

CHAPTER 327

AN ACT

HB 3093

Relating to public charter schools; creating new provisions; amending ORS 327.137, 338.055, 338.105 and 338.135; and declaring an emergency.
Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 327.137 is amended to read:

327.137. (1)(a) Every common or union high school district or education service district shall file a copy of its audit report with the Department of Education within six months of the end of the fiscal year for which the audit is required. **The audit report shall include:**

(A) Information necessary for the computation required in the administration of ORS 327.006 to 327.133, 327.348, 327.731, 328.542 and 530.115 and this section; and

(B) If the district is a sponsor of any public charter schools, a copy of each annual audit forwarded to the district as required by ORS 338.095 (4).

(b) If the audit report, as submitted to the district, fails to provide the detail necessary for the computation required in the administration of ORS 327.006 to 327.133, 327.348, 327.731, 328.542 and 530.115 and this section, the district shall submit the necessary information on forms provided by the department within the time prescribed for filing the audit in this section.

(c) The Superintendent of Public Instruction may withhold any payments from the State School Fund for a public charter school that, pursuant to ORS 338.155, are due to a district under ORS 327.095 if:

(A) The audit report filed by the district fails to include the public charter school annual audit as required by paragraph (a)(B) of this subsection; and

(B) The district has not filed the public charter school annual audit with the department by April 1.

(d) If payments are withheld as provided by paragraph (c) of this subsection, the superintendent may allow payments to be made from the State School Fund to the district upon receipt of the annual audit or upon the meeting of any other conditions identified by rule of the State Board of Education.

(e) Any district failing to file a copy of *[its]* an audit report under this section or a report under ORS 327.133 *[shall]* may not receive any payments from the State School Fund until *[such reports are]* the report is filed.

(2) Notwithstanding the timeline provided by this section and pursuant to rules adopted by the State Board of Education, the superintendent *[of Public Instruction]* may waive a reporting date or specify an alternative date to provide the audit report or

information if a human-created disaster or a natural disaster affects the ability of a school district or an education service district to provide the audit report or information by a specified date.

SECTION 2. ORS 338.105 is amended to read:

338.105. (1) During the term of a charter, the sponsor may terminate the charter on any of the following grounds:

(a) Failure to meet the terms of an approved charter or this chapter.

(b) Failure to meet the requirements for student performance stated in the charter.

(c) Failure to correct a violation of a federal or state law that is described in ORS 338.115.

(d) Failure to maintain insurance as described in the charter.

(e) Failure to maintain financial stability.

(f) Failure to maintain, for *[two]* one or more consecutive years, a sound financial management system described in the proposal submitted under ORS 338.045 and incorporated into the written charter under ORS 338.065.

(2)(a) If a charter is terminated under subsection (1) of this section, the sponsor shall notify the public charter school governing body at least 60 days prior to the proposed effective date of the termination. The notice shall state the grounds for the termination.

(b) If the grounds for termination include failure to maintain financial stability or failure to maintain a sound financial management system, the sponsor and the public charter school may agree to develop a plan to correct deficiencies. Under a plan to correct deficiencies:

(A) The public charter school may attempt to correct any deficiencies related to financial stability or to a sound financial management system by a date identified by the sponsor, which may not be less than 60 days from the date of the notice;

(B) The proposed effective date of the termination may be extended to the date identified under subparagraph (A) of this paragraph;

(C) The sponsor may withhold up to 50 percent of the moneys owed to the public charter school while the public charter school is on the plan to correct deficiencies unless the withholding would create an undue hardship, as determined pursuant to rules of the State Board of Education; and

(D) The sponsor must hold in trust any moneys withheld under subparagraph (C) of this paragraph until:

(i) The public charter school complies with the plan to correct deficiencies, at which time the public charter school is entitled to the moneys held in trust; or

(ii) The public charter school fails to comply with the plan to correct deficiencies, at which time the charter is terminated and the public charter school forfeits any claim to the moneys held in trust.

(c) **A deadline to correct deficiencies under paragraph (b)(A) of this subsection may be extended by mutual agreement of the sponsor and the public charter school.**

(d) The public charter school governing body may request a hearing by the sponsor **in relation to a termination of the charter or a plan to correct deficiencies.**

(3) A public charter school governing body may appeal a decision of a sponsor **that is related to a termination of the charter or a plan to correct deficiencies** to:

(a) The state board if the sponsor is an entity described in ORS 338.005 (5)(a) or (c). The board shall adopt by rule procedures to ensure a timely appeals process to prevent disruption of students' education.

(b) The circuit court pursuant to ORS 183.484 if the sponsor is the State Board of Education.

(4)(a) Notwithstanding subsection (2) of this section, a sponsor may terminate a charter immediately and close a public charter school if the public charter school is endangering the health or safety of the students enrolled in the public charter school.

(b) The public charter school governing body may request a hearing from the sponsor on the termination of the charter under this subsection. The sponsor shall hold a hearing within 10 days after receiving the request.

(c) The public charter school governing body may appeal a decision of a sponsor under this subsection to the State Board of Education. The State Board of Education shall hold a hearing within 10 days after receiving the appeal request.

(d) Throughout the appeals process, the public charter school shall remain closed at the discretion of the sponsor unless the State Board of Education orders the sponsor to open the public charter school and not terminate the charter.

(5) Termination of a charter shall not abridge the public charter school's legal authority to operate as a private or nonchartered public school.

(6) If a charter is terminated or a public charter school is dissolved:

(a) The assets of the public charter school that were purchased with public funds shall be given to the State Board of Education. The State Board of Education may disburse the assets of the public charter school to school districts or other public charter schools.

(b) All student education records of the public charter school shall be transferred to the administrative office of the school district in which the public charter school was located.

(7) A public charter school governing body may only terminate a charter, dissolve or close a public charter school at the end of a semester. If a charter is terminated by the public charter school governing body or a public charter school is closed or dissolved, the public charter school governing body shall notify the sponsor at least 180 days prior to the proposed effective date of the termination, closure or dissolution.

SECTION 3. If House Bill 2150 becomes law, section 2 of this 2013 Act (amending ORS 338.105) is repealed and ORS 338.105, as amended by section 10, chapter 265, Oregon Laws 2013 (Enrolled House Bill 2150), is amended to read:

338.105. (1) During the term of a charter, the sponsor may terminate the charter on any of the following grounds:

(a) Failure to meet the terms of an approved charter or this chapter.

(b) Failure to meet the requirements for student performance stated in the charter.

(c) Failure to correct a violation of a federal or state law that is described in ORS 338.115.

(d) Failure to maintain insurance as described in the charter.

(e) Failure to maintain financial stability.

(f) Failure to maintain, for [two] **one** or more consecutive years, a sound financial management system described in the proposal submitted under ORS 338.045 and incorporated into the written charter under ORS 338.065.

(2)(a) If a charter is terminated under subsection (1) of this section, the sponsor shall notify the public charter school governing body at least 60 days prior to the proposed effective date of the termination. The notice shall state the grounds for the termination.

(b) If the grounds for termination include failure to maintain financial stability or failure to maintain a sound financial management system, the sponsor and the public charter school may agree to develop a plan to correct deficiencies. Under a plan to correct deficiencies:

(A) The public charter school may attempt to correct any deficiencies related to financial stability or to a sound financial management system by a date identified by the sponsor, which may not be less than 60 days from the date of the notice;

(B) The proposed effective date of the termination may be extended to the date identified under subparagraph (A) of this paragraph;

(C) The sponsor may withhold up to 50 percent of the moneys owed to the public charter school while the public charter school is on the plan to correct deficiencies unless the withholding would create an undue hardship, as determined pursuant to rules of the State Board of Education; and

(D) The sponsor must hold in trust any moneys withheld under subparagraph (C) of this paragraph until:

(i) The public charter school complies with the plan to correct deficiencies, at which time the public charter school is entitled to the moneys held in trust; or

(ii) The public charter school fails to comply with the plan to correct deficiencies, at which time the charter is terminated and the public charter school forfeits any claim to the moneys held in trust.

(c) A deadline to correct deficiencies under paragraph (b)(A) of this subsection may be extended by mutual agreement of the sponsor and the public charter school.

(d) The public charter school governing body may request a hearing by the sponsor in relation to a termination of the charter or a plan to correct deficiencies.

(3) A public charter school governing body may appeal a decision of a sponsor under this section. The appeal shall be to:

(a) The State Board of Education if the sponsor is an entity described in ORS 338.005 (5)(a) or (c). The State Board of Education shall:

(A) Review only;

(i) The grounds for termination under this section as stated by the school district board; **or**

(ii) A plan to correct deficiencies; and

(B) Adopt by rule procedures to ensure a timely appeals process to prevent disruption of students' education.

(b) The circuit court pursuant to ORS 183.484 if the sponsor is the State Board of Education.

(4)(a) Notwithstanding subsection (2) of this section, a sponsor may terminate a charter immediately and close a public charter school if the public charter school is endangering the health or safety of the students enrolled in the public charter school.

(b) The public charter school governing body may request a hearing from the sponsor on the termination of the charter under this subsection. The sponsor shall hold a hearing within 10 days after receiving the request.

(c) The public charter school governing body may appeal a decision of a sponsor under this subsection to the State Board of Education. The State Board of Education shall hold a hearing within 10 days after receiving the appeal request.

(d) Throughout the appeals process, the public charter school shall remain closed at the discretion of the sponsor unless the State Board of Education orders the sponsor to open the public charter school and not terminate the charter.

(5) Termination of a charter shall not abridge the public charter school's legal authority to operate as a private or nonchartered public school.

(6) If a charter is terminated or a public charter school is dissolved:

(a) The assets of the public charter school that were purchased with public funds shall be given to the State Board of Education. The State Board of Education may disburse the assets of the public charter school to school districts or other public charter schools.

(b) All student education records of the public charter school shall be transferred to the administrative office of the school district in which the public charter school was located.

(7) A public charter school governing body may only terminate a charter, dissolve or close a public charter school at the end of a semester. If a charter is terminated by the public charter school governing body or a public charter school is closed or dis-

solved, the public charter school governing body shall notify the sponsor at least 180 days prior to the proposed effective date of the termination, closure or dissolution.

SECTION 4. ORS 338.055 is amended to read:

338.055. (1) Within 60 days of receipt of a proposal submitted under ORS 338.045, the school district board shall hold a public hearing on the provisions of the proposal.

(2) The school district board shall evaluate a proposal in good faith using the following criteria:

(a) The demonstrated, sustainable support for the public charter school by teachers, parents, students and other community members, including comments received at the public hearing held under subsection (1) of this section;

(b) The demonstrated financial stability of the public charter school, including the demonstrated ability of the school to have a sound financial management system that is in place at the time the school begins operating and that meets the requirements of ORS 338.095 (1);

(c) The capability of the applicant, in terms of support and planning, to provide comprehensive instructional programs to students pursuant to an approved proposal;

(d) The capability of the applicant, in terms of support and planning, to specifically provide, pursuant to an approved proposal, comprehensive instructional programs to students identified by the applicant as academically low achieving;

(e) The extent to which the proposal addresses the information required in ORS 338.045;

(f) Whether the value of the public charter school is outweighed by any directly identifiable, significant and adverse impact on the quality of the public education of students residing in the school district in which the public charter school will be located;

(g) Whether there are arrangements for any necessary special education and related services for children with disabilities pursuant to ORS 338.165; *[and]*

(h) Whether there are alternative arrangements for students and for teachers and other school employees who choose not to attend or who choose not to be employed by the public charter school[.]; **and**

(i) The prior history, if any, of the applicant in operating a public charter school or in providing educational services.

(3) The school district board must approve a proposal or state in writing the reasons for disapproving a proposal within 30 days after the public hearing held under subsection (1) of this section.

(4) Written notice of the school district board's action shall be sent to the applicant. If the proposal is not approved, the reasons for the denial and suggested remedial measures, if any, shall be clearly stated in the notice sent by the school district board to the applicant. If the proposal is not approved, the applicant may amend the proposal to address objections and any suggested remedial measures and

resubmit the proposal to the school district board. The school district board shall approve or disapprove the resubmitted proposal within 20 days after receiving it. If the proposal is not approved, the applicant may:

(a) Appeal the decision of the school district board to the State Board of Education as provided by ORS 338.075; or

(b) Submit a proposal to an institution of higher education as provided by ORS 338.075.

(5) Individual elements in a public charter school proposal may be changed through the proposal and chartering process.

(6) A proposal to convert an existing public school to a public charter school must be approved by the school district board of the public school.

(7) Entities described in ORS 338.005 (5) may not charge any fee to applicants for the proposal process.

(8) Upon request by a school district, the State Board of Education may grant an extension of any timeline required by this section if the district has good cause for requesting the extension.

SECTION 5. ORS 338.055, as amended by section 10, chapter 695, Oregon Laws 2011, is amended to read:

338.055. (1) Within 60 days of receipt of a proposal submitted under ORS 338.045, the school district board shall hold a public hearing on the provisions of the proposal.

(2) The school district board shall evaluate a proposal in good faith using the following criteria:

(a) The demonstrated, sustainable support for the public charter school by teachers, parents, students and other community members, including comments received at the public hearing held under subsection (1) of this section;

(b) The demonstrated financial stability of the public charter school, including the demonstrated ability of the school to have a sound financial management system that is in place at the time the school begins operating and that meets the requirements of ORS 338.095 (1);

(c) The capability of the applicant, in terms of support and planning, to provide comprehensive instructional programs to students pursuant to an approved proposal;

(d) The capability of the applicant, in terms of support and planning, to specifically provide, pursuant to an approved proposal, comprehensive instructional programs to students identified by the applicant as academically low achieving;

(e) The extent to which the proposal addresses the information required in ORS 338.045;

(f) Whether the value of the public charter school is outweighed by any directly identifiable, significant and adverse impact on the quality of the public education of students residing in the school district in which the public charter school will be located;

(g) Whether there are arrangements for any necessary special education and related services for

children with disabilities pursuant to ORS 338.165; *[and]*

(h) Whether there are alternative arrangements for students and for teachers and other school employees who choose not to attend or who choose not to be employed by the public charter school[.]; **and**

(i) The prior history, if any, of the applicant in operating a public charter school or in providing educational services.

(3) The school district board must approve a proposal or state in writing the reasons for disapproving a proposal within 30 days after the public hearing held under subsection (1) of this section.

(4) Written notice of the school district board's action shall be sent to the applicant. If the proposal is not approved, the reasons for the denial and suggested remedial measures, if any, shall be clearly stated in the notice sent by the school district board to the applicant. If the proposal is not approved, the applicant may amend the proposal to address objections and any suggested remedial measures and resubmit the proposal to the school district board. The school district board shall approve or disapprove the resubmitted proposal within 20 days after receiving it. If the proposal is not approved, the applicant may appeal the decision of the school district board to the State Board of Education.

(5) Individual elements in a public charter school proposal may be changed through the proposal and chartering process.

(6) A proposal to convert an existing public school to a public charter school must be approved by the school district board of the public school.

(7) Entities described in ORS 338.005 (5) may not charge any fee to applicants for the proposal process.

(8) Upon request by a school district, the State Board of Education may grant an extension of any timeline required by this section if the district has good cause for requesting the extension.

SECTION 6. ORS 338.135 is amended to read:

338.135. (1) Employee assignment to a public charter school shall be voluntary.

(2)(a) A public charter school or the sponsor of the public charter school is considered the employer of any employees of the public charter school. If a school district board is not the sponsor of the public charter school, the school district board may not be the employer of the employees of the public charter school and the school district board may not collectively bargain with the employees of the public charter school. The public charter school governing body shall control the selection of employees at the public charter school.

(b) If a virtual public charter school or the sponsor of a virtual public charter school contracts with a for-profit entity to provide educational services through the virtual public charter school, the for-profit entity may not be the employer of any employees of the virtual public charter school[.] **unless:**

(A) The employee is an administrator who does not have any teaching responsibilities; and

(B) Both the executive officer of the sponsor and the public charter school governing body approve employment by the for-profit entity. The executive officer or governing body may choose to grant approval under this subparagraph:

(i) For all employees of the for-profit entity who meet the description in subparagraph (A) of this paragraph;

(ii) Based on the job categories of the employees who meet the description in subparagraph (A) of this paragraph; or

(iii) On a case-by-case basis for each employee who meets the description in subparagraph (A) of this paragraph.

(3) The school district board of the school district within which the public charter school is located shall grant a leave of absence to any employee who chooses to work in the public charter school. The length and terms of the leave of absence shall be set by negotiated agreement or by board policy. However, the length of the leave of absence may not be less than two years unless:

(a) The charter of the public charter school is terminated or the public charter school is dissolved or closed during the leave of absence; or

(b) The employee and the school district board have mutually agreed to a different length of time.

(4) An employee of a public charter school operating within a school district who is granted a leave of absence from the school district and returns to employment with the school district shall retain seniority and benefits as an employee pursuant to the terms of the leave of absence. Notwithstanding ORS 243.650 to 243.782, a school district that was the employer of an employee of a public charter school not operating within the school district may make provisions for the return of the employee to employment with the school district.

(5) For purposes of ORS chapters 238 and 238A, a public charter school shall be considered a public employer and as such shall participate in the Public Employees Retirement System.

(6) For teacher licensing, employment experience in public charter schools shall be considered equivalent to experience in public schools.

(7)(a) Any person employed as an administrator in a public charter school shall be licensed or registered to administer by the Teacher Standards and Practices Commission.

(b) Any person employed as a teacher in a public charter school shall be licensed or registered to teach by the commission.

(c) Notwithstanding paragraph (a) or (b) of this subsection, at least one-half of the total full-time equivalent (FTE) teaching and administrative staff at the public charter school shall be licensed by the commission pursuant to ORS 342.135, 342.136, 342.138 or 342.140.

(8) Notwithstanding ORS 243.650, a public charter school shall be considered a school district for

purposes of ORS 243.650 to 243.782. An employee of a public charter school may be a member of a labor organization or organize with other employees to bargain collectively. Bargaining units at the public charter school may be separate from other bargaining units of the sponsor or of the school district in which the public charter school is located. Employees of a public charter school may be part of the bargaining units of the sponsor or of the school district in which the public charter school is located.

(9) An entity described in ORS 338.005 (5) may not waive the right to sponsor a public charter school in a collective bargaining agreement.

SECTION 7. ORS 338.135, as amended by section 6 of this 2013 Act, is amended to read:

338.135. (1) Employee assignment to a public charter school shall be voluntary.

(2)(a) A public charter school or the sponsor of the public charter school is considered the employer of any employees of the public charter school. If a school district board is not the sponsor of the public charter school, the school district board may not be the employer of the employees of the public charter school and the school district board may not collectively bargain with the employees of the public charter school. The public charter school governing body shall control the selection of employees at the public charter school.

(b) If a virtual public charter school or the sponsor of a virtual public charter school contracts with a for-profit entity to provide educational services through the virtual public charter school, the for-profit entity may not be the employer of any employees of the virtual public charter school. [unless:]

[(A) *The employee is an administrator who does not have any teaching responsibilities; and*]

[(B) *Both the executive officer of the sponsor and the public charter school governing body approve employment by the for-profit entity. The executive officer or governing body may choose to grant approval under this subparagraph;*]

[(i) *For all employees of the for-profit entity who meet the description in subparagraph (A) of this paragraph;*]

[(ii) *Based on the job categories of the employees who meet the description in subparagraph (A) of this paragraph; or*]

[(iii) *On a case-by-case basis for each employee who meets the description in subparagraph (A) of this paragraph.*]

(3) The school district board of the school district within which the public charter school is located shall grant a leave of absence to any employee who chooses to work in the public charter school. The length and terms of the leave of absence shall be set by negotiated agreement or by board policy. However, the length of the leave of absence may not be less than two years unless:

(a) The charter of the public charter school is terminated or the public charter school is dissolved or closed during the leave of absence; or

(b) The employee and the school district board have mutually agreed to a different length of time.

(4) An employee of a public charter school operating within a school district who is granted a leave of absence from the school district and returns to employment with the school district shall retain seniority and benefits as an employee pursuant to the terms of the leave of absence. Notwithstanding ORS 243.650 to 243.782, a school district that was the employer of an employee of a public charter school not operating within the school district may make provisions for the return of the employee to employment with the school district.

(5) For purposes of ORS chapters 238 and 238A, a public charter school shall be considered a public employer and as such shall participate in the Public Employees Retirement System.

(6) For teacher licensing, employment experience in public charter schools shall be considered equivalent to experience in public schools.

(7)(a) Any person employed as an administrator in a public charter school shall be licensed or registered to administer by the Teacher Standards and Practices Commission.

(b) Any person employed as a teacher in a public charter school shall be licensed or registered to teach by the commission.

(c) Notwithstanding paragraph (a) or (b) of this subsection, at least one-half of the total full-time equivalent (FTE) teaching and administrative staff at the public charter school shall be licensed by the commission pursuant to ORS 342.135, 342.136, 342.138 or 342.140.

(8) Notwithstanding ORS 243.650, a public charter school shall be considered a school district for purposes of ORS 243.650 to 243.782. An employee of a public charter school may be a member of a labor organization or organize with other employees to bargain collectively. Bargaining units at the public charter school may be separate from other bargaining units of the sponsor or of the school district in which the public charter school is located. Employees of a public charter school may be part of the bargaining units of the sponsor or of the school district in which the public charter school is located.

(9) An entity described in ORS 338.005 (5) may not waive the right to sponsor a public charter school in a collective bargaining agreement.

SECTION 8. The amendments to ORS 338.135 by section 7 of this 2013 Act become operative on July 1, 2018.

SECTION 9. The amendments to ORS 327.137, 338.055 and 338.105 by sections 1 to 5 of this 2013 Act become operative on January 1, 2014.

SECTION 10. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Approved by the Governor June 6, 2013
Filed in the office of Secretary of State June 6, 2013
Effective date June 6, 2013