membership of the board must take place every two years.~~ The charter school’s bylaws must provide for the board members’ terms to be staggered so that all seats are not subject to election and appointment at the same time. Fifty percent of the members of the board as specified by the bylaws must be individuals who have a background in K‑12 education or in business, and the bylaws of the charter school also must provide for the manner of selection of these members. In addition, at least fifty percent of the members of the board as specified by the bylaws must be elected by the employees and the parents or guardians of students enrolled in the charter school. Parents or legal guardians shall have one vote for each student enrolled in the charter school. Each employee shall have one vote. Any employee who also is a parent or guardian of a child who is a student shall have one employee vote and one vote for each child of his enrolled in the school. All board members must be residents of the State of South Carolina. A person who has been convicted of a felony must not be elected to a board of directors. If the board of directors consists of an odd number of members, the extra member must be an individual who has a background in K‑12 education or in business~~;~~.

(b) A governing board shall adopt a conflict of interest policy and a code of ethics consistent with the Chapter 13, Title 8 and this chapter.

(c) An individual entitled to vote for members of the board of directors of a charter school may not be considered a member of the nonprofit corporation for purposes of Chapter 33, Title 31.

(d) A single nonprofit corporation may hold more than one charter contract, and the board of directors of the nonprofit corporation may oversee more than one charter school; provided, however, that each school overseen by a single governing board must be separate and distinct from any others. For purposes of financial accountability, the comingling of a school’s funds is prohibited, and academic performance must be reported separately. The bylaws must give each school fair representation on the nonprofit board of directors.

(e) The bylaws of a charter school may provide for exemption from the election requirement in this section as provided for in the South Carolina Nonprofit Corporation Act, Article 8, Chapter 31. The charter school shall still follow all other requirements of this chapter including compliance with the South Carolina Freedom of Information Act, and state ethics and government accountability laws;

(10) be subject to the South Carolina Freedom of Information Act, including the charter school and its governing body. A board of directors of a charter school shall notify its sponsor of any regular meeting of the board at least forty‑eight hours prior to the date on which it is to occur;

(11) be subject to the ethics and government accountability requirements for public members and public employees as contained in Chapter 13, Title 8. For purposes of this subsection, employees of the charter school board are considered public employees. The charter contract in accordance with Section 59‑40‑60(B) must contain a statement of assurance of ethical compliance on behalf of the school. A charter school board shall adopt a policy on antinepotism for the board and staff to follow.

(C)(1) If a charter school denies admission to a student, the student may appeal the denial to the sponsor. The decision is binding on the student and the charter school.

(2) If a charter school suspends or expels a student, other charter schools or the local school district in which the charter school is located has the authority but not the obligation to refuse admission to the student.

(3)(a) A charter school is eligible for federally sponsored, state‑sponsored or district‑sponsored interscholastic leagues, competitions, awards, scholarships, grants, and recognition programs for students, educators, administrators, staff, and schools to the same extent as all other public schools.

(b) A charter school student is eligible to compete for, and if selected, participate in any extracurricular activities not offered by the student’s charter school which are offered at the resident public school he would otherwise attend. A charter school student is eligible to compete for, and if selected, participate in an activity governed by the South Carolina High School League offered at the resident public school he would otherwise attend if the league‑governed activity is not offered at the student’s charter school.

(c) A charter school student is eligible for extracurricular activities at the student’s resident public school consistent with eligibility standards as applied to full‑time students of the resident public school.

(d) A school district or resident public school may not impose additional requirements on a charter school student to participate in extracurricular activities that are not imposed on full‑time students of the resident public school.

(e) Charter school students shall pay the same fees as other students to participate in extracurricular activities.

(f) Charter school students shall be eligible for the same fee waivers for which other students are eligible.

(D) The State is not responsible for student transportation to a charter school unless the charter school is designated by the local school district as the only school selected within the local school district’s attendance area. However, a charter school may enter into a contract with a school district or a private provider to provide transportation to the charter school students.

(E) The South Carolina Public Charter School District Board of Trustees may ~~not~~ use program funding for transportation to reduce barriers to enrollment and provide equity and access.”

SECTION 3. Section 59‑40‑55 of the 1976 Code, as last amended by Act 288 of 2014, is further amended to read:

“Section 59‑40‑55. (A) In order to promote the quality of charter school outcomes and oversight, the charter school sponsor shall adopt national industry standards of quality charter schools and shall authorize and implement practices consistent with those standards.

(B) A charter school sponsor shall:

(1) approve charter applications according to Section 59‑40‑70 that meet the requirements specified in Sections 59‑40‑50 and 59‑40‑60;

(2) decline to approve charter applications according to Section 59‑40‑70(C);

(3) negotiate and execute sound charter contracts with each approved charter school including, but not limited to, specific outcome‑based expectations concerning academics, operations, and finance based on the school’s charter;

(4) monitor, in accordance with charter contract terms, the performance and legal/fiscal compliance of charter schools to include collecting and analyzing data to support ongoing evaluation according to the charter contract;

(5) conduct or require oversight activities that enable the sponsor to fulfill its responsibilities outlined in this chapter, including conducting appropriate inquiries and investigations, only if those activities are consistent with the intent of this chapter, adhere to the terms of the charter contact, and do not unduly inhibit the autonomy granted to public charter schools;

(6) ~~collect~~ produce, in accordance with Section 59‑40‑140(H), an annual outcomes‑based performance report aligned with federal and state accountability with data collected from each of its sponsored charter schools and submit the reports to the Department of Education. The sponsor shall not request duplicative data entry and submission from their charter schools or create duplicative reporting requirements for data to which they already have access from the State’s pupil accounting system, fiscal reporting, or other databases;

(7) notify the charter school of perceived problems if its performance or legal compliance appears to be unsatisfactory and provide reasonable opportunity for the school to remedy the problem, unless the problem warrants revocation and revocation timeframes apply. The sponsor shall notify a charter school’s leader and board chair by means of electronic or telephonic communications at least forty‑eight hours before the sponsor’s regularly scheduled board meeting if the charter school is going to be on the board agenda as an action or informational item;

(8) take appropriate corrective actions or exercise sanctions short of revocation in response to apparent deficiencies in charter school performance or legal compliance. These actions or sanctions may include requiring a school to develop and execute a corrective action plan within a specified timeframe based on Section 59‑40‑110, including school‑level performance data and the terms of the charter contract;

(9) determine whether each charter contract merits renewal, nonrenewal, or revocation based on Section 59‑40‑110, including school‑level performance data and the terms of the charter contract;

(10) provide to parents and the general public information about charter schools authorized by the sponsor as an enrollment option within the district in which the charter school is located to the same extent and through the same means as the district in which the charter school is located provides and publicizes information about all public schools in the district. A charter school shall notify its sponsor of its enrollment procedures and dates of its enrollment period no less than ~~sixty~~ thirty days before the first day of its ~~enrollment~~ application period and the sponsor shall monitor the application, lottery, and enrollment procedures and compliance; and

(11) permanently close any charter school at the conclusion of the school year after receiving the lowest performance level rating as defined by the ~~federal~~ State’s accountability system for three consecutive years in accordance with Section 59‑40‑110(E).

(C) The South Carolina Public Charter School District may retain no more than two percent of the total state appropriations for each charter school it authorizes to cover the costs for overseeing its charter schools, excluding any state categorical funds specifically designated for classroom, teacher, or technology use. The sponsor’s administrative fee does not include costs incurred in delivering services that a charter school may purchase at its discretion from the sponsor. The sponsor’s fee is not applicable to federal money, any state categorical funds specifically designated for classroom, teacher or technology use, or grants received by the charter school. The sponsor shall use its funding provided pursuant to this section exclusively for the purpose of fulfilling sponsor obligations in accordance with this chapter. The sponsor also shall maintain a reserve fund in compliance with state and federal laws, GAAP, and stated policies.”

SECTION 4. Section 59‑40‑60 of the 1976 Code, as last amended by Act 288 of 2014, is further amended to read:

“Section 59‑40‑60. (A) An approved charter application constitutes an agreement between the charter school and the sponsor.

(B) A contract between the charter school and the sponsor must be executed and must reflect all provisions outlined in the application as well as the roles, powers, responsibilities, and performance expectations for each party to the contract. A contract must include the proposed enrollment procedures and dates of the enrollment period of the charter school. All agreements regarding the release of the charter school from school district policies must be contained in the contract. The Department of Education shall develop a contract template to be used by charter schools and the sponsor. The template must serve as a foundation for the development of a contract between the charter school and the sponsor.

(C) A material revision of the terms of the contract between the charter school and the sponsor may be made only with the approval of both parties. Amendments of the charter contract or charter must be approved by the board of the school and made to the sponsor in writing. If the sponsor does not take action on the requested amendments within one hundred twenty days, the amendments are considered approved. The sponsor shall not make unilateral amendments to the contract, but may negotiate changes with the board of the charter, which must take action within one hundred twenty days.

(D) Except as provided in subsection (F), an applicant who wishes to form a charter school shall:

(1) organize the charter school as a nonprofit corporation pursuant to the laws of this State;

(2) form a charter committee for the charter school which includes one or more teachers; and

(3) submit a letter of intent and a written charter school application to the board of trustees or area commission from which the committee is seeking sponsorship.

(E) A charter committee is responsible for and has the power to:

(1) submit a letter of intent and an application to operate as a charter school, sign a charter school contract, and ensure compliance with all of the requirements for charter schools provided by law;

(2) employ and contract with teachers and nonteaching employees, contract for services, and develop pay scales, performance criteria, and discharge policies for its employees. All teachers whether certified or noncertified must undergo the background checks and other investigations required for certified teachers, as provided by law, before they may teach in the charter school; ~~and~~

(3) decide all other matters related to the operation of the charter school, including budgeting, curriculum, and operating procedures~~.~~;

(4) hold public meetings informing and engaging the community they intend to serve; provided, an existing charter school replicating their model or significantly expanding beyond their original charter also shall hold public meetings informing and engaging the community they intend to serve; and

(5) determine how the governance and operations of the school will transfer from the charter committee to the school leader and board for its first year of operation, and must ensure no charter committee member has committed a felony that would prevent them from serving on a charter governing board.

(F) ~~The~~ A charter school application, based on an application ~~template~~ with compliance guidelines and evaluation rubric aligned to the application developed by the State Department of Education, must include the following components, along with any additional addendums required by the sponsor in accordance with Section 59‑40‑70(A)(1):

(1) an executive summary, not to exceed ~~two~~ five pages highlighting the need for the school, the vision of the school, the governance structure, and the organizational capacity or potential of the applicant group, replication of any existing schools, and any key partners or contracted management agreements;

(2) the mission statement of the charter school, which must be consistent with the principles of the General Assembly’s purposes pursuant to Section 59‑40‑20;

(3) the goals, objectives, and academic performance standards to be achieved by the charter school, and a description of the charter school’s admission policies and procedures;

(4) evidence that an adequate number of parents or legal guardians with students eligible to attend the proposed school pursuant to Section 59‑40‑50 support the formation of a charter school and justify the projected per pupil allocation in the application budget;

(5) a description of the charter school’s educational program, including how it will meet or exceed the academic performance standards and expectations, including academic standards adopted by the State Board of Education and how the instructional design, learning environment, class size and structure, curriculum, and teaching methods enable each pupil to achieve these standards;

(6) a description of the charter school’s plan for evaluating pupil achievement and progress toward accomplishment of the school’s achievement standards in addition to state assessments, the timeline for meeting these standards, and the procedures for taking corrective action if that pupil achievement falls below the standards;

(7) evidence that the plan for the charter school is economically sound, a proposed budget for the term of the charter, a description of the manner in which an annual audit of the financial and administrative operations of the charter school, including any services provided by the sponsor, is to be conducted;

(8) a description of the governance and operation of the charter school, including a detailed school start‑up plan, resumes and background information on the charter committee members, the capacity and experience of the school leadership and management team, any involvement with the replication of existing successful public charter schools, any proposed management company or educational service provider responsibilities, and the nature and extent of parental, professional educator, and community involvement in the governance and operation of the charter school;

(9) a description of how the charter school plans to ensure that the enrollment of the school is similar to the racial composition of the local school district in which the charter school is to be located or the targeted student population of the local school district that the charter school proposes to serve and provide assurance that the school does not conflict with any school district desegregation plan or order in effect for the school district in which the charter school is to be located;

(10) a description of how the charter school plans to meet the transportation needs of its pupils;

(11) a description of the building, facilities, and equipment and how they shall be obtained;

(12) an explanation of the relationship that shall exist between the proposed charter school and its employees, including a staffing chart aligned with the budget and student enrollment projections, descriptions of evaluation procedures, and evidence that the terms and conditions of employment have been addressed with affected employees;

(13) a description of a reasonable grievance and termination procedure, as required by this chapter, including notice and a hearing before the governing body of the charter school. The application must state whether or not the provisions of Article 5, Chapter 25, Title 59 apply to the employment and dismissal of teachers at the charter school;

(14) a description of student rights and responsibilities, including behavior and discipline standards, and a reasonable hearing procedure, including notice and a hearing before the board of directors of the charter school before expulsion;

(15) an assumption of liability by the charter school for the activities of the charter school and an agreement that the charter school must indemnify and hold harmless the sponsor, its servants, agents, and employees, from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from injury to persons or property or otherwise which arises out of the act, failure to act, or negligence of the charter school, its agents and employees, in connection with or arising out of the activity of the charter school; and

(16) a description of the types and amounts of insurance coverage to be obtained by the charter school.

(G) Nothing in this section shall require a charter school applicant to provide a list of prospective or tentatively enrolled students or prospective employees with the application.”

SECTION 5. Section 59‑40‑70 of the 1976 Code, as last amended by Act 288 of 2014, is further amended to read:

“Section 59‑40‑70. (A)(1) An applicant shall submit a letter of intent ~~at least ninety days before submitting an application~~ no later than the first business day in November to the board of trustees or area commission from which it is seeking sponsorship and a copy to the South Carolina Department of Education. No later than the first business day in December, a sponsor shall provide the following information to any applicant submitting a letter of intent:

(a) any sponsor required application addendums;

(b) a sample charter contract;

(c) the submission procedures, including how to submit electronically if required;

(d) the sponsor’s application evaluation process with any evaluation criteria beyond the application rubric published by the department; and

(e) the sponsor’s preopening requirements.

(2) An applicant shall submit the application, with all required addendums and attachments, no later than the first business day in March to the board of trustees or area commission from which it is seeking sponsorship and one copy to the South Carolina Department of Education. In the case of the South Carolina Public Charter School District or a public or independent institution of higher learning sponsor, the applicant shall provide notice of the application to the local school board of trustees in which the charter school will be located for informational purposes only. The school district or the public or independent institution of higher learning from which the applicant is seeking sponsorship may request clarifying additional information, that is reasonable and necessary, from the applicant and shall specify if the response is to be provided verbally in a meeting, in a formal capacity interview, at a public hearing, or in writing. The State Department of Education shall provide guidance on compliance to both sponsors and applicants and shall publicly post electronic versions of all applications within thirty days after submission.

(3) The applicant shall notify the local delegation of a county in which a proposed charter school is to be located upon submission of a charter school application and also shall provide a copy of the charter school application upon request by a member of the local delegation. A charter school replicating their model or significantly expanding beyond their original charter also must notify the local delegations.

(4) Upon agreement with the charter committee and the sponsor, submission dates or deadlines of the letter of intent and application may be waived by the sponsor and all subsequent review stages and hearing dates must be adjusted within the timeline.

(B)(1) The board of trustees or area commission from which the applicant is seeking sponsorship shall rule on the application for a charter school in a public hearing, upon reasonable public notice, ~~within ninety days after receiving the application~~ no later than the final business day in June. If there is no ruling ~~within ninety days~~ before the final business day in June, the application is considered approved. Once the application has been approved by the board of trustees or area commission, the charter school may open at the beginning of the following year. However, before a charter school may open, the State Department of Education shall verify the accuracy of the financial data for the school within forty‑five days after approval.

(2) The sponsor shall review the application for completeness and provide notice to the applicant of any missing application components no later than the tenth business day of March. Applicants receiving notification of an incomplete application shall have five business days after receiving notification of an incomplete application to submit the components needed to complete the application. At a public hearing, incomplete applications may be denied by the sponsor without further evaluation.

(3) At least ten business days before the public hearing, the sponsor must provide to the applicant written notice of the public hearing, which must contain the date, location and time of the hearing. At least five business days before the public hearing, the sponsor must provide the applicant a written evaluation report using the rubric aligned with the department application and any published sponsor evaluation criteria.

(C) A board of trustees or area commission shall deny an application only if the application does not meet the requirements specified in Section 59‑40‑50 or 59‑40‑60, fails to meet the spirit and intent of this chapter, or adversely affects, as defined in regulation, the other students in the district in which the charter school is to be located, or if, based on the totality of information provided by the applicant, the board of trustees or area commission determines that the applicant has failed to demonstrate a substantial likelihood that it has the capacity to establish a viable school based on national industry standards of quality charter school authorization. It shall provide, within ten days, a written explanation of the reasons for denial, citing specific standards related to provisions of Section 59‑40‑50 or 59‑40‑60 that the application violates. This written explanation immediately must be sent to the charter committee and filed with the State Board of Education.

(D) In the event that the racial composition of an applicant’s or charter school’s enrollment differs from the enrollment of the local school district in which the charter school is to be located or the targeted student population of the local school district by more than twenty percent, despite its best efforts, the board of trustees or area commission from which the applicant is seeking sponsorship shall consider the applicant’s or the charter school’s recruitment efforts and racial composition of the applicant pool in determining whether the applicant or charter school is operating in a nondiscriminatory manner. A finding by the board of trustees or area commission that the applicant or charter school is operating in a racially discriminatory manner justifies the denial of a charter school application or the revocation of a charter as provided in this section or in Section 59‑40‑110, as may be applicable. A finding by the board of trustees or area commission that the applicant is not operating in a racially discriminatory manner justifies approval of the charter without regard to the racial percentage requirement if the application is acceptable in all other aspects.

(E) If the board of trustees or area commission from which the applicant is seeking sponsorship denies a charter school application, the charter applicant may appeal the denial to the Administrative Law Court pursuant to Section 59‑40‑90.

(F) If the board of trustees or area commission approves the application, it becomes the charter school’s sponsor and shall sign the approved application. The sponsor shall submit a copy of the approved charter and charter contract to the State Board of Education.

(G) If a local school board of trustees has information that an approved application by the South Carolina Public Charter School District or a public or independent institution of higher learning sponsor adversely affects the other students in its district, as defined in regulation, or that the approval of the application fails to meet the spirit and intent of this chapter, the local school board of trustees may appeal the granting of the charter to the Administrative Law Court. The Administrative Law Court, within forty‑five days, may affirm or reverse the application for action by the South Carolina Public Charter School District or the public or independent institution of higher learning in accordance with an order of the state board.”

SECTION 6. Section 59‑40‑80 of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

“Section 59‑40‑80. (A) A sponsor may conditionally authorize a charter school ~~before the applicant has secured its space~~ to allow an applicant to amend its application to correct ministerial errors in the application or to set mutually agreed upon preopening benchmarks regarding enrollment, equipment, facilities, and personnel ~~if the applicant indicates such authority is necessary for it to meet the requirements of this chapter~~. A decision by the sponsor to provide or not provide conditional approval is not appealable. If the charter school does not meet the conditions of the approval the opening of the school may be extended by one year or the sponsor may rescind the conditional approval and proceed with the denial of the charter application. Conditional authorization does not give rise to any equitable or other claims based on reliance, notwithstanding any promise, parole, written, or otherwise, contained in the authorization or acceptance of it, whether preceding or following the conditional authorization.

(B) A charter committee with an approved or conditionally approved charter application may request an extension of one or more years to open from their sponsor.”

SECTION 7. Section 59‑40‑110 of the 1976 Code, as last amended by Act 288 of 2014, is further amended to read:

“Section 59‑40‑110. (A) A charter must be approved or renewed for a period of ten school years and is considered an accredited public school by the State Board of Education upon approval and with the subsequent submission of the annual report in Section 59‑40‑140 each year for the term of the charter; however, the charter only may be revoked or not renewed under the provisions of subsection (C) ~~of this section~~. The ten year term of the charter begins with the first operating year of the school with students enrolled and does not include the preoperational period. The sponsor annually shall evaluate the conditions outlined in subsection (C). The annual evaluation results must be used in making a determination for nonrenewal or revocation, provided that for the purposes of subsection (C), a charter school which meets the academic performance standards of the department must be considered to meet the performance standards of its sponsor.

(B) A charter renewal application must be submitted to the school’s sponsor one hundred twenty calendar days before the end of the school year for the term of the charter contract, and it must contain:

(1) a report on the progress of the charter school in achieving the goals, objectives, pupil achievement standards, and other terms of the initially approved charter application;

(2) a financial statement that discloses the costs of administration, instruction, and other spending categories for the charter school that is understandable to the general public and that allows comparison of these costs to other schools or other comparable organizations, in a format required by the State Board of Education; and

(3) any proposed material changes to the current charter or charter school contract to be implemented in the next ten‑year charter term.

(C) A charter must be revoked or not renewed by the sponsor if it determines that the charter school:

(1) committed a material violation of the conditions, standards, performance expectations, or procedures provided for in the charter application or charter school contract, or both;

(2) failed to meet the academic performance standards and expectations as defined in the charter application or charter school contract, or both;

(3) failed to maintain its books and records according to generally accepted accounting principles or failed to create an appropriate system of internal control, or both; or

(4) violated any provision of law from which the charter school was not specifically exempted.

(D) A sponsor summarily may revoke any charter school that is determined by the sponsor to pose an imminent threat of harm to the health or safety of students, or both, based on documented and clear and convincing data.

(E) Any charter school shall automatically and permanently close at the conclusion of the school year in which the school first becomes subject to automatic closure for receiving the lowest performance level rating as defined by the federal accountability system for three consecutive years beginning with student achievement data from the ~~2013‑2014~~ 2017‑2018 School Year. The determination of closure is considered final. Automatic closure shall not apply to any charter school serving fifty percent or more students with disabilities or any charter school designated as an Alternative Education Campus (AEC) by its sponsor as outlined in Section 59‑40‑111.

(F) At least sixty days before not renewing or terminating a charter school, the sponsor shall notify in writing the charter school’s governing body of the proposed action. The notification shall state the grounds for the proposed action in reasonable detail. Termination must follow the procedure provided for in this section.

(G) The existence of another charter granting authority must not be grounds for the nonrenewal or revocation of a charter. Grounds for nonrenewal or revocation must be only those specified of this section.

(H) The charter school’s governing body may request in writing a hearing before the sponsor within fourteen days of receiving notice of nonrenewal or termination of the charter. Failure by the school’s governing body to make a written request for a hearing within fourteen days must be treated as acquiescence to the proposed action. Upon receiving a timely written request for a hearing, the sponsor shall give reasonable notice to the school’s governing body of the hearing date. The sponsor shall conduct a hearing before taking final action. The sponsor shall take final action to renew or not renew a charter by the last day of classes in the last school year for which the charter school is authorized.

(I) A charter school seeking renewal may submit a renewal application to another charter granting authority if the charter school has not committed a material violation of the provisions specified in this section and the sponsor refuses to renew the charter. In such cases the charter school shall continue to receive local funding pursuant to Section 59‑40‑140(A). However, the charter school is not eligible to receive one hundred percent of the base student cost from the State. The charter school only is eligible to receive the percentage of the base student cost previously received as a school in its former district.

(J) A decision to revoke or not to renew a charter school may be appealed to the Administrative Law Court pursuant to the provisions of Section 59‑40‑90. Upon appeal to the Administrative Law Court, there is no automatic stay of the revocation or nonrenewal decision. Pending resolution of the appeal, the charter school also may move before the Administrative Law Court for imposition of a stay of the revocation or nonrenewal on the grounds that an unusual hardship to the charter school will result from the execution of the sponsor’s decision.

(K) Prior to any public charter school closure, the sponsor shall develop a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and net assets in accordance with the requirements of this chapter. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the school and the sponsor. In the event of a public charter school closure for any reason, the sponsor shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol.”

SECTION 8. Section 59‑40‑115 of the 1976 Code, as last amended by Act 288 of 2014, is further amended to read:

“Section 59‑40‑115. (A) A charter school may terminate its contract with a sponsor before the ten‑year term of contract if ~~all parties under contract with~~ the sponsor and the charter school agree to the ~~dissolution~~ termination.

(B) A charter school ~~that terminates its contract with a sponsor directly may seek application for the length of time remaining on its original contract from another sponsor~~ may seek sponsorship from a different sponsor while operating under its current sponsor. If a new sponsor agrees to sponsor an existing charter school, the charter school will become sponsored by the new sponsor on the following July first for the length of time remaining on its original contract. A sponsor of a charter school may not take prejudicial action against the charter school as a consequence of the charter school seeking or securing sponsorship from a different sponsor.”

SECTION 9. Section 59‑40‑140(D) of the 1976 Code, as last amended by Act 164 of 2012, is further amended to read:

“(D) Notwithstanding subsection (C), the proportionate share of state and federal resources generated by students or staff serving them must be directed to the sponsor. After receipt of federal or state categorical aid funds, sponsors shall, within ten business days, supply to the charter school the proportional share of each categorical fund for which the charter school qualifies. If the sponsor fails to do so, the Department of Education may fine the sponsor an amount equivalent to the withheld amounts. Fines imposed must be remitted to the charter school from which the amounts were withheld. If the sponsor retains any federal categorical funds as provided by the local education agency, the retention of those funds must be reported to the sponsored charter school at the time the funds are retained. Additionally, the sponsor annually shall report on their website the total retained funds with the related local education agency functions specified for each sponsored charter school.”

SECTION 10. Section 59‑40‑150 of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

“Section 59‑40‑150. (A) The Department of Education shall disseminate information to the public, directly and through sponsors, on how to form and operate a charter school and how to utilize the offerings of a charter school. The department shall develop the application, compliance guidance, and evaluation rubric with input from sponsors and charter school stakeholders and publish it annually by the final business day of June each year. The application must include language and guidance for existing charter schools replicating their model.

(B) At least annually, the department shall provide ~~upon request a~~ an online directory of all charter schools authorized under this chapter with information concerning the educational goals of each charter school, the success of each charter school in meeting its educational goals, and links to the school’s website with procedures to apply for admission to each charter school.

(C) The department shall bear the cost of complying with this section.”

SECTION 11. Section 59‑40‑170 of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

“Section 59‑40‑170. The Department of Education shall make available, ~~upon request~~ on its website, a list, updated at least annually, of vacant and unused buildings and vacant and unused portions of buildings that are owned by school districts in this State and that may be suitable for the operation of a charter school. The department shall make the list available to applicants for charter schools and to existing charter schools. The list must include the address of each building, a short description of the building, and the name of the owner of the building. Nothing in this section requires the owner of a building on the list to sell or lease the building or a portion of the building to a charter school or to any other school or to any other prospective buyer or tenant. However, if a school district declares a building surplus and chooses to sell or lease the building, a charter school’s board of directors or a charter committee operating or applying to be located within the district must be given the first refusal to purchase or lease the building under the same or better terms and conditions as it would be offered to the public.”

SECTION 12. Section 59‑40‑175 of the 1976 Code, as added by Act 164 of 2012, is amended to read:

“Section 59‑40‑175. (A) There is created in the state treasury the Charter School Facility Revolving Loan Program. This loan program is comprised of federal funds obtained by the state for charter school facilities, other funds appropriated or transferred to the fund by the state, and privately donated funds. Funds deposited to the Charter School Facility Revolving Loan Program must remain available for the purposes of the program until appropriated or reverted by the General Assembly. The State Treasurer may approve loans from monies in the Charter School Revolving Loan Program to a charter school, upon application by the charter school. Money loaned to a charter school pursuant to this section must be used for construction, purchase, renovation, and maintenance of public charter school facilities. The State Treasurer shall establish guidelines and procedures for application, approval, allocation, and repayment regarding loans from these monies. The Office of State Treasurer may be reimbursed from the program for costs associated with the administration of these loans.

(B) Additionally, the State Treasurer may use money in the Charter School Facility Revolving Loan Program, as specified by the General Assembly, to create a debt reserve fund to enhance the ability of a charter school to obtain favorable financing terms on bonds issued on behalf of the charter school for the purpose of financing charter school capital construction, purchase, renovation or maintenance. In using monies from the Charter School Facility Revolving Loan Program for credit enhancement, the State Treasurer shall maintain a reasonable ratio of leverage not to exceed 15:1 of dollars of outstanding bonded debt by the charter schools to dollars provided from the Charter School Facility Revolving Loan Program as credit enhancement. The State Treasurer shall establish guidelines and procedures for application, approval, allocation, and the duration of the credit enhancements with input from stakeholders. The State Treasurer may approve a credit enhancement instrument from monies in the Charter School Revolving Loan Program to a charter school, upon application by the charter school.”

SECTION 13. Section 59‑40‑180 of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

“Section 59‑40‑180. The State Board of Education shall promulgate regulations and develop guidelines necessary to implement the provisions of this chapter, including standards to determine compliance with this chapter ~~and an application process to include a timeline for submission of~~. Any guidelines for applications ~~that will~~ in an appropriate process must allow for final decisions~~, including Administrative Law Court appeal,~~ by December first of the year preceding the charter school’s opening.”

SECTION 14. Section 59‑40‑230(A) of the 1976 Code, as last amended by Act 164 of 2012, is further amended to read:

“(A)(1) The South Carolina Public Charter School District must be governed by a board of trustees consisting of not more than nine members:

(~~1~~a) two appointed by the Governor;

(~~2~~b) one appointed by the Speaker of the House of Representatives;

(~~3~~c) one appointed by the President Pro Tempore of the Senate; and

(~~4~~d) five to be appointed by the Governor upon the recommendation of the:

(~~a~~i) South Carolina Association of School Administrators;

(~~b~~ii) South Carolina Chamber of Commerce;

(~~c~~iii) South Carolina Education Oversight Committee;

(~~d~~iv) South Carolina School Boards Association; and

(~~e~~v) South Carolina Alliance of Black Educators.

(2) The seven members appointed by the Governor pursuant to this subsection are subject to advice and consent of the Senate. Membership of the committee must reflect representatives from each of the entities in item ~~(4)~~ (1)(d) or their designee as reflected in their recommendation.

(3) Each member of the board of trustees shall serve terms of three years, except that, for the initial members, two appointed by the Governor, one by the Speaker of the House, and one by the President Pro Tempore of the Senate, shall serve terms of one year and three appointed by the Governor shall serve terms of two years. A member of the board may be removed after appointment pursuant to Section 1‑3‑240. In making appointments, every effort must be made to ensure that all geographic areas of the State are represented and that the membership reflects urban and rural areas of the State as well as the ethnic diversity of the State. Upon a board vacancy for any reason, the board immediately shall notify the appropriate appointing body. Until such time as that appointment is filled in the manner provided for in this section, the State Superintendent of Education may appoint interim members if no appointment is made within thirty days.”

SECTION 15. Section 59‑40‑200 of the 1976 Code is repealed.

SECTION 16. This act takes effect upon approval by the Governor.

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