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# 2019 STATE LEGISLATIVE SESSION HIGHLIGHTS FOR PUBLIC CHARTER SCHOOLS

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The impacts of the 2018 elections were felt in the 2019 state legislative sessions across the country. While charter school supporters continued to rack up legislative victories on increasing funding and facilities support, strengthening accountability, and protecting autonomy, they also faced political climates in several states that were fiercely hostile as a result of the 2018 elections.

Charter school supporters are used to having to fight against anti-charter school legislation. What was different this year was the political climate created by the elections. For example, instead of having supportive Democratic Governor Jerry Brown in California, charter school advocates had to deal with Democratic Governor Gavin Newsome, hardly the supporter that Brown was. This same dynamic was at play in Illinois, Maine, and New Mexico, among other places.

As a result, teachers' unions and other opponents started to make headway on their anti-public charter school policy agenda in state legislative sessions in 2019. In **Illinois**, they were able to eliminate the State Charter School Commission (the state's appellate body) and the ability for new charter school applicants to appeal district denials. In **Maine**, they made the cap on charter schools permanent and expanded it to include district-authorized charter schools. (The cap was set to expire in 2022 and only included state-authorized charter schools.) And they eliminated an important stream of funding for small charter schools in **New Mexico**.

Most ominously, several anti-charter school provisions were enacted in **California**. For example, the state further concentrated authorizing in the hands of districts and expanded the reasons that districts can use to deny charter school petitions to include the fiscal impact of the charter school on the district. The state also eliminated important staffing flexibilities from charter schools. If not for the work of charter school advocates in California, the results would have been worse.

At the same time that advocates fought such significant threats in hostile climates, we continued to see notable gains in many states. On the funding and facilities front, many states made improvements, including the following:

- ▶ **ALABAMA** appropriated \$400,000 to be used for grants to support the development of new public charter schools in the state.
- ▶ **ARKANSAS** appropriated \$7,575,000 to its open enrollment public charter school facilities funding aid program.
- ▶ **COLORADO** increased equalization funding for state-authorized charter schools from \$5.5 million this year to \$7 million next year.

- ▶ **FLORIDA** required school districts to share tax revenues generated from school district-voted discretionary millages with charter schools based on each charter school's proportionate share of the district's total unweighted full-time equivalent student enrollment. They required that public charter schools to use the funds in the same manner as traditional public schools and required that the referendum to contain an explanation of the distribution methodology consistent with this change. These changes apply to operating millage levies authorized by a vote of the electors on or after July 1, 2019.
- ▶ **FLORIDA** also provided \$158.2 million to its charter school capital outlay fund.
- ▶ **IDAHO** created a credit enhancement for charter schools that will help lower interest rates on bonds for charter school facilities.
- ▶ **ILLINOIS** appropriated \$34 million in capital funding to several charter schools in Chicago as part of the state's capital bill.
- ▶ **INDIANA** increased the Charter and Innovation School Grant from \$500 per pupil to \$750 per pupil. These dollars must be used primarily for facilities and transportation purposes.
- ▶ **MASSACHUSETTS** increased facilities funding for charter schools from \$893 per pupil to \$938 per pupil.
- ▶ **OHIO** allocated \$30 million per year in supplemental state aid for high-performing charter schools. Schools will receive an additional \$1,750 per pupil for economically disadvantaged students and \$1,000 per pupil for other students.
- ▶ **TENNESSEE** doubled the state's previous contribution to the Charter School Facilities Fund, bringing the fund to \$12 million for the coming grant year.

**Tennessee** established an independent commission to hear charter school appeals and authorize schools following successful appeal. **Indiana**, **Nevada**, and **Oklahoma** finally began to address the significant problems in their full-time virtual charter school sectors. And **West Virginia** became the 45th state to enact a charter school law. (The law contains a fatal flaw that allows only district authorizers, which will likely prevent very many schools from opening.)

This report provides a summary of this year's state legislative activity across the country, organized into the following categories: no-law states, caps and moratoria, authorizing and accountability, funding and facilities, full-time virtual charter schools, and other issues.

## NO-LAWS STATES

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As of January 2019, six states had yet to enact a public charter school law. This number decreased to five when **West Virginia** enacted a charter school law in June. As of this writing, 45 states and the District of Columbia have charter school laws on the books.

## CAPS AND MORATORIA

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- ▶ **CALIFORNIA**
  - A bill to place a moratorium on the growth of charter schools until June 30, 2024, was defeated.
  - A bill to cap the number of charter schools in the state at their current number was defeated.
- ▶ **ILLINOIS**
  - A bill to place a moratorium on new charter schools in financially distressed districts was defeated.
- ▶ **MAINE**
  - Made the current cap of 10 charter schools permanent and included district-authorized charter schools within the cap. (The cap was set to expire in 2022 and had only included state-authorized charter schools.)



- Limited the total enrollment at all virtual charter schools authorized by the Maine Charter School Commission to 1,000 students.
- Provided that a virtual charter school authorized by the Maine Charter School Commission may not expand to serve a grade level not included in the school's initial charter contract or, for a school whose charter was renewed prior to November 1, 2019, the renewed charter contract.

▶ **NEVADA**

- The intent of AB 462, when initially introduced, was to place a moratorium on new charter schools until January 1, 2021. The legislature eventually removed the moratorium provision from this bill. In its place, it added the following requirements:
  - Required the State Public Charter School Authority to establish a plan to manage the growth of charter schools.
  - Required the authorizer of a charter school to provide written notice to the State Department of Education and, if the authorizer is not a school district, to the board of trustees of the school district where a charter school is located or proposed to be located when the authorizer receives notice of certain actions that may be taken or takes certain actions to open or expand a charter school.
  - Required the State Public Charter School Authority to conduct an evaluation annually of the academic needs of pupils in the state; required other authorizers to conduct such an evaluation before approving an application to form a charter school; required that such evaluations include consideration of demographic information and the needs of any pupils who are at high risk of dropping out of school.
  - Before approving an application to form a charter school, required the proposed authorizer of the charter school to determine that the proposed charter school will address one or more needs identified in the applicable geographic evaluation and that it has received sufficient public input.
  - If the proposed authorizer is the State Public Charter School Authority or a college or university within the Nevada System of Higher Education, required the proposed authorizer, in renewing the application to form a charter school, to solicit input from the board of trustees of the school district in which the proposed charter school will be located.
  - Required authorizers to conduct site evaluations of each campus of a charter school that it authorizes during the first, third, and fifth years after entering into or renewing a charter contract.

▶ **NEW MEXICO**

- A bill to create a statewide cap on charter school enrollment was defeated.
- A bill to enact a moratorium on new charter schools until 2022 was defeated.

▶ In **NORTH CAROLINA**, an effort to enact a moratorium on new charter schools was defeated.

▶ In **WISCONSIN**, a proposal by the governor to enact a moratorium on new independent charter schools was defeated.

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## AUTHORIZING AND ACCOUNTABILITY

▶ **CALIFORNIA**

- Expanded the list of reasons districts may use to deny charter school petitions. These reasons will now include the fiscal impact of the charter school on the district, although a district must also consider the academic needs of the students that a school is proposing to serve in its fiscal impact analysis. These new



denial criteria would apply to all charter petitions for new charter schools as well as proposals by existing schools to add grade levels or school sites. Renewals of existing charters that do not propose grade levels or school sites would not be subject to these new denial criteria.

- Restricted appeals to the state board of education. Under current law, petitioners for charters for new schools and renewals of existing schools may appeal denials, first to the county board of education, and, if denied at the county level, to the state board of education. State and county appeals currently are reviewed under a *de novo* standard in which county and state boards do not assume the local board was correct and must, instead, consider the entire record. Under recently enacted legislation, the state board of education must shift to an abuse of discretion standard wherein it is generally assumed that the local board was correct to deny the charter unless the charter proponents demonstrate that the local board was arbitrary or absurd in their decision.
  - Provided that appeals to county boards of education would remain under the *de novo* standard of review. However, if a district denied the petition based on the new criteria for a fiscally distressed district, the county must also consider any fiscal impact finding of the district.
  - Reworked the renewal criteria and process for charter schools, resulting in a three-tiered approach that provides a different process for high-, low-, and mid-range-performing schools. Provided that high-performing charter schools (as defined in the law) shall be approved with streamlined renewal for five to seven years. Provided that low-performing charter schools (as defined in the law) shall not be renewed.
- ▶ **FLORIDA** required charter schools to establish internal controls designed to prevent and detect fraud, waste, and abuse; promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices; support economical and efficient operations; ensure reliability of financial records and reports; and safeguard assets.
  - ▶ **HAWAII**
    - Required authorizers to select an independent auditor for a charter school.
    - Prohibited an individual from serving as a member of the Hawaii Board of Education or Hawaii Charter School Commission if the individual was affiliated with a charter school within four years preceding appointment.
  - ▶ **ILLINOIS** eliminated the Illinois State Charter School Commission after one more full year of operation and transferred the commission's duties and powers to the Illinois State Board of Education (ISBE). Under this new law, ISBE will assume the charters of all existing commission schools, have the authority to grant renewals for all existing schools, and have the power to grant expansions and amendments to all existing schools, allowing for continued growth of those schools.
  - ▶ **INDIANA**
    - Increased the membership of the Indiana charter school board from seven members to nine members and authorized the governor to appoint four members to the board, not more than two of whom may be members of the same political party. (Under current law, the governor appoints two members, and they cannot be members of the same political party.)
    - Provided that the affirmative votes of a majority of the members present are required for the Indiana charter school board to take action (as opposed to the affirmative votes of a majority of the voting members appointed to the board).
  - ▶ **MAINE**
    - Changed the appointment structure for the Maine Charter School Commission. Now, the state board of education must appoint three of its own members to the Commission and the governor must appoint four members to the Commission. Previously, the state board of education appointed all seven members, three of whom needed to be state board of education members.

▶ **NEVADA**

- Abolished the Achievement School District and provided for the transition of its schools to the State Public Charter School Authority.
- Allowed flexibility during the charter school contract renewal process by allowing the length of the renewed contract to vary from three to 10 years.
- Required the Nevada Department of Education to adopt regulations prescribing the criteria to be used in determining whether to continue or revoke the ability of entity to authorize charter schools.
- Revised the membership of the State Public Charter School Authority to include two members appointed by the State Board of Education.

▶ **OHIO**

- Changed its automatic closure law. Previously, the law required the automatic closure of any charter school that earned low school ratings during two of the three most recent school years. The new law altered this provision to require mandatory closure after three consecutive years of poor ratings.
- Made three major changes for dropout recovery charter schools. First, it modified the state test passage rate indicator, which measures student proficiency on high school exams. Second, it required the Ohio Department of Education to recalculate 2017-18 report card ratings for dropout recovery schools and prohibited the automatic closure of dropout recovery schools based on report cards issued during the 2017-18 and 2018-19 school years if a school's overall rating meets or exceeds standards based on the updated passage rate indicator. Finally, it altered automatic closure provisions to match the changes made for other charter schools. Automatic closure now occurs after three consecutive years of a rating that does not meet standards.
- Allowed a charter school authorizer that earns an overall rating of effective or exemplary for at least three consecutive years to be evaluated by the Ohio Department of Education once every three years going forward.

▶ **OKLAHOMA**

- Provided that a charter school that contracts with an educational management organization shall use the Oklahoma Cost Accounting System (OCAS) to report the total amount paid to the educational management organization as well as itemized expenditure information for the goods or services provided by the management organization as defined by OCAS expenditure codes. This includes the total compensation package of the superintendent, including the base salary, insurance, retirement, and other fringe benefits.
- Provided that any owner of an educational management organization shall be required to disclose to the governing board of the school in a public meeting any ownership position in any business that contracts or proposes to contract with the same public school that the educational management organization is managing.

▶ **TENNESSEE**

- Established an independent commission to hear charter school appeals and authorize schools following a successful appeal. This commission will have statewide jurisdiction.
- Established the State Board of Education as a formal accountability body for charter school authorizers, including the requirement for evaluation of authorizer compliance with state law and the Tennessee Quality Authorizing Standards as well as the power to enforce compliance through withholding authorizing fees.
- Modified its default closure requirements to bring the process for charter schools that fall on the state's priority list in line with the process for traditional public schools by allowing authorizers to choose to give schools that appear on the list the first time a chance to improve but requiring closure if a charter school falls on the list a second consecutive time.

## FUNDING AND FACILITIES

- ▶ **ALABAMA** appropriated \$400,000 to be used for grants to support the development of new public charter schools in the state.
- ▶ **ARKANSAS** appropriated \$7,575,000 to its open enrollment public charter school facilities funding aid program.
- ▶ **CALIFORNIA** restricted where charter schools may locate schools and resource centers. Under current law, most charter schools generally must locate within the boundaries of their authorizing district unless the school is unable to locate facilities within the district and/or needs to locate outside of the district during a construction project. Charter schools may also locate so-called resource centers for non-classroom-based instruction in adjacent counties. Recently enacted legislation eliminated these exceptions going forward, generally requiring schools to locate only within the boundaries of the authorizing district.
- ▶ **COLORADO** increased equalization funding for state-authorized charter schools from \$5.5 million this year to \$7 million next year. This funding stream was created to equalize funding for state-authorized charter schools to make up for their lack of access to local mill levy overrides.
- ▶ **DELAWARE**
  - Provided that all public school students, including public charter school students, in grades six through 12 may use annual student bus passes from the Delaware Transit Corporation on fixed-route public transit.
  - Enacted new guidelines for charter school contracts with school transportation providers.
- ▶ **FLORIDA**
  - Required school districts to share tax revenues generated from school-district-voted discretionary millages with charter schools based on each charter school's proportionate share of the district's total unweighted full-time equivalent student enrollment. Required charter schools to use the funds in the same manner as required by non-charter schools. Required the referendum to contain an explanation of the distribution methodology consistent with this change. Provided that these changes apply to operating millage levies authorized by a vote of the electors on or after July 1, 2019.
  - Provided \$158.2 million to its charter school capital outlay fund.
- ▶ **IDAHO**
  - Revised the definition of "development" to exclude activities undertaken by charter schools. The new law recognizes that charter schools are similar in purpose to district schools and should not be included within the definition of development, and consequently they are not subject to development impact fees.
  - Created a credit enhancement for charter schools that will help lower interest rates on bonds for charter school facilities.
- ▶ **ILLINOIS** appropriated \$34 million in capital funding to several charter schools in Chicago as part of the state's capital bill.
- ▶ **INDIANA**
  - Increased the Charter and Innovation School Grant from \$500 per pupil to \$750 per pupil. These dollars must be used primarily for facilities and transportation purposes.
  - Reduced the time frame during which a school corporation must make a vacant or unused school building available to a charter school.
  - Provided that if a school corporation does not comply with the requirements regarding a vacant or unused school building and charter schools, the school corporation must submit any proceeds from the sale of the vacant or unused school building to the state board of education to provide grants under the charter school and innovation grant program.
  - Provided that in determining whether to accept a proposal to purchase and redevelop a school building that



has a square footage that exceeds 200,000 gross square feet and any adjacent property, the governing body must ensure that a charter school that has notified the governing body in writing of its interest in locating the charter school on the redeveloped site is provided adequate facilities on the redeveloped site.

▶ **LOUISIANA**

- Transferred a portion of school facilities fund monies collected among schools authorized by the Orleans Parish School Board to a new fund whose purpose is to support systemwide programs that benefit 50 percent or more students or schools.
- Provided a process for the disposal of a charter school facility that has been backed by a tax-exempt bond from the state if the nongovernmental owner of the facility wishes to dispose of it after the bonds have been paid in full.

▶ **MASSACHUSETTS** increased facilities funding for charter schools from \$893 per pupil to \$938 per pupil.

▶ **NEW MEXICO** eliminated the ability of charter schools to receive a small school size adjustment funding stream. This elimination will be completed over a five-year phase-out period.

▶ **OHIO**

- Allocated \$30 million per year in supplemental state aid for high-performing charter schools. Schools will receive an additional \$1,750 per pupil for economically disadvantaged students and \$1,000 per pupil for students who are not disadvantaged students.
- Changed state law to require a district to offer to sell or lease facilities to charter, STEM, and college-preparatory boarding schools located within the district borders that have not been used for only one year. Under previous law, school districts were required to offer to sell or lease school facilities that hadn't been used in two years.

▶ **PENNSYLVANIA** clarified that charter schools, regional charter schools, and cyber charter schools are independent public schools entitled to the same tax exemption from surplus lines tax as a public school district.

▶ **TENNESSEE** doubled the state's previous contribution to the Charter School Facilities Fund, bringing the fund to \$12 million for the coming grant year.

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## FULL-TIME VIRTUAL CHARTER SCHOOLS

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▶ **CALIFORNIA** imposed a moratorium on the establishment of new, nonclassroom-based charter schools. The moratorium would last two years, starting January 1, 2020.

▶ **INDIANA**

- Provided that a virtual charter school is to be funded at a level of 85 percent of the amount it would otherwise receive if it were a brick and mortar charter school. (The current level is 90 percent.)
- Provided that a new virtual charter school may apply for authorization only with any statewide authorizer, and that a virtual charter school that has a charter may renew a charter only with a statewide authorizer.
- Required each authorizer of a virtual charter school to establish requirements or guidelines for virtual charter schools authorized by the authorizer that include the following: requirements for a mandatory annual onboarding process and orientation; a requirement that a virtual charter school must provide to a parent of a student the student engagement and attendance requirements or policies of the virtual charter school; requirements relating to tracking and monitoring student participation and attendance; ongoing student engagement and counseling policy requirements; and employee policy requirements, including professional development requirements.

▶ **NEVADA**

- Limited enrollment in full-time virtual charter schools authorized by a district to only students residing in that district.



- Defined a “charter school for distance education” as a charter school that provides a full-time program of distance education in order to treat them differently than brick-and-mortar charter schools.
- Allowed a charter school management organization to apply directly to the State Public Charter School Authority to operate a charter school for distance education.
- Placed additional requirements into the application for a charter school for distance education, including a description of the support available to each pupil in his or her home or community, including the availability and frequency of interactions between the pupil and teachers; the methods the charter school for distance education will use to administer any test, exam, or assessment required by state or federal law; the methods the charter school for distance education will use to assess the academic success of pupils; and the criteria pupils must meet to be eligible for enrollment at the charter school for distance education; and the process for accepting pupils.
- Required the State Public Charter School Authority to adopt a standard charter contract to be used for each charter school for distance education.
- Required that any charter contract to operate a charter school for distance education entered into on or after July 31, 2019, must include a description of the support available to each pupil, in his or her home or community, including the availability and frequency of interactions between the pupil and teachers; the methods the charter school for distance education will use to administer any test, exam, or assessment required by state or federal law; the methods the charter school for distance education will use to assess the academic success of pupils; and the criteria pupils must meet to be eligible for enrollment at the charter school for distance education; and the process for accepting pupils.
- Provided that for the purposes of calculating attendance, truancy, and transiency of pupils, a charter school for distance education may use the following methods: the amount of time each pupil spends on a computer, television, Internet website, or other means of communication used to administer the program of distance education; the progress of each pupil in completing tasks during a specific period of time; or the number of lessons and units completed by each pupil.
- Deemed the State Public Charter School Authority as a local educational agency for all charter schools for distance education that are authorized by the authority.
- Required the Nevada Department of Education to adopt regulations establishing different requirements for the operation or regulation of or any other matter that requires the different treatment (which may include selective enrollment) of charter schools for distance education sponsored by the State Public Charter School Authority and brick-and-mortar charter schools sponsored by the State Public Charter School Authority.
- Required the Nevada Department of Education to adopt regulations determining when a pupil enrolled at a charter school for distance education may be suspended or expelled from such charter school for failing to actively participate in the charter school for distance education.

► **OKLAHOMA**

- Subjected virtual charter schools to the same reporting requirements, financial audits, audit procedures, and audit requirements as school districts.
- Provided that the State Department of Education or State Auditor and Inspector may conduct financial, program, or compliance audits of virtual charter schools.
- Required virtual charter schools to use the Oklahoma Cost Accounting System to report financial transactions to the State Department of Education.
- Provided that a virtual charter school governing body shall be responsible for the policies that govern the operational decisions of the virtual charter school, that the governing body of a virtual charter school shall be subject to the same conflict of interest requirements as a member of a local school board, and that members appointed to the governing body of a virtual charter school after July 1, 2019, are subject to the same

instruction and continuing education requirements as a member of a local school board, complete 12 hours of instruction within 15 months of appointment to the governing body, and attend continuing education.

## OTHER ISSUES

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- ▶ **ARKANSAS** ensured that more than one adult education public charter school may operate in the state.
- ▶ **CALIFORNIA**
  - Applied existing open meetings, public records, and conflict of interests acts to charter schools and the entities that manage charter schools.
  - Deleted a provision in current law allowing non-credentialed teachers to teach non-core and non-college preparatory courses, thereby presumably requiring credentialed teachers in all settings.
- ▶ **IDAHO** created a new voluntary certificate for charter school administrators to provide increased flexibility to charter schools. Idaho still requires charter school administrators to hold a certificate, thus retaining oversight by the Idaho Professional Standards Commission, but places more of the decision-making authority with the charter school.
- ▶ **ILLINOIS** required that all charter school board members complete annual training and mandates that at least one member of a charter school's governing board be a parent or guardian.
- ▶ **INDIANA**
  - Permitted charter schools to provide an enrollment preference for siblings of a student alumnus.
  - Allowed a student who attends a charter school co-located with another charter school to receive preference to admission to the charter school if the preference is specifically provided for in the charter school's charter and is approved by the charter school's authorizer.
- ▶ **LOUISIANA** enacted some new requirements pertaining to charter school bus transportation.
- ▶ **MISSOURI** provided that a charter school may give a preference for admission to students who will be eligible for the free and reduced-price lunch program in the upcoming school year.
- ▶ **NEVADA**
  - Deemed the State Public Charter School Authority to be a local educational agency for its charter schools for all purposes.
  - Removed the authorization for a charter school to transfer a pupil if the charter school determines it is unable to provide an appropriate special education program and services to a pupil.
- ▶ **TEXAS**
  - Required the state commissioner of education to adopt by rule a common admission application form for use by an applicant for admission to an open-enrollment charter school.
  - Required the state commissioner of education to adopt by rule guidelines for an open-enrollment charter school that receives more acceptable applications for admission than available positions at the school to create and manage a waiting list each school year for applicants who are not admitted.
  - Required the state commissioner of education to post an annual enrollment and waiting list report on the Texas Education Agency's website, based upon annual enrollment and waiting list reports submitted by charter school holders.
  - Adopted new requirements pertaining to related party transactions by charter schools and related to disposition, transfer, and sale of property purchased with state funds by charter school holders that have ceased to operate.
  - Provided that charter schools will now have the same protections as school districts to prevent labor unions from forcing them to the bargaining table. Charter school employees will continue to have the right to join

a union—as they do today—but the union will not be able to force the school to bargain with the union on behalf of employees. Schools will continue to be able to voluntarily negotiate with a union on behalf of their employees if they would like. This law simply says they cannot be forced to do so.

- ▶ **UTAH** permitted charter schools to provide an enrollment preference for a child of a military servicemember.

