



February 19, 2021

SENATE BILL No. 358

DIGEST OF SB 358 (Updated February 17, 2021 5:22 pm - DI 110)

Citations Affected: IC 20-26.

Synopsis: School buildings. Makes various changes to the provisions in the law regarding the transfer of vacant school buildings to charter schools, including changes regarding the following: (1) Exemptions to the provisions. (2) Defining "underutilized" school buildings. (3) Defining "charter organization" and applying the provisions to charter organizations. (4) Time period requirements and other requirements regarding certain notices. (5) Information required to be provided to a charter organization. (6) The responsibility for the maintenance and repair of a school building and financial responsibility for any damage or destruction to a school building. (7) The waiver of rights regarding a school building. (8) Terminating a lease. (9) Establishing a committee if more than one charter organization has provided a preliminary notice of interest in purchasing or leasing a school building. (10) Information regarding school buildings required to be reported to the department of education (department). (11) Department requirements if the department determines a school building is underutilized. Repeals provisions distinguishing requirements regarding school buildings that are more than 200,000 square feet and school buildings that are 200,000 square feet or less.

Effective: Upon passage.

Rogers, Raatz, Kruse

January 11, 2021, read first time and referred to Committee on Education and Career Development.
February 18, 2021, amended, reported favorably — Do Pass.

SB 358—LS 7143/DI 136



February 19, 2021

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE BILL No. 358

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 20-26-7.1-1, AS ADDED BY P.L.270-2019,
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 1. This chapter does not apply to ~~a~~ **the**
4 **following:**

5 (1) A school building that ~~on~~ **has since** July 1, 2011, **is been**
6 **continuously** leased ~~or loaned~~ by the school corporation that
7 owns the school building to ~~another an~~ **entity that** is
8 not a building corporation or other entity that is related in any way
9 to, or created by, the school corporation or the governing body.

10 (2) **A school building that is the only building owned by a**
11 **school corporation.**

12 (3) **A school building that is vacant as a result of consolidation**
13 **of two (2) or more school corporations.**

14 SECTION 2. IC 20-26-7.1-1.5 IS ADDED TO THE INDIANA
15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
16 [EFFECTIVE UPON PASSAGE]: **Sec. 1.5. As used in this chapter,**
17 **"authorizer" has the meaning set forth in IC 20-24-1-2.5.**

SB 358—LS 7143/DI 136



1 SECTION 3. IC 20-26-7.1-2, AS ADDED BY P.L.270-2019,
 2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 UPON PASSAGE]: Sec. 2. As used in this chapter, "charter school"
 4 has the meaning set forth in IC 20-24-1-4 and includes an entity that
 5 has filed an application with an authorizer and is seeking approval from
 6 the authorizer to operate a charter school under IC 20-24-3:
 7 **organization" means an entity that:**

- 8 (1) operates a charter school (as defined in IC 20-24-1-4);
 9 (2) has submitted a proposal to an authorizer seeking
 10 approval to establish a charter school under IC 20-24; or
 11 (3) has filed with an authorizer a letter of intent to operate a
 12 charter school.

13 SECTION 4. IC 20-26-7.1-2.5 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE UPON PASSAGE]: Sec. 2.5. As used in this chapter,
 16 "underutilized" means a school building in which the number of
 17 students enrolled in the school is less than fifty percent (50%) of
 18 the number of students enrolled at the highest enrollment for the
 19 building, as reported by the department.

20 SECTION 5. IC 20-26-7.1-3, AS AMENDED BY P.L.92-2020,
 21 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 UPON PASSAGE]: Sec. 3. (a) **This subsection applies to any school
 23 building that:**

- 24 (1) is owned by a school corporation; and
 25 (2) has at any time been used for classroom instruction.

26 Before a governing body school corporation may sell, or exchange,
 27 lease, demolish, hold without operating, or dispose of a school
 28 building, described in this section in accordance with IC 20-25-4-14,
 29 IC 20-26-5-4(a)(7), or IC 20-26-7-1; and except as provided in this
 30 chapter, a governing body the school corporation shall make the
 31 building available for lease or purchase to any by a charter school any
 32 school building owned by the school corporation or any other entity
 33 that is related in any way to, or created by, the school corporation or the
 34 governing body, including but not limited to a building corporation;
 35 that:

- 36 (1) is vacant or unused; and
 37 (2) was previously used for classroom instruction;

38 in order for the charter school to conduct kindergarten through grade
 39 12 classroom instruction:
 40 **organization in accordance with this chapter.**

41 (b) The following are not required to comply with the requirements
 42 provided in section 4 of this chapter:



- 1 (1) A ~~governing body~~ **school corporation** that vacates a school
 2 building in order to:
- 3 (A) renovate the school building for future use by the school
 4 corporation; or
- 5 (B) demolish the school building and build a new school
 6 building on the same site as the demolished building.
- 7 (2) An emergency manager of a distressed school corporation
 8 under IC 6-1.1-20.3.
- 9 (3) The ~~governing body of the~~ School City of East Chicago school
 10 corporation for the Carrie Gosch Elementary School building.
- 11 (4) **A school corporation that uses at least fifty percent (50%)**
 12 **of a school building for:**
- 13 (A) **storage;**
- 14 (B) **administrative use;**
- 15 (C) **a preschool;**
- 16 (D) **alternative education;**
- 17 (E) **a school health clinic; or**
- 18 (F) **any combination of clauses (A) through (E);**
- 19 **and the school corporation does not own any other building**
 20 **that can accommodate the uses described in clauses (A)**
 21 **through (F) for which the school building is being used.**
- 22 (5) **A school corporation that:**
- 23 (A) **has an underutilized school building; and**
- 24 (B) **does not own another building with sufficient capacity**
 25 **to receive the number of students enrolled at the**
 26 **underutilized school building.**
- 27 (c) Notwithstanding subsection (a), a lease entered into by a
 28 ~~governing body school corporation~~ under IC 20-26-5-4(a)(7) prior to
 29 July 1, 2019, with a state accredited nonpublic school shall remain in
 30 full force and effect. In addition, the ~~governing body school~~
 31 **corporation** may, during or at the expiration of the term of such lease,
 32 sell the school building leased under IC 20-26-5-4(a)(7) to the
 33 nonpublic school at a purchase price mutually agreed to by the
 34 ~~governing body school corporation~~ and the nonpublic school.
- 35 SECTION 6. IC 20-26-7.1-4, AS AMENDED BY THE
 36 TECHNICAL CORRECTIONS BILL OF THE 2021 GENERAL
 37 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 UPON PASSAGE]: Sec. 4. (a) Not later than ~~ten (10)~~ **thirty (30)** days
 39 after ~~passing the date a school corporation passes~~ a resolution or
 40 ~~taking takes~~ other official action to close, no longer use, or no longer
 41 occupy a school building that was previously used for classroom
 42 instruction, the ~~governing body school corporation~~ shall:



- 1 (1) notify the department of the official action and the effective
 2 date that the school building will be closed, no longer used, or no
 3 longer occupied;
- 4 (2) make the school building available for inspection by a charter
 5 ~~school organization that notifies provides, not later than sixty~~
 6 **(60) days after the date the charter organization receives a**
 7 **notice under subsection (b), preliminary notice to** the
 8 department **and the school corporation** that ~~it~~ **the charter**
 9 **organization** is interested in leasing or purchasing the school
 10 building; ~~described under section 3 of this chapter;~~ and
- 11 (3) make the following information available to a charter ~~school~~
 12 **organization** described in subdivision (2):
- 13 (A) Estimates of the operating expenses for the school
 14 building for the past three (3) years.
- 15 **(B) A copy of any building maintenance records.**
- 16 ~~(B)~~ **(C)** Written information regarding the condition of the
 17 building, including the age of the roof and the HVAC system,
 18 and any known conditions which, in the ~~governing body's~~
 19 **school corporation's** opinion, require prompt repair or
 20 replacement.
- 21 ~~(C)~~ **(D)** A description of the property as shown on the ~~current~~
 22 ~~tax statement.~~ **legal description.**
- 23 **(E) A copy of any available:**
- 24 **(i) building drawings and floor plans; and**
- 25 **(ii) property surveys.**
- 26 (b) ~~Within five (5) Not later than ten (10) days of receiving after~~
 27 **the date the department receives the notice under subsection (a)(1),**
 28 the department shall:
- 29 **(1) provide written notification of the availability of a school**
 30 **building to:**
- 31 **(A) each charter school located in a county in which the**
 32 **school corporation is located;**
- 33 **(B) each charter school authorizer (excluding school**
 34 **corporation authorizers as defined in IC 20-24-1-2.5(1)); and**
- 35 **(C) all statewide organizations representing charter schools in**
 36 **Indiana; of the school corporation's resolution or official action**
 37 **described in subsection (a); including and**
- 38 **(2) post on the department's Internet web site the written**
 39 **notification described in subdivision (1) and include the date**
 40 **when on which the school building will close, no longer be used,**
 41 **or become vacant.**
- 42 ~~(c)~~ **The school corporation shall lease the school building to a**



1 charter school for one dollar (\$1) per year for as long as the charter
 2 school uses the school building for classroom instruction for a term at
 3 the charter school's discretion; or sell the school building for one dollar
 4 (\$1); if the charter school does the following:

5 (1) Within thirty (30) days of receiving the department's notice
 6 under subsection (b); a charter school must submit a preliminary
 7 request to purchase or lease the school building.

8 (2) Subject to subsection (d); within ninety (90) days of receiving
 9 the department's notice under subsection (b); a charter school
 10 must submit to the school corporation the following information:

11 (A) The name of the charter school that is interested in leasing
 12 or purchasing the vacant or unused school building.

13 (B) A time frame; which may not exceed two (2) years from
 14 the date that the school building is to be closed; no longer
 15 used; or no longer occupied; in which the charter school
 16 intends to begin providing classroom instruction in the vacant
 17 or unused school building.

18 (C) A resolution; adopted by the board of the charter school
 19 stating that the board has determined that; after the charter
 20 school has made any necessary repairs or modifications; the
 21 school building will be sufficient to meet the charter school's
 22 needs and can be operated within the charter school's budget.

23 (D) This clause applies to a vacant or unused school building
 24 with more than two hundred thousand (200,000) gross square
 25 feet. In addition to the information provided in clauses (A)
 26 through (C); a charter school shall submit the following:

27 (i) The charter school's projected enrollment when all of the
 28 grade levels are added.

29 (ii) A letter from the charter school's authorizer or
 30 prospective authorizer that indicates that the charter school's
 31 authorizer or prospective authorizer has reviewed the items
 32 described in clauses (B) through (C) and that the projected
 33 enrollment of the charter school when all of the grade levels
 34 are added or fully implemented will be at least sixty percent
 35 (60%) of the maximum annual student enrollment of the
 36 school building during the past twenty-five (25) years as
 37 validated by records maintained or created by the
 38 department.

39 (c) Until the time that a charter organization leases or acquires
 40 a school building or the charter organization's rights in a school
 41 building are waived under this chapter, a school corporation shall
 42 be:



- 1 (1) responsible for maintenance of a building described in this
2 chapter, including protection against fire, theft, and weather
3 conditions;
- 4 (2) responsible for completing any repairs necessary to
5 restore the building to the same condition that the building
6 was in on the last day of classroom instruction; and
- 7 (3) financially responsible for any damage or destruction to
8 the building prior to the charter organization taking
9 possession of the building.
- 10 (d) A charter organization shall waive all rights regarding a
11 school building described in subsection (a) if the charter
12 organization does not:
- 13 (1) provide, not later than sixty (60) days after the date the
14 charter organization receives the notice under subsection
15 (b)(1), the preliminary notice of interest to the school
16 corporation as described in subsection (a)(2); and
- 17 (2) provide, not later than two hundred seventy-five (275)
18 days after the school corporation completes its duties of
19 disclosure relating to the building, written notice to the school
20 corporation that the charter organization intends to lease or
21 buy the building.
- 22 (e) A school corporation that receives a notice described in
23 subsection (d) from a charter organization regarding a school
24 building shall take all actions necessary on its part to enable the
25 charter organization to:
- 26 (1) purchase the building for one dollar (\$1); or
27 (2) lease the building for one dollar (\$1) per year, with an
28 option to purchase the building at any time for an additional
29 one dollar (\$1).
- 30 However, a school building that is subject to mortgage debt may
31 only be leased to a charter organization and not purchased. A
32 school building purchased or leased as described in this subsection
33 must include all personal property used in the operation of the
34 building other than removable furniture.
- 35 (f) A charter organization may terminate the lease of a school
36 building that is entered into or renewed under this section after
37 June 30, 2021, if the charter organization provides to the school
38 corporation, at least six (6) months before the charter organization
39 intends to terminate the lease, written notice that the charter
40 organization is terminating the lease.
- 41 ~~(d)~~ (g) If:
- 42 (1) the department does not receive any preliminary requests



1 **notice** to purchase or lease a school building within the time
 2 frame described in subsection (c)(1) and except as provided in
 3 section 7 of this chapter; **(d)(1); or**
 4 **(2) a charter organization provided the preliminary notice but**
 5 **has not provided a notice of intent to purchase within the time**
 6 **frame described in subsection (d)(2);**

7 the department shall send notification to the school corporation that ~~the~~
 8 ~~department has not received any preliminary requests to purchase or~~
 9 ~~lease the school building.~~ **all charter school organization rights to**
 10 **the building under this chapter have been waived.** Upon receipt of
 11 the notification under this subsection, the school corporation may sell
 12 or otherwise dispose of the school building in accordance with
 13 IC 36-1-11, IC 20-25-4-14, ~~or IC 20-26-5-4(7).~~ and section 8 of this
 14 chapter: **IC 20-26-5-4(a)(7).**

15 (c) In the event that two (2) or more charter schools submit a
 16 preliminary request to purchase or lease a school building within the
 17 time frame described in subsection (c)(1); the department shall send
 18 notification to an authorizer described in IC 20-24-1-2.5(3) and each
 19 statewide charter school authorizer and statewide organization
 20 representing charter schools in Indiana (excluding school corporation
 21 authorizers as defined in IC 20-24-1-2.5(1)) and the school corporation
 22 that the department has received two (2) or more preliminary requests
 23 under this section. An authorizer committee shall be established; with
 24 each statewide authorizer that has authorized one (1) or more charter
 25 schools appointing a representative; and the committee shall establish
 26 the chairperson and procedures for the committee. Within sixty (60)
 27 days of receiving notice under this subsection; the committee shall
 28 select which charter school may proceed under subsection (c)(2) to
 29 purchase or lease the school building or determine if two (2) or more
 30 charter schools should co-locate within the school building. The
 31 committee shall give priority to a charter school located within one (1)
 32 mile of the vacant or unused school building. In the event that the
 33 committee determines that two (2) or more charter schools should
 34 co-locate in the school building and; if applicable; that the combined
 35 enrollment of the charter schools will meet or exceed the requirements
 36 in subsection (c)(2)(D); the charter schools have sixty (60) days to
 37 submit a memorandum of understanding stating that the charter schools
 38 shall be jointly and severally liable for the obligations related to the
 39 sale or lease of the school building; and specifying how the charter
 40 schools will utilize the school building and share responsibility for
 41 operational; maintenance; and renovation expenses. If the charter
 42 schools are unable to agree; the charter schools shall be deemed to have



1 revoked their prior request regarding the lease or sale of the school
2 building.

3 (f) A school corporation shall lease the school building for one
4 dollar (\$1) per year for as long as the charter school uses the school
5 building for classroom instruction for any combination of kindergarten
6 through grade 12 for a term at the charter school's discretion; or sell the
7 school building to the charter school for one dollar (\$1); if the charter
8 school has met the requirements set forth in subsection (c) and uses the
9 vacant or unused school building to provide classroom instruction to
10 students in any combination of kindergarten through grade 12. If a
11 charter school has not met the requirements under subsection (c); the
12 school corporation may, subject to section 7 of this chapter, sell or
13 otherwise dispose of the school building in accordance with
14 IC 36-1-11; IC 20-25-4-14; IC 20-26-5-4(7); and section 8 of this
15 chapter.

16 (h) If two (2) or more charter organizations submit timely
17 preliminary notices under subsection (d)(1) regarding a school
18 building, the secretary of education shall appoint three (3)
19 authorizers that have no business relationship with the charter
20 organizations that are seeking to lease or purchase the building.
21 The appointed authorizers shall act as a committee to determine
22 which of the charter organizations that have submitted notices as
23 described in this subsection is best able to meet the needs of the
24 students in the locality in which the school building is located. Not
25 later than sixty (60) days after the date that the secretary of
26 education appoints the authorizers under this subsection, the
27 committee of authorizers shall select which charter organization
28 may proceed to purchase or lease the school building.

29 SECTION 7. IC 20-26-7.1-5, AS ADDED BY P.L.270-2019,
30 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 UPON PASSAGE]: Sec. 5. (a) If a school building is sold to a charter
32 school organization under section 3 or 4 of this chapter and the charter
33 school, organization, or any subsequent owner, subsequently sells or
34 transfers the school building to a third party, the charter school
35 organization or subsequent owner must transfer an amount equal to
36 the gain in the property minus the adjusted basis (including costs of
37 improvements to the school building) to the school corporation that
38 initially sold the vacant school building to the charter school
39 organization. Gain and adjusted basis shall be determined in the
40 manner prescribed by the Internal Revenue Code and the applicable
41 Internal Revenue Service regulations and guidelines.

42 (b) A charter school organization that purchases a school building



1 assumes total control of the school building and must maintain the
 2 school building, including utilities, insurance, maintenance, and
 3 repairs. In the event a charter **school organization** does not use the
 4 school building for classroom instruction within two (2) years after
 5 acquiring the school building, the school building shall revert to the
 6 school corporation, which may sell or otherwise dispose of the school
 7 building under IC 36-1-11.

8 SECTION 8. IC 20-26-7.1-6, AS ADDED BY P.L.270-2019,
 9 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 UPON PASSAGE]: Sec. 6. During the term of a lease under section 4
 11 of this chapter, the charter **school organization** is responsible for the
 12 direct expenses related to the school building leased, including utilities,
 13 insurance, maintenance, repairs, and remodeling. ~~If the lease involves~~
 14 ~~co-locating charter schools, the obligations under the lease of the~~
 15 ~~school building shall be joint and several.~~ The school corporation is
 16 responsible for any debt incurred for or liens that attached to the school
 17 building before the charter **school organization** leased the school
 18 building.

19 SECTION 9. IC 20-26-7.1-7 IS REPEALED [EFFECTIVE UPON
 20 PASSAGE]. Sec. 7: (a) As used in this section, "accredited nonpublic
 21 school" means a nonpublic school that:

- 22 (1) has voluntarily become accredited under IC ~~20-31-4.1~~; or
- 23 (2) is accredited by a national or regional accrediting agency that
 24 is recognized by the state board.

25 (b) This section applies to a school building with a gross square
 26 footage of two hundred thousand (200,000) square feet or less.

27 (c) If the school corporation receives notification from the
 28 department that the department has not received any preliminary
 29 requests to purchase or lease a vacant or unused school building under
 30 section 4(c)(1) of this chapter or a charter school has not met the
 31 requirements under section 4(c)(2) or 4(c) of this chapter, the school
 32 corporation must sell the school building to an accredited nonpublic
 33 school or postsecondary educational institution that sends a letter of
 34 intent to the school corporation to purchase the vacant or unused school
 35 building for an amount not more than the minimum bid for the vacant
 36 or unused school building determined in accordance with IC ~~36-1-11~~,
 37 or an amount agreed to by both parties.

38 (d) The accredited nonpublic school or postsecondary educational
 39 institution must submit its letter of intent to purchase the school
 40 building within thirty (30) days of the date the school corporation
 41 passes a resolution or takes other official action to close, no longer use,
 42 or no longer occupy a school building that was previously used for



1 classroom instruction. However, in the event that a charter school has
 2 submitted a preliminary request to purchase or lease a school building,
 3 the accredited nonpublic school or postsecondary educational
 4 institution may send a letter of intent to purchase or lease the school
 5 building within ninety (90) days of the date that the school corporation
 6 passed a resolution or took official action to close, no longer use, or no
 7 longer occupy a school building.

8 (e) Within forty-five (45) days of notice of the minimum bid, the
 9 accredited nonpublic school or postsecondary educational institution
 10 must provide a binding offer to the school corporation to purchase the
 11 property in its current condition and provide a nonrefundable down
 12 payment equal to five percent (5%) of the minimum bid or an amount
 13 agreed to by both parties. In the event that two (2) or more binding
 14 offers are submitted to the school corporation under this subsection, the
 15 school corporation may select which offer to accept.

16 (f) If the sale of the property does not close within one hundred
 17 eighty (180) days of the school corporation's receipt of the binding
 18 offer, and the delay in closing is not caused by the school corporation
 19 or its representatives, the school corporation may refund the down
 20 payment and sell or otherwise dispose of the school building under
 21 IC 20-25-4-14, IC 20-26-5-4(a)(7), or IC 36-1-11.

22 SECTION 10. IC 20-26-7.1-8 IS REPEALED [EFFECTIVE UPON
 23 PASSAGE]. Sec. 8. (a) This section applies to the sale of a vacant or
 24 unused school building with more than two hundred thousand
 25 (200,000) gross square feet under IC 36-1-11, as permitted by this
 26 chapter.

27 (b) In determining whether to accept a proposal to purchase and
 28 redevelop the school building and any adjacent property, the governing
 29 body must ensure that a charter school that is located within one (1)
 30 mile of the site to be redeveloped and has notified the governing body
 31 in writing of its interest in locating the charter school on the
 32 redeveloped site is provided with the opportunity to lease adequate
 33 facilities on the redeveloped site at fifty percent (50%) or less than the
 34 current market rate for the redeveloped property or a rate agreed upon
 35 by the parties.

36 (c) In the event that a charter school does not enter into a lease for
 37 the appropriate facilities as part of the initial development of the school
 38 building parcel, this section shall no longer be binding on the school
 39 corporation or the purchaser of the property, which shall not be
 40 required to make the space available for use by another charter school.

41 SECTION 11. IC 20-26-7.1-9, AS ADDED BY P.L.270-2019,
 42 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 UPON PASSAGE]: Sec. 9. If (a) **At the request of a school**
 2 **corporation does not comply with the requirements provided in or**
 3 **charter organization, any dispute under** this chapter **the school**
 4 **corporation shall submit any proceeds from the sale of the vacant**
 5 **school building to the state board to provide grants under the charter**
 6 **school and innovation grant program under IC 20-24-13: is subject to**
 7 **mediation or arbitration.**

8 (b) **The parties to a dispute under this chapter shall share**
 9 **equally the costs of mediation or arbitration.**

10 (c) **A charter organization shall have a private right of action to**
 11 **enforce a school corporation to comply with the requirements**
 12 **under this chapter.**

13 (d) **A charter organization that prevails in a private right of**
 14 **action is entitled to reasonable court costs, costs for arbitration and**
 15 **mediation, and attorney's fees.**

16 (e) **An action under this chapter may be enforced by injunction.**

17 SECTION 12. IC 20-26-7.1-10 IS ADDED TO THE INDIANA
 18 CODE AS A NEW SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE UPON PASSAGE]: Sec. 10. **Beginning with the**
 20 **2021-2022 school year, and each school year thereafter, not later**
 21 **than sixty (60) days after the date of the fall count of ADM, each**
 22 **school corporation shall submit to the department on a form**
 23 **prescribed by the department the following information on all**
 24 **school buildings that are currently or have been used for any**
 25 **combination of kindergarten through grade 12 instruction:**

26 (1) **The number of students enrolled at the highest enrollment**
 27 **for the building, as reported by the department.**

28 (2) **The current student usage based on the last fall count of**
 29 **ADM.**

30 (3) **The percentage of utilization, as determined by dividing**
 31 **the number of students enrolled in the school by the number**
 32 **of students enrolled at the highest enrollment for the building,**
 33 **as reported by the department.**

34 (4) **The school building's current use.**

35 (5) **If the school corporation requested and was granted a**
 36 **waiver under section 11 of this chapter, information**
 37 **regarding:**

38 (A) **implementation of the school corporation's plan**
 39 **submitted under section 11 of this chapter; and**

40 (B) **current use of the school building.**

41 SECTION 13. IC 20-26-7.1-11 IS ADDED TO THE INDIANA
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS



1 [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) If the department
 2 determines that a school building is underutilized for two (2)
 3 consecutive fall ADM counts, the department shall:

- 4 (1) place the school building in underutilized status; and
 5 (2) notify the school corporation that the school corporation
 6 is required to offer the building for sale or lease to a charter
 7 organization not later than the end of the school year in which
 8 the department makes the determination.

9 (b) The department may consider factors other than, or in
 10 addition to, a school corporation's report submitted under section
 11 10 of this chapter in determining that a school building is
 12 underutilized as described in subsection (a).

13 (c) Not later than sixty (60) days after the date that the school
 14 corporation receives a notice under subsection (a), the school
 15 corporation may submit a request to the department to remove the
 16 school building from underutilized status. If a school corporation
 17 submits a request under this subsection, the school corporation
 18 must submit with the request a plan to bring the building out of
 19 underutilized status.

20 (d) If:

21 (1) the school corporation does not submit a request and a
 22 plan under subsection (c); or

23 (2) the request is denied by the department;

24 the department shall provide written notice of the availability of
 25 the school building as described in section 4(b) of this chapter and
 26 the requirements and process under section 4 of this chapter apply
 27 to the building.

28 SECTION 14. An emergency is declared for this act.



COMMITTEE REPORT

Madam President: The Senate Committee on Education and Career Development, to which was referred Senate Bill No. 358, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective date in SECTION 7 with "[EFFECTIVE UPON PASSAGE]".

Page 1, delete lines 1 through 17, begin a new paragraph and insert: "SECTION 1. IC 20-26-7.1-1, AS ADDED BY P.L.270-2019, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. This chapter does not apply to ~~a~~ **the following:**

- (1) A school building that ~~on~~ **has since** July 1, 2011, **is been continuously** leased ~~or loaned~~ by the school corporation that owns the school building to ~~another an~~ **entity if the entity that** is not a building corporation or other entity that is related in any way to, or created by, the school corporation or the governing body.
- (2) **A school building that is the only building owned by a school corporation.**
- (3) **A school building that is vacant as a result of consolidation of two (2) or more school corporations.**

SECTION 2. IC 20-26-7.1-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.5. As used in this chapter, "authorizer" has the meaning set forth in IC 20-24-1-2.5.**

SECTION 3. IC 20-26-7.1-2, AS ADDED BY P.L.270-2019, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this chapter, "charter school" ~~has the meaning set forth in IC 20-24-1-4 and includes an entity that has filed an application with an authorizer and is seeking approval from the authorizer to operate a charter school under IC 20-24-3-~~ **organization" means an entity that:**

- (1) **operates a charter school (as defined in IC 20-24-1-4);**
- (2) **has submitted a proposal to an authorizer seeking approval to establish a charter school under IC 20-24; or**
- (3) **has filed with an authorizer a letter of intent to operate a charter school.**

SECTION 4. IC 20-26-7.1-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. As used in this chapter,**



"underutilized" means a school building in which the number of students enrolled in the school is less than fifty percent (50%) of the number of students enrolled at the highest enrollment for the building, as reported by the department.

SECTION 5. IC 20-26-7.1-3, AS AMENDED BY P.L.92-2020, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) **This subsection applies to any school building that:**

- (1) is owned by a school corporation; and**
- (2) has at any time been used for classroom instruction.**

Before a ~~governing body~~ **school corporation** may sell, or exchange, lease, demolish, hold without operating, or dispose of a school building, described in this section in accordance with ~~IC 20-25-4-14, IC 20-26-5-4(a)(7), or IC 20-26-7-1,~~ and except as provided in this chapter, ~~a governing body~~ **the school corporation** shall make ~~the building~~ **the building** available for lease or purchase to ~~any by a charter school~~ **any school building owned by the school corporation or any other entity that is related in any way to, or created by, the school corporation or the governing body, including but not limited to a building corporation;** that:

- ~~(1) is vacant or unused; and~~
- ~~(2) was previously used for classroom instruction;~~

~~in order for the charter school to conduct kindergarten through grade 12 classroom instruction:~~

organization in accordance with this chapter.

(b) The following are not required to comply with the requirements provided in section 4 of this chapter:

- (1) A ~~governing body~~ **school corporation** that vacates a school building in order to:
 - (A) renovate the school building for future use by the school corporation; or
 - (B) demolish the school building and build a new school building on the same site as the demolished building.
- (2) An emergency manager of a distressed school corporation under IC 6-1.1-20.3.
- (3) The ~~governing body of the~~ School City of East Chicago school corporation for the Carrie Gosch Elementary School building.
- (4) A school corporation that uses at least fifty percent (50%) of a school building for:**
 - (A) storage;**
 - (B) administrative use;**
 - (C) a preschool;**



(D) alternative education;
 (E) a school health clinic; or
 (F) any combination of clauses (A) through (E);
and the school corporation does not own any other building that can accommodate the uses described in clauses (A) through (F) for which the school building is being used.

(5) A school corporation that:

(A) has an underutilized school building; and
 (B) does not own another building with sufficient capacity to receive the number of students enrolled at the underutilized school building.

(c) Notwithstanding subsection (a), a lease entered into by a ~~governing body~~ **school corporation** under IC 20-26-5-4(a)(7) prior to July 1, 2019, with a state accredited nonpublic school shall remain in full force and effect. In addition, the ~~governing body~~ **school corporation** may, during or at the expiration of the term of such lease, sell the school building leased under IC 20-26-5-4(a)(7) to the nonpublic school at a purchase price mutually agreed to by the ~~governing body~~ **school corporation** and the nonpublic school.

SECTION 6. IC 20-26-7.1-4, AS AMENDED BY THE TECHNICAL CORRECTIONS BILL OF THE 2021 GENERAL ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Not later than ~~ten (10)~~ **thirty (30)** days after ~~passing the date a school corporation passes~~ a resolution or ~~taking takes~~ other official action to close, no longer use, or no longer occupy a school building that was previously used for classroom instruction, the ~~governing body~~ **school corporation** shall:

(1) notify the department of the official action and the effective date that the school building will be closed, no longer used, or no longer occupied;

(2) make the school building available for inspection by a charter ~~school organization that notifies~~ **provides, not later than sixty (60) days after the date the charter organization receives a notice under subsection (b), preliminary notice to the department and the school corporation that it the charter organization is interested in leasing or purchasing the school building; described under section 3 of this chapter;** and

(3) make the following information available to a charter ~~school organization~~ **organization** described in subdivision (2):

(A) Estimates of the operating expenses for the school building for the past three (3) years.

(B) A copy of any building maintenance records.



~~(B)~~ **(C)** Written information regarding the condition of the building, including the age of the roof and the HVAC system, and any known conditions which, in the ~~governing body's~~ **school corporation's** opinion, require prompt repair or replacement.

~~(C)~~ **(D)** A description of the property as shown on the ~~current tax statement.~~ **legal description.**

(E) A copy of any available:

(i) building drawings and floor plans; and

(ii) property surveys.

~~(b) Within five (5) days of receiving after~~ **Not later than ten (10) days of receiving after the date the department receives the notice under subsection (a)(1),** the department shall:

(1) provide written notification of the availability of a school building to:

(A) each charter school located in a county in which the school corporation is located;

(B) each charter school authorizer (excluding school corporation authorizers as defined in IC 20-24-1-2.5(1)); and

(C) all statewide organizations representing charter schools in Indiana; of the school corporation's resolution or official action described in subsection (a); including and

(2) post on the department's Internet web site the written notification described in subdivision (1) and include the date when on which the school building will close, no longer be used, or become vacant.

~~(c) The school corporation shall lease the school building to a charter school for one dollar (\$1) per year for as long as the charter school uses the school building for classroom instruction for a term at the charter school's discretion; or sell the school building for one dollar (\$1); if the charter school does the following:~~

~~(1) Within thirty (30) days of receiving the department's notice under subsection (b); a charter school must submit a preliminary request to purchase or lease the school building.~~

~~(2) Subject to subsection (d); within ninety (90) days of receiving the department's notice under subsection (b); a charter school must submit to the school corporation the following information:~~

~~(A) The name of the charter school that is interested in leasing or purchasing the vacant or unused school building.~~

~~(B) A time frame, which may not exceed two (2) years from the date that the school building is to be closed; no longer used; or no longer occupied; in which the charter school~~



intends to begin providing classroom instruction in the vacant or unused school building:

(C) A resolution, adopted by the board of the charter school stating that the board has determined that, after the charter school has made any necessary repairs or modifications, the school building will be sufficient to meet the charter school's needs and can be operated within the charter school's budget.

(D) This clause applies to a vacant or unused school building with more than two hundred thousand (200,000) gross square feet. In addition to the information provided in clauses (A) through (C), a charter school shall submit the following:

(i) The charter school's projected enrollment when all of the grade levels are added.

(ii) A letter from the charter school's authorizer or prospective authorizer that indicates that the charter school's authorizer or prospective authorizer has reviewed the items described in clauses (B) through (C) and that the projected enrollment of the charter school when all of the grade levels are added or fully implemented will be at least sixty percent (60%) of the maximum annual student enrollment of the school building during the past twenty-five (25) years as validated by records maintained or created by the department.

(c) Until the time that a charter organization leases or acquires a school building or the charter organization's rights in a school building are waived under this chapter, a school corporation shall be:

- (1) responsible for maintenance of a building described in this chapter, including protection against fire, theft, and weather conditions;
- (2) responsible for completing any repairs necessary to restore the building to the same condition that the building was in on the last day of classroom instruction; and
- (3) financially responsible for any damage or destruction to the building prior to the charter organization taking possession of the building.

(d) A charter organization shall waive all rights regarding a school building described in subsection (a) if the charter organization does not:

- (1) provide, not later than sixty (60) days after the date the charter organization receives the notice under subsection (b)(1), the preliminary notice of interest to the school



corporation as described in subsection (a)(2); and
 (2) provide, not later than two hundred seventy-five (275) days after the school corporation completes its duties of disclosure relating to the building, written notice to the school corporation that the charter organization intends to lease or buy the building.

(e) A school corporation that receives a notice described in subsection (d) from a charter organization regarding a school building shall take all actions necessary on its part to enable the charter organization to:

- (1) purchase the building for one dollar (\$1); or
- (2) lease the building for one dollar (\$1) per year, with an option to purchase the building at any time for an additional one dollar (\$1).

However, a school building that is subject to mortgage debt may only be leased to a charter organization and not purchased. A school building purchased or leased as described in this subsection must include all personal property used in the operation of the building other than removable furniture.

(f) A charter organization may terminate the lease of a school building that is entered into or renewed under this section after June 30, 2021, if the charter organization provides to the school corporation, at least six (6) months before the charter organization intends to terminate the lease, written notice that the charter organization is terminating the lease.

(d) (g) If:

- (1) the department does not receive any preliminary requests **notice** to purchase or lease a school building within the time frame described in subsection (e)(1) and except as provided in section 7 of this chapter; (d)(1); or
- (2) a charter organization provided the preliminary notice but has not provided a notice of intent to purchase within the time frame described in subsection (d)(2);

the department shall send notification to the school corporation that ~~the department has not received any preliminary requests to purchase or lease the school building.~~ **all charter school organization rights to the building under this chapter have been waived.** Upon receipt of the notification under this subsection, the school corporation may sell or otherwise dispose of the school building in accordance with IC 36-1-11, IC 20-25-4-14, or ~~IC 20-26-5-4(7).~~ and section 8 of this chapter. **IC 20-26-5-4(a)(7).**

(e) In the event that two (2) or more charter schools submit a



preliminary request to purchase or lease a school building within the time frame described in subsection (c)(1); the department shall send notification to an authorizer described in IC 20-24-1-2.5(3) and each statewide charter school authorizer and statewide organization representing charter schools in Indiana (excluding school corporation authorizers as defined in IC 20-24-1-2.5(1)) and the school corporation that the department has received two (2) or more preliminary requests under this section. An authorizer committee shall be established, with each statewide authorizer that has authorized one (1) or more charter schools appointing a representative; and the committee shall establish the chairperson and procedures for the committee. Within sixty (60) days of receiving notice under this subsection, the committee shall select which charter school may proceed under subsection (c)(2) to purchase or lease the school building or determine if two (2) or more charter schools should co-locate within the school building. The committee shall give priority to a charter school located within one (1) mile of the vacant or unused school building. In the event that the committee determines that two (2) or more charter schools should co-locate in the school building and, if applicable, that the combined enrollment of the charter schools will meet or exceed the requirements in subsection (c)(2)(D), the charter schools have sixty (60) days to submit a memorandum of understanding stating that the charter schools shall be jointly and severally liable for the obligations related to the sale or lease of the school building; and specifying how the charter schools will utilize the school building and share responsibility for operational, maintenance, and renovation expenses. If the charter schools are unable to agree, the charter schools shall be deemed to have revoked their prior request regarding the lease or sale of the school building.

(f) A school corporation shall lease the school building for one dollar (\$1) per year for as long as the charter school uses the school building for classroom instruction for any combination of kindergarten through grade 12 for a term at the charter school's discretion; or sell the school building to the charter school for one dollar (\$1); if the charter school has met the requirements set forth in subsection (c) and uses the vacant or unused school building to provide classroom instruction to students in any combination of kindergarten through grade 12. If a charter school has not met the requirements under subsection (c), the school corporation may, subject to section 7 of this chapter, sell or otherwise dispose of the school building in accordance with IC 36-1-11; IC 20-25-4-14; IC 20-26-5-4(7); and section 8 of this chapter.



(h) If two (2) or more charter organizations submit timely preliminary notices under subsection (d)(1) regarding a school building, the secretary of education shall appoint three (3) authorizers that have no business relationship with the charter organizations that are seeking to lease or purchase the building. The appointed authorizers shall act as a committee to determine which of the charter organizations that have submitted notices as described in this subsection is best able to meet the needs of the students in the locality in which the school building is located. Not later than sixty (60) days after the date that the secretary of education appoints the authorizers under this subsection, the committee of authorizers shall select which charter organization may proceed to purchase or lease the school building.

SECTION 7. IC 20-26-7.1-5, AS ADDED BY P.L.270-2019, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) If a school building is sold to a charter ~~school~~ **organization** under ~~section 3 or 4~~ of this chapter and the charter ~~school~~, **organization**, or any subsequent owner, subsequently sells or transfers the school building to a third party, the charter ~~school~~ **organization** or subsequent owner must transfer an amount equal to the gain in the property minus the adjusted basis (including costs of improvements to the school building) to the school corporation that initially sold the ~~vacant school~~ building to the charter ~~school~~. **organization**. Gain and adjusted basis shall be determined in the manner prescribed by the Internal Revenue Code and the applicable Internal Revenue Service regulations and guidelines.

(b) A charter ~~school~~ **organization** that purchases a school building assumes total control of the school building and must maintain the school building, including utilities, insurance, maintenance, and repairs. In the event a charter ~~school~~ **organization** does not use the school building for classroom instruction within two (2) years after acquiring the school building, the school building shall revert to the school corporation, which may sell or otherwise dispose of the school building under IC 36-1-11.

SECTION 8. IC 20-26-7.1-6, AS ADDED BY P.L.270-2019, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. During the term of a lease under section 4 of this chapter, the charter ~~school~~ **organization** is responsible for the direct expenses related to the school building leased, including utilities, insurance, maintenance, repairs, and remodeling. ~~If the lease involves co-locating charter schools, the obligations under the lease of the school building shall be joint and several.~~ The school corporation is



responsible for any debt incurred for or liens that attached to the school building before the charter school **organization** leased the school building.

SECTION 9. IC 20-26-7.1-7 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 7: (a) As used in this section, "accredited nonpublic school" means a nonpublic school that:

- (1) has voluntarily become accredited under IC 20-31-4.1; or
- (2) is accredited by a national or regional accrediting agency that is recognized by the state board.

(b) This section applies to a school building with a gross square footage of two hundred thousand (200,000) square feet or less.

(c) If the school corporation receives notification from the department that the department has not received any preliminary requests to purchase or lease a vacant or unused school building under section 4(c)(1) of this chapter or a charter school has not met the requirements under section 4(c)(2) or 4(e) of this chapter, the school corporation must sell the school building to an accredited nonpublic school or postsecondary educational institution that sends a letter of intent to the school corporation to purchase the vacant or unused school building for an amount not more than the minimum bid for the vacant or unused school building determined in accordance with IC 36-1-11; or an amount agreed to by both parties.

(d) The accredited nonpublic school or postsecondary educational institution must submit its letter of intent to purchase the school building within thirty (30) days of the date the school corporation passes a resolution or takes other official action to close, no longer use, or no longer occupy a school building that was previously used for classroom instruction. However, in the event that a charter school has submitted a preliminary request to purchase or lease a school building, the accredited nonpublic school or postsecondary educational institution may send a letter of intent to purchase or lease the school building within ninety (90) days of the date that the school corporation passed a resolution or took official action to close, no longer use, or no longer occupy a school building.

(e) Within forty-five (45) days of notice of the minimum bid, the accredited nonpublic school or postsecondary educational institution must provide a binding offer to the school corporation to purchase the property in its current condition and provide a nonrefundable down payment equal to five percent (5%) of the minimum bid or an amount agreed to by both parties. In the event that two (2) or more binding offers are submitted to the school corporation under this subsection, the school corporation may select which offer to accept.



(f) If the sale of the property does not close within one hundred eighty (180) days of the school corporation's receipt of the binding offer, and the delay in closing is not caused by the school corporation or its representatives, the school corporation may refund the down payment and sell or otherwise dispose of the school building under IC 20-25-4-14, IC 20-26-5-4(a)(7), or IC 36-1-11.

SECTION 10. IC 20-26-7.1-8 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 8: (a) This section applies to the sale of a vacant or unused school building with more than two hundred thousand (200,000) gross square feet under IC 36-1-11, as permitted by this chapter.

(b) In determining whether to accept a proposal to purchase and redevelop the school building and any adjacent property, the governing body must ensure that a charter school that is located within one (1) mile of the site to be redeveloped and has notified the governing body in writing of its interest in locating the charter school on the redeveloped site is provided with the opportunity to lease adequate facilities on the redeveloped site at fifty percent (50%) or less than the current market rate for the redeveloped property or a rate agreed upon by the parties.

(c) In the event that a charter school does not enter into a lease for the appropriate facilities as part of the initial development of the school building parcel, this section shall no longer be binding on the school corporation or the purchaser of the property, which shall not be required to make the space available for use by another charter school.

SECTION 11. IC 20-26-7.1-9, AS ADDED BY P.L.270-2019, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. If **(a) At the request of a school corporation does not comply with the requirements provided in or charter organization, any dispute under** this chapter the school corporation shall submit any proceeds from the sale of the vacant school building to the state board to provide grants under the charter school and innovation grant program under IC 20-24-13: **is subject to mediation or arbitration.**

(b) The parties to a dispute under this chapter shall share equally the costs of mediation or arbitration.

(c) A charter organization shall have a private right of action to enforce a school corporation to comply with the requirements under this chapter.

(d) A charter organization that prevails in a private right of action is entitled to reasonable court costs, costs for arbitration and mediation, and attorney's fees.



(e) **An action under this chapter may be enforced by injunction.**"

Delete pages 2 through 6.

Page 7, delete lines 1 through 35.

Page 7, line 38, delete "in 2022," and insert "**with the 2021-2022 school year,**".

Page 8, line 3, delete "The maximum student capacity." and insert "**The number of students enrolled at the highest enrollment for the building, as reported by the department.**".

Page 8, line 6, delete "utilization." and insert "**utilization, as determined by dividing the number of students enrolled in the school by the number of students enrolled at the highest enrollment for the building, as reported by the department.**".

Page 8, delete lines 8 through 42, begin a new line block indented and insert:

"(5) If the school corporation requested and was granted a waiver under section 11 of this chapter, information regarding:

(A) implementation of the school corporation's plan submitted under section 11 of this chapter; and

(B) current use of the school building.

SECTION 13. IC 20-26-7.1-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11. (a) If the department determines that a school building is underutilized for two (2) consecutive fall ADM counts, the department shall:**

(1) place the school building in underutilized status; and

(2) notify the school corporation that the school corporation is required to offer the building for sale or lease to a charter organization not later than the end of the school year in which the department makes the determination.

(b) The department may consider factors other than, or in addition to, a school corporation's report submitted under section 10 of this chapter in determining that a school building is underutilized as described in subsection (a).

(c) Not later than sixty (60) days after the date that the school corporation receives a notice under subsection (a), the school corporation may submit a request to the department to remove the school building from underutilized status. If a school corporation submits a request under this subsection, the school corporation must submit with the request a plan to bring the building out of underutilized status.



(d) If:

(1) the school corporation does not submit a request and a plan under subsection (c); or

(2) the request is denied by the department;

the department shall provide written notice of the availability of the school building as described in section 4(b) of this chapter and the requirements and process under section 4 of this chapter apply to the building.

SECTION 14. An emergency is declared for this act."

Delete page 9.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 358 as introduced.)

RAATZ, Chairperson

Committee Vote: Yeas 9, Nays 4.

