



AN ACT AUTHORIZING THE ESTABLISHMENT OF COMMUNITY CHOICE SCHOOLS AS A MEANS OF PROVIDING ADDITIONAL EDUCATIONAL OPPORTUNITIES; PROVIDING LEGISLATIVE FINDINGS AND INTENT; PROVIDING DEFINITIONS; ESTABLISHING A COMMUNITY CHOICE SCHOOL COMMISSION; ESTABLISHING CHOICE SCHOOL AUTHORIZERS FOR OVERSEEING CHOICE SCHOOLS; PROVIDING AN OVERSIGHT FEE FOR CHOICE SCHOOL AUTHORIZERS; PROVIDING FOR THE CREATION, RENEWAL, REVOCATION, AND CLOSURE OF CHOICE SCHOOLS; PROVIDING FOR PERFORMANCE MEASURES FOR CHOICE SCHOOLS; EXEMPTING CHOICE SCHOOL TEACHERS FROM STATE CERTIFICATION REQUIREMENTS; PROVIDING FOR FUNDING OF CHOICE SCHOOLS; ESTABLISHING CONDITIONS FOR CHOICE SCHOOL ACCESS TO SCHOOL DISTRICT FACILITIES AND LAND; ESTABLISHING THE COMMUNITY CHOICE SCHOOL ACCOUNT; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 17] may be cited as the "Community Choice Schools Act".

Section 2. Community choice schools -- legislative findings and intent. (1) The legislature finds, pursuant to the authority and duties provided in Article X, section 1(3), of the Montana constitution, that:

- (a) parents desire education options for their children;
- (b) expanding educational opportunities for K-12 education within the state is a valid public purpose; and
- (c) creating options that empower parents, encourage students to develop their full educational potential, provide a variety of professional opportunities for teachers, and encourage educational entrepreneurship is vital to the economic competitiveness of the state.

(2) It is the legislature's intent, pursuant to the authority and duties provided in Article X, section

1(3), of the Montana constitution, to create other public educational programs and institutions through choice schools. The purposes are to:

- (a) enable parents to make decisions on how best to educate their children;
- (b) provide other public educational opportunities for all students, especially those at risk of academic failure or academic disengagement;
- (c) encourage the use of different models of teaching, governing, scheduling, and providing instruction to meet a wide variety of student and community needs; and
- (d) advance Montana's commitment to the preservation of American Indian cultural identity, pursuant to Article X, section 1(2), of the Montana constitution, and to eliminate the American Indian achievement gap by encouraging participation in the choice school program by students, parents, and school districts in Indian country.

Section 3. Definitions. As used in [sections 1 through 17], the following definitions apply:

- (1) "Applicant" means a person or group that submits a proposal for a community choice school to an authorizer.
- (2) "Authorizer" means the commission or a local school board approved as an authorizer by the commission.
- (3) "Charter contract" means a fixed-term, renewable contract between a community choice school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.
- (4) "Commission" means the community choice school commission provided for in [section 4].
- (5) "Community choice school" or "choice school" means a public school that:
 - (a) has autonomy over decisions, including but not limited to matters concerning finance, board governance, personnel, scheduling, curriculum, and instruction;
 - (b) is governed by a governing board;
 - (c) is established and operated under the terms of a charter contract between the school's governing board and its authorizer;
 - (d) is a school in which parents choose to enroll their children;

- (e) is a school that admits students based on capacity and then on the basis of a lottery if more students apply for admission than can be accommodated;
 - (f) provides a program of education that may include any or all grades from kindergarten through grade 12 and vocational education programs;
 - (g) operates in pursuit of a specific set of educational objectives as defined in its charter contract;
 - (h) operates under the oversight of its authorizer in accordance with its charter contract; and
 - (i) establishes graduation requirements and has authority to award degrees and issue diplomas.
- (6) "Education service provider" means a for-profit education management organization, nonprofit education management organization, school design provider, or other partner entity with which a community choice school intends to contract for educational design, implementation, or comprehensive management.
- (7) "Governing board" means an independent volunteer board of trustees of a community choice school that is a party to the charter contract with the authorizer.
- (8) "Local school board" means a traditional school district board of trustees exercising management and control over a traditional local school district pursuant to the laws of the state.
- (9) "Parent" means a parent, guardian, or other person or entity having legal custody of a child.
- (10) "Resident school district" means the public school district in which a student resides.
- (11) "Student" means a child who is eligible for attendance in a public school in the state.
- (12) "Traditional public school" means a traditional public school that is under the direct management, governance, and control of a local school board or the state.
- (13) "Virtual community choice school" means a community choice school headquartered in Montana that offers educational services predominantly through an online program.

Section 4. Community choice school commission -- appointments. (1) There is an autonomous state community choice school commission with statewide authorizing jurisdiction and authority. The commission is attached to the board of public education for administrative purposes, as prescribed in 2-15-121(2), except as provided in this section, and is under the general supervision of the board of public education as set forth in this section.

- (2) The commission is responsible for approving authorizers for choice schools throughout the

state.

(3) The commission consists of seven members who are appointed as follows:

- (a) two members appointed by the governor;
- (b) one member appointed by the superintendent of public instruction
- (c) one member appointed by the president of the senate;
- (d) one member appointed by the speaker of the house;
- (e) one member appointed by the minority leader of the senate; and
- (f) one member appointed by the minority leader of the house of representatives.

(4) Members appointed to the commission must collectively possess substantial experience and expertise in board governance, business, finance, education, management, and philanthropy. All members of the commission must have a demonstrated understanding of and commitment to choice schools as a strategy for strengthening public education.

(5) (a) Initial appointments to the commission must be for staggered terms as follows:

(i) 4-year terms for the appointees of the governor, one of whom must be designated by the governor as the initial presiding officer of the commission for 2 years;

(ii) 3-year terms for the appointees of the superintendent of public instruction and the minority leaders of the senate and house of representatives; and

(iii) 2-year terms for the appointees of the president of the senate and speaker of the house.

(b) All terms after the initial term must be for 3 years. Appointment to the initial terms must be made no later than 60 days following [the effective date of this act]. If any of the appointing authorities fails to make the appointments, the remaining appointing authorities may make the remaining appointments.

(6) Each member of the commission is entitled to reimbursement for expenses upon approval of the treasurer of the commission as provided in the commission's bylaws.

(7) A member of the commission may be removed by a majority vote of the commission for any cause that renders the member unable or unfit to discharge the duties of the office, including but not limited to failure to approve an authorizer or a choice school without just cause and interference with the functions of the commission as set forth in [sections 1 through 17]. Whenever a vacancy on the commission exists, the original appointing authority shall appoint a member for the remaining portion of the term consistent with the

requirements of subsections (4) and (5).

(8) The commission is authorized to receive and expend gifts and donations of any kind from any private entity. The gifts and donations may not require conditions that do not comport with the purposes of [sections 1 through 17]. Gifts and donations under this subsection must be deposited in the community choice school account pursuant to [section 17] and may be used by the commission for commission operations or distributed to choice schools at the discretion of the commission.

(9) The commission may hire staff for the commission. Support staff may be provided by the board of public education for centralized services, including payroll, human resources, accounting, information technology, or other services, if those services are determined by the commission and the board to be more efficiently provided by the board.

(10) The commission shall convene and approve bylaws and officers within 180 days of [the effective date of this act].

(11) All commission meetings are open to the public pursuant to Article II, section 9, of the Montana constitution and 2-3-203.

(12) By August 1 of each year, the commission shall annually report to the state board of public education the academic performance and financial reports of each choice school authorized within the state.

Section 5. Authorizers. (1) The state community choice school commission created under [section 4] may authorize choice schools in the state. The commission shall perform the functions of choice school authorizers under [sections 1 through 17].

(2) (a) A local school board may apply to the commission for authorizing authority within the boundaries of the traditional school district overseen by the local school board.

(b) If the commission determines that the local school board fulfills the requirements of an authorizer, the commission shall, within 60 days of receipt of a local school board's application, approve the local school board as an authorizer.

(c) On approval, the commission shall register the local school board and shall provide the local school board with a letter confirming its approval as an authorizer.

(3) (a) The commission shall establish the annual application and approval process, including

cycles and deadlines during the fiscal year, for local school boards to apply for authorizing authority as set forth in this section.

(b) By March 1 of each year, the commission shall make available information and guidelines for local school boards concerning the opportunity to apply for authorizing authority under [sections 1 through 17].

(c) Each interested local school board shall submit an application that clearly explains or presents the following elements in a format to be established by the commission:

(i) written notification of intent to serve as a choice school authorizer in accordance with [sections 1 through 17];

(ii) an explanation of the local school board's strategic vision for authorizing;

(iii) a plan supporting the local school board's strategic vision and an explanation of the local school board's budget and personnel capacity and commitment to execute the duties of choice school authorizing in accordance with [sections 1 through 17];

(iv) a draft or preliminary outline of a request for proposal that will solicit choice school applicants in accordance with [section 9];

(v) a description or outline of the performance framework the local school board will use to guide the establishment of a charter contract and for ongoing oversight and evaluation of choice schools consistent with the requirements of [sections 1 through 17];

(vi) a draft of the local school board's renewal, revocation, nonrenewal, and school closure processes consistent with [sections 12 and 13];

(vii) a statement of assurance that the local school board commits to serving as a choice school authorizer in fulfillment of the expectations, spirit, and intent of [sections 1 through 17] and will fully participate in any authorizer training provided or required by the commission; and

(viii) a statement of assurance that the local school board will be accountable and transparent in all matters concerning authorizing practices, decisions, and expenditures.

(4) (a) Within 60 days of receipt of the application, the commission shall determine whether to approve an application based on a review of the documentation provided in subsection (5) and the quality of the application. The commission shall provide a letter to the local school board either confirming or denying acceptance as an authorizer.

(b) Within 30 days of approval of an application for choice school authorizing, the commission and the approved authorizer shall execute a renewable authorizing contract. The initial authorizing contract term is 6 years.

(5) A local school board may not engage in authorizing functions without a fully executed authorizing contract.

(6) When approved by the commission, the local school board continues as an authorizer from year to year during the term of the contract as long as the local school board fulfills all authorizing duties and expectations set forth in [sections 1 through 17] and remains an authorizer in good standing with the commission.

Section 6. Authorizer responsibilities. (1) In accordance with [sections 1 through 17], an authorizer is responsible for executing the following essential powers and duties:

- (a) soliciting and evaluating choice school proposals;
- (b) approving choice school proposals that meet identified educational needs and promote a diversity of educational choices, including but not limited to:
 - (i) creating more schools with high standards for pupil performance;
 - (ii) closing achievement gaps between high-performing and low-performing groups of public school students;
 - (iii) increasing educational opportunities within the public education system;
 - (iv) providing alternative learning environments for students who are not thriving in traditional school settings;
 - (v) addressing the dropout rate;
 - (vi) creating new professional opportunities for teachers, leaders, and other school personnel;
 - (vii) encouraging the use of innovative models of teaching, delivering content, and providing other aspects of K-12 education; and
 - (viii) providing students, parents, community members, and other local and philanthropic entities with expanded opportunities for involvement in the public education system;
- (c) declining to approve inadequate choice school proposals;

- (d) negotiating and executing sound charter contracts with each approved choice school;
 - (e) monitoring, in accordance with charter contract terms, the performance and legal compliance of choice schools; and
 - (f) determining whether each charter contract merits renewal, nonrenewal, or revocation.
- (2) An authorizer may delegate its duties to its officers, employees, and contractors.
 - (3) Regulation of choice schools by authorizers is limited to the powers and duties described in [sections 1 through 17], consistent with the intent of [sections 1 through 17].
 - (4) An authorizer shall develop, carry out, and maintain authorizing policies and practices consistent with nationally recognized principles and standards for authorizing in all major areas of authorizing responsibility, including:
 - (a) organizational capacity and infrastructure;
 - (b) soliciting and evaluating choice school proposals;
 - (c) performance contracting;
 - (d) ongoing community choice school oversight and evaluation; and
 - (e) charter contract renewal decisionmaking.
 - (5) Evidence of material or persistent failure to carry out the duties enumerated in this section constitutes grounds for rescission of authorizing powers by the commission.
 - (6) Each authorizer shall submit to the commission an annual report summarizing:
 - (a) the authorizer's strategic vision for authorizing and progress toward achieving that vision;
 - (b) the academic and financial performance of all operating choice schools overseen by the authorizer, according to the performance expectations for choice schools set forth in [sections 1 through 17];
 - (c) the status of the authorizer's choice school portfolio, identifying all choice schools approved but not yet open, operating, renewed, transferred, revoked, not renewed, voluntarily closed, or never opened;
 - (d) the authorizing functions provided by the authorizer to the choice schools under its direction, including the authorizer's operating costs and expenses detailed in annual audited financial statements that conform with generally accepted accounting principles; and
 - (e) the services purchased from the authorizer by a choice school under the authorizer's direction, including an itemized accounting of the actual costs of these services, as required in [section 7].

(7) An employee, trustee, agent, or representative of an authorizer may not simultaneously serve as an employee, trustee, agent, representative, vendor, or contractor of a community choice school authorized by that entity.

(8) A government unit or other entity, other than those expressly granted authority under [section 5], may not assume any authorizing function or duty in any form unless expressly allowed by law.

Section 7. Duties of commission -- oversight of authorizers. (1) (a) The commission shall establish a statewide formula for authorizer funding to be applied uniformly to every authorizer in the state. Authorizer funding is financed through an oversight fee.

(b) The oversight fee must be calculated as a uniform percentage of the state funding allocated to each choice school and is to be paid from the choice school's budget share of the per-pupil funding, not to exceed 3% of each community choice school's state funding in a single school year.

(c) The commission may establish a sliding scale for authorizer funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold after a certain number of years of authorizing, after a certain number of schools have been authorized, or for other reasons determined at the discretion of the commission.

(d) An authorizer's oversight fee may not include any costs incurred in delivering services that a choice school may purchase at its discretion from the authorizer. The authorizer shall use the funding provided under this section exclusively for the purpose of fulfilling authorizing obligations in accordance with [sections 1 through 17].

(2) The commission is responsible for overseeing the performance and effectiveness of all authorizers established under [sections 1 through 17].

(3) The commission shall annually review the effectiveness of the formula it established for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of [sections 1 through 17].

(4) By October 15 of each year, the commission shall communicate to every authorizer the requirements for the format, content, and submission of the annual report.

(5) Persistently unsatisfactory performance of an authorizer's portfolio of community choice

schools, a pattern of well-founded complaints about the authorizer or its choice schools, or other objective circumstances may trigger a special review by the commission.

(6) In reviewing or evaluating the performance of authorizers, the commission shall apply nationally recognized principles and standards for authorizing.

(7) If at any time the commission finds that an authorizer is not in compliance with an existing charter contract, its authorizing contract with the commission, or the requirements of authorizers under [sections 1 through 17], the commission shall notify the authorizer in writing of the identified problems and shall provide the authorizer reasonable opportunity to respond and remedy the problems.

(8) If an authorizer fails to respond and remedy the problems identified by the commission, the commission shall notify the authorizer, within a reasonable amount of time under the circumstances, that it intends to revoke the authorizer's authority unless the authorizer demonstrates a timely and satisfactory remedy for the violation or deficiencies.

(9) In the event of revocation of an authorizer's authority, the commission shall manage the timely and orderly transfer of each charter contract held by that authorizer to another authorizer in the state, with the mutual agreement of each affected choice school and proposed new authorizer. The new authorizer shall assume the existing charter contract for the remainder of the charter contract term.

(10) On or before December 1 of each year, beginning in the first year that choice schools have been in operation for a full school year, the commission shall issue to the board of public education, the education interim committee, and the public an annual report on the state's community choice schools that includes data from the annual reports submitted by every authorizer, as well as any additional relevant data compiled by the commission, for the school year ending in the preceding calendar year. The annual report must include:

(a) a comparison of the performance of choice school students with the performance of the comparable grade ranges of the choice school's students' resident district schools; and

(b) the commission's assessment of the successes, challenges, and areas for improvement in meeting the purposes of [sections 1 through 17], including the commission's assessment of the sufficiency of funding for choice schools, the efficacy of the commission's formula for authorizer funding, and any suggested changes in state law or policy necessary to strengthen the state's community choice schools.

Section 8. Purchase of services by choice school. (1) With the exception of oversight services as required by [section 7], a community choice school may not be required to purchase services from the choice school's authorizer as an express or implied condition of choice school approval or of executing a charter contract.

(2) A choice school may choose to purchase services from its authorizer. In that event, the choice school and authorizer shall execute an annual service contract, separate from the charter contract, stating the parties' mutual agreement concerning any services to be provided by the authorizer and any service fees to be charged to the choice school. An authorizer may not charge more than market rates for services provided to a choice school.

(3) A choice school may purchase goods and services from for-profit providers for operational and ancillary purposes.

Section 9. Community choice school proposal process -- request for proposal. (1) To solicit, encourage, and guide the development of choice schools, every authorizer operating under [sections 1 through 17] shall issue and broadly publicize a request for proposal by June 1 of each year. The content and dissemination of the request for proposal must be consistent with the purposes and requirements of [sections 1 through 17].

(2) Each authorizer's request for proposal must present the authorizer's strategic vision for authorizing, including a clear statement of any preferences the authorizer wishes to grant to proposals that help at-risk students.

(3) A request for proposal must include or otherwise direct applicants to the performance framework that the authorizer has developed for choice school oversight and evaluation in accordance with [section 7].

(4) A request for proposal must include the criteria that will guide the authorizer's decision to approve or deny a choice school proposal.

(5) A request for proposal must include clear and detailed questions designed to gauge an applicant's capacity to establish and operate a successful choice school, as well as guidelines concerning the

format and content of an applicant's response to the request for proposal.

(6) A request for proposal must require applicants to describe thoroughly the following essential elements of their proposed choice school proposal:

- (a) an executive summary;
- (b) the mission and vision of the proposed choice school, including identification of the targeted student population and the community the school hopes to serve;
- (c) the location or geographic area proposed for the choice school;
- (d) the grades to be served each year for the full term of the charter contract;
- (e) minimum, planned, and maximum enrollment each year for the term of the charter contract;
- (f) evidence of need and community support for the proposed choice school;
- (g) background information on the founding governing board members and, if identified, the proposed school leadership and management team;
- (h) the proposed choice school's proposed calendar and sample daily schedule;
- (i) a description of the academic program, including identification of the planned standardized assessment to formally measure student achievement on an annual basis;
- (j) a description of the proposed choice school's instructional design, including the type of learning environment, class size and structure, curriculum overview, and teaching methods;
- (k) the proposed choice school's plans for identifying and successfully serving students with disabilities, students who are English language learners, students who are academically challenged, and gifted students, including but not limited to compliance with applicable laws and regulations;
- (l) a description of cocurricular or extracurricular programs, if any, and how the programs will be funded and delivered;
- (m) plans and timelines for student recruitment and enrollment, including lottery procedures;
- (n) the proposed choice school's student discipline policies, including those for special education students;
- (o) an organizational chart that clearly presents the proposed choice school's organizational structure, including lines of authority and reporting between the governing board, staff, related bodies such as advisory bodies or parent and teacher councils, and any external organizations that may play a role in

managing the school;

(p) a clear description of the roles and responsibilities for the governing board, the proposed choice school's leadership and management team, and other entities shown in the organizational chart;

(q) a staffing chart for the proposed choice school's first year and a staffing plan for the term of the charter contract;

(r) plans for recruiting and developing school leadership and staff;

(s) the proposed choice school's leadership and teacher employment policies, including performance evaluation plans;

(t) proposed governing bylaws;

(u) explanations of any partnerships or contractual relationships central to the proposed choice school's operations or mission;

(v) the proposed choice school's plans for providing transportation, food service, and all other significant operational or ancillary services, if any;

(w) opportunities and expectations for parent involvement;

(x) a detailed school startup plan identifying tasks, timelines, and responsible individuals;

(y) a description of the proposed choice school's financial plan and policies, including financial controls and audit requirements;

(z) a description of the insurance coverage the proposed choice school will obtain;

(aa) startup and 5-year budgets with clearly stated assumptions;

(bb) startup and first-year cash flow projections with clearly stated assumptions;

(cc) evidence of anticipated fundraising contributions, if claimed in the proposal; and

(dd) a sound facilities plan, including backup or contingency plans, if appropriate.

(7) In the case of a proposal to establish a choice school by converting an existing traditional public school to choice school status, a request for proposal must also require the applicants to demonstrate support for the proposed choice school conversion by a petition signed by a majority of teachers or a majority of the local school board and a petition signed by a majority of parents of students in the existing traditional public school.

(8) In the case of a proposal to establish a virtual choice school, a request for proposal must

additionally require the applicants to describe the proposed school's system of course credits and how the school will:

- (a) monitor and verify full-time student enrollment, student participation in a full course load, credit accrual, and course completion;
- (b) monitor and verify student progress and performance in each course through regular, proctored assessments and submissions of coursework; and
- (c) conduct parent-teacher conferences.

(9) In the case of a proposed choice school that intends to contract with an education service provider for substantial educational services, management services, or both, a request for proposal must additionally require the applicants to:

- (a) provide evidence of the education service provider's success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;
- (b) provide documentation setting forth:
 - (i) the proposed duration of the service contract;
 - (ii) the roles and responsibilities of the governing board, the school staff, and the education service provider;
 - (iii) the scope of services and resources to be provided by the education service provider;
 - (iv) performance evaluation measures and timelines;
 - (v) a compensation structure, including clear identification of all fees to be paid to the education service provider;
 - (vi) methods of contract oversight and enforcement;
 - (vii) investment disclosure; and
 - (viii) conditions for renewal and termination of the contract; and
- (c) disclose and explain any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

(10) In the case of a choice school proposal from an applicant that currently operates one or more schools in any state or nation, a request for proposal must additionally require the applicant to provide evidence

of past performance and current capacity for growth.

(11) If a choice school proposal does not contain the elements required in this section, the authorizer may consider the proposal incomplete and return the proposal to the applicant without following the process described in subsection (12).

(12) In reviewing and evaluating choice school proposals, authorizers shall employ procedures, practices, and criteria consistent with nationally recognized principles and standards for authorizing. The proposal review process must include thorough evaluation of each written choice school proposal, an in-person interview with the applicant group, and an opportunity in a public forum for local residents to learn about and provide input on each proposal.

(13) In deciding whether to approve choice school proposals, authorizers shall:

- (a) grant approval only to applicants that have demonstrated competence in each element of the authorizer's published approval criteria and are likely to open and operate a successful choice school;
- (b) base decisions on documented evidence collected through the proposal review process; and
- (c) follow proposal review and approval policies and practices that are transparent and are based on merit and avoid conflicts of interest or any appearance of conflict.

(14) (a) The authorizer shall approve or deny a choice school proposal within 60 days after the filing of the proposal, except that the commission has up to 120 days if more than three proposals have been submitted to the commission within 30 days. The commission shall notify the applicant of the expected timeline for approval or denial.

(b) The authorizer shall adopt by resolution all choice school proposal approval or denial decisions in an open meeting of the authorizer's governing body.

(c) An approval decision may include, if appropriate, reasonable conditions that the applicant must meet before a charter contract may be executed pursuant to [section 10].

(d) For any choice school proposal denial, the authorizer shall clearly state for the public record the reasons for denial. A denied applicant may subsequently reapply to that authorizer or apply to any other authorizer in the state.

(e) Within 10 days of taking action to approve or deny a choice school proposal, the authorizer shall report its decision to the commission. The authorizer shall provide a copy of the report to the applicant at

the same time that the report is submitted to the commission. The report must include a copy of the resolution of the authorizer's governing body setting forth the action taken and reasons for the decision and providing assurances of compliance with all of the procedural requirements and proposal elements set forth in this section.

(15) An applicant may submit a proposal for a particular choice school to only one authorizer at a time.

Section 10. Charter contract -- terms. (1) An initial charter contract must be granted for a term of 5 operating years, commencing on the community choice school's first day of operation. An approved choice school may delay its opening for 1 school year to plan and prepare for the school's opening. If the school requires an opening delay of more than 1 school year, the school shall request an extension from its authorizer. The authorizer may grant or deny the extension depending on the school's circumstances.

(2) Within 45 days of approval of a choice school proposal, the authorizer and the governing board of the approved choice school shall execute a charter contract that clearly sets forth the academic and operational performance expectations and measures by which the choice school will be judged and the administrative relationship between the authorizer and the choice school, including each party's rights and duties.

(3) The performance provisions of the charter contract may be refined or amended by mutual agreement after the choice school is operating and has collected baseline achievement data for its enrolled students.

(4) The charter contract for a full-time virtual community choice school must include a description and agreement regarding the methods by which the school will:

(a) monitor and verify full-time student enrollment, student participation in a full course load, credit accrual, and course completion;

(b) monitor and verify student progress and performance in each course through regular, proctored assessments and submissions of coursework; and

(c) conduct parent-teacher conferences.

(5) The charter contract must be signed by the president of the authorizer's governing body and

the president of the choice school's governing board. Within 10 days of executing a charter contract, the authorizer shall submit to the commission written notification of the charter contract execution, including a copy of the executed charter contract and any attachments.

(6) A community choice school may not commence operations without a charter contract executed in accordance with this section and approved in an open meeting of the authorizer's governing body.

(7) Authorizers may establish reasonable pre-opening requirements or conditions to monitor the startup progress of a newly approved choice school to ensure that the school is 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.

Section 11. Enrollment. (1) (a) A community choice school must be open to any student residing in the state.

(b) A school district may not require a student enrolled in the school district to attend a choice school.

(c) A choice school may limit admission to students within a given age group or grade level.

(d) A choice school may be organized for a special emphasis, theme, or concept as stated in the school's proposal.

(e) A choice school shall enroll all students who wish to attend the school unless the number of students exceeds the capacity of a program, class, grade level, or building.

(f) If capacity is insufficient to enroll all students who wish to attend the school, the choice school shall select students through a lottery.

(2) A traditional public school converting to a choice school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

(3) (a) A choice school shall give enrollment preference to students who were enrolled in the choice school the previous school year and to siblings of students already enrolled in the choice school. An enrollment preference for returning students and siblings excludes those students from entering a lottery.

(b) A choice school may give enrollment preference to children of a choice school's employees and governing board, limited to no more than 10% of the school's total student population.

(4) This section does not preclude the formation of a community choice school for the purpose of serving students with disabilities, students of the same gender, students who pose a sufficiently severe disciplinary problem to warrant a specific educational program, or students who are at risk of academic failure. If capacity is insufficient to enroll all students who wish to attend a school, the choice school shall select students through a lottery.

(5) If a student who was previously enrolled in a choice school enrolls in any other public school in this state, the student's new school shall accept credits earned by the student in courses or instructional programs at the choice school.

(6) A traditional school district shall provide or publicize to parents and the general public information about choice schools as an enrollment option within the district's physical, geographical boundaries to the same extent and through the same means that the district provides and publicizes information about traditional public schools in the district.

(7) An authorizer may not restrict the number of students a choice school may enroll. The capacity of the choice school must be determined annually by its governing board in conjunction with the authorizer and in consideration of the choice school's ability to facilitate the academic success of its students, to achieve the objectives specified in the charter contract, and to ensure that its student enrollment does not exceed the capacity of its facility or site.

(8) If the choice school is the only public school in a town, the choice school must give preference to enrolling pupils residing in the town or within 5 miles of the school if the next closest public school is more than 10 miles away from the student's residence.

Section 12. Community choice school performance and renewal. (1) The performance provisions within the charter contract must be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures, and metrics that will guide the authorizer's evaluations of each choice school. The performance framework must include indicators, measures, and metrics for, at a minimum:

- (a) student academic proficiency;
- (b) student academic growth;
- (c) achievement gaps in both proficiency and growth between major student subgroups;

(d) attendance;

(e) recurrent enrollment from year to year;

(f) postsecondary readiness;

(g) financial performance and sustainability; and

(h) governing board performance and stewardship, including compliance with all applicable laws, regulations, and terms of the charter contract.

(2) Each choice school, in conjunction with its authorizer, shall set annual performance targets designed to help each school meet applicable federal, state, and authorizer expectations.

(3) (a) The contract performance framework must include rigorous, valid, and reliable indicators proposed by a choice school to evaluate its performance that are consistent with the purposes of [sections 1 through 17].

(b) The authorizer shall collect and analyze data from each choice school it oversees in accordance with the performance framework.

(c) Multiple schools operating under a single charter contract or overseen by a single governing board shall report their performance as separate, individual schools. Each school must be held independently accountable for its performance.

(4) (a) An authorizer shall monitor the performance and legal compliance of the choice schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the charter contract. Every authorizer has the authority to conduct or require oversight activities that do not unduly inhibit the autonomy granted to choice schools but that enable the authorizer to fulfill its responsibilities under [sections 1 through 17], including conducting appropriate inquiries and investigations consistent with the intent of [sections 1 through 17], and to adhere to the terms of the charter contract. Required oversight activities may not encumber the choice school financially and may be appealed by the choice school through the commission.

(b) Each authorizer shall annually publish and provide as part of its annual report to the commission a performance report for each choice school it oversees, within the performance framework set forth in the charter contract and [section 10]. The authorizer may require each choice school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the performance framework.

(c) In the event that a choice school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify the choice school of the perceived problem and provide a reasonable opportunity for the school to remedy the problem.

(d) An authorizer may take appropriate corrective action or exercise sanctions short of revocation in response to apparent deficiencies in choice school performance or legal compliance. The action or sanctions may include, if warranted, requiring a choice school to develop and execute a corrective action plan within a specified timeframe.

(5) (a) A charter contract may be renewed for successive 5-year terms, although the authorizer may vary the term based on the performance, demonstrated capacities, and particular circumstances of each choice school. An authorizer may grant renewal with specific conditions for necessary improvement to a choice school.

(b) No later than June 30 of each year, the authorizer shall issue a choice school performance report and charter renewal application guide to any choice school whose charter contract will expire the following year. The performance report must summarize the choice school's performance record to date, based on the data required by [sections 1 through 17] and the charter contract, and must provide notice of any weaknesses or concerns perceived by the authorizer concerning the choice school that may jeopardize renewal if not promptly rectified. The choice school shall respond to the performance report and submit any corrections or clarifications within 90 days.

(6) The renewal application guide must, at a minimum, provide an opportunity for the choice school to:

(a) present additional evidence, beyond the data contained in the performance report, supporting its case for charter contract renewal;

(b) describe improvements undertaken or planned for the choice school; and

(c) detail the choice school's plans for the next charter contract term.

(7) The renewal application guide must include or refer explicitly to the criteria that will guide the authorizer's renewal decisions, based on the performance framework set forth in the charter contract and consistent with [sections 1 through 17].

(8) (a) No later than February 1 of each year, the governing board of a community choice school

seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal application guide issued by the authorizer. The authorizer shall rule by resolution on the renewal application no later than 30 days after the filing of the renewal application.

- (b) Every authorizer shall, when considering charter contract renewal:
 - (i) base its decision on evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;
 - (ii) ensure that the data used in making renewal decisions is available to the choice school and to the public; and
 - (iii) provide a public report summarizing the basis for each decision.

Section 13. Charter contract revocation and school closure or charter contract nonrenewal. (1)

A charter contract may be subject to nonrenewal or revocation if the authorizer determines that the community choice school:

- (a) committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under [sections 1 through 17] or the charter contract and from which the choice school was not exempted;
 - (b) failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;
 - (c) failed to meet public safety standards; or
 - (d) failed to meet generally accepted standards of fiscal management.
- (2) An authorizer shall develop revocation and nonrenewal processes that:
- (a) provide the charter contract holders with timely notification of the prospect of revocation or nonrenewal and of the reasons for the possible closure;
 - (b) allow the charter contract holders a reasonable amount of time in which to prepare a response;
 - (c) provide the charter contract holders an opportunity to submit documents and testimony at a hearing to challenge the rationale for the closure recommendation and in support of the continuation of the school;
 - (d) allow the charter contract holders to be represented by counsel and call witnesses on their

behalf;

(e) permit the recording of the proceedings; and

(f) provide for a final determination conveyed in writing to the charter contract holders.

(3) If an authorizer revokes or denies renewal of a charter contract, the authorizer shall clearly state, by resolution of its governing body, the reasons for the revocation or nonrenewal.

(4) Within 10 days of taking action to renew, not renew, or revoke a charter contract, the authorizer shall report to the commission the action taken and at the same time shall provide a copy of the report to the choice school. The report must include a copy of the resolution of the authorizer's governing body setting forth the action taken and reasons for the decision and providing assurances of compliance with all the requirements set forth in [sections 1 through 17]. The authorizer's decision is appealable to the commission in writing within 30 days of the commission's receipt of the authorizer's report.

(5) (a) Prior to a choice school closure, an authorizer shall develop a choice 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 [sections 1 through 17]. The protocol must specify responsible parties, transition and closure timelines, and a delineation of the respective duties of the choice school and the authorizer.

(b) The authorizer shall oversee the closure and work with the closing choice school to ensure a smooth and orderly closure and transition for students and parents.

(c) In the event of a choice school closure for any reason, the nonrestricted distributable assets of the choice school must be distributed first to satisfy outstanding payroll obligations for employees of the choice school, then to creditors of the choice school, then to resident school districts of students previously attending the closed choice school on a prorated per-pupil basis, and then to the state general fund. If the assets of the choice school are insufficient to pay all obligations, the prioritization of the distribution of assets may be determined by a court of law.

(d) If a closing choice school was converted from an existing traditional public school, the closing choice school is not responsible for any financial obligation or debt of the previously existing traditional public school unless the choice school assumed the debt or obligation at the time of conversion.

(6) Transfer of a charter contract, and of oversight of that choice school from one authorizer to

another before the expiration of the charter contract term, may occur only if the authorizer violates the provisions of [section 6] or by special petition to the commission by a choice school or its authorizer. The commission shall consider a petition for transfer on a case-by-case basis and may grant transfer requests in response to special circumstances and to evidence that the transfer would serve the best interests of the community choice school's students.

Section 14. Community choice school operation and autonomy. (1) (a) A community choice school must be a nonprofit education organization.

(b) A choice school is subject to all federal laws and authorities as provided in [sections 1 through 17] or arranged by charter contract with the choice school's authorizer consistent with applicable laws, rules, and regulations.

(c) Except as provided in [sections 1 through 17], a choice school is not subject to the provisions of Title 20 or any state or local rule, regulation, policy, or procedure relating to traditional public schools within an applicable traditional local school district.

(d) For the purposes of the public employee retirement system and the teacher retirement system under Title 19, choice schools are not "employers" and choice school employees are not "employees" as those terms are defined in 19-2-303 and 19-20-101.

(e) A single governing board may hold one or more charter contracts. A charter contract may consist of one or more schools, to the extent approved by the authorizer and consistent with applicable law. Each choice school that is part of a charter contract is separate and distinct from any other choice school.

(f) The founding governing board of a choice school may apply for and operate with a charter contract for a period up to 3 years before holding an election. The founding board shall ensure an elected governing board is in place within 3 years of the school commencing operations. The governing board must be elected by a process outlined in the choice school bylaws. The election process must include the following requirements:

(i) the qualified electors consist of parents and guardians of students enrolled in the school and the choice school's employees. The qualified electors shall nominate and vote for candidates for the governing board on a cycle outlined in the choice school's bylaws.

- (ii) if the number of nominees is equal to the number of vacancies, no election is required;
 - (iii) if the number of nominees is greater than the number of vacancies, the election must be decided by the qualified electors as part of the next regular school election; and
 - (iv) the terms of board members must be staggered to ensure continuity on the governing board.
- (2) A choice school may only be created within the geographical boundaries of a third-class elementary district, as described in 20-6-201, or a third-class high school district, as described in 20-6-301, if:
- (a) the choice school is being converted from an existing public school;
 - (b) the traditional third-class school district elects to establish a community choice school;
 - (c) the traditional third-class district elects to convert a grade or grades to a choice school from an existing school;
 - (d) the choice school is a tribal choice school;
 - (e) the choice school is a virtual community choice school; or
 - (f) the governing board of the choice school has received approval, by majority vote, of a memorandum of understanding from the third-class school district's board of trustees.
- (3) Each community choice school shall function as a local educational agency. A choice school is responsible for meeting the requirements of a local educational agency under applicable federal, state, and local laws, including those relating to special education.
- (4) For purposes of special education, a community choice school shall serve as its own local education agency. A choice school is responsible for special education services at the school, including identification and service provisions, and is responsible for meeting the needs of enrolled students with disabilities.
- (5) A choice school has all the powers necessary for carrying out the terms of its charter contract, including the following powers:
- (a) to receive and disburse funds for school purposes;
 - (b) to secure appropriate insurance and to enter into contracts and leases, free from prevailing wage laws;
 - (c) to contract with an education service provider for the management and operation of the choice school only if the school's governing board retains oversight authority over the school;

- (d) to incur debt in reasonable anticipation of the receipt of public or private funds;
 - (e) to pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;
 - (f) to solicit and accept gifts or grants for school purposes subject to applicable laws and the terms of its charter contract;
 - (g) to acquire real property, for use as its facility or facilities, from public or private sources; and
 - (h) to sue and be sued in its own name.
- (6) (a) A choice school may not engage in any sectarian practices in its educational program, admissions policies, employment policies or practices, or operations.
- (b) The powers, obligations, and responsibilities set forth in the charter contract may not be delegated or assigned by either party except as otherwise specifically provided in [sections 1 through 17].
- (7) (a) A choice school is subject to the same federal civil rights, health, and safety requirements applicable to other public schools in the state except as otherwise specifically provided in [sections 1 through 17].
- (b) The governing board shall establish graduation requirements and may award degrees and issue diplomas.
- (c) A governing board is subject to and shall comply with state open meeting and public records laws pursuant to Title 2, chapters 3 and 6.
- (d) A choice school shall establish purchasing procedures that include a competitive bidding process for purchases or contracts exceeding \$80,000.
- (8) (a) A community choice school's teachers are exempt from state teacher certification requirements provided in Title 20, chapter 4.
- (b) Employees in choice schools have the same rights and privileges as other public school employees except as otherwise provided in [sections 1 through 17].
- (c) Teachers and other school personnel, as well as governing board members, are subject to criminal history record checks and fingerprinting requirements.
- (d) Community choice school employees may not be required to be members of any existing collective bargaining agreement between a school district and its employees. However, a choice school may

not interfere with laws and other applicable rules protecting the rights of employees to organize and to be free from discrimination.

(9) A choice school's location is determined exclusively by its governing board and only encompasses the property lines of where the school exists as a tenant, guest, or owner of the property. The community choice school is a separate public education entity authorized by and under control of the state of Montana. A choice school is separate from the traditional local school district in which it is physically located and is exempt from Title 20 except as provided in [sections 1 through 17].

Section 15. Funding of choice schools. (1) It is the intent of the legislature that a choice school receive operational funding on a per-pupil basis that is equitable with the per-pupil funding within the general fund of a choice school student's resident school district.

(2) (a) A choice school student's enrollment must be included in the student's resident district enrollment counts for ANB purposes only. By March 1, prior to a choice school's first year of operation, the authorizer shall provide an estimate of a choice school's enrollment broken down by resident school districts to the superintendent of public instruction for review and possible adjustment. The ANB determined by the superintendent must be used for budgeting and BASE funding program purposes for the upcoming school year.

(b) A choice school must have a separate basic entitlement included in the general fund budget of the school district in which the choice school is physically located. The authorizer of the choice school shall determine the choice school's need for a basic entitlement and, not later than February 1, communicate to the superintendent of public instruction the percentage, not to exceed 80%, of the basic entitlement amount under 20-9-306 to be included in the located school district's general fund budget for the ensuing school fiscal year for the choice school.

(3) The county treasurer of the county in which a choice school is physically located shall establish a general fund and other necessary funds for the choice school separate from the funds of school districts of the county.

(4) (a) The superintendent of public instruction shall:

(i) reduce a resident school district's BASE aid payment in August through May by an amount equal to 10% of the student amount for the resident school district multiplied by the number of full-time

equivalent resident students enrolled in a choice school that were included in the resident school district's general fund budget calculations; and

(ii) by the fifth day of each month from September through June of the school fiscal year, distribute to the county treasurer in which the choice school is located the amount determined under subsection (4)(a)(i) for deposit in the choice school's general fund.

(b) The superintendent of public instruction shall reduce the BASE aid payment of a school district in which a choice school is physically located by an amount equal to 10% of the choice school's basic entitlement amount pursuant to subsection (2)(b) in August through May and by the fifth day of each month from September through June of the school fiscal year and distribute the money to the county treasurer for deposit in the choice school's general fund.

(5) A choice school experiencing significant enrollment increases must receive additional funding in an equitable manner with that received by school districts under Title 20, chapter 9.

(6) (a) A choice school may not charge tuition and may charge only fees that may be imposed by traditional public schools in the state.

(b) The out-of-district attendance and tuition laws under Title 20, chapter 5, part 3, do not apply to a student enrolled in a choice school located outside the student's district of residence.

(7) A choice school may obligate the choice school to indebtedness and is solely responsible for those debts. A choice school is not responsible for any debt service obligations that exist in the school district in which the choice school is physically located.

(8) Nothing in [sections 1 through 17] may be construed to prohibit any person, organization, business, or foundation from providing funding or other assistance for the establishment or operation of a choice school. The governing board of a choice school is authorized to accept gifts or donations of any kind made to the choice school and to expend or use the gifts or donations in accordance with the conditions prescribed by the donor. A gift or donation may not be accepted if the gift or donation is subject to a condition that is contrary to any provision of law or term of the charter contract.

(9) Money received by a choice school from any source and remaining in the choice school's accounts at the end of a budget year must remain in the choice school's accounts for use by the choice school in subsequent years.

- (10) For the purposes of this section, the following definitions apply:
- (a) "Resident school district" means the school district in which a choice school student resides.
 - (b) "Student amount" means the sum of:
 - (i) the per-ANB rate for the total data-for-achievement payment rate under 20-9-306;
 - (ii) the per-ANB rate for the total Indian education for all payment rate under 20-9-306;
 - (iii) 140% of the per-ANB amounts of the instructional block grant and related services block grant under 20-9-321; and
 - (iv) the applicable per-ANB maximum rate established in 20-9-306 for the choice school student multiplied by the ratio, rounded to the nearest 1/100 and not to exceed 1.00, of the resident school district's adopted general fund budget to its maximum general fund budget in the prior year.

Section 16. Community choice school access to district facilities and land. (1) A choice school has a right of first refusal to purchase or lease at or below fair market value a closed public school facility or property or an unused portion of a public school facility or property located in a school district from which the choice school draws its students.

(2) A choice school may negotiate and contract at or below fair market value with a school district, the governing body of a college or university or community college, or any other public entity or for-profit or nonprofit private entity for the use of a facility for a school building.

Section 17. Community choice school account. (1) There is a community choice school account in the state special revenue fund provided for in 17-2-102 and administered by the commission. The purpose of the account is for the receipt and expenditure of gifts, grants, legacies, devises, and donations given specifically to support the creation and operation of the Montana community choice schools and commission.

(2) All donations must be from a private source and may not be expended for any purpose other than for the benefit of qualifying choice schools as determined by the commission. Money in the account is derived from a private nonstate source and is payable by the commission without an appropriation pursuant to 17-8-101.

(3) A gift or donation made directly to a specific choice school or schools is not prohibited by this

section.

Section 18. Transition. The legislature intends that the community choice school commission established in [section 4] organize its operations, adopt bylaws, approve authorizers, and solicit choice school proposals during the fiscal year beginning July 1, 2023, with the goal of having operating choice schools for the school year beginning July 1, 2024.

Section 19. Codification instruction. [Sections 1 through 17] are intended to be codified as a new chapter in Title 20.

Section 20. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. Effective date. [This act] is effective July 1, 2023.

- END -

I hereby certify that the within bill,
HB 562, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2023.

President of the Senate

Signed this _____ day
of _____, 2023.

HOUSE BILL NO. 562

INTRODUCED BY S. VINTON, S. FITZPATRICK, M. REGIER, J. ELLSWORTH, R. KNUDSEN, K. BOGNER

AN ACT AUTHORIZING THE ESTABLISHMENT OF COMMUNITY CHOICE SCHOOLS AS A MEANS OF PROVIDING ADDITIONAL EDUCATIONAL OPPORTUNITIES; PROVIDING LEGISLATIVE FINDINGS AND INTENT; PROVIDING DEFINITIONS; ESTABLISHING A COMMUNITY CHOICE SCHOOL COMMISSION; ESTABLISHING CHOICE SCHOOL AUTHORIZERS FOR OVERSEEING CHOICE SCHOOLS; PROVIDING AN OVERSIGHT FEE FOR CHOICE SCHOOL AUTHORIZERS; PROVIDING FOR THE CREATION, RENEWAL, REVOCATION, AND CLOSURE OF CHOICE SCHOOLS; PROVIDING FOR PERFORMANCE MEASURES FOR CHOICE SCHOOLS; EXEMPTING CHOICE SCHOOL TEACHERS FROM STATE CERTIFICATION REQUIREMENTS; PROVIDING FOR FUNDING OF CHOICE SCHOOLS; ESTABLISHING CONDITIONS FOR CHOICE SCHOOL ACCESS TO SCHOOL DISTRICT FACILITIES AND LAND; ESTABLISHING THE COMMUNITY CHOICE SCHOOL ACCOUNT; AND PROVIDING AN EFFECTIVE DATE.