

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 09-20-17  
Rule ID(s): 6602  
File Date: 9/22/17  
Effective Date: 12/21/17

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

<b>Agency/Board/Commission:</b>	Tennessee State Board of Education
<b>Division:</b>	
<b>Contact Person:</b>	Elizabeth Taylor
<b>Address:</b>	710 James Robertson Pkwy
<b>Zip:</b>	1st floor
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**Revision Type (check all that apply):**

- ☒ Amendment  
☐ New  
☐ Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.03	Allocation of State and Local Funds

Rule 0520-14-01-.03 Allocation of State and Local Funds is amended by changing the language so that, as amended, it shall read:

**0520-14-01-.03 ALLOCATION OF STATE AND LOCAL FUNDS.**

- (1) A local board of education shall allocate to each charter school an amount equal to the per student state and local funds received by the charter authorizer and all appropriate allocations under federal laws or regulations.
- (2) Student enrollments used in per pupil calculations shall be based on current year average daily membership (ADM) for the LEA in which the school resides (inclusive of all charter school enrollment). The charter school's allocation shall be calculated by multiplying the per pupil amount by the charter school's current year ADM.
- (3) Allocations to charter schools shall be based on one hundred percent (100%) of state and local funds received by the charter authorizer, including any current year growth funds received by the authorizer and the required local match for the state funds generated under the Basic Education Program (BEP) for capital outlay (excluding the proceeds of debt obligations and associated debt service).
- (4) The department of education shall calculate the amount of state funding required under the BEP for capital outlay to be received in a fiscal year by the LEA in which the charter school resides and shall distribute directly to each charter school its total per pupil state share.
- (5) Allocations to a charter school may not be reduced by the charter authorizer for any category of cost except for the annual authorizer fee. If the charter agreement includes a provision whereby the charter authorizer will provide for employee benefits or retirement, then the authorizer may withhold funds to cover the costs of those services. Any services the charter school chooses to purchase from the charter authorizer may also exist in a separate services contract between the charter school and the authorizer. However, approval of a separate services contract may not be a condition of approval of the charter agreement. If a services contract is executed with the charter authorizer, then the authorizer may withhold funds to cover the costs of those services.
- (6) Each charter authorizer shall include as part of its budget submitted pursuant to T.C.A. § 49-2-203, the per pupil amount of local money it will pass through to charter schools during the upcoming school year. Allocations to the charter schools during that year shall be based on that figure. The charter authorizer shall distribute the portion of local funds it expects to receive in no fewer than nine (9) equal installments to charter schools in the same manner as state funds are distributed. The initial per pupil amount of funding shall be calculated using the number of BEP funded ADMs for the first payments. A charter authorizer shall adjust payments to its charter schools, at a minimum, in October, February and June, based on changes in revenue, student enrollment, or student services. Beginning with the first such adjustment, and continuing for the remainder of the school year, the charter authorizer shall use current year enrollment to calculate the adjusted per pupil amount.
- (7) New charter schools or charter schools adding a new grade shall be funded based on anticipated enrollment in the charter agreement. Those figures shall be subsequently adjusted to reflect the actual number of students enrolled.
- (8) Pursuant to T.C.A. § 49-13-124, the charter authorizer may endorse the submission of the qualified zone academy bond application to the local taxing authority. The charter authorizer may endorse such a bond application submitted by the charter school governing body, or the charter authorizer may include the charter school's project as part of the authorizer's bond application.

- (9) If charter schools provide school nutrition programs, they may provide their own programs in compliance with United States Department of Agriculture regulations and State law or they may contract with the charter authorizer for the provision of school nutrition programs.
- (10) Charter schools that provide transportation in accordance with the provisions of T.C.A. § 49-6-2100 *et seq.*, other than through an agreement with the charter authorizer, shall receive the State and local funds generated through the BEP for such transportation.

**Authority:** T.C.A. §§ 49-2-203, 49-13-112, 49-13-124, 49-13-126, and 49-6-2100 *et seq.*,  
**Administrative History:** Original rule filed March 25, 2010; effective August 29, 2010. Repeal and new rule filed March 21, 2012; effective August 29, 2012.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Cook	X				
Edwards	X				
Ferguson				X	
Hartgrove	X				
Kim	X				
Rolston	X				
Tucker	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 05/24/2017, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: 9/12/17

Signature: [Handwritten Signature]

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

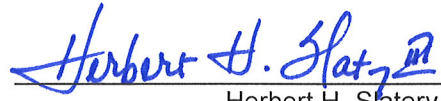
Subscribed and sworn to before me on: 9/12/17

Notary Public Signature: [Handwritten Signature]

My commission expires on: 3-8-21



All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
Herbert H. Slatery III.  
Attorney General and Reporter

9/20/2017

Date

**Department of State Use Only**

Filed with the Department of State on: 9/22/17

Effective on: 12/21/17



Tre Hargett  
Secretary of State

RECEIVED  
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PUBLICATIONS

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not Applicable

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This item may impact the funding allocations for any local school district that was using prior year enrollment numbers.

## **Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

T.C.A. § 49-13-112 provides that allocations to charter schools from the local board of education "shall be in accordance with the rules and regulations promulgated by the department of education." The allocation of state and local funds rule was originally promulgated in 2010 and recently there have been several questions and concerns from schools and districts as well as from the Tennessee Comptroller's office.

This item seeks to provide clarity around charter school funding and aligns to legislation that has been introduced by the department of education.

The following changes have been made to the rule:

Clarifies language for the calculation of funding for each charter school.

Clarifies growth funding and capital outlay funding.

Clarifies authorizing LEAs may not charge an administrative fee to charter schools and outlines the conditions that LEAs may withhold funding from a charter for certain services.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Pursuant to T.C.A. § 49-1-302(a)(4)(A), it is the duty of the State Board of Education and it has the power to develop and adopt policies, formulas and guidelines for the fair and equitable distribution and use of public funds among public schools and for the funding of all requirements of state laws, rules, regulations and other required expenses, and to regulate expenditures of state appropriations for public education, kindergarten through grade twelve (K-12).

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Local Education Agencies and Charter Management Organizations are most directly affected by this rule. Neither of which has urged adoption or rejection of this rule. After first reading, the Comptroller's Office of Research and Education Accountability (OREA) provided feedback on the proposed rule which was considered in making changes between first and final reading. The OREA urges adoption of this rule. The Tennessee Department of Education and the Tennessee State Board of Education urge adoption of this rule.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

Tenn. Op. Atty. Gen. No. 13-34 (Tenn. A.G.), 2013 WL 1856670  
Tenn. Op. Atty. Gen. No. 13-72 (Tenn. A.G.), 2013 WL 5303888  
Tenn. Op. Atty. Gen. No. 08-169 (Tenn. A.G.), 2008 WL 4759874

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

N/A



- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)

Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Elizabeth Fiveash  
[Elizabeth.Fiveash@tn.gov](mailto:Elizabeth.Fiveash@tn.gov)

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)

Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Elizabeth Fiveash  
[Elizabeth.Fiveash@tn.gov](mailto:Elizabeth.Fiveash@tn.gov)

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

RULES  
OF THE  
STATE BOARD OF EDUCATION  
CHAPTER 0520-14-01  
CHARTER SCHOOLS

**0520-14-01-.03 ALLOCATION OF STATE AND LOCAL FUNDS.**

- (1) A local board of education shall allocate to each charter school an amount equal to ~~the per~~ the per student state and local funds received by the charter LEA and authorizer and all appropriate allocations under federal laws or regulations.
- (2) Student enrollments used in per pupil calculations shall be based on current year average daily membership (ADM) for the LEA in which the school resides (inclusive of all charter school enrollment). The charter school's allocation shall be calculated by multiplying the per pupil amount by the charter school's current year ADM.
- (3) Allocations to charter schools shall be based on one hundred percent (100%) of state and local funds received by the charter authorizer-LEA, including any current year growth funds received by the authorizing chartering LEA and authorizer and the required local match for the state funds generated under the Basic Education Program (BEP) for capital outlay current funds allocated for capital outlay purposes (excluding the proceeds of debt obligations and associated debt service).
- (4) The department of education shall calculate the amount of state funding required under the BEP for capital outlay to be received in a fiscal year by the LEA in which the charter school resides and shall distribute directly to each charter school its total per pupil state share.
- ~~(3) Student enrollments used in per pupil allocations calculations shall be based on current year enrollment for the charter schools and for the authorizing LEA. The charter school's allocation shall be calculated by multiplying the per pupil amount by the charter school's current year enrollment.~~
- (54) Allocations to a the charter school may not be reduced by the charter authorizer LEA for administrative, indirect, or any other category of cost except for the annual authorizer fee. If the charter agreement includes a provision whereby the charter authorizer will provide for employee benefits or retirement, then the authorizer may withhold funds to cover the costs of those services. or charge except as specifically provided in a charter agreement. Any educational or operational services the charter school chooses to purchase from the charter authorizer authorizer provides for a fee may also exist in a separate services contract contractual agreement between the charter school and the authorizer. However, approval of a separate services contract may not be a condition of approval of the charter agreement. If a services contract is executed with the charter authorizer, then the authorizer may withhold funds to cover the costs of those services.
- ~~(5) New charter schools or charter schools adding a new grade shall be funded based on anticipated enrollment in the charter agreement. Those figures shall be subsequently adjusted to reflect the actual number of students enrolled.~~

(Rule 0520-14-01-.04, continued)

- (6) Each charter authorizer LEA shall include as part of its budget submitted pursuant to T.C.A. § 49-2-203, the per pupil amount of local money it will pass through to charter schools during the upcoming school year. Allocations to the charter schools during that year shall be based on that figure. The charter authorizer LEA shall distribute the portion of local funds it expects to receive in no fewer than nine (9) equal installments to the charter schools in the same manner as state funds are distributed. The initial per pupil amount of funding shall be calculated using the number of BEP funded ADMs for the first payments. ~~And a charter authorizer LEA shall adjust payments to its charter schools, at a minimum, in October, February and June, based on changes in revenue, student enrollment, or student services. Beginning with the first such adjustment, and continuing for the remainder of the school year, the charter authorizer LEA shall use current year enrollment to calculate the adjusted per pupil amount.~~
- (7) New charter schools or charter schools adding a new grade shall be funded based on anticipated enrollment in the charter agreement. Those figures shall be subsequently adjusted to reflect the actual number of students enrolled.
- (87) Pursuant to T.C.A. § 49-13-124, the charter authorizer chartering authority may endorse the submission of the qualified zone academy bond application to the local taxing authority. The charter authorizer chartering authority may endorse such a bond application submitted by the charter school governing body, or the charter authorizer chartering authority may include the charter school's project as part of the chartering authority's bond authorizer's bond application.
- (98) If charter schools provide school nutrition programs, they may provide their own programs in compliance with United States Department of Agriculture regulations and State law or they may contract with the charter LEA for authorizer for the provision of school nutrition programs.
- (109) Charter schools that provide transportation in accordance with the provisions of T.C.A. § 49-6-2100 *et seq.*, other than through an agreement with the charter authorizer LEA, shall receive the State and local funds generated through the BEP for such transportation.

**Authority:** T.C.A. §§ 49-2-203, 49-13-112, 49-13-124, 49-13-126, and 49-6-2100 et seq. ~~T.C.A. §§ 49-13-112 and 49-13-126.~~ **Administrative History:** Original rule filed March 25, 2010; effective August 29, 2010. Repeal and new rule filed March 21, 2012; effective August 29, 2012.