

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2012

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Legislative Document

No. 1762

S.P. 607

In Senate, January 10, 2012

### An Act To Amend and Clarify the Public Charter School Law

(EMERGENCY)

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Submitted by the Department of Education pursuant to Joint Rule 204.  
Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator MASON of Androscoggin.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** Public Law 2011, chapter 414 authorized the creation of public charter  
4 schools in Maine; and

5           **Whereas,** charter school authorizers are studying the law and potential charter  
6 school founders are making plans for schools, which could begin educating students as  
7 early as July 1, 2012; and

8           **Whereas,** the Legislature directed the Department of Education to review the new  
9 law to determine whether any clarifications were needed prior to the authorization or  
10 opening of new charter schools; and

11           **Whereas,** charter school authorizers and founders need clarity about the law's  
12 requirements as soon as possible; and

13           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
14 the meaning of the Constitution of Maine and require the following legislation as  
15 immediately necessary for the preservation of the public peace, health and safety; now,  
16 therefore,

17           **Be it enacted by the People of the State of Maine as follows:**

18           **Sec. 1. 20-A MRSA §2403, sub-§5,** as enacted by PL 2011, c. 414, §5, is  
19 amended to read:

20           **5. Investigation and sanction of authorizers.** Consistent with the policies and  
21 practices established in subsection 4, the department may investigate and, as appropriate,  
22 institute sanctions in response to deficiencies in authorizer performance or legal  
23 compliance. In addition to any other sanction instituted, the commissioner may suspend a  
24 deficient authorizer's authority to issue new charters until the commissioner is satisfied  
25 that the deficiencies have been corrected.

26           **Sec. 2. 20-A MRSA §2405, sub-§1, ¶C,** as enacted by PL 2011, c. 414, §5, is  
27 amended to read:

28           C. A collaborative among ~~authorizing entities~~ local school boards that forms to set  
29 up a regional public charter school to be located within the area managed and  
30 controlled by those school boards.

31           **Sec. 3. 20-A MRSA §2405, sub-§4, ¶¶C and D,** as enacted by PL 2011, c. 414,  
32 §5, are amended to read:

33           C. The status of the authorizer's public charter school portfolio of approved charter  
34 applications, identifying all public charter schools within that portfolio as:

- 35           (1) Approved, but not yet open;  
36           (2) Operating;

- 1 (3) Renewed;
- 2 (4) Transferred;
- 3 (5) Terminated;
- 4 (6) Closed; or
- 5 (7) Never opened; ~~and~~

6 D. The oversight and services provided by the authorizer to the public charter  
7 schools under the authorizer's purview; and

8 **Sec. 4. 20-A MRSA §2405, sub-§4, ¶E** is enacted to read:

9 E. The total amount of funds collected from each public charter school the authorizer  
10 authorized pursuant to subsection 5, paragraph B and the costs incurred by the  
11 authorizer to oversee the school.

12 **Sec. 5. 20-A MRSA §2405, sub-§8, ¶A**, as enacted by PL 2011, c. 414, §5, is  
13 amended to read:

14 A. The commission consists of 7 members appointed by the state board for 3-year  
15 terms. The commission shall elect a chair and such other officers as may be  
16 necessary to conduct its business. Four members constitute a quorum.

17 (1) Three members must be members of the state board, and those 3 members  
18 shall nominate the other 4 members who must be approved by a majority vote of  
19 the state board.

20 (2) Members appointed to the commission must have diverse professional  
21 experience in education, social services, youth training, business startup and  
22 administration, accounting and finance, strategic planning and nonprofit  
23 governance. The following provisions apply to the appointment of the 4 other  
24 members nominated and appointed by state board members pursuant to  
25 subparagraph (1):

26 (a) In appointing members to the commission, the state board shall give  
27 proper consideration to candidates with experience in a noncharter public  
28 school in the State in one of the following positions: school board member,  
29 superintendent, teacher and special education director;

30 (b) The state board shall ensure that the joint standing committee of the  
31 Legislature having jurisdiction over education matters has an opportunity to  
32 meet and interview the candidate or candidates nominated for the  
33 commission;

34 (c) Within 10 days of meeting with the candidate or candidates, the joint  
35 standing committee of the Legislature having jurisdiction over education  
36 matters shall deliver to the state board its written appraisal of the strengths  
37 and weaknesses of the candidate or candidates; and

38 (d) The state board shall consider the appraisal of the joint standing  
39 committee of the Legislature having jurisdiction over education matters prior  
40 to appointing a candidate or candidates to the commission.

1 (3) A commission member may not serve more than 3 consecutive terms, but  
2 may serve again after not serving on the commission for at least one term.

3 (4) A commission member may not receive compensation, but may be  
4 reimbursed for travel expenses.

5 (5) A commission member who is a member of the state board serves on the  
6 commission only during that person's membership on the state board. Upon  
7 expiration of that person's state board membership, the position on the  
8 commission becomes vacant and must be filled in the manner provided for filling  
9 vacancies.

10 (6) A vacancy on the commission must be filled in the same manner as applies to  
11 the position in which the vacancy occurs, including, if applicable, a review by the  
12 joint standing committee of the Legislature having jurisdiction over education  
13 matters. A vacancy is filled for the remainder of the unexpired term. If the  
14 person serves more than 1 1/2 years of an unexpired term, that service counts as  
15 one term for purposes of the limitation set forth in subparagraph (3).

16 (7) A member of the commission may be removed for failure to perform the  
17 duties of office by a majority vote of the state board.

18 **Sec. 6. 20-A MRSA §2405, sub-§8, ¶B,** as enacted by PL 2011, c. 414, §5, is  
19 amended to read:

20 B. The commission shall adopt rules for the organization and operation of the  
21 commission and to develop, implement and refine its procedures for authorizing  
22 public charter schools in this State. Rules adopted by the commission pursuant to this  
23 paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

24 **Sec. 7. 20-A MRSA §2405, sub-§9,** as enacted by PL 2011, c. 414, §5, is  
25 amended to read:

26 **9. Transition period.** The public charter school program set out in this chapter must  
27 begin with a 10-year transition period, beginning on the effective date of this chapter.  
28 During the transition period, the commissioner shall register the charters approved by all  
29 authorizers in chronological order by date of approval under this chapter. During the  
30 transition period, only 10 public charter schools may be approved by ~~authorizers other~~  
31 ~~than local school boards~~ the commission. Once the cap is reached, the commissioner may  
32 not accept further registrations from ~~authorizers other than local school boards~~ the  
33 commission and only local school boards may approve charters until the end of the  
34 transition period.

35 This subsection is repealed July 1, 2022.

36 **Sec. 8. 20-A MRSA §2410, sub-§2,** as enacted by PL 2011, c. 414, §5, is  
37 amended to read:

38 **2. Notification of unsatisfactory performance or compliance.** In the event that a  
39 public charter school's performance or legal compliance appears unsatisfactory, the  
40 authorizer shall promptly ~~notify~~ provide written notice to the public charter school of

1 perceived problems and provide reasonable opportunity for the school to remedy the  
2 problems.

3 **Sec. 9. 20-A MRSA §2411, sub-§6, ¶C** is enacted to read:

4 C. The authorizer shall include in the charter contract a description of the standards  
5 and processes under which the authorizer may pursue revocation of the charter  
6 contract. The processes must comply with section 2410, subsection 2 and provide an  
7 opportunity for the public charter school to be heard prior to a decision on revocation.

8 **Sec. 10. 20-A MRSA §2412, sub-§5, ¶C**, as enacted by PL 2011, c. 414, §5, is  
9 amended to read:

10 C. Governing boards are subject to and must comply with sections 1002 and 1004 in  
11 the same manner as school boards and Title 1, chapter 13.

12 **Sec. 11. 20-A MRSA §2412, sub-§5, ¶¶G and H** are enacted to read:

13 G. Public charter schools are subject to the same federal and state laws, regulations  
14 and rules regarding special education as noncharter public schools. Notwithstanding  
15 any law or rule to the contrary, a charter school takes over responsibility for special  
16 education for a student transferring to the charter school on the first day of school at  
17 the charter school unless the charter school and the transferring school agree to an  
18 earlier date.

19 H. A public charter school student's eligibility for and funding of career and  
20 technical education programming is the same as if the student were attending school  
21 within that student's resident school administrative unit. If the public charter school  
22 is located outside the student's resident school administrative unit, the public charter  
23 school is responsible for ensuring that the student is transported to the career and  
24 technical education center or to a location from which the student will be transported  
25 by the resident school administrative unit, the career and technical education region  
26 or the career and technical education center.

27 **Sec. 12. 20-A MRSA §2413, sub-§2**, as enacted by PL 2011, c. 414, §5, is  
28 amended to read:

29 **2. Revenue provisions.** ~~All state~~ State and local operating funds follow each student  
30 to the public charter school attended by the student, except that the school administrative  
31 unit of the student's residence may retain up to 1% of the per-pupil allocation described in  
32 this subsection to cover associated administrative costs.

33 A. For each public charter school student, the school administrative unit in which the  
34 student resides must forward the per-pupil allocation to the public charter school  
35 attended by the student as follows.

36 (1) The per-pupil allocation amount is the EPS per-pupil rate for the school  
37 administrative unit in which the student resides, as calculated pursuant to section  
38 15676, based on the student's grade level and adjusted as appropriate for  
39 economic disadvantage and limited English proficiency pursuant to section  
40 15675, subsections 1 and 2. For transportation expenses, the average per-pupil

1 expense in each school administrative unit of residence must be calculated and a  
2 per-pupil allocation of that amount must be forwarded to the public charter  
3 school attended on the same basis as the per-pupil allocations for operating funds.  
4 Debt service and capital outlays may not be included in the calculation of these  
5 per-pupil allocations. The department shall adopt rules governing how to  
6 calculate these per-pupil allocations, including those for gifted and talented  
7 programs, vocational, technical and career education programs, and targeted  
8 funds for assessment technology and kindergarten to grade 2 programs.

9 (2) For students attending public charter schools, the school administrative unit  
10 of residence shall forward the per-pupil allocations described in subparagraph (1)  
11 directly to the public charter school attended. These per-pupil allocations must  
12 be forwarded to each public charter school on a quarterly basis, as follows. For  
13 each fiscal year, allocations must be made in quarterly payments on September  
14 1st, December 1st, March 1st and June 1st. The September payment must be  
15 based on the number of students enrolled or anticipated to be enrolled in the  
16 public charter school at the opening of school for that school year, which may not  
17 exceed the maximum enrollment approved in the charter contract for that year  
18 unless a waiver is obtained from the authorizer. In February of the school year, if  
19 the number of students is higher or lower than the number of students at the  
20 beginning of the school year, adjustments must be made in the June payment,  
21 with 50% of the annual per-pupil allocation added for additional students or  
22 subtracted if the total number of students is lower.

23 A school administrative unit is not required to send funds to a public charter school  
24 for a student enrolled in the public charter school's preschool or prekindergarten  
25 program if the school administrative unit of the student's residence does not offer that  
26 program to its own residents.

27 B. The following provisions govern special education funding.

28 (1) For each enrolled special education pupil, a public charter school must  
29 receive the average additional allocation calculated by the department under  
30 section 15681-A, subsection 2 for each school administrative unit for its special  
31 education students. These allocations must be paid on the same basis as the per-  
32 pupil allocations for operating funds.

33 (2) The school administrative unit of residence shall pay directly to the public  
34 charter school any federal or state aid attributable to a student with a disability  
35 attending the public charter school in proportion to the level of services for the  
36 student with a disability that the public charter school provides directly or  
37 indirectly.

38 (3) The school administrative unit of residence shall pay to the public charter  
39 school any additional allocation assigned to the unit because of a high-cost in-  
40 district or high-cost out-of-district placement pursuant to section 15681-A,  
41 subsection 2, paragraph B or C in the year in which the allocation is assigned to  
42 the school administrative unit.

43 (4) If the public charter school in which the student is enrolled was authorized by  
44 a local school board, the funds under this paragraph must be paid to the local

1 school board that authorized the public charter school, rather than directly to the  
2 public charter school. The local school board that authorized the charter school is  
3 responsible for ensuring that special education services are provided to students  
4 in that school, pursuant to section 2412, subsection 2, paragraph A.

5 C. Except as otherwise provided in this chapter, the State shall send applicable  
6 federal funds directly to public charter schools attended by eligible students. Public  
7 charter schools with students eligible for funds under Title I of the federal Elementary  
8 and Secondary Education Act of 1965, 20 United States Code, Section 6301 et seq.  
9 must receive and use these funds in accordance with federal and state law. During  
10 the first year of operation, a public charter school must receive Title I funds on the  
11 basis of an estimated enrollment of eligible students, as agreed with its authorizer.

12 D. A public charter school may receive gifts and grants from private sources in any  
13 manner that is available to a school administrative unit.

14 E. A public charter school may not levy taxes or issue bonds secured by tax  
15 revenues.

16 F. In the event of the failure of the school administrative unit to make payments  
17 required by this section, the Treasurer of State shall deduct from any state funds that  
18 become due to the school administrative unit or to the municipalities within the  
19 school administrative unit an amount equal to the unpaid obligation. The Treasurer  
20 of State shall pay over the amount to the public charter school upon certification by  
21 the department. The department shall adopt rules to implement the provisions of this  
22 paragraph.

23 G. Any money received by a public charter school from any source and remaining in  
24 the school's accounts at the end of any budget year remains in the school's accounts  
25 for use by the school during subsequent budget years and may not revert to the  
26 authorizer or to the State.

27 H. Nothing in this chapter may be construed to prohibit any person or organization  
28 from providing funding or other assistance for the establishment or operation of a  
29 public charter school. The governing board of a public charter school may accept  
30 gifts, donations or grants of any kind made to the school and expend or use such gifts,  
31 donations or grants in accordance with the conditions prescribed by the donor except  
32 that a gift, donation or grant may not be accepted if subject to a condition that is  
33 contrary to any provision of law or term of the charter contract.

34 I. Public charter schools have the same access as other noncharter public schools to  
35 any risk pool for high-cost special education services and to any fund for fiscal  
36 emergencies, as long as the risk pool or the fund is operated by the State or by the  
37 public charter school's authorizer.

38 J. The department may establish a method of transferring funds to public charter  
39 schools that is an alternative to the method provided in this subsection.

40 **Emergency clause.** In view of the emergency cited in the preamble, this  
41 legislation takes effect when approved.



1

## SUMMARY

2 This bill amends the law authorizing creation of public charter schools. The bill  
3 makes the following changes with regard to authorizers of public charter schools. It  
4 allows the Commissioner of Education to suspend an authorizer's authority to enter into  
5 new charter contracts if the commissioner finds that the authorizer is deficient in  
6 performing its functions. It clarifies the functioning of local school boards that join  
7 together to form a regional charter school. It clarifies membership and operations of the  
8 State Charter School Commission, including specifying that members who are appointed  
9 because of their membership on the State Board of Education continue to serve on the  
10 commission only as long as they are members of the State Board of Education. It  
11 provides that the transitional 10-school limit on public charter schools in current law  
12 applies only to schools approved by the commission. It requires a public charter school  
13 authorizer to give a public charter school written notice of deficiencies in the school and  
14 to provide written notice of the authorizer's charter revocation procedures and criteria.

15 The bill makes the following changes with regard to public charter schools. It  
16 provides that governing boards of public charter schools are subject to the same conflict  
17 of interest provisions as noncharter public school boards. It clarifies when public charter  
18 schools take over responsibility for special education services for a student transferring  
19 from a noncharter public school and clarifies special education funding. The bill changes  
20 the law regarding payment of special education funds to a public charter school  
21 authorized by a local school board by requiring that the payments be made to the local  
22 school board, not to the public charter school. The bill ensures that a public charter  
23 school student has the same access to career and technical education programs as students  
24 in the noncharter public school in the student's resident school administrative unit.

25 Under current laws, if a school administrative unit fails to make payment to a public  
26 charter school, the Treasurer of State is directed to withhold payments to that school  
27 administrative unit. This bill provides that the Treasurer of State may withhold those  
28 funds from the municipalities that are members of the school administrative unit. Finally,  
29 the bill provides that public charter schools have access to high-risk pools and emergency  
30 funds operated by the State or by the school's authorizer, but do not have access to local  
31 high-risk or emergency funds.