First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1012

AN ACT to amend the Indiana Code concerning education.

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

SECTION 1. IC 20-26-7-1, AS AMENDED BY P.L.91-2011, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. **(a) As used in this section, "charter school" has the meaning set forth in IC 20-24-1-4 and includes a group or entity seeking approval from a sponsor to operate a charter school under IC 20-24-3.**

~~(a)~~ **(b) Except as otherwise provided in this section,** if a governing body of a school corporation determines that any real or personal property:

(1) is no longer needed for school purposes; or

(2) should, in the interests of the school corporation, be exchanged for other property;

the governing body may sell or exchange the property in accordance with IC 36-1-11.

~~(b)~~ **(c)** Money derived from the sale or exchange of property under this section shall be placed in any school fund:

(1) established under applicable law; and

(2) that the governing body considers appropriate.

~~(c)~~ **(d)** A governing body may not make a covenant that prohibits the sale of real property to another educational institution.

~~(d)~~ **(e)** This subsection does not apply to a school building that on July 1, 2011, is leased or loaned by the school corporation that owns

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the school building to another entity, **if the entity is not a building corporation or other entity that is related in any way to, or created by, the school corporation or the governing body. Except as provided in subsections (k) through (n),** a governing body shall make available for lease or purchase to any charter school ~~(as defined in IC 20-24-1-4)~~ any school building owned by the school corporation **or any other entity that is related in any way to, or created by, the school corporation or the governing body, including but not limited to a building corporation,** that:

(1) either:

(A) is not used in whole or in part for classroom instruction at the time the charter school seeks to lease the building; or

(B) appears on the list compiled by the department under subsection ~~(e);~~ **(f);** and

(2) was previously used for classroom instruction;

in order for the charter school to conduct classroom instruction.

~~(e)~~ **(f) Not later than August 1 each calendar year,** each governing body shall inform the department ~~whenever~~ **if** a school building that was previously used for classroom instruction is closed, unused, or unoccupied. The department shall maintain a list of closed, unused, or unoccupied school buildings and make the list available on the department's Internet web site. Each school corporation shall provide a list of closed, unused, or unoccupied buildings to the department by the date set by the department. The department must update the list each year before August 31.

~~(f)~~ **(g)** A school building that appears for the first time on the department's list under subsection ~~(e)~~ **(f)** shall be designated as "Unavailable until (a date two (2) years after the school building first appears on the list)" if the governing body of the school corporation that owns the school building indicates **to the department, on a form prescribed by the department, that** the school building may be reclaimed during that period for classroom instruction. ~~which must begin not later than one (1) year after the school building is reclaimed.~~ **If a governing body does not indicate that a school building may be reclaimed, the governing body shall designate the school building as "Available" on the department's list. The governing body may change the designation of a building from unavailable to available at any time.** If ~~the~~ **a** school building **that is designated as unavailable on the department's list** remains unused for classroom instruction one (1) year after being reclaimed **under this subsection,** the governing body shall ~~place~~ **designate** the school building **as "Available"** on the department's list. A governing body may reclaim a school building only

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one (1) time under this subsection.

~~(g)~~ **(h)** If a charter school wishes to use a school building on the list created under subsection ~~(c),~~ **(f),** the charter school shall send a letter of intent to the department. **Within thirty (30) days after receiving a letter from a charter school, the** department shall notify the school corporation of the charter school's intent, and, **within thirty (30) days after receiving notification from the department,** the school corporation that owns the school building shall lease the school building to the charter school for one dollar ($1) per year for as long as the charter school uses the school building for classroom instruction or for a term at the charter school's discretion, or sell the school building to the charter school for one dollar ($1). The charter school must begin to use the school building for classroom instruction not later than two (2) years after acquiring the school building. If the school building is not used for classroom instruction within two (2) years after acquiring the school building, the school building shall be placed on the department's list under subsection ~~(c).~~ **(f).** If during the term of the lease the charter school closes or ceases using the school building for classroom instruction, the school building shall be placed on the department's list under subsection ~~(c).~~ **(f). If a school building is sold to a charter school under this subsection and the charter school or any entity related to the charter school subsequently sells or transfers the school building to a third party, the charter school or related entity must transfer an amount equal to the gain in the property minus the adjusted basis (including costs of improvements to the school building) to the school corporation that initially sold the vacant school building to the charter school. Gain and adjusted basis shall be determined in the manner prescribed by the Internal Revenue Code and the applicable Internal Revenue Service regulations and guidelines.**

~~(h)~~ **(i)** During the term of a lease under subsection ~~(g),~~ **(h),** the charter school is responsible for the direct expenses related to the school building leased, including utilities, insurance, maintenance, repairs, and remodeling. The school corporation is responsible for any debt incurred for or liens that attached to the school building before the charter school leased the school building.

~~(i)~~ **(j)** ~~If~~ **Notwithstanding anything to the contrary in this section, and with the sole exception of a waiver provided in subsection (n), when** a school building ~~appears on the department's list under subsection (c) for at least forty-eight (48) months,~~ **is designated as "Available" under subsection (g), the school building must remain designated as "Available" and may not be sold or otherwise**

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disposed of for at least two (2) years. When the two (2) year period has elapsed, the school corporation may sell or otherwise dispose of the school building ~~in any manner the governing body considers appropriate.~~ **in accordance with IC 36-1-11.**

(k) Notwithstanding subsection (e), a governing body may request a waiver from the department from the requirements of subsection (e). In order for a governing body to receive a waiver under subsection (n), the governing body must apply to the department, on a form prescribed by the department, for the waiver. The application must include a statement that the governing body believes that a charter school would not be interested in leasing or purchasing the vacant or unused school building.

(l) If the department receives a waiver request under subsection (k), the department, within five (5) days after receiving the waiver request under subsection (k), shall notify each charter school sponsor and statewide organization representing charter schools in Indiana by certified mail of the waiver request received under subsection (k). The notice must include a copy of the governing body's waiver request.

(m) Not later than thirty (30) days after a charter school sponsor or statewide organization representing charter schools in Indiana receives a notice described in subsection (l), the charter school sponsor or a statewide organization representing charter schools may submit a qualified objection to the governing body's request for a waiver under subsection (k). The qualified objection must be submitted to the department in writing. In order for an objection to be considered a qualified objection by the department, the objection must include:

(1) the name of the charter school that is interested in leasing or purchasing the vacant or unused school building; and

(2) a time frame, which may not exceed one (1) year from the date of the objection, in which the charter school intends to begin providing classroom instruction in the vacant or unused school building.

(n) If the department receives a qualified objection under subsection (m), the vacant or unused school building shall remain on the department's list under subsection (f) with the designation with which the building is listed under subsection (g) at the time the department receives the waiver request. If the department does not receive a qualified objection, the department shall grant the governing body's request for a waiver. A governing body that

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receives a waiver under this subsection may sell or otherwise dispose of the unused or vacant school building in accordance with IC 36-1-11.

SECTION 2. **An emergency is declared for this act.**

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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