

SENATE BILL No. 358

DIGEST OF INTRODUCED BILL

Citations Affected: IC 20-26-7.1.

Synopsis: Vacant or underutilized school buildings. Defines a vacant or underutilized school building. Mandates that, beginning in 2022, and each school year thereafter, each school corporation shall submit to the department of education (department), within 60 days after the fall count of average daily membership (ADM), certain information about school buildings that are currently or have been used for any combination of kindergarten through grade 12 instruction. Requires that, if a school building is vacant or underutilized for two consecutive counts, the department must notify the school corporation that it must put the school building up for sale unless the school corporation submits a protest and plan to bring the school building out of vacant or underutilized status. Authorizes mediation or arbitration if a dispute arises between the school corporation and charter school authorizer. Makes conforming changes.

Effective: July 1, 2021.

Rogers

January 11, 2021, read first time and referred to Committee on Education and Career Development.



First Regular Session of the 122nd General Assembly (2021)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE BILL No. 358

A BILL FOR AN ACT to amend the Indiana Code concerning education.

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

1 SECTION 1. IC 20-26-7.1-3, AS AMENDED BY P.L.92-2020,
2 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 3. **(a) As used in this chapter, a school building**
4 **is vacant or underutilized if:**

5 **(1) the school building is not being used to provide any**
6 **combination of regular kindergarten through grade 12**
7 **instruction to school corporation students with a class size and**
8 **schedule similar to comparable school buildings in the school**
9 **corporation and student enrollment does not exceed twenty-**
10 **five percent (25%) of the school building's maximum**
11 **capacity; or**

12 **(2) forty percent (40%) or less of the school building is being**
13 **used for storage or administrative purposes, or both, and is**
14 **not being used to provide any combination of regular**
15 **kindergarten through grade 12 instruction.**

16 ~~(a)~~ **(b)** Before a governing body may sell or exchange a building
17 described in this section in accordance with IC 20-25-4-14,



1 IC 20-26-5-4(a)(7), or IC 20-26-7-1, and except as provided in this
 2 chapter, a governing body shall make available for lease or purchase to
 3 any charter school any school building owned by the school corporation
 4 or any other entity that is related in any way to, or created by, the
 5 school corporation or the governing body, including but not limited to
 6 a building ~~corporation~~, that **is vacant or underutilized**

7 ~~(1) is vacant or unused; and~~

8 ~~(2) was previously used for classroom instruction;~~

9 in order for the charter school to conduct kindergarten through grade
 10 12 classroom instruction.

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

13 (1) A governing body that vacates a school building in order to:

14 (A) renovate the school building for future use by the school
 15 corporation; or

16 (B) demolish the school building and build a new school
 17 building on the same site as the demolished building.

18 (2) An emergency manager of a distressed school corporation
 19 under IC 6-1.1-20.3.

20 (3) The governing body of the School City of East Chicago school
 21 corporation for the Carrie Gosch Elementary School building.

22 ~~(c)~~ **(d)** Notwithstanding subsection ~~(a)~~; ~~(b)~~, a lease entered into by
 23 a governing body under IC 20-26-5-4(a)(7) prior to July 1, 2019, with
 24 a state accredited nonpublic school shall remain in full force and effect.
 25 In addition, the governing body may, during or at the expiration of the
 26 term of such lease, sell the school building leased under
 27 IC 20-26-5-4(a)(7) to the nonpublic school at a purchase price mutually
 28 agreed to by the governing body and the nonpublic school.

29 SECTION 2. IC 20-26-7.1-4, AS AMENDED BY THE
 30 TECHNICAL CORRECTIONS BILL OF THE 2021 GENERAL
 31 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2021]: Sec. 4. (a) Not later than ten (10) days after passing a
 33 resolution or taking other official action to close, no longer use, or no
 34 longer occupy a school building that was previously used for classroom
 35 instruction, the governing body shall:

36 (1) notify the department of the official action and the effective
 37 date that the school building will be closed, no longer used, or no
 38 longer occupied;

39 (2) make the school building available for inspection by a charter
 40 school that notifies the department that it is interested in leasing
 41 or purchasing the school building described under section 3 of
 42 this chapter; and



- 1 (3) make the following information available to a charter school
 2 described in subdivision (2):
- 3 (A) Estimates of the operating expenses for the school
 4 building for the past three (3) years.
- 5 (B) Written information regarding the condition of the
 6 building, including the age of the roof and the HVAC system,
 7 and any known conditions which, in the governing body's
 8 opinion, require prompt repair or replacement.
- 9 (C) A description of the property as shown on the current tax
 10 statement.
- 11 (b) Within five (5) days of receiving notice under subsection (a)(1),
 12 the department shall provide written notification to each charter school
 13 authorizer (excluding school corporation authorizers as defined in
 14 IC 20-24-1-2.5(1)) and statewide organizations representing charter
 15 schools in Indiana of the school corporation's resolution or official
 16 action described in subsection (a), including the date when the school
 17 building will close, no longer be used, or become vacant.
- 18 (c) The school corporation shall lease the school building to a
 19 charter school for one dollar (\$1) per year for as long as the charter
 20 school uses the school building for classroom instruction for a term at
 21 the charter school's discretion, or sell the school building for one dollar
 22 (\$1), if the charter school does the following:
- 23 (1) Within thirty (30) days of receiving the department's notice
 24 under subsection (b), a charter school must submit a preliminary
 25 request to purchase or lease the school building.
- 26 (2) Subject to subsection (d), within ninety (90) days of receiving
 27 the department's notice under subsection (b), a charter school
 28 must submit to the school corporation the following information:
- 29 (A) The name of the charter school that is interested in leasing
 30 or purchasing the vacant or ~~unused~~ **underutilized** school
 31 building.
- 32 (B) A time frame, which may not exceed two (2) years from
 33 the date that the school building is to be closed, no longer
 34 used, or no longer occupied, in which the charter school
 35 intends to begin providing classroom instruction in the vacant
 36 or ~~unused~~ **underutilized** school building.
- 37 (C) A resolution, adopted by the board of the charter school
 38 stating that the board has determined that, after the charter
 39 school has made any necessary repairs or modifications, the
 40 school building will be sufficient to meet the charter school's
 41 needs and can be operated within the charter school's budget.
- 42 (D) This clause applies to a vacant or ~~unused~~ **underutilized**



1 school building with more than two hundred thousand
 2 (200,000) gross square feet. In addition to the information
 3 provided in clauses (A) through (C), a charter school shall
 4 submit the following:

5 (i) The charter school's projected enrollment when all of the
 6 grade levels are added.

7 (ii) A letter from the charter school's authorizer or
 8 prospective authorizer that indicates that the charter school's
 9 authorizer or prospective authorizer has reviewed the items
 10 described in clauses (B) through (C) and that the projected
 11 enrollment of the charter school when all of the grade levels
 12 are added or fully implemented will be at least sixty percent
 13 (60%) of the maximum annual student enrollment of the
 14 school building during the past twenty-five (25) years as
 15 validated by records maintained or created by the
 16 department.

17 (d) If the department does not receive any preliminary requests to
 18 purchase or lease a school building within the time frame described in
 19 subsection (c)(1) and except as provided in section 7 of this chapter,
 20 the department shall send notification to the school corporation that the
 21 department has not received any preliminary requests to purchase or
 22 lease the school building. Upon receipt of the notification under this
 23 subsection, the school corporation may sell or otherwise dispose of the
 24 school building in accordance with IC 36-1-11, IC 20-25-4-14,
 25 ~~IC 20-26-5-4(7)~~, **IC 20-26-5-4(a)(7)**, and section 8 of this chapter.

26 (e) In the event that two (2) or more charter schools submit a
 27 preliminary request to purchase or lease a school building within the
 28 time frame described in subsection (c)(1), the department shall send
 29 notification to an authorizer described in IC 20-24-1-2.5(3) and each
 30 statewide charter school authorizer and statewide organization
 31 representing charter schools in Indiana (excluding school corporation
 32 authorizers as defined in IC 20-24-1-2.5(1)) and the school corporation
 33 that the department has received two (2) or more preliminary requests
 34 under this section. An authorizer committee shall be established, with
 35 each statewide authorizer that has authorized one (1) or more charter
 36 schools appointing a representative, and the committee shall establish
 37 the chairperson and procedures for the committee. Within sixty (60)
 38 days of receiving notice under this subsection, the committee shall
 39 select which charter school may proceed under subsection (c)(2) to
 40 purchase or lease the school building or determine if two (2) or more
 41 charter schools should co-locate within the school building. The
 42 committee shall give priority to a charter school located within one (1)



1 mile of the vacant or ~~unused~~ **underutilized** school building. In the
 2 event that the committee determines that two (2) or more charter
 3 schools should co-locate in the school building and, if applicable, that
 4 the combined enrollment of the charter schools will meet or exceed the
 5 requirements in subsection (c)(2)(D), the charter schools have sixty
 6 (60) days to submit a memorandum of understanding stating that the
 7 charter schools shall be jointly and severally liable for the obligations
 8 related to the sale or lease of the school building, and specifying how
 9 the charter schools will utilize the school building and share
 10 responsibility for operational, maintenance, and renovation expenses.
 11 If the charter schools are unable to agree, the charter schools shall be
 12 deemed to have revoked their prior request regarding the lease or sale
 13 of the school building.

14 (f) A school corporation shall lease the school building for one
 15 dollar (\$1) per year for as long as the charter school uses the school
 16 building for classroom instruction for any combination of kindergarten
 17 through grade 12 for a term at the charter school's discretion, or sell the
 18 school building to the charter school for one dollar (\$1), if the charter
 19 school has met the requirements set forth in subsection (c) and uses the
 20 vacant or ~~unused~~ **underutilized** school building to provide classroom
 21 instruction to students in any combination of kindergarten through
 22 grade 12. If a charter school has not met the requirements under
 23 subsection (c), the school corporation may, subject to section 7 of this
 24 chapter, sell or otherwise dispose of the school building in accordance
 25 with IC 36-1-11, IC 20-25-4-14, ~~IC 20-26-5-4(7)~~, **IC 20-26-5-4(a)(7)**,
 26 and section 8 of this chapter.

27 SECTION 3. IC 20-26-7.1-5, AS ADDED BY P.L.270-2019,
 28 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2021]: Sec. 5. (a) If a school building is sold to a charter
 30 school under section 3 or 4 of this chapter and the charter school, or
 31 any subsequent owner, subsequently sells or transfers the school
 32 building to a third party, the charter school or subsequent owner must
 33 transfer an amount equal to the gain in the property minus the adjusted
 34 basis (including costs of improvements to the school building) to the
 35 school corporation that initially sold the vacant **or underutilized**
 36 school building to the charter school. Gain and adjusted basis shall be
 37 determined in the manner prescribed by the Internal Revenue Code and
 38 the applicable Internal Revenue Service regulations and guidelines.

39 (b) A charter school that purchases a school building assumes total
 40 control of the school building and must maintain the school building,
 41 including utilities, insurance, maintenance, and repairs. In the event a
 42 charter school does not use the school building for classroom



1 instruction within two (2) years after acquiring the school building, the
 2 school building shall revert to the school corporation, which may sell
 3 or otherwise dispose of the school building under IC 36-1-11.

4 SECTION 4. IC 20-26-7.1-7, AS AMENDED BY P.L.92-2020,
 5 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2021]: Sec. 7. (a) As used in this section, "accredited
 7 nonpublic school" means a nonpublic school that:

8 (1) has voluntarily become accredited under IC 20-31-4.1; or

9 (2) is accredited by a national or regional accrediting agency that
 10 is recognized by the state board.

11 (b) This section applies to a school building with a gross square
 12 footage of two hundred thousand (200,000) square feet or less.

13 (c) If the school corporation receives notification from the
 14 department that the department has not received any preliminary
 15 requests to purchase or lease a vacant or ~~unused~~ **underutilized** school
 16 building under section 4(c)(1) of this chapter or a charter school has
 17 not met the requirements under section 4(c)(2) or 4(e) of this chapter,
 18 the school corporation must sell the school building to an accredited
 19 nonpublic school or postsecondary educational institution that sends a
 20 letter of intent to the school corporation to purchase the vacant or
 21 ~~unused~~ **underutilized** school building for an amount not more than the
 22 minimum bid for the vacant or ~~unused~~ **underutilized** school building
 23 determined in accordance with IC 36-1-11, or an amount agreed to by
 24 both parties.

25 (d) The accredited nonpublic school or postsecondary educational
 26 institution must submit its letter of intent to purchase the school
 27 building within thirty (30) days of the date the school corporation
 28 passes a resolution or takes other official action to close, no longer use,
 29 or no longer occupy a school building that was previously used for
 30 classroom instruction. However, in the event that a charter school has
 31 submitted a preliminary request to purchase or lease a school building,
 32 the accredited nonpublic school or postsecondary educational
 33 institution may send a letter of intent to purchase or lease the school
 34 building within ninety (90) days of the date that the school corporation
 35 passed a resolution or took official action to close, no longer use, or no
 36 longer occupy a school building.

37 (e) Within forty-five (45) days of notice of the minimum bid, the
 38 accredited nonpublic school or postsecondary educational institution
 39 must provide a binding offer to the school corporation to purchase the
 40 property in its current condition and provide a nonrefundable down
 41 payment equal to five percent (5%) of the minimum bid or an amount
 42 agreed to by both parties. In the event that two (2) or more binding



1 offers are submitted to the school corporation under this subsection, the
2 school corporation may select which offer to accept.

3 (f) If the sale of the property does not close within one hundred
4 eighty (180) days of the school corporation's receipt of the binding
5 offer, and the delay in closing is not caused by the school corporation
6 or its representatives, the school corporation may refund the down
7 payment and sell or otherwise dispose of the school building under
8 IC 20-25-4-14, IC 20-26-5-4(a)(7), or IC 36-1-11.

9 SECTION 5. IC 20-26-7.1-8, AS ADDED BY P.L.270-2019,
10 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2021]: Sec. 8. (a) This section applies to the sale of a vacant
12 or ~~unused~~ **underutilized** school building with more than two hundred
13 thousand (200,000) gross square feet under IC 36-1-11, as permitted by
14 this chapter.

15 (b) In determining whether to accept a proposal to purchase and
16 redevelop the school building and any adjacent property, the governing
17 body must ensure that a charter school that is located within one (1)
18 mile of the site to be redeveloped and has notified the governing body
19 in writing of its interest in locating the charter school on the
20 redeveloped site is provided with the opportunity to lease adequate
21 facilities on the redeveloped site at fifty percent (50%) or less than the
22 current market rate for the redeveloped property or a rate agreed upon
23 by the parties.

24 (c) In the event that a charter school does not enter into a lease for
25 the appropriate facilities as part of the initial development of the school
26 building parcel, this section shall no longer be binding on the school
27 corporation or the purchaser of the property, which shall not be
28 required to make the space available for use by another charter school.

29 SECTION 6. IC 20-26-7.1-9, AS ADDED BY P.L.270-2019,
30 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2021]: Sec. 9. If a school corporation does not comply with
32 the requirements provided in this chapter, the school corporation shall
33 submit any proceeds from the sale of the vacant **or underutilized**
34 school building to the state board to provide grants under the charter
35 school and innovation grant program under IC 20-24-13.

36 SECTION 7. IC 20-26-7.1-10 IS ADDED TO THE INDIANA
37 CODE AS A NEW SECTION TO READ AS FOLLOWS
38 [EFFECTIVE JULY 1, 2021]: **Sec. 10. Beginning in 2022, and each**
39 **school year thereafter, not later than sixty (60) days after the date**
40 **of the fall count of ADM, each school corporation shall submit to**
41 **the department on a form prescribed by the department the**
42 **following information on all school buildings that are currently or**



1 have been used for any combination of kindergarten through grade
2 12 instruction:

- 3 (1) The maximum student capacity.
4 (2) The current student usage based on the last fall count of
5 ADM.
6 (3) The percentage of utilization.
7 (4) The school building's current use.
8 (5) If the school building is not being used for any
9 combination of routine kindergarten through grade 12
10 instruction, details about the school building's current usage
11 and the rationale for its current use.

12 SECTION 8. IC 20-26-7.1-11 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2021]: **Sec. 11. (a) If a school building meets**
15 **the definition of being underutilized for two (2) consecutive counts,**
16 **the department shall notify the school corporation within thirty**
17 **(30) days after the receipt of the capacity report under section 10**
18 **of this chapter that the school corporation is required to offer the**
19 **building for sale or lease to a charter school authorizer at the end**
20 **of the current school year.**

21 (b) Within sixty (60) days after the school corporation has
22 received notice under subsection (a), the school corporation may
23 submit a protest and plan to bring the building out of vacant or
24 underutilized status.

25 (c) If the school corporation does not submit a protest and a
26 plan under subsection (b) or if the protest and plan are rejected by
27 the department, the department shall provide written notification
28 to each charter school authorizer and the process shall continue
29 under section 4 of this chapter as if the school corporation had
30 taken official action to close, no longer use, or no longer occupy the
31 school building.

32 SECTION 9. IC 20-26-7.1-12 IS ADDED TO THE INDIANA
33 CODE AS A NEW SECTION TO READ AS FOLLOWS
34 [EFFECTIVE JULY 1, 2021]: **Sec. 12. (a) If the governing body of**
35 **a school corporation makes the decision to close a school building**
36 **or is required to close a school building under this chapter on the**
37 **last day of regular school instruction, the school building and its**
38 **contents must be:**

- 39 (1) maintained; and
40 (2) protected from:
41 (A) weather;
42 (B) vandalism; and



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(C) theft.

(b) Any repairs needed to maintain the building at its status on the last day of classroom usage must be completed within a reasonable time.

SECTION 10. IC 20-26-7.1-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 13. (a) At the request of the school corporation or charter school authorizer, any dispute between the parties under this chapter shall be subject to mediation or arbitration by a representative of the state board.**

(b) The parties shall have equal responsibility for the fees and costs of the mediator or arbitrator.

