



SENATE BILL 392: Various Charter School Changes.

2019-2020 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	July 10, 2019
Introduced by:	Sens. Ballard, Brown, Newton	Prepared by:	Samantha Yarborough Staff Attorney
Analysis of:	Fourth Edition		

OVERVIEW: *The 4th edition of SB 392 would do the following:*

- *Authorize the Superintendent of Public Instruction to approve issuance of private activity bonds for charter school facilities after a public hearing.*
- *Clarify charter school renewal standards.*
- *Require background checks for charter school boards of directors.*
- *Remove the cap on enrollment growth of virtual charter schools participating in the virtual charter school pilot program.*
- *Authorize the State Board to allow a participating virtual charter school to increase enrollment by greater than 20%.*
- *For a participating virtual charter school that has been placed under monthly compliance monitoring as a result of a material change to its charter, require State Board approval before the school can have any enrollment increase.*

PART I. DESIGNATE THE SUPERINTENDENT OF PUBLIC INSTRUCTION AS AN APPLICABLE ELECTED REPRESENTATIVE WHO MAY APPROVE BONDS TO FINANCE OR REFINANCE A CHARTER SCHOOL FACILITY

CURRENT LAW: Under the Internal Revenue Code, a qualified private activity bond is a type of tax-exempt bond that state and local governments may issue to finance certain projects that would otherwise be classified as private activities. These include nonprofit corporations carrying out charitable purposes, including education. 26 U.S.C. 145. The governmental body has authority to serve as a “conduit” issuer, but has no liability for the repayment of the debt, and only acts as an issuer so that the private activity bonds can be tax exempt. Article 2 of Chapter 159D of the General Statutes establishes the North Carolina Capital Facilities Finance Agency as an issuer in North Carolina for these types of conduit bonds. There are also governmental entities such as the Public Finance Authority in Wisconsin that issue conduit bonds for public and private entities throughout all 50 states.

The Internal Revenue Code, 26 U.S.C. 147(f), requires that qualified private activity bonds receive public approval by both the governmental entity issuing the bonds (issuer approval) and a governmental entity having jurisdiction over the area in which the bond-financed facility is to be located (host approval). Public approval may be satisfied by approval of an applicable elected representative of the approving government unit following a public hearing for which there was reasonable public notice, or by a voter referendum. 26 U.S.C. 147(f). An “applicable elected official” includes an official elected by the voters of the governmental unit and authorized by State law to provide such approval. 26 U.S.C. 147(f)(2)(E)(i)(II).

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BILL ANALYSIS: Part I would designate the Superintendent of Public Instruction as an applicable elected representative under the Internal Revenue Code who may approve issuance of a private activity bond to finance a charter school facility, following a public hearing conducted in accordance with the Internal Revenue Code and applicable State and federal laws and regulations.

PART II. CLARIFY CHARTER SCHOOL RENEWAL STANDARDS

CURRENT LAW: The State Board of Education (SBE) must renew a charter for a charter school upon the request of the chartering entity for subsequent periods of 10 years. However, the SBE can renew the charter for less than 10 years or not renew the charter at all if one of the following applies:

- The charter school has not provided financially sound audits for the immediately preceding three years.
- The charter school's student academic outcomes for the immediately preceding three years have not been comparable to the academic outcomes of students in the local school administrative unit in which the charter school is located.
- The charter school is not, at the time of the request for renewal of the charter, substantially in compliance with State law, federal law, the school's own bylaws, or the provisions set forth in its charter granted by the State Board of Education.

BILL ANALYSIS: Part II would revise the student outcome standard so that the SBE could renew the charter for less than 10 years or not renew the charter if the percent of students who scored at or above proficient for all end-of-grade and end-of-course tests taken in the previous school year is at least 5 percentage points lower in the charter school than in the local school administrative unit in which the charter school is located.

PART III: REQUIRE BACKGROUND CHECKS FOR CHARTER BOARDS OF DIRECTORS

BILL ANALYSIS: Part III would add a requirement to the application for a charter to operate a charter school in this State. The application would be required to include the following:

- A nationwide criminal background check for each member of the board of directors of the proposed charter school to ensure that the member has not been convicted of any crime listed in G.S. 115C-332 or a substantially similar crime in another state. The criminal background check must include the following: (i) a social security number trace, including locations returned on at least a county-by-county basis and (ii) any known aliases.
- A certification from each member of the board of directors certifying whether the board member has been convicted of any felony or misdemeanor. If the board member has been convicted of a felony or misdemeanor, the certification shall include a listing of the year of the charge, the charge, and the disposition of the charge.

PART IV. CHANGES TO THE CAP ON ENROLLMENT GROWTH OF VIRTUAL CHARTER SCHOOLS PARTICIPATING IN THE VIRTUAL CHARTER SCHOOL PILOT PROGRAM

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CURRENT LAW: Section 8.35 of S.L. 2014-100 directed the SBE to establish a four-year pilot program to authorize the operation of two virtual charter schools serving students in kindergarten through 12th grade. Maximum student enrollment in any virtual charter school must be no greater than 1,500 students in the school's first year of operation and can increase by 20% for each participating school up to a maximum student enrollment of 2,592 in the fourth year of the pilot program. The SBE can waive the maximum student enrollment threshold beginning in the fourth year of the school's operation, if it determines it is in the best interests of students.

Section 7.13 of S.L. 2018-5 extended the pilot program from four years to eight years.

BILL ANALYSIS: Part IV would remove the maximum student enrollment cap for a virtual charter school, and would authorize the SBE to allow a virtual charter school to grow by more than 20% if the SBE finds that doing so is in the best interest of North Carolina students. For a virtual charter school participating in the pilot that has been placed under monthly compliance monitoring by the Charter School Advisory Board or the State Board as a result of a material change to its charter, the school must receive State Board approval before any enrollment increase.

EFFECTIVE DATE: SB 392 would become effective when it becomes law. The modified charter renewal standards would apply to applications for the renewal of charters submitted on or after the effective date. The background checks for boards of directors would be required beginning with applications for initial charters received on or after the effective date. The changes to virtual charter school enrollment would apply beginning with the 2019-2020 school year.

**Brian Gwyn, Kara McCraw, and Drupti Chauhan, staff attorneys with the Legislative Analysis Division, substantially contributed to this summary.*