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CHAPTER 40.

 CHARTER SCHOOLS

**SECTION 59‑40‑10.** Short title.

This chapter may be cited as the “South Carolina Charter Schools Act of 1996”.

**SECTION 59‑40‑20.** Purpose.

This chapter is enacted to:

(1) improve student learning;

(2) increase learning opportunities for students;

(3) encourage the use of a variety of productive teaching methods;

(4) establish new forms of accountability for schools;

(5) create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site; and

(6) assist South Carolina in reaching academic excellence.

**SECTION 59‑40‑30.** Intent of General Assembly.

(A) In authorizing charter schools, it is the intent of the General Assembly to create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of educating all children within the public school system. The General Assembly seeks to create an atmosphere in South Carolina’s public school systems where research and development in producing different learning opportunities are actively pursued and where classroom teachers are given the flexibility to innovate and the responsibility to be accountable. As such, the provisions of this chapter should be interpreted liberally to support the findings and goals of this chapter and to advance a renewed commitment by the State of South Carolina to the mission, goals, and diversity of public education.

(B) It is the intent of the General Assembly that creation of this chapter encourages cultural diversity, educational improvement, and academic excellence. Further, it is not the intent of the General Assembly to create a segregated school system but to continue to promote educational improvement and excellence in South Carolina.

**SECTION 59‑40‑40.** Definitions.

As used in this chapter:

(1) A “charter school” means a public, nonreligious, nonhome‑based, nonprofit corporation forming a school that operates within a public school district or the South Carolina Public Charter School District, but is accountable to the school board of trustees of that district which grants its charter. Nothing in this chapter prohibits charter schools from offering virtual services pursuant to state law and subsequent regulations defining virtual schools.

(2) A charter school:

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

(b) is subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education services;

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

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

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

(4) “Sponsor” means the South Carolina Public Charter School District Board of Trustees or the local school board of trustees in which the charter school is to be located, as provided by law, from which the charter school applicant requested its charter and which granted approval for the charter school’s existence.

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

(6) “Noncertified teacher” means an individual considered appropriately qualified for the subject matter taught and who has completed at least one year of study at an accredited college or university and meets the qualifications outlined in Section 59‑25‑115.

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

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

**SECTION 59‑40‑50.** Exemption; powers and duties; admission to charter school.

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

(B) A charter school must:

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

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

(3) adhere to the same financial audits, audit procedures, and audit requirements as are applied to public schools;

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

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

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

(7) admit all children eligible to attend public school to a charter school, subject to space limitations. However, it is required that the racial composition of the charter school enrollment reflect that of the local school district in which the charter school is located or that of the targeted student population of the local school district that the charter school proposes to serve, to be defined for the purposes of this chapter as differing by no more than twenty percent from that population. This requirement is also subject to the provisions of Section 59‑40‑70(D). If the number of applications exceeds the capacity of a program, class, grade level, or building, students must be accepted by lot, and there is no appeal to the sponsor;

(8) not limit or deny admission or show preference in admission decisions to any individual or group of individuals; however, a charter school may give enrollment priority to a sibling of a pupil already enrolled or previously enrolled, children of a charter school employee, and children of the charter committee, if such priority enrollment does not constitute more than twenty percent of the enrollment of the charter school;

(9) elect its board of directors annually. All employees of the charter school and all parents or guardians of students enrolled in the charter school are eligible to participate in the election. Parents or guardians of a student shall have one vote for each student enrolled in the charter school. A person who has been convicted of a felony must not be elected to a board of directors;

(10) be subject to the Freedom of Information Act, including the charter school and its governing body.

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

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

(3) The sponsor has no obligation to provide extracurricular activities or access to facilities of the school district for students enrolled in the charter school; however, the charter contract may include participation in agreed upon interscholastic activities at a designated school within the sponsor district. Notwithstanding another provision of law, the local school district has no obligation to provide charter schools, sponsored by the South Carolina Public Charter School District, extracurricular activities or access to facilities of the school district for students enrolled in charter schools unless the school district, by contract, has agreed to provide activities or access. Students participating under this agreement must be considered eligible to participate in league events if other eligibility requirements are met.

(D) The State is not responsible for student transportation to a charter school unless the charter school is designated by the local school district as the only school selected within the local school district’s attendance area.

(E) The South Carolina Public Charter School District Board of Trustees may not use program funding for transportation.

**SECTION 59‑40‑60.** Charter application; revision; formation of charter school; charter committee; application requirements.

(A) An approved charter application constitutes an agreement, and the terms must be the terms of a contract between the charter school and the sponsor.

(B) The contract between the charter school and the sponsor shall reflect all agreements regarding the release of the charter school from school district policies.

(C) A material revision of the terms of the contract between the charter school and the approving board may be made only with the approval of both parties.

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

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

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

(3) submit a written charter school application to the charter school advisory committee and the school board of trustees from which the committee is seeking sponsorship.

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

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

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

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

(F) The charter school application shall be a proposed contract and must include:

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

(2) the goals, objectives, and pupil achievement standards to be achieved by the charter school, and a description of the charter school’s admission policies and procedures;

(3) evidence that an adequate number of parents, teachers, pupils, or any combination of them support the formation of a charter school;

(4) a description of the charter school’s educational program, pupil achievement standards, and curriculum which must meet or exceed any content standards adopted by the State Board of Education and the chartering district must be designed to enable each pupil to achieve these standards;

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

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

(7) a description of the governance and operation of the charter school, including the nature and extent of parental, professional educator, and community involvement in the governance and operation of the charter school;

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

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

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

(11) an explanation of the relationship that shall exist between the proposed charter school and its employees, including descriptions of evaluation procedures and evidence that the terms and conditions of employment have been addressed with affected employees;

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

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

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

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

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

**SECTION 59‑40‑65.** Online or computer instruction; requirements; enrollment in South Carolina Virtual School Program.

(A) If the governing body of a charter school offers as part of its curriculum a program of online or computer instruction, this information shall be included in the application and the governing body shall be required to:

(1) provide each student enrolled in the program with a course or courses of online or computer instruction approved by the State Department of Education that must meet or exceed the South Carolina content and grade specific standards. Students enrolled in the program of online or computer instruction must receive all instructional materials required for the student’s program;

(2) ensure that the persons who operate the program on a day‑to‑day basis comply with and carry out all applicable requirements, statutes, regulations, rules, and policies of the charter school;

(3) ensure that each course offered through the program is taught by a teacher meeting the requirements of Section 59‑40‑50;

(4) ensure that a parent or legal guardian of each student verifies the number of hours of educational activities completed by the student each school year;

(5) adopt a plan by which it will provide:

(a) frequent, ongoing monitoring to ensure and verify that each student is participating in the program, including proctored assessment(s) per semester in core subjects graded or evaluated by the teacher, and at least bi‑weekly parent‑teacher conferences in person or by telephone;

(b) regular instructional opportunities in real time that are directly related to the school’s curricular objectives, including, but not limited to, meetings with teachers and educational field trips and outings;

(c) verification of ongoing student attendance in the program;

(d) verification of ongoing student progress and performance in each course as documented by ongoing assessments and examples of student coursework;

(6) administer to all students in a proctored setting all applicable assessments as required by the South Carolina Education Accountability Act.

(B) Nothing in this section shall prohibit a charter school that provides a program of online or computer instruction from reimbursing families of enrolled students for costs associated with their Internet connection for use in the program.

(C) A charter school shall provide no more than seventy‑five percent of a student’s core academic instruction in kindergarten through twelfth grade via an online or computer instruction program. The twenty‑five percent of the student’s core academic instruction may be met through the regular instructional opportunities outlined in subitem (A)(5)(b).

(D) Charter school students may enroll in the South Carolina Virtual School Program pursuant to program requirements.

(E) Private or homeschool students choosing to take courses from a virtual charter school may not be provided instructional materials, or any other materials associated with receiving instruction through a program of online or computer instruction at the state’s expense.

(F) Only students enrolled in the charter school as a full‑time student shall be reported in the charter school’s average daily membership to the State Department of Education for the purposes of receiving state or federal funds. Private and homeschool students may not be included in the student weighted pupil units or average daily membership reported to the State Department of Education for the purposes of receiving state or federal funds.

**SECTION 59‑40‑70.** Charter School Advisory Committee; appointment of members; review of charter school applications.

(A) The Charter School Advisory Committee must be established by the State Board of Education to review charter school applications for compliance with established standards that reflect the requirements and intent of this chapter. Members must be appointed by the State Board of Education unless otherwise indicated.

(1) The advisory committee shall consist of eleven members as follows:

(a) South Carolina Association of Public Charter Schools, the president or his designee and one additional representative from the association;

(b) South Carolina Association of School Administrators, the executive director or his designee;

(c) South Carolina Chamber of Commerce, the executive director or his designee and one additional representative from the chamber;

(d) South Carolina Education Oversight Committee, the chair or a business designee;

(e) South Carolina Commission on Higher Education, the chair or his designee;

(f) South Carolina School Boards Association, the executive director or his designee;

(g) South Carolina Alliance of Black Educators, the president or his designee; and

(h) one teacher and one parent to be appointed by the State Superintendent of Education.

(2) As an application is reviewed, a representative from the board of trustees from which the committee is seeking sponsorship and a representative of the charter committee shall serve on the advisory committee as ex officio nonvoting members. If the applicant indicates a proposed contractual agreement with the local school district in which the charter school is located, a representative from the local school board of trustees of that district shall serve on the advisory committee as an ex officio, nonvoting member.

(3) Appointing authorities shall give consideration to the appointment of minorities and women as representatives on the committee.

(4) The committee shall establish bylaws for its operation that must include terms of office for its membership.

(5) An applicant shall submit the application to the advisory committee and one copy to the school board of trustees of the district from which it is seeking sponsorship. In the case of the South Carolina Public Charter School District, the applicant shall provide notice of the application to the local school board of trustees in which the charter school will be located for informational purposes only. The advisory committee shall receive input from the school district in which the applicant is seeking sponsorship and shall request clarifying information from the applicant. An applicant may submit an application to the advisory committee at any time during the fiscal year and the advisory committee, within sixty days, shall determine whether the application is in compliance. An application that is in compliance must be forwarded to the school district from which the applicant is seeking sponsorship with a letter stating the application is in compliance. The letter also shall include a recommendation from the Charter School Advisory Committee to approve or deny the charter. The letter must specify the reasons for its recommendation. This recommendation is nonbinding on the school board of trustees. If the application is in noncompliance, it must be returned to the applicant with deficiencies noted. The applicant may appeal the decision to the Administrative Law Court.

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

(C) A school district board of trustees only shall deny an application if the application does not meet the requirements specified in Section 59‑40‑50 or 59‑40‑60, fails to meet the spirit and intent of this chapter, or adversely affects, as defined in regulation, the other students in the district in which the charter school is to be located. It shall provide, within ten days, a written explanation of the reasons for denial, citing specific standards related to provisions of Section 59‑40‑50 or 59‑40‑60 that the application violates. This written explanation immediately must be sent to the charter committee and filed with the State Board of Education and the Charter School Advisory Committee.

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

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

(F) If the school district board of trustees approves the application, it becomes the charter school’s sponsor and shall sign the approved application, which constitutes a contract with the charter committee of the charter school. A copy of the charter must be filed with the State Board of Education.

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

**SECTION 59‑40‑75.** Removal of sponsor or member of district or governing board; prosecution.

(A) A member of the South Carolina Public Charter School District or of the governing board or sponsor of the charter school who is indicted in any court for any crime, or has waived the indictment if permitted by law, may be suspended by the Governor, who shall appoint another in his stead until he is acquitted. In case of conviction, the office must be declared vacant by the Governor and the vacancy filled as provided by law.

(B) A member of the South Carolina Public Charter School District or of the governing board of the charter school who is guilty of malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity may be removed from office by the Governor. Before removing the officer, the Governor shall inform him in writing of the specific charges brought against him and give him an opportunity on reasonable notice to be heard.

(C) Whenever it appears to the satisfaction of the Governor that probable cause exists to charge a member of the South Carolina Public Charter School District or of the governing board of the charter school who has the custody of public or trust funds with embezzlement or the appropriation of public or trust funds to private use, then the Governor shall direct his immediate prosecution by the proper officer.

**SECTION 59‑40‑80.** Conditional authorization of charter school.

A sponsor may conditionally authorize a charter school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates such authority is necessary for it to meet the requirements of this chapter. Conditional authorization does not give rise to any equitable or other claims based on reliance, notwithstanding any promise, parole, written, or otherwise, contained in the authorization or acceptance of it, whether preceding or following the conditional authorization.

**SECTION 59‑40‑90.** Appeal to Administrative Law Court.

A final decision of the school district may be appealed by any party to the Administrative Law Court as provided in Sections 1‑23‑380(B) and 1‑23‑600(D).

**SECTION 59‑40‑100.** Conversion to charter school.

(A) An existing public school may be converted into a charter school if two‑thirds of the faculty and instructional staff employed at the school and two‑thirds of all voting parents or legal guardians of students enrolled in the school agree to the filing of an application with the local school board of trustees for the conversion and formation of that school into a charter school. Parents or legal guardians of students enrolled in the school must be given the opportunity to vote on the conversion. Parents or guardians of a student shall have one vote for each student enrolled in the school seeking conversion. The application must be submitted pursuant to Section 59‑40‑70(A)(5) by the principal of that school or his designee who must be considered the applicant. The application must include all information required of other applications pursuant to this chapter. The local school board of trustees shall approve or disapprove this application in the same manner it approves or disapproves other applications. The existence of another charter granting authority must not be grounds for disapproving a school desiring to convert to a charter school.

(B) A converted charter school shall offer at least the same grades, or nongraded education appropriate for the same ages and education levels of pupils, as offered by the school immediately before conversion, and also may provide additional grades and further educational offerings.

(C) All students enrolled in the school at the time of conversion must be given priority enrollment.

(D) All employees of a converted school shall remain employees of the local school district or the South Carolina Public Charter School District with the same compensation and benefits including any future increases. The converted charter school quarterly shall reimburse the local school district or the South Carolina Public Charter School District for the compensation and employer contribution benefits paid to or on behalf of these employees and provide to the school district any reports, forms, or data necessary for maintaining retirement coverage and providing South Carolina Retirement Systems benefits to converted school employees. The provisions of Article 5, Chapter 25 of Title 59 apply to the employment and dismissal of teachers at a converted school.

(E) The South Carolina Public Charter School District may not sponsor a public school to convert to a charter school. However, the South Carolina Public Charter School District may sponsor a converted charter school renewal if the charter school has not committed a material violation of the provisions specified in subsection (C) of Section 59‑40‑110 and the local school district board of trustees refuses to renew the charter. In such cases, the charter school shall continue to receive local funding pursuant to Section 59‑40‑110(A). However, the charter school is not eligible to receive one hundred percent of the base student cost from the State. The charter school only is eligible to receive the percentage of the base student cost previously received as a school in its former district.

**SECTION 59‑40‑110.** Duration of charter; renewal; revocation; termination.

(A) A charter must be approved or renewed for a period of ten school years; however, the charter only may be revoked or not renewed under the provisions of subsection (C) of this section. The sponsor annually shall evaluate the conditions outlined in subsection (C). The annual evaluation results must be used in making a determination for nonrenewal or revocation.

(B) A charter renewal application must be submitted to the school’s sponsor, and it must contain:

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

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

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

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

(2) failed to meet or make reasonable progress, as defined in the charter application, toward pupil achievement standards identified in the charter application;

(3) failed to meet generally accepted standards of fiscal management; or

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

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

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

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

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

(H) A decision to revoke or not to renew a charter school may be appealed to the Administrative Law Court pursuant to the provisions of Section 59‑40‑90.

**SECTION 59‑40‑115.** Termination of contract with sponsor.

A charter school may terminate its contract with a sponsor before the ten‑year term of contract if all parties under contract with the charter school agree to the dissolution. A charter school that terminates its contract with a sponsor directly may seek application for the length of time remaining on its original contract from another sponsor without review from the Charter School Advisory Committee.

**SECTION 59‑40‑120.** Dissolution of charter school.

Upon dissolution of a charter school, its assets may not inure to the benefit of any private person. Any assets obtained through restricted agreements with a donor through awards, grants, or gifts must be returned to that entity. All other assets become property of the sponsor.

**SECTION 59‑40‑125.** Eligibility for retirement coverage.

(A) All charter schools, other than converted charter schools whose employees remain employees of the local school district or the South Carolina Public Charter School District pursuant to Section 59‑40‑100(D), are eligible covered employers in the South Carolina Retirement Systems and may elect to participate in the system by filing the appropriate application with the South Carolina Retirement Systems. If the charter school chooses not to become a covered employer, employees of that charter school are not allowed to participate in the South Carolina Retirement Systems except as provided in Section 59‑40‑130.

(B) The South Carolina Public Charter School District shall be a covered employer in the South Carolina Retirement Systems.

**SECTION 59‑40‑130.** Leave to be employed at charter school; continuation of benefits; exceptions.

(A) If an employee of a local school district makes a written request for leave to be employed at a charter school before July 1, 2006, the school district shall grant the leave for up to five years as requested by the employee. The school district may require that the request for leave or extension of leave be made by the date provided for by state law for the return of teachers’ contracts. Employees may return to employment with the local school district at its option with the same teaching or administrative contract status as when they left but without assurance as to the school or supplemental position to which they may be assigned.

(B) A charter school employing an individual on leave from a local school district shall participate in the South Carolina Retirement Systems as a covered employer with respect to the employee on leave it hires. The employee on leave from a local school district employed by a charter school shall accrue benefits and credits in the South Carolina Retirement Systems. The charter school shall remit to the Retirement Systems the employer contributions required by law for participating employers. The employee shall make the employee contributions to the Retirement Systems required by law and the contributions must be picked up in accordance with Section 9‑1‑1020. The South Carolina Retirement Systems may impose reasonable requirements to administer this section.

(C) The provisions of this section do not apply to teachers and other employees of a converted school whose employment relation is governed by Section 59‑40‑100.

**SECTION 59‑40‑140.** Distribution of resources; periodic reports; technical assistance from sponsor; property rights; tax exemption.

(A) A local school board of trustees sponsor shall distribute state, county, and school district funds to a charter school as determined by the following formula: the previous year’s audited total general fund revenues, divided by the previous year’s weighted students, then increased by the Education Finance Act inflation factor, pursuant to Section 59‑20‑40, for the years following the audited expenditures, then multiplied by the weighted students enrolled in the charter school, which will be subject to adjustment for student attendance and state budget allocations based on the same criteria as the local school district. These amounts must be verified by the State Department of Education before the first disbursement of funds. All state and local funding must be distributed by the local school district to the charter school monthly beginning July first following approval of the charter school application and must continue to be disbursed to the charter school for the duration of its charter and for the duration of any subsequent renewals.

(B) The South Carolina Public Charter School District shall receive and distribute state funds to the charter school as determined by the following formula: the current year’s base student cost, as funded by the General Assembly, multiplied by the weighted students enrolled in the charter school, which must be subject to adjustment for student attendance and state budget allocations. These state funds are in addition to other funds to be received and distributed by the South Carolina Public Charter School District pursuant to subsections (C) and (D) of this section and Section 59‑40‑220(A). However, the South Carolina Public Charter School District may not retain more than two percent of its gross revenue for its internal administrative and operating expenses.

(C) During the year of the charter school’s operation, as received, and to the extent allowed by federal law, a sponsor shall distribute to the charter school federal funds which are allocated to the school district on the basis of the number of special characteristics of the students attending the charter school. These amounts must be verified by the State Department of Education before the first disbursement of funds.

(D) Notwithstanding subsection (C), the proportionate share of state and federal resources generated by students with disabilities or staff serving them must be directed to the school district board of trustees. The proportionate share of funds generated under other federal or state categorical aid programs must be directed to the school district board of trustees serving students eligible for the aid pursuant to state and federal law.

(E) All services centrally or otherwise provided by the sponsor or local school district, if any, including, but not limited to, food services, custodial services, maintenance, curriculum, media services, libraries, and warehousing are subject to negotiation between a charter school and the sponsor or local school district.

(F) All awards, grants, or gifts collected by a charter school must be retained by the charter school.

(G) The governing body of a charter school is authorized to accept gifts, donations, or grants of any kind made to the charter school and to expend or use the gifts, donations, or grants in accordance with the conditions prescribed by the donor. A gift or donation must not be required for admission. However, a gift, donation, or grant must not be accepted by the governing board if subject to a condition contrary to law or contrary to the terms of the contract between the charter school and the governing body. All gifts, donations, or grants must be reported to the sponsor in their annual audit report as required in Section 59‑40‑50(B)(3).

(H) A charter school shall report to its sponsor and the Department of Education any change to information provided under its application. In addition, a charter school shall report at least annually to its sponsor and the department all information required by the sponsor or the department and including, at a minimum, the number of students enrolled in the charter school, the success of students in achieving the specific educational goals for which the charter school was established, and the identity and certification status of the teaching staff.

(I) The sponsor shall provide technical assistance to persons and groups preparing or revising charter applications at no expense.

(J) Charter schools may acquire by gift, devise, purchase, lease, sublease, installment purchase agreement, land contract, option, or by any other means, and hold and own in its own name buildings or other property for school purposes and interests in it which are necessary or convenient to fulfill its purposes.

(K) Charter schools are exempt from all state and local taxation, except the sales tax, on their earnings and property. Instruments of conveyance to or from a charter school are exempt from all types of taxation of local or state taxes and transfer fees.

**SECTION 59‑40‑145.** Students attending charter schools outside district of residence.

A child who resides in a school district other than the one where a charter school is located may attend a charter school outside his district of residence; however, the receiving charter school shall have authority to grant or deny permission for the student to attend pursuant to Sections 59‑40‑40(2)(b) and 59‑40‑50(B)(7) and (8) according to the terms of the charter after in‑district children have been given priority in enrollment. However, the out‑of‑district enrollment shall not exceed twenty percent of the total enrollment of the charter school without the approval of the sponsoring district board of trustees. The district sending children to the charter school under the terms of this section must be notified immediately of the transferring students. Out‑of‑district students must be considered based on the order in which their applications are received. If the twenty percent out‑of‑district enrollment is from one school district, then the sending district must concur with any additional students transferring from that district to attend the charter school. The charter school to which the child is transferring shall be eligible for state and federal funding according to the formula defined in Section 59‑40‑140(A), (B), and (C), as applicable. However, this section does not apply to a charter school sponsored by the South Carolina Public Charter School District Board of Trustees.

**SECTION 59‑40‑150.** Duties of Department of Education.

(A) The Department of Education shall disseminate information to the public, directly and through sponsors, on how to form and operate a charter school and how to utilize the offerings of a charter school.

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

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

**SECTION 59‑40‑155.** Orientation programs for board members and administrators.

(A) Within one year of taking office, all persons elected or appointed as members of a charter school board of trustees after July 1, 2006, shall complete successfully an orientation program in the powers, duties, and responsibilities of a board member including, but not limited to, topics on policy development, personnel, instructional programs, school finance, school law, ethics, and community relations. The orientation must be provided at no charge by the State Department of Education or an association approved by the department.

(B) Within ninety days of employment, an administrator employed by the charter school, who is not certified, shall complete successfully an orientation program in the powers, duties, and responsibilities of a school administrator including, but not limited to, topics on personnel, instructional programs, school finance, school law, ethics, and community relations. The orientation must be provided at no charge by the State Department of Education or an association approved by the department.

**SECTION 59‑40‑160.** Compilation of evaluations; impact study.

(A) The State Board of Education shall compile evaluations to include, but not be limited to, school report cards of charter schools received from sponsors. They shall review information regarding the regulations and policies from which charter schools were released to determine if the releases assisted or impeded the charter schools in meeting their stated goals and objectives.

(B) An impact study must be conducted by the State Board of Education two years after the implementation of the Charter School Advisory Committee review process to determine the effectiveness of the application process.

**SECTION 59‑40‑170.** Annual listing of buildings suitable for charter school use.

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

**SECTION 59‑40‑180.** Regulations and guidelines.

The State Board of Education shall promulgate regulations and develop guidelines necessary to implement the provisions of this chapter, including standards which the Charter School Advisory Committee shall use to determine compliance with this chapter and an application process to include a timeline for submission of applications that will allow for final decisions, including Administrative Law Court appeal, by December first of the year preceding the charter school’s opening.

**SECTION 59‑40‑190.** Liability of governing body, sponsor, board and employees; employment of member of governing body.

(A) The governing body of a charter school may sue and be sued. The governing body may not levy taxes or issue bonds.

(B) A sponsor is not liable for any of the debts of the charter school.

(C) A sponsor, members of the board of a sponsor, and employees of a sponsor acting in their official capacity are immune from civil or criminal liability with respect to all activities related to a charter school they sponsor. The governing body of a charter school shall obtain at least the amount of and types of insurance required for this purpose.

(D) A member of a school governing body may not receive pay as an employee in the same school.

**SECTION 59‑40‑200.** Effect of establishment of South Carolina Public Charter School District on pending and future applications.

An application already on file with the charter school advisory committee before the effective date of Section 59‑40‑220 is subject to the time line in effect at the time the application was filed. An application filed after the effective date of Section 59‑40‑220 is subject to the new time lines established pursuant to this chapter.

**SECTION 59‑40‑210.** Conversion of private school to charter school.

A school established as a private school, on the effective date of this section, which desires to convert to a charter school shall dissolve and must not be allowed to open as a charter school for a period of twelve months.

**SECTION 59‑40‑220.** South Carolina Public Charter School District.

(A) The South Carolina Public Charter School District is created as a public body. The South Carolina Public Charter School District must be considered a local education agency and is eligible to receive state and federal funds and grants available for public charter schools and other schools to the same degree as other local education agencies. The South Carolina Public Charter School District may not have a local tax base and may not receive local property taxes.

(B) The geographical boundaries of the South Carolina Public Charter School District are the same as the boundaries of the State of South Carolina.

(C) The office of the South Carolina Public Charter School District Board of Trustees must be housed in the State Department of Education.

**SECTION 59‑40‑230.** Board of trustees; membership; powers and duties.

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

(1) two appointed by the Governor;

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

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

(4) seven to be appointed by the Governor upon the recommendation of the:

(a) South Carolina Association of Public Charter Schools and one additional representative from the association;

(b) South Carolina Association of School Administrators;

(c) South Carolina Chamber of Commerce;

(d) South Carolina Education Oversight Committee;

(e) South Carolina School Boards Association;

(f) South Carolina Alliance of Black Educators.

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

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

(B) The South Carolina Public Charter School District Board of Trustees has the same powers, rights, and responsibilities with respect to charter schools as other school district boards of trustees of this State including, but not limited to, sponsoring charter schools and applying for federal charter school grants, except that the South Carolina Public Charter School District Board of Trustees may not offer application for a charter school, issue bonds, or levy taxes.

(C) The South Carolina Public Charter School District Board of Trustees annually shall elect a chairman and other officers, as it considers necessary from among its membership.

(D) Members of the South Carolina Public Charter School District Board of Trustees are not eligible to receive compensation but are eligible for per diem, mileage, and subsistence as provided by law for members of state boards, committees, and commissions.

(E) The South Carolina Public Charter School District Board of Trustees shall:

(1) exercise general supervision over public charter schools sponsored by the district;

(2) grant charter status to qualifying applicants for public charter schools pursuant to this chapter;

(3) adopt and use an official seal in the authentication of its acts;

(4) keep a record of its proceedings;

(5) adopt rules of governance;

(6) determine the policy of the district and the work undertaken by it;

(7) prepare a budget for expenditures necessary for the proper maintenance of the board and the accomplishment of its purpose;

(8) keep financial records in accordance with state and federal accounting codes and procedures;

(9) comply with and ensure compliance of applicable state and federal regulations;

(10) procure an outside annual certified financial audit on funds and submit to the State Department of Education as required by the State Department of Education;

(11) be subject to the Freedom of Information Act;

(12) have the power to hire and fire the superintendent of the district who may have staff as needed.

(F) The South Carolina Public Charter School District Board of Trustees may contract, sue, and be sued.

**SECTION 59‑40‑240.** Severability.

If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this chapter is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this chapter, the General Assembly hereby declaring that it would have passed this chapter, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words thereof may be declared to be unconstitutional, invalid, or otherwise ineffective.