

TITLE 33  
EDUCATION

CHAPTER 52  
PUBLIC CHARTER SCHOOLS

33-5201. SHORT TITLE. This chapter shall be known and may be cited as the "Public Charter Schools Act of 1998."

[33-5201, added 1998, ch. 92, sec. 1, p. 331.]

33-5202. LEGISLATIVE INTENT. It is the intent of the legislature to provide opportunities for teachers, parents, students, and community members to establish and maintain public charter schools that operate independently from the existing traditional school district structure but within the existing public school system. In order to accomplish any of the following, public charter schools shall have equal access and authority to participate in all state and federal programs to the same extent as a traditional public school, irrespective of the instructional delivery method:

- (1) Improve student learning;
- (2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students;
- (3) Include the use of different and innovative teaching methods;
- (4) Utilize virtual distance learning and online learning;
- (5) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;
- (6) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system;
- (7) Hold the schools established under this chapter accountable for meeting measurable student educational standards.

[33-5202, added 1998, ch. 92, sec. 1, p. 331; am. 2000, ch. 443, sec. 1, p. 1404; am. 2001, ch. 302, sec. 1, p. 1101; am. 2004, ch. 371, sec. 1, p. 1100; am. 2019, ch. 298, sec. 4, p. 883.]

33-5202A. DEFINITIONS. As used in this chapter, unless the context requires otherwise:

- (1) "Authorized chartering entity" means any of the following:
  - (a) A local board of trustees of a school district in this state;
  - (b) The public charter school commission created pursuant to the provisions of this chapter;
  - (c) An Idaho public college, university or community college;
  - (d) A private, nonprofit, Idaho-based nonsectarian college or university that is accredited by the same organization that accredits Idaho public colleges and universities.
- (2) "Charter" means the grant of authority approved by the authorized chartering entity to the board of directors of the public charter school.
- (3) "Charter holder" means the public charter school's board of directors to which a charter is granted pursuant to [chapter 52, title 33](#), Idaho Code.
- (4) "Educational services provider" means a nonprofit or for-profit entity that contracts with a public charter school for a fee to provide

educational services and resources including administrative support and educational design, implementation or management.

(5) "Founder" means a person, including employees or staff of a public charter school, who makes a material contribution toward the establishment of a public charter school in accordance with criteria determined by the board of directors of the public charter school, and who is designated as such at the time the board of directors acknowledges and accepts such contribution. The criteria for determining when a person is a founder shall not discriminate against any person on any basis prohibited by the federal or state constitution or any federal, state or local law. The designation of a person as a founder, and the admission preferences available to the children of a founder, shall not constitute pecuniary benefits.

(6) "Performance certificate" means a fixed-term, renewable certificate between a public charter school and an authorized chartering entity that outlines the roles, powers, responsibilities and performance expectations for each party to the certificate.

(7) "Petition" means the document submitted by a person or persons to the authorized chartering entity to request the creation of a public charter school.

(8) "Career technical regional public charter school" means a public charter secondary school authorized under this chapter to provide programs in career technical education that meet the standards and qualifications established by the division of career technical education. A career technical regional public charter school may be approved by an authorized chartering entity and, by the terms of its charter, shall operate in association with at least two (2) school districts. This provision does not exclude a public charter school with a statewide boundary from applying for added cost funds authorized for career technical education, irrespective of the instructional delivery method. Participating school districts need not be contiguous.

(9) "Public charter school" means a school that is authorized under this chapter to deliver public education in Idaho with equal access and authority to participate in all state and federal programs to the same extent as a traditional public school, irrespective of the instructional delivery method.

(10) "Traditional public school" means any school existing or to be built that is operated and controlled by a school district in this state.

(11) "Virtual school" means either a public charter school or a traditional public school that delivers a full-time, sequential program of synchronous and/or asynchronous instruction primarily through the use of technology via the internet in a distributed environment. Schools classified as virtual must have an online component to their school with online lessons and tools for student and data management.

[33-5202A, added 2004, ch. 371, sec. 2, p. 1100; am. 2005, ch. 376, sec. 1, p. 1201; am. 2007, ch. 246, sec. 1, p. 724; am. 2008, ch. 105, sec. 1, p. 288; am. 2012, ch. 188, sec. 11, p. 508; am. 2013, ch. 343, sec. 2, p. 910; am. 2016, ch. 25, sec. 35, p. 54; am. 2016, ch. 271, sec. 1, p. 728; am. 2017, ch. 249, sec. 6, p. 620; am. 2019, ch. 298, sec. 5, p. 884; am. 2023, ch. 268, sec. 1, p. 798.]

33-5203. AUTHORIZATION -- LIMITATIONS. (1) The creation of public charter schools is hereby authorized. Public charter schools shall be part of the state's program of public education.

(2) New public charter schools, which may begin educational instruction in any one (1) school year, shall be subject to the following:

(a) No whole school district may be converted to a charter district or any configuration that includes all schools as public charter schools; and

(b) A petition must be received by the initial authorized chartering entity no later than September 1 to be eligible to begin instruction the first complete school year following receipt of the petition, unless the authorized chartering entity agrees to a later date; and

(c) To begin operations, a newly chartered public school must be authorized by no later than January 1 of the previous school year.

(3) A public charter school may be formed either by creating a new public charter school or by replicating an existing high-performing public charter school, which charter may be approved by any authorized chartering entity, or by converting an existing traditional public school to a public charter school, which charter may only be approved by the board of trustees of the school district in which the existing public school is located.

(4) No charter shall be approved under this chapter:

(a) That provides for the conversion of any existing private or parochial school to a public charter school;

(b) For a for-profit entity, provided however, nothing in this section shall prevent the board of directors of a public charter school from legally contracting with an educational service provider that provides comprehensive educational administrative and management services or with for-profit entities for the provision of products or services that aid in the operation of the school; or

(c) By the board of trustees of a school district if the public charter school's physical location is outside the boundaries of the authorizing school district.

(5) A public virtual school charter may be approved by any authorized chartering entity. In addition, a charter may also be approved by the state board of education pursuant to section [33-5207](#) (5) (b), Idaho Code.

(6) A charter holder may not operate enterprises other than the public charter schools for which it has been authorized.

(7) The state board of education shall adopt rules, subject to law, to establish a consistent application and review process for the approval and maintenance of all public charter schools.

(8) Each public charter school authorized by an authorized chartering entity other than a local school district board of trustees is hereby designated as a local education agency (LEA) as such term is defined in 34 CFR 300.28. Public charter schools chartered by the board of trustees of a school district may also be designated by the board of trustees as an LEA, with the concurrence of the public charter school board of directors. Otherwise, the public charter school shall be included in that district's LEA.

[33-5203, added 1998, ch. 92, sec. 1, p. 331; am. 1999, ch. 244, sec. 1, p. 624; am. 2004, ch. 371, sec. 3, p. 1101; am. 2005, ch. 255, sec. 7, p. 785; am. 2005, ch. 376, sec. 2, p. 1202; am. 2006, ch. 16, sec. 4, p. 47; am. 2012, ch. 112, sec. 1, p. 310; am. 2013, ch. 343, sec. 3, p. 910; am. 2016, ch. 271, sec. 2, p. 729; am. 2017, ch. 249, sec. 1, p. 608; am. 2023, ch. 268, sec. 2, p. 799.]

33-5204. NONPROFIT CORPORATION -- LIABILITY -- INSURANCE. (1) A public charter school shall be organized and managed under the Idaho nonprofit corporation act. The board of directors of a public charter school shall be deemed public agents authorized by a public school district, the public charter school commission, or the state board of education to control the public charter school, but shall function independently of any school board of trustees in any school district in which the public charter school is located or independently of the public charter school commission, except as provided in the charter. The nonprofit board as the charter holder may hold multiple charters under the following conditions:

(a) Each public charter school must have its own performance certificate; and

(b) Each public charter school must be independently accountable for its academic, financial and operational outcomes.

(2) For the purposes of section [59-1302](#) (15), Idaho Code, a public charter school created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of section [63-36220](#), Idaho Code, sales to or purchases by a public charter school are exempt from payment of the sales and use tax. A public charter school and the board of directors of a public charter school are subject to the provisions of:

(a) Sections [18-1351](#) through [18-1362](#), Idaho Code, on bribery and corrupt influence, except as provided by section [33-5204A](#) (2), Idaho Code;

(b) [Chapter 5, title 74](#), Idaho Code, on prohibitions against contracts with officers;

(c) [Chapter 4, title 74](#), Idaho Code, on ethics in government;

(d) [Chapter 2, title 74](#), Idaho Code, on open public meetings; and

(e) [Chapter 1, title 74](#), Idaho Code, on disclosure of public records;

in the same manner that a traditional public school and the board of school trustees of a school district are subject to those provisions.

(3) A public charter school may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and borrow money for such purposes, to the same extent and on the same conditions as a traditional public school district, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of traditional public school districts and other public schools, including those provided by [chapter 9, title 6](#), Idaho Code. The authorized chartering entity that approves a public school charter shall have no liability for the acts, omissions, debts or other obligations of a public charter school, except as may be provided in the charter. A local public school district shall have no liability for the acts, omissions, debts or other obligations of a public charter school located in its district that has been approved by an authorized chartering entity other than the board of trustees of the local school district.

(4) Nothing in this chapter shall prevent the board of directors of a public charter school, operating as a nonprofit corporation, from borrowing money to finance the purchase or lease of school building facilities, equipment and furnishings of those school building facilities. Subject to the terms of a contractual agreement between the board and a lender, nothing herein shall prevent the board from using the facility, its equipment and furnishings as collateral for the loan.

(5) Public charter schools shall secure insurance for liability and property loss.

(6) It shall be unlawful for:

(a) Any director to have pecuniary interest, directly or indirectly, in any contract or other transaction pertaining to the maintenance or conduct of the authorized chartering entity and charter or to accept any reward or compensation for services rendered as a director except as may be otherwise provided in this subsection. The board of directors of a public charter school may accept and award contracts involving the public charter school to businesses in which the director or a person related to him by blood or marriage within the second degree has a direct or indirect interest, provided that the procedures set forth in section [18-1361](#) or [18-1361A](#), Idaho Code, are followed. The receiving, soliciting or acceptance of moneys of a public charter school for deposit in any bank or trust company, or the lending of moneys by any bank or trust company to any public charter school, shall not be deemed to be a contract pertaining to the maintenance or conduct of a public charter school and authorized chartering entity within the meaning of this section; nor shall the payment by any public charter school board of directors of compensation to any bank or trust company for services rendered in the transaction of any banking business with such public charter school board of directors be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company within the meaning of this section.

(b) The board of directors of any public charter school to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract require, or will require, the payment or delivery of any public charter school funds, moneys or property to such spouse, except as provided in paragraph (c) of this subsection or in section [18-1361](#) or [18-1361A](#), Idaho Code.

(c) No spouse of any director may be employed by a public charter school physically located within the boundaries of a school district with a fall student enrollment population of greater than one thousand two hundred (1,200) in the prior school year. For public charter schools physically located within the boundaries of a school district with a fall student enrollment population of one thousand two hundred (1,200) or less in the prior school year, such spouse may be employed in a nonadministrative position for a school year if each of the following conditions has been met:

(i) The position has been listed as open for application on the public charter school website or in a local newspaper, whichever is consistent with the school's current practice, and the position shall be listed for at least sixty (60) days, unless the opening occurred during the school year, in which case the position shall be so listed for at least fifteen (15) days. If the position is listed in a newspaper, the listing shall be made in a manner consistent with the provisions of section [60-106](#), Idaho Code;

(ii) No applications were received that met the minimum certification, endorsement, education or experience requirements of the position other than such spouse;

(iii) The director abstained from voting in the employment of the spouse and was absent from the meeting while such employment was being considered and determined.

The public charter school may employ such spouse for further school years, provided that the conditions contained in this paragraph are met for each school year in which such spouse is employed. The director

shall abstain from voting in any decisions affecting the compensation, benefits, individual performance evaluation or disciplinary action related to the spouse and shall be absent from the meeting while such issues are being considered and determined. Such limitation shall include, but not be limited to: any matters relating to negotiations regarding compensation and benefits; discussion and negotiation with district benefits providers; and any matter relating to the spouse and letters of reprimand, direction, probation or termination. Such limitations shall not prohibit the trustee spouse from participating in deliberation and voting upon the district's annual fiscal budget or annual audit report. Any spouse of a director employed as a certificated employee pursuant to this paragraph shall be employed under a category 1 contract pursuant to section [33-514A](#), Idaho Code.

(7) When any relative of any director or relative of the spouse of a director related by affinity or consanguinity within the second degree is to be considered for employment in a public charter school, such director shall abstain from voting in the election of such relative and shall be absent from the meeting while such employment is being considered and determined.

[33-5204, added 1998, ch. 92, sec. 1, p. 332; am. 1998, ch. 201, sec. 1, p. 717; am. 1999, ch. 244, sec. 2, p. 625; am. 2000, ch. 282, sec. 1, p. 905; am. 2000, ch. 443, sec. 2, p. 1404; am. 2001, ch. 64, sec. 1, p. 121; am. 2002, ch. 293, sec. 1, p. 845; am. 2004, ch. 371, sec. 4, p. 1102; am. 2005, ch. 376, sec. 3, p. 1203; am. 2014, ch. 252, sec. 3, p. 634; am. 2015, ch. 141, sec. 70, p. 379; am. 2016, ch. 271, sec. 3, p. 728.]

33-5204A. APPLICABILITY OF PROFESSIONAL CODES AND STANDARDS -- LIMITATIONS UPON AUTHORITY. (1) Every person who serves in a public charter school, either as an employee, contractor, or otherwise, in the capacity of teacher, supervisor, administrator, education specialist, school nurse or librarian, must comply with the professional codes and standards approved by the state board of education, including standards for ethics or conduct.

(2) Every employee of a public charter school and every member of the board of directors of a public charter school, whether compensated or non-compensated, shall comply with the standards of ethics or conduct applicable to public officials including, but not limited to, [chapter 4, title 74](#), Idaho Code, except that section [74-405](#), Idaho Code, which permits a noncompensated public official to have an interest in a contract made or entered into by the board of which he is a member under certain conditions, shall not apply to the board of directors of a public charter school. A member of the board of directors of a public charter school is prohibited from receiving a personal pecuniary benefit, directly or indirectly, pertaining to a contractual relationship with the public charter school.

[33-5204A, added 2004, ch. 371, sec. 5, p. 1104; am. 2015, ch. 141, sec. 72, p. 433.]

33-5205. PETITION TO ESTABLISH PUBLIC CHARTER SCHOOL. (1) Intent. Any group of persons, upon creating a nonprofit corporation pursuant to section [33-5204](#), Idaho Code, may petition to establish a new public charter school, or to convert an existing traditional public school to a public charter school. The purpose of the charter petition is to present the proposed public charter school's academic and operational vision and plans, demonstrate the petitioner's capacities to execute the proposed vision and plans and

provide the authorized chartering entity a clear basis for assessing the applicant's plans and capacities. An approved charter petition shall not serve as the school's performance certificate.

(2) New Public Charter School Petition. Except for a petition to establish a new virtual school, which shall follow subsection (6) of this section, or to convert an existing traditional public school, which shall follow subsection (7) of this section, a petition to establish a new public charter school shall follow the process set forth in subsections (3) through (5) of this section.

(3) Application.

(a) The state board of education, by rule, shall develop an application to establish a new public charter school that, when submitted by petitioners, shall constitute the public charter school's completed petition. The application is not intended to be exhaustive, but shall require petitioners to provide descriptions of the following key features of the prospective public charter school:

- (i) Educational program, including student academic proficiency and growth standards and measurement methods and any mission-specific standards that may be unique to the school;
- (ii) Financial and facilities plan;
- (iii) Board capacity and governance structure; and
- (iv) Student demand and primary attendance area.

(b) Prior to submitting the completed petition to an authorized chartering entity described in section [33-5202A](#)(1), Idaho Code, petitioners shall send a letter and a copy of the completed petition to the superintendent of each district that overlaps the proposed public charter school's primary attendance area. The purpose of the letter is to inform the superintendent that petitioners are seeking an authorizer, and to offer to attend a district board of trustees meeting, if the superintendent so requests.

(c) A minimum of four (4) weeks after sending the letter and copy of the completed petition pursuant to paragraph (b) of this subsection, or earlier if the superintendent of each district that overlaps the proposed public charter school's primary attendance area agrees, petitioners may submit the completed petition to an authorized chartering entity pursuant to section [33-5202A](#)(1), Idaho Code. Upon receipt of the completed petition, which may be received electronically, representatives of the authorized chartering entity shall review, and may contract with a third party or other government agency to assist in reviewing, the petition. If necessary, representatives of the authorized chartering entity may request from petitioners limited additional information necessary to clarify the contents of the completed petition. Any subsequent change to the completed petition will comprise the revised petition.

(4) Hearing. If the authorized chartering entity is the public charter school commission, within ten (10) weeks of receiving a revised petition and not later than twelve (12) weeks after receiving the completed petition, commission staff shall provide commissioners with a written recommendation that the commission approve, deny or grant conditional approval of the petition. Concurrently, the commission staff shall provide a copy of the recommendation to petitioners, along with a notice of a hearing date, and shall notify the district in which the proposed charter school will be physically located of the opportunity to submit written comments or to testify at the

hearing. Petitioners may testify to support or refute the recommendation. If the authorized chartering entity is other than the public charter school commission, it may develop its own hearing process.

(5) Petition Decision. If the authorized chartering entity approves the petition, the parties shall negotiate the terms of the performance certificate pursuant to section [33-5205B](#), Idaho Code. If the authorized chartering entity grants conditional approval, the conditions may be considered reasonable pre-opening requirements or conditions pursuant to section [33-5206](#), Idaho Code, or may be added to the charter upon agreement of petitioners and the authorized chartering entity.

(6) Virtual Schools.

(a) In the case of a petition for a public virtual charter school, if the primary attendance area described in the petition of a proposed public virtual charter school extends within the boundaries of five (5) or fewer local school districts, the prospective authorizer shall provide notice in writing to those local school districts of the public hearing no less than thirty (30) days prior to the public hearing. The public hearing shall include any oral or written comments that an authorized representative of the local school districts may provide regarding the merits of the petition and any potential impacts on the school districts.

(b) An authorized chartering entity may approve a charter for a public virtual school under the provisions of this chapter if it determines that the petition contains the statements describing the following:

- (i) The learning management system by which courses will be delivered;
- (ii) The role of the online teacher, including the consistent availability of the teacher to provide guidance around course material, methods of individualized learning in the online course and the means by which student work will be assessed;
- (iii) A plan for the provision of professional development specific to the public virtual school environment;
- (iv) The means by which public virtual school students will receive appropriate teacher-to-student interaction, including timely and frequent feedback about student progress;
- (v) The means by which the public virtual school will verify student attendance and award course credit. Attendance at public virtual schools shall focus primarily on coursework and activities that are correlated to the Idaho state thoroughness standards;
- (vi) A plan for the provision of technical support relevant to the delivery of online courses;
- (vii) The means by which the public virtual school will provide opportunity for student-to-student interaction;
- (viii) To the extent there is a financial agreement that will require an education service provider to assume a virtual school's financial risk when the virtual school does not have sufficient residual funds to pay the education service provider, such financial agreement, which will be favorably considered during the application process. Where this paragraph is applicable, the education service provider shall make its audited financial statements available unless the education service provider al-

ready makes such audited financial statements publicly available for compliance with other federal or state laws; and

(ix) A plan for ensuring equal access for all students, including the provision of necessary hardware, software and internet connectivity required for participation in online coursework.

(7) Conversion Charter Schools. A petition to convert an existing traditional public school shall be submitted to the board of trustees of the district in which the school is located for review and approval. The petition shall be signed by not less than sixty percent (60%) of the teachers currently employed by the school district at the school to be converted, and by one (1) or more parents or guardians of not less than sixty percent (60%) of the students currently attending the school to be converted. Each petition submitted to convert an existing school or to establish a new charter school shall contain a copy of the articles of incorporation and the bylaws of the nonprofit corporation, which shall be deemed incorporated into the petition.

(8) Term. An initial charter, if approved, shall be granted for a term of five (5) operating years. This term shall commence on July 1 preceding the public charter school's first year of operation.

[33-5205, added 1998, ch. 92, sec. 1, p. 332; am. 1999, ch. 244, sec. 3, p. 625; am. 2000, ch. 443, sec. 3, p. 1405; am. 2004, ch. 371, sec. 6, p. 1104; am. 2004, ch. 375, sec. 1, p. 1117; am. 2005, ch. 376, sec. 4, p. 1204; am. 2008, ch. 105, sec. 2, p. 289; am. 2008, ch. 157, sec. 1, p. 451; am. 2009, ch. 11, sec. 11, p. 21; am. 2009, ch. 41, sec. 1, p. 115; am. 2009, ch. 160, sec. 1, p. 477; am. 2009, ch. 200, sec. 1, p. 639; am. 2010, ch. 79, sec. 10, p. 138; am. 2012, ch. 188, sec. 1, p. 495; am. 2013, ch. 343, sec. 4, p. 911; am. 2015, ch. 129, sec. 1, p. 328; am. 2016, ch. 271, sec. 5, p. 733; am. 2017, ch. 249, sec. 2, p. 608; am. 2023, ch. 268, sec. 3, p. 800.]

33-5205A. TRANSFER OF CHARTER. (1) A charter and performance certificate for a public charter school may be transferred to, and placed under the chartering authority of, any authorized chartering entity if the current authorizer, the receiving authorizer, and the board of directors of the public charter school all agree to such transfer, including any revision to the charter and performance certificate that may be required in connection with such transfer. Provided however, that a charter and performance certificate shall not be transferred to a school district board of trustees in which the public charter school is not physically located. A request to transfer a charter may be initiated by the board of directors of a public charter school or by the authorized chartering entity with chartering authority over the charter of such public charter school.

(2) A public charter school, authorized by any authorized chartering entity except a school district board of trustees, which has a primary attendance area located within more than one (1) school district, may transfer the physical location of its public charter school within its primary attendance area to locate the facilities within the boundaries of another school district within the primary attendance area if the authorized chartering entity, the board of trustees of each of the relevant school districts and the board of directors of the public charter school all approve of such transfer of facilities location, and if the authorized chartering entity approves any revisions to the charter that may be required in connection with such transfer.

(3) If all parties fail to reach agreement in regard to the request to transfer a charter and performance certificate, as required herein, then the matter may be appealed directly to the state board of education. With respect to such appeal, the state board of education shall substantially follow the procedure as provided in section [33-5207](#) (5) (b), Idaho Code. A transferred charter school shall not be considered a new public charter school.

[33-5205A, added 2005, ch. 376, sec. 5, p. 1208; am. 2008, ch. 171, sec. 1, p. 471; am. 2012, ch. 188, sec. 2, p. 500; am. 2013, ch. 343, sec. 5, p. 916.]

33-5205B. PERFORMANCE CERTIFICATES. (1) Within seventy-five (75) days of approval of a charter application, the authorized chartering entity and the governing board of the approved public charter school shall execute a performance certificate that clearly sets forth the academic and operational performance expectations and measures by which the public charter school will be judged and the administrative relationship between the authorized chartering entity and public charter school, including each party's rights and duties. The performance expectations and measures set forth in the performance certificate shall include but need not be limited to applicable federal and state accountability requirements, and shall take into consideration the actual and potential at-risk makeup of the student body population defined by the criteria set forth in section [33-1001](#) (3) (a) and (b), Idaho Code, for all grade levels and economically disadvantaged students. The performance provisions may be refined or amended by mutual agreement after the public charter school is operating and has collected baseline achievement data for its enrolled students. A virtual school shall be deemed financially sufficient if there is an agreement that requires an education service provider to assume the virtual school's financial risk when it does not have sufficient residual funds to pay the education service provider. Where this subsection is applicable, the education service provider shall make its audited financial statements available unless the education service provider already makes such audited financial statements publicly available for compliance with other federal or state laws.

(2) The performance certificate shall be signed by the president of the authorized chartering entity's governing board and the president of the public charter school's governing body. Within fourteen (14) days of executing a performance certificate, the authorized chartering entity shall submit to the state board of education written notification of the performance certificate execution, including a copy of the performance certificate.

(3) No public charter school may commence operations without a performance certificate executed in accordance with this provision and approved in an open meeting of the authorized chartering entity's governing board.

(4) All public charter schools approved prior to July 1, 2013, shall execute performance certificates with their authorizers no later than July 1, 2014. Such certificates shall ensure that each public charter school approved prior to July 1, 2014, is evaluated for renewal or nonrenewal between March 1, 2016, and March 1, 2019.

[33-5205B, added 2013, ch. 343, sec. 6, p. 917; am. 2023, ch. 268, sec. 4, p. 803.]

33-5205C. PUBLIC CHARTER SCHOOL REPLICATION. (1) Public charter schools may petition for replication, subject to the following provisions:

(a) The public charter schools must have successfully completed at least one (1) renewal cycle and be eligible for a nonconditional renewal; or

(b) Public charter schools that are scheduled to be evaluated for renewal or nonrenewal between March 1, 2016, and March 1, 2019, must be rated in the top twenty percent (20%) of all Idaho public schools by the state's accountability system for the two (2) previous years.

(2) Replication public charter schools must serve the same, or a subset of the same, grades as the public charter school being replicated and the operational model must be the same as that of the public charter school being replicated.

(3) A public charter school authorized by the public charter school commission or an Idaho college or university pursuant to section [33-5202A](#), Idaho Code, must provide written notice and opportunity to comment to the school district for which the replication school will be located at least thirty (30) days prior to submitting the replication request to the authorizing entity. The petitioner must provide written notice to the state department of education at the time the petition is submitted to the authorized chartering entity.

(4) A school district authorizer may not approve the replication of a public charter school that is physically located outside of the authorizer's school district boundaries.

(5) Replication petitions are not subject to a sufficiency review by the state department of education.

(6) The replicated public charter schools under a single charter holder shall be authorized and funded as separate schools. The charter holder must obtain annual independent comprehensive fiscal audits that treat each school as a separate component unit. Funds appropriated by the state must be used toward the operations of the public charter school for which they were appropriated. This does not prohibit multiple public charter schools under a single charter holder from combining resources toward administrative or program costs or prohibit public charter schools from participating in cooperative education services pursuant to sections [33-315](#) and [33-316](#), Idaho Code.

(7) Authorized chartering entities must establish policies regarding the criteria that will be considered when evaluating a petition for replication. Such criteria must include at a minimum the following replication petition requirements:

(a) A description of the capacity of the charter holder to successfully replicate an additional school;

(b) A description of how the charter holder will manage multiple charter schools while maintaining a high level of academic and fiscal performance in the original public charter school and the replication school; and

(c) A description of how the charter holder will incorporate representation and input in the school operations from the local area where the replication public charter school is physically located if the location is outside of the school district of the public charter school being replicated.

[33-5205C, added 2016, ch. 271, sec. 6, p. 739.]

33-5206. REQUIREMENTS AND PROHIBITIONS OF A PUBLIC CHARTER SCHOOL. (1) In addition to any other requirements imposed in this chapter, a public char-

ter school shall be nonsectarian in its programs, affiliations, admission policies, employment practices, and all other operations, shall not charge tuition, levy taxes or issue bonds, and shall not discriminate against any student on any basis prohibited by the federal or state constitution or any federal, state or local law. Public charter schools shall comply with the federal individuals with disabilities education act. Admission to a public charter school shall not be determined according to the place of residence of the student, or of the student's parent or guardian within the district, except that a new replication or conversion public charter school established under the provisions of this chapter shall adopt and maintain a policy giving admission preference to students who reside within the contiguous and compact primary attendance area of that public charter school.

(2) No board of trustees shall require any employee of the school district to be involuntarily assigned to work in a public charter school.

(3) Certified teachers in a public charter school shall be considered public school teachers. Educational experience shall accrue for service in a public charter school and such experience shall be counted by any school district for any teacher who has been employed in a public charter school. The staff of the public charter school shall be considered a separate unit for the purposes of collective bargaining.

(4) Employment of charter school teachers and administrators shall be on written contract conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder.

(5) Administrators may be certified pursuant to the requirements set forth in [chapter 12, title 33](#), Idaho Code, pertaining to traditional public schools, or may hold a charter school administrator certificate. An applicant is eligible for a charter school administrator certificate if the applicant:

- (a) Holds a bachelor's degree from an accredited four (4) year institution;
- (b) Submits to a criminal history check as described in section [33-130](#), Idaho Code;
- (c) Completes a course consisting of a minimum of three (3) semester credits in the statewide framework for teacher evaluations, which shall include a laboratory component;
- (d) Submits a letter from a charter school board of directors stating that the board of directors has carefully considered the applicant's candidacy, has chosen to hire the applicant, and is committed to overseeing the applicant's performance; and
- (e) Has one (1) or more of the following:
  - (i) Five (5) or more years of experience administering a public charter school;
  - (ii) A post-baccalaureate degree and a minimum of five (5) years of experience in school administration, public administration, business administration, or military administration;
  - (iii) Successful completion of a nationally recognized charter school leaders fellowship; or
  - (iv) Five (5) or more years of teaching experience and a commitment from an administrator at a charter school in academic, operational, and financial good standing according to its authorizer's most recent review to mentor the applicant for a minimum of one (1) year.

A charter school administrator certificate shall be valid for five (5) years and renewable thereafter. Administrators shall be subject to oversight by the professional standards commission. Certificates may be revoked pursuant to the provisions of section [33-1208](#), Idaho Code. Issuance of a certificate to any applicant may be refused for such reason as would have constituted grounds for revocation.

(6) Charter school teachers may be certified pursuant to the requirements set forth in [chapter 12, title 33](#), Idaho Code, pertaining to traditional public school districts, or may hold a charter school-specific teaching certificate. A charter school-specific teaching certificate shall be valid only for teachers teaching at a public charter school.

(a) Criteria for a charter school-specific teaching certificate shall be in writing and require that teachers satisfy the provisions set forth in section [33-1202](#) 1., 3., and 4., Idaho Code, and meet the following minimum educational or professional qualifications:

- (i) Hold a bachelor's degree from an accredited institution; or
- (ii) If instructing students in the fields of career technical education, satisfy the provisions of section [33-2205](#)(6)(a), Idaho Code.

(b) Teachers with a charter school-specific teaching certificate shall receive mentoring and professional development as approved by the charter school board of directors. The charter school board of directors may impose additional requirements.

(c) The state board of education shall issue charter school-specific teaching certificates to teachers upon recommendation of the individual charter school, unless denied on the grounds set forth in section [33-1208](#), Idaho Code.

(d) Charter school-specific teaching certificates shall not be transferable to a traditional public school district, but may be transferable to another public charter school at the election of the subsequent public charter school.

(e) For teachers holding a charter school-specific teaching certificate, a charter school may substitute its own ongoing education and professional development requirements in place of those set forth in rule by the state board of education if the same number of credit hours is required as that of teachers holding a standard instructional certificate.

(7) No board of trustees shall require any student enrolled in the school district to attend a public charter school.

(8) Authorized chartering entities may establish reasonable pre-opening requirements or conditions to monitor the start-up progress of newly approved public charter schools and ensure that they are prepared to open smoothly on the date agreed, and to ensure that each school meets all building, health, safety, insurance and other legal requirements for school opening.

(9) Each public charter school shall annually submit the audit of its fiscal operations to the authorized chartering entity.

(10) A public charter school or the authorized chartering entity may enter into negotiations to revise a charter or performance certificate at any time. If a public charter school petitions to revise its charter or performance certificate, the authorized chartering entity's review of the revised petition shall be limited in scope solely to the proposed revisions. Except for public charter schools authorized by a school district board

of trustees, when a non-virtual public charter school submits a proposed charter revision to its authorized chartering entity and such revision includes a proposal to increase such public charter school's approved student enrollment cap by ten percent (10%) or more, the authorized chartering entity shall hold a public hearing on such petition. The authorized chartering entity shall provide the board of the local school district in which the public charter school is physically located notice in writing of such hearing no later than thirty (30) days prior to the hearing. The public hearing shall include any oral or written comments that an authorized representative of the school district in which the public charter school is physically located may provide regarding the impact of the proposed charter revision upon the school district. Such public hearing shall also include any oral or written comments that any petitioner may provide regarding the impact of the proposed charter revision upon such school district.

(11) When a charter is nonrenewed pursuant to the provisions of section [33-5209B](#), Idaho Code, revoked pursuant to section [33-5209C](#), Idaho Code, or the board of directors of the public charter school terminates the charter, the assets of the public charter school remaining after all debts of the public charter school have been satisfied must be returned to the authorized chartering entity for distribution in accordance with applicable law.

(12) Public charter schools may contract with educational services providers subject to the following provisions:

(a) Educational services providers, whether for-profit or nonprofit, shall be third-party entities separate from the public charter schools with which they contract. Educational services providers shall not be considered governmental entities.

(b) No more than one-third (1/3) of the public charter school's board membership may be comprised of nonprofit educational services provider representatives. Nonprofit educational services provider representatives may not be employees of the public charter school or the educational services provider and may not hold office as president or treasurer on the public charter school's board. For-profit educational services providers may not have representatives on the public charter school's board of directors.

(c) Public charter school board of director members shall annually disclose any existing and potential conflicts of interest, pecuniary or otherwise, with affiliated educational services providers.

(d) Charter holders shall retain responsibility for academic, fiscal and organizational operations and outcomes of the school and may not relinquish this responsibility to any other entity.

(e) Contracts must ensure that school boards retain the right to terminate the contract for failure to meet defined performance standards.

(f) Contracts must ensure that assets purchased by educational services providers on behalf of the school, using public funds, shall remain assets of the school. The provisions of this paragraph shall not prevent educational services providers from acquiring assets using revenue acquired through management fees.

(g) Charter holders shall consult legal counsel independent of the party with whom they are contracting for purposes of reviewing the school's management contract and facility lease or purchase agreements to ensure compliance with applicable state and federal law, including requirements that state entities not enter into contracts that obli-

gate them beyond the terms of any appropriation of funds by the state legislature.

(h) Charter holders must ensure that their facility contracts are separate from any and all management contracts.

(i) Prior to approval of the charter petition indicating the school board's intention to contract with an educational services provider, authorized chartering entities shall conduct a thorough evaluation of the academic, financial and organizational outcomes of other schools that have contracted with the educational services provider and evidence of the educational services provider's capacity to successfully grow the public charter school while maintaining quality management and instruction in existing schools.

(j) A virtual school shall be deemed financially sufficient if there is an agreement that requires an education service provider to assume the virtual school's financial risk when it does not have sufficient residual funds to pay the education service provider. Where this paragraph is applicable, the education service provider shall make its audited financial statements available unless the education service provider already makes such audited financial statements publicly available for compliance with other federal or state laws.

(13) Admission procedures, including provision for overenrollment, shall provide that the initial admission procedures for a new public charter school or replication public charter school will be determined by lottery or other random method, except as otherwise provided herein.

(a) If initial capacity is insufficient to enroll all pupils who submit a timely application, then the admission procedures may provide that preference shall be given in the following order: first, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; second, to siblings of pupils already selected by the lottery or other random method; third, to pupils seeking to transfer from another Idaho public charter school at which they have been enrolled for at least one (1) year, provided that this admission preference shall be subject to an existing written agreement for such preference between the subject charter schools; fourth, to students residing within the primary attendance area of the public charter school; and fifth, by an equitable selection process such as a lottery or other random method. If so stated in its petition, a public charter school may weight the school's lottery to preference admission for the following educationally disadvantaged students: students living at or below one hundred eighty-five percent (185%) of the federal poverty level, students who are homeless or in foster care, children with disabilities as defined in section [33-2001](#), Idaho Code, students with limited English proficiency, and students who are at-risk as defined in section [33-1001](#), Idaho Code. If so stated in its petition, a new public charter school or replication public charter school may include the children of full-time employees of the public charter school within the first priority group subject to the limitations therein. Otherwise, such children shall be included in the highest priority group for which they would otherwise be eligible.

(b) If capacity is insufficient to enroll all pupils who submit a timely application for subsequent school terms, then the admission procedures may provide that preference shall be given in the following

order: first, to pupils returning to the public charter school in the second or any subsequent year of its operation; second, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school; third, to siblings of pupils already enrolled in the public charter school; fourth, to pupils seeking to transfer from another Idaho public charter school at which they have been enrolled for at least one (1) year, provided that this admission preference shall be subject to an existing written agreement for such preference between the subject charter schools; fifth, to students residing within the primary attendance area of the public charter school; and sixth, by an equitable selection process such as a lottery or other random method. There shall be no carryover from year to year of the list maintained to fill vacancies. A new lottery shall be conducted each year to fill vacancies that become available. If so stated in its petition, a public charter school may weight the school's lottery to preference admission for the following educationally disadvantaged students: students living at or below one hundred eighty-five percent (185%) of the federal poverty level, students who are homeless or in foster care, children with disabilities as defined in section [33-2001](#), Idaho Code, students with limited English proficiency, and students who are at-risk as defined in section [33-1001](#), Idaho Code. If so stated in its petition, a public charter school may include the following children within the second priority group subject to the limitations therein:

(i) The children of full-time employees of the public charter school; and

(ii) Children who attended the public charter school within the previous three (3) school years, but who withdrew as a result of the relocation of a parent or guardian due to an academic sabbatical, employer or military transfer or reassignment.

(c) Each public charter school shall establish a process under which a child may apply for enrollment or register for courses, regardless of where such child resides at the time of application or registration, if the child is a dependent of a member of the United States armed forces who has received transfer orders to a location in Idaho and will, upon such transfer, reside in an area served by the public charter school. If capacity is insufficient as described in paragraph (a) or (b) of this subsection, a child described in this paragraph shall be treated as a student residing within the primary attendance area of the public charter school for purposes of preference.

Otherwise, such children shall be included in the highest priority group for which they would otherwise be eligible.

(14) Public charter schools shall comply with section [33-119](#), Idaho Code, as it applies to secondary school accreditation.

(15) Public charter school students shall be tested with the same standardized tests as other Idaho public school students.

[33-5206, added 1998, ch. 92, sec. 1, p. 334; am. 1999, ch. 244, sec. 4, p. 627; am. 2001, ch. 209, sec. 1, p. 831; am. 2004, ch. 220, sec. 1, p. 658; am. 2004, ch. 371, sec. 7, p. 1107; am. 2004, ch. 376, sec. 1, p. 1120; am. 2005, ch. 376, sec. 6, p. 1209; am. 2012, ch. 188, sec. 3, p. 500; am. 2013, ch. 343, sec. 7, p. 918; am. 2016, ch. 54, sec. 1, p. 150; am. 2016, ch. 271, sec. 7, p. 739; am. 2017, ch. 249, sec. 3, p. 616; am. 2019, ch. 197, sec. 1, p. 611; am. 2020, ch. 64, sec. 2, p. 147; am. 2020,

ch. 322, sec. 1, p. 929; am. 2022, ch. 192, sec. 1, p. 628; am. 2023, ch. 268, sec. 5, p. 803.]

33-5207. CHARTER APPEAL PROCEDURE. (1) If a local school board of trustees, acting in its capacity as an authorized chartering entity, approves a petition for the conversion of an existing traditional public school within the school district over the objection of thirty (30) or more persons or employees of the district, or if an authorized chartering entity denies a petition for the establishment of a new or replication public charter school for any reason including, but not limited to, failure by the petitioner to follow procedures or for failure to provide required information, then such decisions may be appealed to the state superintendent of public instruction within thirty (30) days of the date of the written decision, at the request of persons opposing the conversion of an existing traditional public school, or at the request of the petitioner whose request for a new charter was denied.

(2) The state superintendent of public instruction shall select a hearing officer to review the action of the authorized chartering entity, pursuant to section [67-5242](#), Idaho Code. The hearing officer shall, within thirty (30) days of receipt of the request, review the full record regarding the charter petition and convene a public hearing regarding the charter petition. Within ten (10) days of the public hearing, the hearing officer shall submit a written recommendation to the authorized chartering entity and to the persons requesting the review. The recommendation by the hearing officer either to affirm or reverse the decision of the authorized chartering entity shall be based upon the full record regarding the charter petition, including the standards and criteria contained in this chapter and upon any public charter school rules adopted by the state board of education. The recommendation shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the recommendations based on the applicable statutory provisions and factual information contained in the record.

(3) Within thirty (30) days following receipt of the hearing officer's written recommendation, the authorized chartering entity shall hold a meeting open to the public for the purpose of reviewing the hearing officer's written recommendation. Within ten (10) days of such meeting, the authorized chartering entity shall either affirm or reverse its initial decision. The authorized chartering entity's decision shall be in writing and contain findings which explain the reasons for its decision.

(4) If, upon reconsideration of a decision to approve the conversion of a traditional public school to a public charter school, the local school board:

(a) Affirms its initial decision to authorize such conversion, the charter shall be approved and there shall be no further appeal.

(b) Reverses its initial decision and denies the conversion, that decision is final and there shall be no further appeal.

(5) If, upon reconsideration of a decision to deny a petition for a public charter school, the authorized chartering entity:

(a) Reverses its initial decision and approves the public charter school petition, there shall be no further appeal.

(b) Affirms its initial decision denying the public charter school petition, the board of directors of the nonprofit corporation identified

in the petition may appeal to the state board of education. The state board of education shall hold a public hearing within a reasonable time after receiving notice of such appeal but no later than sixty (60) calendar days after receiving such notice, and after the public hearing, shall take any of the following actions: (i) approve or deny the petition for the public charter school, provided that the state board of education shall only approve the petition if it determines that the authorized chartering entity failed to appropriately consider the charter petition, or if it acted in an arbitrary manner in denying the petition; or (ii) in the case of a denial by the board of a local school district, redirect the matter to the public charter school commission for further review. Such public hearing shall be conducted pursuant to procedures as set by the state board of education.

(6) A public charter school for which a charter is approved by the state board of education shall qualify fully as a public charter school for all funding and other purposes of this chapter. The public charter school commission shall assume the role of the authorized chartering entity for any charter approved by the state board of education as provided in subsection (5) (b) of this section. Employees of a public charter school approved by the state board of education shall not be considered employees of the local school district in which the public charter school is located, nor of the state board of education, nor of the commission.

(7) The decision of the state board of education shall be subject to review pursuant to [chapter 52, title 67](#), Idaho Code. Nothing in this section shall prevent a petitioner from bringing a new petition for a public charter school at a later time.

(8) There shall be no appeal of a decision by a local school board of trustees which denies the conversion of an existing traditional public school within that district to a public charter school, or by an authorized chartering entity which approves a petition for a public charter school.

[33-5207, added 1998, ch. 92, sec. 1, p. 334; am. 1998, ch. 201, sec. 2, p. 718; am. 2004, ch. 371, sec. 8, p. 1108; am. 2005, ch. 376, sec. 7, p. 1210; am. 2012, ch. 188, sec. 4, p. 501; am. 2013, ch. 343, sec. 8, p. 919; am. 2016, ch. 271, sec. 8, p. 741.]

33-5208. PUBLIC CHARTER SCHOOL FINANCIAL SUPPORT. Except as provided in subsection (10) of this section, from the state educational support program the state department of education shall make the following apportionment to each public charter school for each fiscal year based on attendance figures submitted in a manner and time as required by the department of education:

(1) Per student support. Computation of support units for each public charter school shall be calculated as if it were a separate school according to the schedules in section [33-1002](#)(4), Idaho Code, except that public charter schools with fewer than one hundred (100) secondary ADA shall use a divisor of twelve (12) and the minimum units shall not apply. No public charter school shall receive an increase in support units that exceeds the support units it received in the prior year by more than thirty (30), provided that this limitation shall not apply for the 2020-2021 school year. Funding from the state educational support program shall be equal to the total distribution factor, plus the salary-based apportionment provided in [chapter 10, title 33](#), Idaho Code. Provided however, any public charter school that is formed by the conversion of an existing traditional public school shall

be assigned divisors, pursuant to section [33-1002](#), Idaho Code, that are no lower than the divisors of the school district in which the traditional public school is located, for each category of pupils listed.

(2) Special education. For each student enrolled in the public charter school who is entitled to special education services, the state and federal funds from the exceptional child education program for that student that would have been apportioned for that student to the school district in which the public charter school is located.

(3) Alternative school support. Public charter schools may qualify under the provisions of sections [33-1002](#) and [33-1002C](#), Idaho Code, provided the public charter school meets the necessary statutory requirements, and students qualify for attendance at an alternative school as provided by rule of the state board of education.

(4) Transportation support. Support shall be paid to the public charter school as provided in [chapter 15, title 33](#), Idaho Code, and section [33-1006](#), Idaho Code. Each public charter school shall furnish the department with an enrollment count as of the first Friday in November of public charter school students who are eligible for reimbursement of transportation costs under the provisions of this subsection and who reside more than one and one-half (1 1/2) miles from the school. The state department of education is authorized to include in the annual appropriation to the charter school sixty percent (60%) of the estimated transportation cost. The final appropriation payment in July shall reflect reimbursements of actual costs pursuant to section [33-1006](#), Idaho Code. To be eligible for state reimbursement under the provisions of section [33-1006](#), Idaho Code, the student to be transported must reside within the public charter school's primary attendance area and must meet at least one (1) of the following two (2) criteria:

- (a) The student resides within the school district in which the public charter school is physically located; or
- (b) The student resides within fifteen (15) miles of the public charter school, by road.

The limitations placed by this subsection on the reimbursement of transportation costs for certain students shall not apply to public virtual schools.

(5) Facilities funds. The state department of education shall distribute facilities funds to public charter schools for each enrolled student in which a majority of the student's instruction is received at a facility that is owned or leased by the public charter school. Such funds shall be used to defray the purchase, fee, loan or lease costs associated with payments for real property used by the students or employees of the public charter school for educational or administrative purposes. Such funds shall be distributed from the moneys appropriated to the educational support program and shall be calculated as a percentage of the statewide average amount of bond and plant facility funds levied per student by Idaho school districts, as follows:

Fiscal Year 2014	Twenty Percent (20%)
Fiscal Year 2015	Thirty Percent (30%)

For fiscal year 2016 and each fiscal year thereafter, this percentage shall increase by ten percent (10%) each time the total appropriation of state funds for the educational support program increases by three percent (3%) or more over the prior fiscal year. Provided however, that the percentage shall be no greater than fifty percent (50%).

For those public charter schools that do not receive facilities funds for all enrolled students, the school may submit to the state department of education a reimbursement claim for any costs for which facilities funds may be used. The state department of education shall reduce such claim by the greater of fifty percent (50%) or the percentage of the school's enrolled students for which the school receives facilities funds and shall pay the balance. Provided however, that the total reimbursements paid to a public charter school, in combination with any facilities stipend received by the school, shall not exceed the amount of facilities funds that would have been received by the school had the school received facilities funds for all enrolled students. For the purposes of this subsection, the term "real property" shall be used as defined in section [63-201](#), Idaho Code.

(6) Payment schedule. The state department of education is authorized to make an advance payment of twenty-five percent (25%) of a public charter school's estimated annual apportionment for its first year of operation, and each year thereafter, provided the public charter school is serving more grades or at least ten percent (10%) more classes than the previous year, to assist the school with initial start-up costs or payroll obligations. For a public charter school entering its second or greater year of operations, the state department of education may require documentation establishing the need for such an advance payment, including comparative class schedules and proof of a commensurate increase in the number of employees.

(a) For a public charter school to receive the advance payment, the school shall submit its anticipated fall membership for each grade level to the state department of education by June 1.

(b) Using the figures provided by the public charter school, the state department of education shall determine an estimated annual apportionment from which the amount of the advance payment shall be calculated. Advance payment shall be made to the school on or after July 1 but no later than July 31.

(c) All subsequent payments, taking into account the onetime advance payment made for the first year of operation, shall be made to the public charter school in the same manner as other traditional public schools in accordance with the provisions of section [33-1009](#), Idaho Code.

A public charter school shall comply with all applicable fiscal requirements of law, except that the following provisions shall not be applicable to public charter schools: that portion of section [33-1004](#), Idaho Code, relating to reduction of the administrative and instructional staff allowance and the pupil service staff allowance when there is a discrepancy between the number allowed and the number actually employed; and section [33-1004E](#), Idaho Code, for calculation of district staff indices.

(7) Nothing in this chapter shall be construed to prohibit any private person or organization from providing funding or other financial assistance to the establishment or operation of a public charter school.

(8) Each public charter school shall pay an authorizer fee to its authorized chartering entity, to defray the actual documented cost of monitoring, evaluation and oversight, which, in the case of public charter schools authorized by the public charter school commission, shall include each school's proportional fee share of moneys appropriated from the public charter school authorizers fund to the public charter school commission, plus fifteen percent (15%). Provided however, that each public charter school's board of directors may direct up to ten percent (10%) of the calculated fee to pay membership fees to an organization or association

that provides technical assistance, training and advocacy for Idaho public charter schools. Unless the authorized chartering entity declines payment, such fee shall be paid by March 15 of each fiscal year and shall not exceed the greater of:

(a) All state funds distributed to public schools on a support unit basis for the prior fiscal year, divided by the statewide number of public school students in average daily attendance in the first reporting period in the prior fiscal year; or

(b) The lesser of:

(i) The result of the calculation in paragraph (a) of this subsection, multiplied by four (4); or

(ii) One and one-half percent (1.5%) of the result of the calculation in paragraph (a) of this subsection, multiplied by the public charter school's average daily attendance in the first reporting period in the current fiscal year.

(9) Nothing in this chapter shall prevent a public charter school from applying for federal grant moneys or for career technical education funding of any source for any reason including, but not limited to, the instructional delivery method.

(10) (a) Each student in attendance at a public virtual school shall be funded based upon either the actual hours of attendance in the public virtual school on a flexible schedule, or the percentage of coursework completed, whichever is more advantageous to the school, up to the maximum of one (1) full-time equivalent student.

(b) All federal educational funds shall be administered and distributed to public charter schools, including public virtual schools, that have been designated as a local education agency (LEA), as provided in section [33-5203](#)(8), Idaho Code.

(11) Nothing in this section prohibits separate face-to-face learning activities or services. In order to be eligible for career technical education essential components funding, virtual schools may be required to offer some face-to-face instruction in order to meet industry standards, licensing requirements, work-based learning requirements, or other requirements set forth by the board.

(12) The provisions of section [33-1021](#), Idaho Code, shall apply to public charter schools provided for in this chapter.

[33-5208, added 1998, ch. 92, sec. 1, p. 335; am. 1999, ch. 244, sec. 5, p. 628; am. 2001, ch. 114, sec. 1, p. 405; am. 2002, ch. 109, sec. 1, p. 307; am. 2004, ch. 370, sec. 3, p. 1097; am. 2004, ch. 374, sec. 1, p. 1116; am. 2005, ch. 255, sec. 6, p. 783; am. 2005, ch. 376, sec. 8, p. 1212; am. 2006, 1st Ex. Sess., ch. 1, sec. 13, p. 55; am. 2007, ch. 350, sec. 7, p. 1031; am. 2009, ch. 284, sec. 3, p. 855; am. 2011, ch. 310, sec. 2, p. 879; am. 2012, ch. 188, sec. 5, p. 503; am. 2013, ch. 342, sec. 2, p. 903; am. 2013, ch. 343, sec. 9, p. 920; am. 2015, ch. 14, sec. 1, p. 18; am. 2015, ch. 305, sec. 1, p. 1204; am. 2016, ch. 271, sec. 9, p. 743; am. 2019, ch. 298, sec. 6, p. 885; am. 2021, ch. 127, sec. 1, p. 369; am. 2021, ch. 247, sec. 1, p. 768.]

33-5209A. ACCOUNTABILITY. (1) Performance framework. The performance provisions within the performance certificate shall be based upon a performance framework that clearly sets forth the academic and operational performance indicators, measures and metrics that will guide the authorized char-

tering entity's evaluations of each public charter school. The performance framework shall include indicators, measures and metrics for, at a minimum:

- (a) Student academic proficiency;
- (b) Student academic growth;
- (c) College and career readiness (for high schools);
- (d) The actual and potential at-risk makeup of the student body population defined by the criteria set forth in section [33-1001](#)(3)(a) and (b), Idaho Code, for all grade levels and economically disadvantaged students; and
- (e) Board performance and stewardship, including compliance with all applicable laws, regulations and terms of the performance certificate.

(2) Measurable performance targets shall be set by each charter holder for each public charter school for which it holds a charter in conjunction with its authorized chartering entity and shall, at a minimum, require that each school meet applicable federal, state and authorized chartering entity goals for student achievement.

(3) For each public charter school it oversees, the authorized chartering entity shall be responsible for analyzing and reporting all data from state assessments in accordance with the performance framework.

[33-5209A, added 2013, ch. 343, sec. 11, p. 922; am. 2016, ch. 271, sec. 10, p. 746; am. 2021, ch. 181, sec. 1, p. 500; am. 2023, ch. 268, sec. 6, p. 808.]

33-5209B. CHARTER RENEWALS. (1) A charter may be renewed for successive five (5) year terms of duration. An authorized chartering entity may grant renewal with specific written conditions for necessary improvements to a public charter school. Any such specific written conditions shall state the date by which the conditions must be met.

(2) Following the initial three (3) year term, an authorized chartering entity may nonrenew or grant renewal for an additional five (5) years, based on the performance of the public charter school on the performance indicators, measures and metrics contained in the performance certificate. Subsequent renewals shall be for a term of five (5) years.

(3) No later than November 15, the authorized chartering entity shall issue a public charter school performance report and charter renewal application guidance to any charter holder with a public charter school whose charter will expire the following year. The performance report shall summarize the public charter school's performance record to date, based on the data required by this chapter and the performance certificate, and shall provide notice of any weaknesses or concerns determined by the authorized chartering entity concerning the public charter school that may jeopardize its position in seeking renewal, if not timely rectified. The charter holder shall have thirty (30) days to respond to the performance report and submit any corrections or clarifications for the report.

(4) The renewal application guidance shall, at a minimum, provide an opportunity for the charter holder to:

- (a) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal; and
- (b) Describe improvements undertaken or planned for the school.

(5) The renewal application guidance shall include or refer explicitly to the criteria that will guide the authorized chartering entity's renewal decisions, which shall be based on independent fiscal audits and the performance framework set forth in the performance certificate.

(6) No later than December 15, the charter holder seeking renewal shall submit a renewal application to the authorized chartering entity pursuant to the renewal application guidance issued by the authorized chartering entity. The authorized chartering entity shall vote on the renewal application no later than March 15.

(7) In making charter renewal decisions, every authorized chartering entity shall:

(a) Ground its decisions in evidence of the school's performance over the term of the performance certificate in accordance with the performance framework set forth in the performance certificate;

(b) Ensure that data used in making renewal decisions are available to the school and the public;

(c) Take into consideration the actual and potential at-risk makeup of the student body population defined by the criteria set forth in section [33-1001](#) (3) (a) and (b), Idaho Code, for all grade levels and economically disadvantaged students;

(d) Deem a virtual school financially sufficient if there is an agreement that requires an education service provider to assume a virtual school's financial risk when it does not have sufficient residual funds to pay the education service provider. Where this paragraph is applicable, the education service provider shall make its audited financial statements available unless the education service provider already makes such audited financial statements publicly available for compliance with other federal or state laws; and

(e) Provide a public report summarizing the evidence basis for each decision.

(8) An authorized chartering entity must develop revocation and nonrenewal processes that:

(a) Provide the charter holders with a timely notification of the prospect of revocation or nonrenewal and of the reasons for such possible closure, which shall be limited to failure to meet the terms of the performance certificate or the written conditions established pursuant to the provisions of subsection (1) of this section;

(b) Allow the charter holders a reasonable amount of time in which to prepare a response;

(c) Provide the charter holders with an opportunity to submit documents and give testimony challenging the rationale for closure and in support of the continuation of the school at an orderly proceeding held for that purpose;

(d) Allow the charter holders to be represented by counsel and to call witnesses on their behalf;

(e) Permit the recording of such proceedings; and

(f) After a reasonable period for deliberation, require a final determination to be made and conveyed in writing to the charter holders.

(9) An authorized chartering entity shall renew any charter in which the public charter school met all of the terms of its performance certificate at the time of renewal. An authorized chartering entity may renew or nonrenew any charter in which the public charter school failed to meet one (1) or more of the terms of its performance certificate.

33-5209C. ENFORCEMENT -- REVOCATION -- APPEAL. (1) An authorized chartering entity shall continually monitor the performance and legal compliance of the public charter schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the performance certificate. Every authorized chartering entity shall have the authority to conduct or require oversight activities that enable the authorized chartering entity to fulfill its responsibilities pursuant to the provisions of this chapter, including conducting appropriate inquiries and investigations, as long as those activities are consistent with the intent of this chapter, adhere to the terms of the performance certificate and do not unduly inhibit the autonomy granted to public charter schools.

(2) Each authorized chartering entity shall annually publish and make available to the public a performance report for each public charter school it oversees, in accordance with the performance framework set forth in the performance certificate and section [33-5209A](#), Idaho Code. The authorized chartering entity may require each public charter school it oversees to submit an annual report to assist the authorized chartering entity in gathering complete information about each school consistent with the performance framework. Each public charter school shall publish its annual performance report on the school's website.

(3) If an authorized chartering entity has reason to believe that a public charter school cannot remain fiscally sound for the remainder of its certificate term, it shall provide the state department of education with written notification of such concern. Upon receiving such notification, the state department of education shall have the authority to modify the percentage of the total appropriation to be paid to the public charter school pursuant to the provisions of section [33-1009](#)(1), Idaho Code, such that equal percentages are paid on each of the prescribed dates. If documents filed with an authorized chartering entity pursuant to section [33-5206](#)(9), Idaho Code, establish that a public charter school that is not a virtual school and that has been open for more than two (2) years had less than fifteen (15) days' worth of cash on hand on June 30 of the current calendar year, then by November 30 of that year the authorized chartering entity shall notify the school that the school has until June 30 of the subsequent year to cure the deficiency. If on June 30 of the subsequent year the school again has less than fifteen (15) days' worth of cash on hand, then by November 30 of that year the authorized chartering entity shall begin revocation proceedings pursuant to subsection (7) of this section.

(4) If an authorized chartering entity has reason to believe that a charter holder or public charter school has violated any provision of law, it shall notify the charter holder and the entity responsible for administering said law of the possible violation.

(5) If an authorized chartering entity revokes or does not renew a charter, the authorized chartering entity shall clearly state, in a resolution of its governing board, the reasons for the revocation or nonrenewal.

(6) Within fourteen (14) days of taking action to renew, not renew or revoke a charter, the authorized chartering entity shall report to the state board of education the action taken and shall provide a copy of the report to the charter holder at the same time that the report is submitted to the state board of education. The report shall include a copy of the authorized chartering entity's resolution setting forth the action taken and reasons for the decision and assurances as to compliance with all of the requirements set forth in this chapter.

(7) A charter may be revoked by the authorized chartering entity if the public charter school has failed to meet any of the specific, written conditions for necessary improvements established pursuant to the provisions of section [33-5209B](#)(1), Idaho Code, or has failed to cure the fifteen (15) days' worth of cash on hand deficiency pursuant to subsection (3) of this section, by the dates specified. Revocation may not occur until the charter holder has been afforded a public hearing, unless the authorized chartering entity determines that the continued operation of the public charter school presents an imminent public safety issue, in which case the charter may be revoked immediately. Public hearings shall be conducted by the authorized chartering entity or such other person or persons appointed by the authorized chartering entity to conduct public hearings and receive evidence as a contested case in accordance with the provisions of section [67-5242](#), Idaho Code. Notice and opportunity to reply shall include, at a minimum, written notice setting out the basis for consideration of revocation, a period of not less than thirty (30) days within which the charter holder can reply in writing, and a public hearing within thirty (30) days of the receipt of the written reply.

(8) A decision to revoke or nonrenew a charter or to deny a revision of a charter may be appealed directly to the state board of education. With respect to such appeal, the state board of education shall substantially follow the procedure as provided in section [33-5207](#)(5)(b), Idaho Code. In the event the state board of education reverses a decision of revocation or non-renewal, the charter holder subject to such action shall then be placed under the chartering authority of the public charter school commission.

[33-5209C, added 2013, ch. 343, sec. 13, p. 924; am. 2016, ch. 271, sec. 12, p. 747; am. 2020, ch. 287, sec. 1, p. 832; am. 2022, ch. 192, sec. 2, p. 632.]

33-5210. APPLICATION OF SCHOOL LAW -- ACCOUNTABILITY -- EXEMPTION FROM STATE RULES. (1) All public charter schools are under the general supervision of the state board of education.

(2) Every authorized chartering entity that approves a charter shall be responsible for ensuring that each public charter school program approved by that authorized chartering entity meets the terms of the charter, complies with the general education laws of the state unless specifically directed otherwise in this chapter, and operates in accordance with the state educational standards of thoroughness pursuant to section [33-1612](#), Idaho Code.

(3) Each public charter school shall comply with the financial reporting requirements of section [33-701](#), subsections 5. through 10., Idaho Code, in the same manner as those requirements are imposed upon school districts and with laws governing safety including, but not limited to, sections [33-122](#) and [33-130](#), Idaho Code, and [chapter 2, title 33](#), Idaho Code, and rules promulgated thereunder.

(4) Other than as specified in this section, each public charter school is exempt from rules governing school districts, which rules have been promulgated by the state board of education, with the exception of state rules relating to:

(a) Teacher certification as necessitated by the provisions of section [33-5206](#)(3) and (4), Idaho Code;

(b) Accreditation of the school as necessitated by the provisions of section [33-5206](#)(14), Idaho Code;

- (c) Qualifications of a student for attendance at an alternative school as necessitated by the provisions of section [33-5208](#)(3), Idaho Code;
- (d) Rules promulgated pursuant to section [33-1612](#), Idaho Code; and
- (e) All rules that specifically pertain to public charter schools promulgated by the state board of education.

[33-5210, added 1998, ch. 92, sec. 1, p. 337; am. 1999, ch. 244, sec. 6, p. 629; am. 2000, ch. 278, sec. 1, p. 901; am. 2002, ch. 110, sec. 1, p. 309; am. 2004, ch. 371, sec. 10, p. 1111; am. 2005, ch. 376, sec. 10, p. 1215; am. 2012, ch. 188, sec. 7, p. 506; am. 2016, ch. 271, sec. 13, p. 748; am. 2017, ch. 249, sec. 4, p. 618; am. 2022, ch. 192, sec. 3, p. 633.]

33-5211. TECHNICAL SUPPORT AND INFORMATION. (1) Upon request, the state department of education shall provide technical assistance to persons or authorized chartering entities preparing or reviewing charter petitions or performance certificates, and to existing public charter schools in the same manner as such assistance is provided to traditional public schools and school districts.

(2) Upon request, the state department of education shall provide the following information concerning a public charter school whose petition has been approved:

- (a) The public charter school's charter and performance certificate;
- (b) The annual audit performed at the public charter school pursuant to the public charter school petition; and
- (c) Any written report by the state board of education to the legislature reviewing the educational effectiveness of public charter schools.

(3) At least one (1) person among a group of petitioners of a prospective public charter school shall attend, in person or electronically, a public charter school workshop offered by the state department of education. The state department of education shall provide notice of dates and locations when workshops will be held, shall make earlier recorded workshops available electronically and shall provide proof of attendance to workshop attendees.

[33-5211, added 1998, ch. 92, sec. 1, p. 337; am. 2001, ch. 188, sec. 1, p. 651; am. 2004, ch. 371, sec. 11, p. 1111; am. 2012, ch. 188, sec. 8, p. 507; am. 2013, ch. 343, sec. 14, p. 925; am. 2017, ch. 249, sec. 5, p. 619.]

33-5212. SCHOOL CLOSURE AND DISSOLUTION. (1) Prior to any public charter school closure decision, an authorized chartering entity shall have developed a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property and assets in accordance with the requirements of this chapter. The protocol shall specify tasks, timelines and responsible parties, including delineating the respective duties of the school and the authorized chartering entity. In the event of a public charter school closure for any reason, the authorized chartering entity shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol. The closing school's board of directors shall be responsible for executing the school's closure.

(2) In the event of a public charter school closure for any reason, the assets of the school shall be distributed first to satisfy outstanding payroll obligations for employees of the school, including any tax, public employee retirement system and other employee benefit obligations, then to creditors of the school, and then to the authorized chartering entity in the case of a public charter school authorized by the board of a local school district. In the case of a public charter school authorized by any other authorized chartering entity, any remaining assets shall be distributed to the public school income fund. Assets purchased using federal funds shall be returned to the authorized chartering entity for redistribution among other public charter schools. If the assets of the school are insufficient to pay all parties to whom the school owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.

[33-5212, added 2013, ch. 343, sec. 15, p. 926.]

33-5213. PUBLIC CHARTER SCHOOL COMMISSION. (1) There is hereby created an independent public charter school commission, referred to hereinafter as the commission, under the state board of education, pursuant to section [33-101](#), Idaho Code. The commission is hereby authorized to appoint a director who shall serve at the pleasure of the commission and shall receive such salary as fixed by the commission. It shall be the responsibility and duty of the director acting at the direction of the commission to administer and enforce the provisions of this chapter. The director shall hire such staff as may be necessary to assist in carrying out the provisions of this chapter.

(2) The public charter school commission shall adopt policies, subject to law, regarding the governance and administration of the commission and make recommendations to the state board of education regarding the oversight of public charter schools.

(3) The commission shall be composed of seven (7) members appointed by the governor, subject to the advice and consent of the senate. Commissioner appointments made pursuant to this section prior to July 1, 2021, shall remain valid through the duration of the term to which each commissioner was appointed.

(4) The term of office for commission members shall be four (4) years. In making such appointments, the governor shall consider regional balance without reference to party affiliation. Members appointed to the commission shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, public school leadership, assessment, curriculum and instruction, and public education law. All members of the commission shall have demonstrated understanding of and commitment to charter schools as a strategy for strengthening public education. Members of the commission shall hold office until the expiration of the term to which the member was appointed and until a successor has been duly appointed, unless sooner removed for cause by the governor. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(5) All members of the commission shall be citizens of the United States and residents of the state of Idaho for not less than two (2) years.

(6) The members of the commission shall, at their first regular meeting following the effective date of this act, and every two (2) years thereafter, elect, by a majority vote of the members of the commission, a chair and a vice chair. The chair shall preside at meetings of the commission, and the vice chair shall preside at such meetings in the absence of the chair. A majority

of the members of the commission shall constitute a quorum. The commission shall meet at such times and places as determined to be necessary and convenient, or at the call of the chair.

(7) Each member of the commission not otherwise compensated by public moneys shall be compensated as provided in section [59-509](#) (h), Idaho Code.

[33-5213, added 2004, ch. 371, sec. 12, p. 1112; am. 2012, ch. 188, sec. 9, p. 507; am. 2013, ch. 343, sec. 16, p. 926; am. 2014, ch. 29, sec. 1, p. 43; am. 2017, ch. 44, sec. 1, p. 65; am. 2017, ch. 267, sec. 1, p. 663; am. 2021, ch. 181, sec. 2, p. 501.]

33-5214. PUBLIC CHARTER SCHOOL AUTHORIZERS FUND. There is hereby created in the state treasury a fund to be known as the "Public Charter School Authorizers Fund," hereinafter referred to as "the fund." All authorizer fees paid pursuant to section [33-5208](#) (8), Idaho Code, for public charter schools under the governance of the public charter school commission shall be deposited in the fund. Moneys in the fund shall be appropriated to defray the commission's cost of operations and the state department of education's cost of reviewing, approving and overseeing any charter school authorizers requiring department approval.

[33-5214, added 2013, ch. 342, sec. 3, p. 906.]

33-5215. CAREER TECHNICAL REGIONAL PUBLIC CHARTER SCHOOL. (1) A career technical regional public charter school is hereby declared to be a public charter school and, as such, the provisions of [chapter 52, title 33](#), Idaho Code, shall apply to each career technical regional public charter school in the same manner and to the same extent as the provisions of charter school law apply to other public charter schools, with the exception of certain conditions and applications as specifically provided in this section. The provisions of section [33-1002G](#), Idaho Code, apply to career technical regional public charter schools.

(2) In addition to the approval provisions of this chapter, approval of a career technical regional public charter school by an authorized chartering entity shall not be final until the petition has also been reviewed by the division of career technical education.

(3) Funding for a career technical regional public charter school shall be the same as provided in section [33-5208](#), Idaho Code, except that:

(a) The salary-based apportionment for a career technical regional public charter school shall be the statewide average for public charter schools. Such salary-based apportionment may be used for payment of contracted services or for direct hire of staff;

(b) The board of directors may contract for the services of certificated and noncertificated personnel, to procure the use of facilities and equipment, and to purchase materials and equipment that in the judgment of the board of directors is necessary or desirable for the conduct of the business of the career technical regional public charter school; and

(c) Transportation support shall be paid to the career technical regional public charter school in accordance with the provisions of [chapter 15, title 33](#), Idaho Code.

(4) A career technical regional public charter school shall provide assurances in state attendance reports that it has verified attendance reports, which generate ADA claims with its participating school districts,

to make certain that the districts and the charter school do not duplicate enrollment or ADA claims.

[33-5215, added 2007, ch. 246, sec. 2, p. 725; am. 2016, ch. 25, sec. 36, p. 55; am. 2016, ch. 245, sec. 10, p. 655; am. 2023, ch. 271, sec. 2, p. 815.]

33-5217. PUBLIC CHARTER SCHOOL REVOLVING LOAN FUND. (1) There is hereby established in the state treasury the public charter school revolving loan fund to assist qualifying charter schools in obtaining financing for facility purchases, improvements, and construction. The fund shall consist of moneys made available through appropriations, fees, grants, gifts, interest earned on idle moneys in the fund, and any other source to fulfill the purposes of this section. Moneys in the fund are hereby continuously appropriated for the purposes of this section and shall be expended only for the purposes stated in this section.

(2) Loan issuer. The Idaho housing and finance association shall issue all loans under this section. A public charter school seeking to use the public charter school revolving loan fund must apply for and receive approval from the Idaho housing and finance association to receive a loan under this section. The Idaho housing and finance association shall establish guidelines and procedures for the application, approval, allocation, and repayment of loans issued under this section, consistent with the criteria in this section.

(3) Public charter school eligibility. A public charter school shall be eligible to use the public charter school revolving loan fund only upon satisfaction of the guidelines and procedures established by the Idaho housing and finance association pursuant to subsection (2) of this section and upon satisfaction of the following conditions, as determined by the Idaho housing and financing association:

(a) The public charter school must demonstrate it has obtained one (1) of the following for the remainder of the financing:

- (i) A letter of commitment from a national or state-chartered financial institution;
- (ii) A letter of commitment from a nonprofit corporation;
- (iii) A letter of commitment from a community development financial institution; or
- (iv) A letter of commitment from a qualified underwriter or an investment firm;

(b) The public charter school must provide annual budgets and cash flow statements and must also provide:

- (i) Projected future budgets throughout the term of the loan, cash flows, and operating reserves to support a debt service coverage greater than 1.20x;
- (ii) Facility operation cost estimates, including debt service, occupancy cost, and other facilities-related expenses, which are not to exceed twenty percent (20%) of revenue; and
- (iii) Certification from a school administrator that projected future budgets and cash flows are based on reasonable assumptions related to level or increasing projected enrollment or waitlist and projected total income, including any matching funds and donations contingent on receipt of a loan under this section;

(c) The public charter school must have a minimum of one million dollars (\$1,000,000) in private or public grant support available for use supporting the school budget prior to loan issuance;

(d) The public charter school must demonstrate that the letter of commitment it obtained pursuant to paragraph (a) of this subsection includes a commitment from a lender to provide a minimum of twenty percent (20%) of project financing subordinate to the loan provided by this section; and

(e) At the time of loan issuance, the public charter school must be in the preopening stage or in the first or second year serving students.

(4) Loan terms and conditions. The Idaho housing and finance association shall develop and publish the general terms and conditions of loans issued under this section.

(5) Maximum loan amount. Public charter schools that satisfy the guidelines and procedures established by the Idaho housing and finance association shall receive approval from the Idaho housing and finance association to rely on the public charter school revolving loan fund for assistance in obtaining favorable financing for facility improvements and construction, as long as sufficient moneys exist pursuant to subsection (1) of this section. Eligible schools shall receive approval on a first-come, first-served basis, according to date of completed application, in an amount not to exceed two million five hundred thousand dollars (\$2,500,000).

(6) Intercept. As a requirement to participate in the public charter school revolving loan fund, a participating public charter school shall provide a directive to the state department of education that all payments to the school pursuant to the state educational support program shall be paid directly to all affected lenders, including the Idaho housing and finance association, according to the loan documents. All remaining funds shall be forwarded to the public charter school. The payment directive required in this subsection may not be revoked or amended.

(7) Annual fee. Schools participating in the public charter school revolving loan fund shall pay a onetime fee in an amount equal to one-half percent (0.5%) of the loan amount at the time of issuance, which may be included in the loan and paid to the Idaho housing and finance association for costs related to the making of the loan. Participating public charter schools shall also annually pay an amount not to exceed thirty (30) basis points of the principal amount of the loan, which may be used to cover costs the Idaho housing and finance association incurred in managing the public charter school revolving loan fund.

[33-5217, added 2023, ch. 117, sec. 2, p. 337.]

33-5218. PUBLIC CHARTER SCHOOL FACILITIES PROGRAM. (1) Legislative intent. It is the intent of the legislature, in recognition that providing Idaho students with a thorough education is an essential public purpose of the state, to support public charter schools by providing a mechanism to obtain favorable financing on bonds so that less money is obligated toward interest payments and more money remains in public charter schools for the benefit of Idaho's students. There is hereby created the public charter school facilities program to assist qualifying charter schools in obtaining favorable financing on bonds for facility improvements and construction.

(2) Eligibility. A public charter school seeking to use the public charter school facilities program must receive approval from the Idaho housing and finance association pursuant to requirements for issuance of

nonprofit facility bonds and to satisfaction of the criteria set forth in this section. To qualify, a public charter school must submit the following documentation to the Idaho housing and finance association:

- (a) A letter of commitment from one (1) of the following:
  - (i) A national or state chartered financial institution;
  - (ii) A community development financial institution; or
  - (iii) A qualified underwriter or an investment firm;
- (b) Evidence that the public charter school has been in academic, operational, and financial good standing according to its authorizer for each of the previous three (3) years;
- (c) Annual budgets and cash flow statements projecting that the cost to operate the proposed facility, including future debt service, future occupancy cost, and facility operating expenses, will not exceed twenty percent (20%) of ongoing revenues;
- (d) Evidence that the school has operating reserves greater than sixty (60) days of cash on hand and a debt service coverage ratio equal to or greater than one and two-tenths (1.2);
- (e) An audit opinion or opinions demonstrating:
  - (i) An unqualified audit opinion, or a qualified opinion qualified only on the basis of not reporting the actuarial value of the PERSI sick leave plan pursuant to statement no. 45 of the governmental accounting standards board;
  - (ii) An audit devoid of significant findings and conditions, material weakness, or significant internal control weakness; and
  - (iii) An audit that does not include a going concern disclosure in the notes or an explanatory paragraph within the audit report for three (3) consecutive years;
- (f) Certification from a public charter school's board chair or treasurer that projected future budgets and cash flows are based on reasonable assumptions related to level or increasing projected enrollment or waitlist and projected total income, including any matching funds and donations contingent on receipt of a loan under this section;
- (g) Evidence of strong academic results, including above state average growth or proficiency on the Idaho standards achievement test. A public charter school with enrollment comprised of one hundred percent (100%) at-risk students as defined by section [33-1001](#)(3), Idaho Code, is exempt from this requirement; and
- (h) Any additional information requested by the Idaho housing and finance association.

(3) Approval to participate. Upon receipt of documentation satisfying the criteria set forth in subsection (2) of this section, the Idaho housing and finance association shall notify the public charter school and the state treasurer that the school has been approved to participate in the public charter school facilities program if:

- (a) The public charter school complies with the requirements set forth in subsection (4) of this section; and
- (b) The public charter school's participation would not cause a violation of the limitations set forth in subsection (8) of this section.

Additional requirements and security interests may be imposed by agreement of the school and bondholder or trustee.

- (4) Restricted debt service reserve account.

- (a) A school participating in the public charter school facilities program shall agree to have deposited a minimum of twelve (12) months' pay-

ment on principal and interest in a restricted debt service reserve account established and held by the bondholder or trustee.

(b) Except as provided in paragraph (c) of this subsection, money in a participating public charter school's restricted debt service reserve account may not be withdrawn if the amount withdrawn would reduce the level of money in the account to less than twelve (12) months' payment on principal and interest.

(c) As long as applicable bonds issued under the facilities program remain outstanding, money in a restricted debt service reserve account may be withdrawn in an amount that would reduce the level to less than twelve (12) months' payment on principal and interest, if the money is withdrawn for the purpose of:

(i) Paying the principal, redemption price, or interest on a bond when due if the state payments intercepted pursuant to subsection (5) of this section, plus funded grants and other revenues pledged by the participating public charter school for payment of the bond, are insufficient to make the payment; or

(ii) Paying any redemption premium required to be paid when the bonds are redeemed prior to maturity if no bonds will remain outstanding.

(5) Intercept. As a requirement to participate in the public charter school facilities program, a participating public charter school shall provide a directive to the Idaho department of education that all payments to the school pursuant to the state educational support program shall be paid directly to the bond trustee to set aside funds in accordance with the bond indenture. All remaining funds shall be forwarded to the public charter school. The payment directive required in this subsection may not be revoked or amended.

(6) Public charter school facilities program fund. There is hereby established in the state treasury the public charter school facilities program fund, which shall consist of moneys made available through appropriations, fees, grants, gifts, or any other source to fulfill the purposes of this section. Moneys in the fund are hereby continuously appropriated for the purposes of this section and shall only be expended for the purposes stated herein. Any interest earned on the investment of idle moneys in the public charter school facilities program fund shall be returned to the public charter school facilities program fund. Schools participating in the public charter school facilities program shall pay a onetime fee in an amount equal to one-half percent (0.5%) of par at the time of issuance and an annual fee in an amount equal to seventy-five thousandths percent (0.075%) on the outstanding balance, which shall be deposited in the public charter school facilities program fund.

(7) Nonpayment.

(a) If a public charter school participating in the public charter school facilities program has defaulted on its obligation to pay, a draw on its restricted debt service reserve account shall be made, then the following shall occur:

(i) The bond trustee shall exercise its remedies under the bond indenture and loan agreement.

(ii) Within ten (10) days following the withdrawal from the restricted debt service account, the bondholder or trustee shall notify the Idaho housing and finance association, the state trea-

surer, and the state controller of the shortfall in the school's restricted debt service reserve account.

(iii) Within fifteen (15) days of the notice provided pursuant to subparagraph (ii) of this paragraph, the controller shall transfer, from the public charter school facilities program fund set forth in subsection (6) of this section, to the public school income fund and then to the school's restricted debt service reserve account an amount equal to one (1) month's interest on the bonds based on the interest payments for which the draw on the restricted debt service reserve account occurred. Moneys transferred to the public school income fund pursuant to this subparagraph shall be continuously appropriated for such purposes.

(iv) By December 1 of each year, the treasurer shall submit to the governor a letter certifying the amount, if any, required to restore amounts on deposit in the restricted debt service reserve accounts of participating public charter schools and the public charter school facilities program fund. The governor shall send to the legislature a statement of the expenditure of moneys from the public charter school facilities program fund as specified in section 8, article IV of the Idaho constitution and report the amount needed to restore funds in the restricted debt service reserve accounts to the amount required in subsection (4) (b) of this section. The legislature may appropriate money to restore amounts on deposit in the restricted debt service reserve account of a defaulting public charter school to the amounts required in subsection (4) (b) of this section or to redeem all outstanding bonds issued for a defaulting public charter school, the source of which may be the public charter school facilities program fund or any other available funds. The legislature may also appropriate money to restore amounts withdrawn from the public charter school facilities program fund.

(b) Repayment. If money has been withdrawn from the public charter school facilities program fund pursuant to paragraph (a) of this subsection, the school shall repay the fund from the school's allocation of facilities funds pursuant to section [33-5208](#) (5), Idaho Code, at a time agreed to by the superintendent of public instruction over a period of years until the amount so withdrawn has been repaid to the public charter school facilities program fund, as long as the repayment does not cause an event of default on a facility lease or loan.

(8) Limitations.

(a) Bonds issued for the benefit of public charter schools using the public charter school facilities program shall not be indebtedness of the state, but are special obligations payable solely from:

- (i) Revenues or other funds pledged by the qualifying public charter school; and
- (ii) Amounts appropriated by the legislature pursuant to subsection (7) of this section.

(b) The Idaho housing and finance association may not use the public charter school facilities program when issuing bonds for a public charter school under the facilities program if the total par amount outstanding under the facilities program as of the proposed closing date of the bonds to be issued, plus the par amount of the bonds to be issued, would exceed the percentage of all Idaho public school students

attending public charter schools as of July 15 of the prior calendar year multiplied by two (2) and then multiplied by the par amount of the bonds guaranteed under the Idaho school bond guaranty act as of June 30 of the prior calendar year.

(c) Bonds issued under the public charter school facilities program shall not be subordinate to any other obligations used to finance the same project.

[33-5218, added 2019, ch. 291, sec. 1, p. 861; am. 2023, ch. 118, sec. 1, p. 339.]