

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 ENROLLED ACT No. 358

AN ACT to amend the Indiana Code concerning education.

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

SECTION 1. IC 20-26-7.1-2.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 2.3. As used in this chapter, "state educational institution" has the meaning set forth in IC 21-7-13-32.**

SECTION 2. IC 20-26-7.1-3, AS AMENDED BY P.L.92-2020, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2021 (RETROACTIVE)]: Sec. 3. (a) **This subsection applies to any school building that is owned by a 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, and that has at any time been used for classroom instruction. Except as provided in subsection (b)(1), before a governing body 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 shall do the following:**

- (1) This subdivision applies after June 30, 2021. The governing body shall obtain a certification from the attorney general's office under section 8.5 of this chapter.**
- (2) The governing body shall make available for lease or purchase to any by a charter school or, after June 30, 2021, a**

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state educational institution 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) (A) is vacant or unused; and

(2) (B) was previously used for classroom instruction;

in order for the charter school to conduct kindergarten through grade 12 classroom instruction **or to be used by a state educational institution for an academic purpose.**

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

(1) A governing body 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.

(c) Notwithstanding subsection (a), a lease entered into by a governing body under IC 20-26-5-4(a)(7) prior to ~~July 1, 2019~~, **January 1, 2019**, with a state accredited nonpublic school shall remain in full force and effect. In addition, the governing body 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 and the nonpublic school.

SECTION 3. 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 JULY 1, 2021]: Sec. 4. (a) Not later than ten (10) days after passing a resolution or taking other official action to close, no longer use, or no longer occupy a school building that was previously used for classroom instruction **under section 3 of this chapter**, the governing body 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 **or state educational institution** that notifies the department that it 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 **or state educational institution** described in subdivision (2):

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

(B) 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 opinion, require prompt repair or replacement.

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

(b) Within five (5) days of receiving notice under subsection (a)(1), the department shall provide written notification to each **state educational institution**, charter school authorizer (excluding school corporation authorizers as defined in IC 20-24-1-2.5(1)), and statewide organizations representing charter schools in Indiana of the school corporation's resolution or official action described in subsection (a), including the date when 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 **or state educational institution** for one dollar (\$1) per year for as long as the **state educational institution uses the building for an academic purpose or the** charter school uses the school building for classroom instruction, for a term at the **state educational institution's or** charter school's discretion, or sell the school building for one dollar (\$1), if the charter school **or state educational institution** does the following:

(1) Within thirty (30) days of receiving the department's notice under subsection (b), a charter school **or state educational institution** 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 **or state educational institution** must submit to the school corporation the following information:

(A) The name of the charter school **or state educational institution** 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:

(i) charter school intends to begin providing classroom instruction in the vacant or unused school building; **or**



(ii) state educational institution intends to begin using the building for an academic purpose.

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

(d) If the department does not receive any preliminary requests to purchase or lease a school building within the time frame described in subsection (c)(1) and except as provided in section 7 of this chapter, 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. 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, ~~IC 20-26-5-4(7)~~; **IC 20-26-5-4(a)(7)**, and section 8 of this chapter.

(e) **Except as provided in subsection (g)**, in the event that two (2) or more charter schools **but no state educational institutions**, 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) If two (2) or more state educational institutions but no charter schools submit timely preliminary requests under subsection (c)(1) regarding a school building, the secretary of education shall appoint three (3) representatives of other state educational institutions. The appointed representatives shall act as a committee to determine which of the state educational institutions that have submitted preliminary requests 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 committee of representatives under this subsection, the committee of representatives shall:

- (1) select which state educational institution may proceed to purchase or lease the building; or**
- (2) determine if two (2) or more state educational institutions should co-locate within the school building.**

(g) If one (1) or more charter schools and one (1) or more state



educational institutions submit timely preliminary requests under subsection (c)(1) regarding a school building, the charter school shall be provided preference to the school building. If more than one (1) charter school submits timely preliminary requests under subsection (c)(1) regarding a school building, the determination of which charter school may obtain the school building shall be resolved in the manner prescribed in subsection (e).

(f) (h) A school corporation shall lease the school building for one dollar (\$1) per year to the charter school or the state educational institution for as long as the charter school uses the school building for classroom instruction for any combination of kindergarten through grade 12 or a state educational institution uses the building for an academic purpose. The term of the lease shall be established at the charter school's or state educational institution's discretion and include an option for the state educational institution or charter school to purchase the school building for one dollar (\$1). ~~for a term at the charter school's discretion; or Alternatively, the school corporation shall sell the school building to the charter school or the state educational institution for one dollar (\$1), if the charter school or the state educational institution 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; in the manner prescribed by this subsection.~~ If a charter school or state educational institution 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); IC 20-26-5-4(a)(7),~~ and section 8 of this chapter.

SECTION 4. IC 20-26-7.1-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.5. (a) After a governing body passes a resolution or takes official action to close, no longer use, or no longer occupy a school building that was previously used for classroom instruction under section 3 of this chapter, a school corporation is responsible for meeting the requirements described in subsection (b) until the applicable school building is:**

- (1) sold or leased to a charter school or state educational institution;
- (2) sold to an accredited nonpublic school or postsecondary educational institution other than a state educational institution under section 7 of this chapter; or
- (3) eligible to be sold or otherwise disposed in accordance with



IC 36-1-11, IC 20-25-4-14, IC 20-26-5-4(a)(7), and section 8 of this chapter.

(b) During the period described in subsection (a), a school corporation is:

- (1) responsible for the maintenance of a vacant or unused school building, including;
 - (A) protection against theft or vandalism;
 - (B) fire protection; and
 - (C) ensuring the vacant or unused school building is not damaged during adverse weather conditions;
- (2) responsible for maintaining the physical condition of the vacant or unused school building in the same physical condition the applicable school building was on the last day that it was used for classroom instruction; and
- (3) financially responsible for any damage or destruction that occurs to the vacant or unused school building.

SECTION 5. IC 20-26-7.1-5, AS ADDED BY P.L.270-2019, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5. (a) If a school building is sold to a charter school **or state educational institution** under section 3 or 4 of this chapter and the charter school **or the state educational institution**, or any subsequent owner, subsequently sells or transfers the school building to a third party, the charter school **or state educational institution**, 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 **or the state educational institution**. 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 **or state educational institution** 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:

- (1) charter school does not use the school building for classroom instruction; **or**
- (2) state educational institution does not use the school building for an academic purpose;

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 6. IC 20-26-7.1-6, AS ADDED BY P.L.270-2019,



SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 6. During the term of a lease under section 4 of this chapter, the charter school **or the state educational institution** 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 **or a co-location with a state educational institution**, 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 leased the school building.

SECTION 7. IC 20-26-7.1-7, AS AMENDED BY P.L.92-2020, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: 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 **or state educational institution** 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 a postsecondary educational institution **other than a state 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, **other than a state 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 **or state educational institution** has submitted a preliminary request to purchase or lease a school building, the accredited nonpublic school or postsecondary educational institution **other than a state 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 **other than a state 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 8. IC 20-26-7.1-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8.5. (a) This section applies after June 30, 2021.**

(b) Except as provided in section 3(b)(1) of this chapter, if a governing body passes a resolution to sell, exchange, lease, demolish, hold without operation, or dispose of a school building, the governing body of the school corporation must receive a certification from the attorney general to ensure that the governing body is in compliance with the requirements of this chapter. The governing body of the school corporation shall submit an application, not later than fifteen (15) days after the governing body passes the resolution described in this subsection, to the attorney general in a manner prescribed by the attorney general. The attorney general shall approve or deny a certification within thirty (30) days of the date the request for certification is received by the attorney general. If the attorney general denies a certification under this section, the attorney general shall provide the specific reason why the request for certification was denied. If a governing body's request for certification is denied under this subsection, the governing body may reapply for certification upon remedying the reason for the attorney general's certification denial.



(c) A contract entered by a school corporation to sell, lease, demolish, or otherwise dispose of a school building without receiving a certification from attorney general under this section is null and void.

(d) The attorney general shall submit all certification findings to the department, which shall post the attorney general's certification findings on the department's Internet web site.

SECTION 9. 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. (a) The attorney general shall investigate complaints that a school corporation has not complied with the requirements under this chapter if the complaint is filed within one (1) year of the date in which the governing body is alleged to have taken an official action that does not comply with this chapter. The attorney general shall notify the school corporation of the investigation within five (5) business days of receipt of a complaint under this section. The attorney general shall complete the investigation within sixty (60) days of the date of the complaint. The school corporation must provide any information requested by the attorney general necessary to conduct the investigation. Upon completion of the investigation, the attorney general shall issue findings indicating whether the complaint is either substantiated or unsubstantiated.

(b) Subject to subsection (d), in the event that a complaint is substantiated, the attorney general, in consultation with the department and state board, is authorized to take any action necessary to remedy a substantiated complaint, which may include actions to be performed by the state board or the department to ensure compliance of a school corporation under this section.

(c) Upon completion of the investigation under subsection (a), the attorney general shall publish findings of an investigation under subsection (a) on the attorney general's Internet web site. In the event a complaint is substantiated, a copy of the findings shall be sent to the state board and the department.

(d) If a school corporation does not comply with the requirements to sell a vacant school building provided in this chapter as determined by the attorney general under subsection (a), the school corporation shall submit any proceeds from the sale of the vacant school building to the state board, which shall be distributed equally between each charter school located in the attendance area of the school corporation. If no charter schools are located in the attendance area, the state board must use the proceeds to provide



grants under the charter school and innovation grant program under IC 20-24-13. **The attorney general is authorized to initiate any legal action necessary to ensure compliance with this section.**

SECTION 10. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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