



Reprinted
February 23, 2021

SENATE BILL No. 358

DIGEST OF SB 358 (Updated February 22, 2021 3:42 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 and additions 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. (12) Appeals to the state board of education regarding denials by the department of requests for waivers to remove school buildings from underutilized status. (13) The repurchase of school buildings by school corporations. 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.
February 22, 2021, read second time, amended, ordered engrossed.

SB 358—LS 7143/DI 136



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 at least twenty (20) hours each week**
 13 **for one (1) or more school related uses approved by the**
 14 **department and the school corporation does not own any**
 15 **other building that can accommodate the approved uses.**
- 16 **(5) A school corporation that:**
- 17 **(A) has an underutilized school building; and**
- 18 **(B) does not own another building with sufficient capacity**
 19 **to receive the number of students enrolled at the**
 20 **underutilized school building.**
- 21 (c) Notwithstanding subsection (a), a lease entered into by a
 22 ~~governing body~~ **school corporation** under IC 20-26-5-4(a)(7) prior to
 23 July 1, 2019, with a state accredited nonpublic school shall remain in
 24 full force and effect. In addition, the ~~governing body~~ **school**
 25 **corporation** may, during or at the expiration of the term of such lease,
 26 sell the school building leased under IC 20-26-5-4(a)(7) to the
 27 nonpublic school at a purchase price mutually agreed to by the
 28 ~~governing body~~ **school corporation** and the nonpublic school.
- 29 SECTION 6. IC 20-26-7.1-4, AS AMENDED BY THE
 30 TECHNICAL CORRECTIONS BILL OF THE 2021 GENERAL
 31 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 UPON PASSAGE]: Sec. 4. (a) Not later than ~~ten (10)~~ **thirty (30)** days
 33 after ~~passing the date a school corporation passes~~ a resolution or
 34 ~~taking takes~~ other official action to close, no longer use, or no longer
 35 occupy a school building that was previously used for classroom
 36 instruction, the ~~governing body~~ **school corporation** shall:
- 37 (1) notify the department of the official action and the effective
 38 date that the school building will be closed, no longer used, or no
 39 longer occupied;
- 40 (2) make the school building available for inspection by a charter
 41 ~~school organization that notifies~~ **provides, not later than sixty**
 42 **(60) days after the date the charter organization receives a**



1 **notice under subsection (b), preliminary notice to the**
 2 **department and the school corporation that it the charter**
 3 **organization** is interested in leasing or purchasing the school
 4 building; ~~described under section 3 of this chapter;~~ and

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

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

9 **(B) A copy of any building maintenance records.**

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

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

17 **(E) A copy of any available:**

18 (i) **building drawings and floor plans; and**

19 (ii) **property surveys.**

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

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

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

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

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

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

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

41 (1) ~~Within thirty (30) days of receiving the department's notice~~
 42 ~~under subsection (b); a charter school must submit a preliminary~~



1 request to purchase or lease the school building.

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

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

7 (B) A time frame, which may not exceed two (2) years from
8 the date that the school building is to be closed, no longer
9 used, or no longer occupied, in which the charter school
10 intends to begin providing classroom instruction in the vacant
11 or unused school building.

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

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

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

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

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

37 (1) responsible for maintenance of a building described in this
38 chapter, including protection against fire, theft, and weather
39 conditions;

40 (2) responsible for completing any repairs necessary to
41 restore the building to the same condition that the building
42 was in on the last day of classroom instruction; and



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



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

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

39 (f) A school corporation shall lease the school building for one
 40 dollar (\$1) per year for as long as the charter school uses the school
 41 building for classroom instruction for any combination of kindergarten
 42 through grade 12 for a term at the charter school's discretion; or sell the



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

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

- 22 **(1) select which charter organization may proceed to purchase**
 23 **or lease the building; or**
 24 **(2) determine if two (2) or more charter schools should**
 25 **co-locate within the school building.**

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

38 **(b) (a) A charter school organization that purchases a school**
 39 **building assumes total control of the school building and must maintain**
 40 **the school building, including utilities, insurance, maintenance, and**
 41 **repairs. In the event**

42 **(b) If:**



1 (1) a charter school organization that purchased a school
2 building under this chapter:

3 (A) does not use the school building for classroom instruction
4 within two (2) years after acquiring the school building; the
5 school building shall revert to the school corporation; which
6 may sell or otherwise dispose of the school building under
7 IC 36-1-11; or

8 (B) no longer uses or intends to use the building; or

9 (2) the department determines that the building is
10 underutilized as provided under section 12 of this chapter;
11 the charter organizer shall provide notice as provided under
12 section 12(d)(2)(B) of this chapter and take all actions necessary on
13 its part to enable the school corporation to repurchase the building
14 for one dollar (\$1).

15 (c) If the school corporation intends to repurchase the school
16 building, the school corporation shall, not later than sixty (60) days
17 after the date that the charter organization provides the school
18 corporation the notice under subsection (b), provide a notice to the
19 charter organization that the school corporation intends to
20 repurchase the building.

21 (d) If the school corporation repurchases a school building as
22 described in subsection (b), the school corporation may sell or
23 otherwise dispose of the school building in accordance with
24 IC 20-25-4-14, IC 20-26-5-4(a)(7), or IC 36-1-11.

25 (e) If the school corporation does not provide the notice of intent
26 to repurchase within the time period described in subsection (c),
27 the charter organization may sell or transfer the building to a third
28 party. If the charter organization sells or transfers the school
29 building under this subsection, the charter organization must
30 transfer an amount equal to the gain in the property minus the
31 adjusted basis (including costs of improvements to the school
32 building less depreciation on the cost of improvements) to the
33 school corporation from which the charter organization purchased
34 the building. Gain and adjusted basis shall be determined in the
35 manner prescribed by the Internal Revenue Code and the
36 applicable Internal Revenue Service regulations and guidelines.

37 SECTION 8. IC 20-26-7.1-6, AS ADDED BY P.L.270-2019,
38 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 UPON PASSAGE]: Sec. 6. During the term of a lease under section 4
40 of this chapter, the charter school organization is responsible for the
41 direct expenses related to the school building leased, including utilities,
42 insurance, maintenance, repairs, and remodeling. ~~If the lease involves~~



1 co-locating charter schools; the obligations under the lease of the
 2 school building shall be joint and several. The school corporation is
 3 responsible for any debt incurred for or liens that attached to the school
 4 building before the charter school **organization** leased the school
 5 building.

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

9 (1) has voluntarily become accredited under IC 20-31-4.1; or

10 (2) is accredited by a national or regional accrediting agency that
 11 is recognized by the state board.

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

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

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

37 (e) Within forty-five (45) days of notice of the minimum bid, the
 38 accredited nonpublic school or postsecondary educational institution
 39 must provide a binding offer to the school corporation to purchase the
 40 property in its current condition and provide a nonrefundable down
 41 payment equal to five percent (5%) of the minimum bid or an amount
 42 agreed to by both parties. In the event that two (2) or more binding



1 offers are submitted to the school corporation under this subsection, the
2 school corporation may select which offer to accept.

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

9 SECTION 10. IC 20-26-7.1-8 IS REPEALED [EFFECTIVE UPON
10 PASSAGE]. Sec. 8: (a) This section applies to the sale of a vacant or
11 unused school building with more than two hundred thousand
12 (200,000) gross square feet under IC 36-1-11, as permitted by this
13 chapter.

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

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

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

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

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



1 (d) A court may award a charter organization that prevails in
2 a private right of action under this section reasonable court costs
3 and attorney's fees.

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

5 SECTION 12. IC 20-26-7.1-10 IS ADDED TO THE INDIANA
6 CODE AS A NEW SECTION TO READ AS FOLLOWS
7 [EFFECTIVE UPON PASSAGE]: Sec. 10. Beginning with the
8 2021-2022 school year, and each school year thereafter, not later
9 than sixty (60) days after the date of the fall count of ADM, each
10 school corporation shall submit to the department on a form
11 prescribed by the department the following information on all
12 school buildings that are currently or have been used for any
13 combination of kindergarten through grade 12 instruction:

14 (1) The number of students enrolled at the highest enrollment
15 for the school building.

16 (2) The current student usage based on the last fall count of
17 ADM.

18 (3) The percentage of utilization, as determined by dividing
19 the number of students enrolled in the school by the number
20 of students enrolled at the highest enrollment for the building,
21 as reported by the department.

22 (4) The school building's current use.

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

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

28 (B) current use of the school building.

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

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

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

39 (b) The department may consider factors other than, or in
40 addition to, a school corporation's report submitted under section
41 10 of this chapter in determining that a school building is
42 underutilized as described in subsection (a).



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

8 (d) If:

9 (1) a school corporation submits a request and plan under
 10 subsection (c); and

11 (2) the department denies the request;

12 the school corporation may, not later than ten (10) days after the
 13 date that the department provides notice of its denial to the school
 14 corporation, appeal the department's decision to the state board.
 15 The state board shall make a determination regarding an appeal
 16 submitted under this subsection at the state board's next meeting
 17 following receipt of the appeal.

18 (e) If:

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

21 (2) the request is denied by the department and the school
 22 corporation:

23 (A) does not appeal to the state board the department's
 24 decision within the time period established under
 25 subsection (d); or

26 (B) filed an appeal with the state board and the state board
 27 denied the request for a waiver;

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

32 SECTION 14. IC 20-26-7.1-12 IS ADDED TO THE INDIANA
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS
 34 [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) This section applies to
 35 a charter organization that is leasing or has purchased a school
 36 building for one dollar (\$1) under this chapter.

37 (b) Subsection (d) does not apply to a charter organization for
 38 the first five (5) years that the charter organization leases a school
 39 building or the first five (5) years after the charter organization
 40 purchases the building, whichever is applicable. If the charter
 41 organization leases and later purchases a school building, the total
 42 number of years to which subsection (d) does not apply is five (5)



1 years from the date that the charter organization initially leased
2 the school building.

3 (c) Beginning with the 2021-2022 school year, and each school
4 year thereafter, not later than sixty (60) days after the date of the
5 fall count of ADM, each charter organization shall submit to the
6 department on a form prescribed by the department the:

7 (1) information described in section 10(1) through 10(4) of
8 this chapter regarding a school building that the charter
9 organization has leased or purchased as described in
10 subsection (a); and

11 (2) if the charter organization requested and was granted a
12 waiver under this section, information regarding:

13 (A) implementation of the charter organization's plan
14 submitted under subsection (f); and

15 (B) current use of the school building.

16 (d) If the department determines that a school building
17 described in subsection (a) is underutilized for two (2) consecutive
18 fall ADM counts beginning after the five (5) year period described
19 in subsection (b), the department shall:

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

21 (2) provide notification to the charter organization of the
22 following:

23 (A) If the building is leased, the charter organization is
24 required to do the following:

25 (i) If the lease was entered into or renewed after June 30,
26 2021, terminate the lease.

27 (ii) If the lease was entered into or renewed before July
28 1, 2021, terminate the lease as soon as the lease
29 agreement allows for termination or nonrenewal of the
30 lease.

31 (B) If the building was purchased, the charter organization
32 is required to do the following:

33 (i) Not later than thirty (30) days after the date that the
34 charter organization is notified by the department under
35 this subdivision, provide notice to the school corporation
36 from which the charter organization purchased the
37 building that the building is available for repurchase.

38 (ii) Take all actions necessary on the charter
39 organization's part to enable the school corporation to
40 repurchase the building for one dollar (\$1).

41 (e) The department may consider factors other than, or in
42 addition to, a charter organization's report submitted under



1 subsection (c) in determining that a school building is underutilized
2 as described in subsection (d).

3 (f) Not later than sixty (60) days after the date that the charter
4 organization receives a notice under subsection (d), the charter
5 organization may submit a request to the department for a waiver
6 to remove the school building from underutilized status. If a
7 charter organization submits a request under this subsection, the
8 charter organization must submit with the request a plan to bring
9 the building out of underutilized status.

10 (g) If:

11 (1) a charter organization submits a request and plan under
12 subsection (f); and

13 (2) the department denies the request;

14 the charter organization may, not later than ten (10) days after the
15 date that the department provides notice of its denial to the charter
16 organization, appeal the department's decision to the state board.
17 The state board shall make a determination regarding an appeal
18 submitted under this subsection at the state board's next meeting
19 following receipt of the appeal.

20 (h) If:

21 (1) the charter organization does not submit a request and a
22 plan under subsection (f); or

23 (2) the request is denied by the department and the school
24 corporation:

25 (A) does not appeal to the state board the department's
26 decision within the time period established under
27 subsection (g); or

28 (B) filed an appeal with the state board and the state board
29 denied the request for a waiver;

30 the charter organization shall provide written notice of the
31 availability of the school building as described in section 5(b) of
32 this chapter and the requirements and process under section 5 of
33 this chapter apply to the building.

34 SECTION 15. 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 **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.

SENATE MOTION

Madam President: I move that Senate Bill 358 be amended to read as follows:

Page 3, delete lines 11 through 21, begin a new line block indented and insert:

"(4) A school corporation that uses at least fifty percent (50%) of a school building for at least twenty (20) hours each week for one (1) or more school related uses approved by the department and the school corporation does not own any other building that can accommodate the approved uses."

Page 6, line 21, delete "buy" and insert "**purchase**".

Page 7, line 1, after "notice" insert "**of interest**".

Page 7, line 4, after "notice" insert "**of interest**".

Page 7, line 5, after "intent to" insert "**lease or**".

Page 8, line 27, delete "shall select which charter organization" and insert "**shall:**

(1) select which charter organization may proceed to purchase or lease the building; or

(2) determine if two (2) or more charter schools should co-locate within the school building."

Page 8, delete lines 28 through 42, begin a new paragraph and

SB 358—LS 7143/DI 136



insert:

"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 under section 3 or 4 of this chapter and the charter school; or any subsequent owner; subsequently sells or transfers the school building to a third party; the charter school 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. 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) 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~~

(b) If:

(1) a charter school organization that purchased a school building under this chapter:

(A) 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; or

(B) no longer uses or intends to use the building; or

(2) the department determines that the building is underutilized as provided under section 12 of this chapter; the charter organizer shall provide notice as provided under section 12(d)(2)(B) of this chapter and take all actions necessary on its part to enable the school corporation to repurchase the building for one dollar (\$1).

(c) If the school corporation intends to repurchase the school building, the school corporation shall, not later than sixty (60) days after the date that the charter organization provides the school corporation the notice under subsection (b), provide a notice to the charter organization that the school corporation intends to repurchase the building.

(d) If the school corporation repurchases a school building as described in subsection (b), the school corporation may sell or otherwise dispose of the school building in accordance with IC 20-25-4-14, IC 20-26-5-4(a)(7), or IC 36-1-11.



(e) If the school corporation does not provide the notice of intent to repurchase within the time period described in subsection (c), the charter organization may sell or transfer the building to a third party. If the charter organization sells or transfers the school building under this subsection, the charter organization must transfer an amount equal to the gain in the property minus the adjusted basis (including costs of improvements to the school building less depreciation on the cost of improvements) to the school corporation from which the charter organization purchased the building. 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."

Page 9, delete lines 1 through 7.

Page 11, line 2, delete "or" and insert "**and a**".

Page 11, line 3, delete "any dispute" and insert "**a dispute between the school corporation and charter organization**".

Page 11, delete lines 13 through 15, begin a new paragraph and insert:

"(d) A court may award a charter organization that prevails in a private right of action under this section reasonable court costs and attorney's fees."

Page 11, line 27, delete "building, as reported by the department." and insert "**school building**".

Page 12, line 15, after "department" insert "**for a waiver**".

Page 12, between lines 19 and 20, begin a new paragraph and insert:

"(d) If:

(1) a school corporation submits a request and plan under subsection (c); and

(2) the department denies the request;

the school corporation may, not later than ten (10) days after the date that the department provides notice of its denial to the school corporation, appeal the department's decision to the state board. The state board shall make a determination regarding an appeal submitted under this subsection at the state board's next meeting following receipt of the appeal."

Page 12, line 20, delete "(d)" and insert "(e)".

Page 12, line 23, delete "department;" and insert "**department and the school corporation:**

(A) does not appeal to the state board the department's decision within the time period established under subsection (d); or

(B) filed an appeal with the state board and the state board



denied the request for a waiver;".

Page 12, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 14. IC 20-26-7.1-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) This section applies to a charter organization that is leasing or has purchased a school building for one dollar (\$1) under this chapter.

(b) Subsection (d) does not apply to a charter organization for the first five (5) years that the charter organization leases a school building or the first five (5) years after the charter organization purchases the building, whichever is applicable. If the charter organization leases and later purchases a school building, the total number of years to which subsection (d) does not apply is five (5) years from the date that the charter organization initially leased the school building.

(c) Beginning with the 2021-2022 school year, and each school year thereafter, not later than sixty (60) days after the date of the fall count of ADM, each charter organization shall submit to the department on a form prescribed by the department the:

(1) information described in section 10(1) through 10(4) of this chapter regarding a school building that the charter organization has leased or purchased as described in subsection (a); and

(2) if the charter organization requested and was granted a waiver under this section, information regarding:

(A) implementation of the charter organization's plan submitted under subsection (f); and

(B) current use of the school building.

(d) If the department determines that a school building described in subsection (a) is underutilized for two (2) consecutive fall ADM counts beginning after the five (5) year period described in subsection (b), the department shall:

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

(2) provide notification to the charter organization of the following:

(A) If the building is leased, the charter organization is required to do the following:

(i) If the lease was entered into or renewed after June 30, 2021, terminate the lease.

(ii) If the lease was entered into or renewed before July 1, 2021, terminate the lease as soon as the lease agreement allows for termination or nonrenewal of the



lease.

(B) If the building was purchased, the charter organization is required to do the following:

(i) Not later than thirty (30) days after the date that the charter organization is notified by the department under this subdivision, provide notice to the school corporation from which the charter organization purchased the building that the building is available for repurchase.

(ii) Take all actions necessary on the charter organization's part to enable the school corporation to repurchase the building for one dollar (\$1).

(e) The department may consider factors other than, or in addition to, a charter organization's report submitted under subsection (c) in determining that a school building is underutilized as described in subsection (d).

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

(g) If:

(1) a charter organization submits a request and plan under subsection (f); and

(2) the department denies the request;

the charter organization may, not later than ten (10) days after the date that the department provides notice of its denial to the charter organization, appeal the department's decision to the state board. The state board shall make a determination regarding an appeal submitted under this subsection at the state board's next meeting following receipt of the appeal.

(h) If:

(1) the charter organization does not submit a request and a plan under subsection (f); or

(2) the request is denied by the department and the school corporation:

(A) does not appeal to the state board the department's decision within the time period established under subsection (g); or

(B) filed an appeal with the state board and the state board denied the request for a waiver;



the charter organization shall provide written notice of the availability of the school building as described in section 5(b) of this chapter and the requirements and process under section 5 of this chapter apply to the building."

Renumber all SECTIONS consecutively.

(Reference is to SB 358 as printed February 19, 2021.)

ROGERS

