

1 Introduced by Senator Baruth

2 Referred to Committee on

3 Date:

4 Subject: Education; approved independent schools; financial capacity

5 Statement of purpose of bill as introduced: This bill proposes to clarify the

6 process and requirements for the State Board of Education to determine

7 whether an independent school seeking approved status satisfies the

8 requirement that it has the financial capacity to meet its stated objective.

9 An act relating to State Board of Education approval of independent schools

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 16 V.S.A. § 166(b) is amended to read:

12 (b) Approved independent schools. On application, the State Board shall

13 approve an independent school that offers elementary or secondary education

14 if it finds, after opportunity for hearing, that the school provides a minimum

15 course of study pursuant to section 906 of this title and that it substantially

16 complies with the Board's rules for approved independent schools. Except as

17 provided in subdivision (6) of this subsection, the Board's rules must at

18 minimum require that the school has the resources required to meet its stated

19 objectives, including financial capacity, faculty who are qualified by training

20 and experience in the areas in which they are assigned, and physical facilities

1 and special services that are in accordance with any State or federal law or  
2 regulation. Approval may be granted without State Board evaluation in the  
3 case of any school accredited by a private, State, or regional agency recognized  
4 by the State Board for accrediting purposes.

5 \* \* \*

6 (8)(A) An independent school shall seek to demonstrate its financial  
7 capacity for approval under this subsection by providing to the State Board  
8 with its application for approval:

9 (i) a statement of financial capacity for the school's current or  
10 immediately preceding fiscal year issued by:

11 (I) an accrediting agency recognized by the State Board;

12 (II) a licensed certified public accountant or licensed certified  
13 public accounting firm; or

14 (III) a peer review team or independent reviewer appointed by  
15 the Council of Independent Schools and approved by the Secretary of  
16 Education;

17 (ii) an audit report for the school's current or immediately  
18 preceding fiscal year issued by a licensed certified public accountant or  
19 licensed certified public accounting firm; or

20 (iii) IRS Form 990 for the school's current or immediately  
21 preceding fiscal year.

1           (B)(i) The State Board shall find that an independent school that  
2           submits any of the documentation under subdivision (A) of this subdivision (8)  
3           has demonstrated the financial capacity for approval under this subsection if it  
4           finds that:

5                   (I) the documentation demonstrates that the school has the  
6           financial capacity to meet its stated objective for the period covered by the  
7           documentation; and

8                   (II) the documentation does not contain information that causes  
9           the State Board to believe that the school would likely be unable to maintain its  
10          financial capacity to meet its stated objective during the period of State Board  
11          approval.

12                   (ii) Nothing in this section prohibits an independent school from  
13          voluntarily submitting additional information related to its financial capacity to  
14          the State Board or prohibits the State Board from finding that the school has  
15          demonstrated its financial capacity based upon this additional information.

16          The State Board may require an independent school that is seeking approval  
17          for the first time to provide it with updated documentation under subdivision  
18          (A) of this subdivision (8) on a periodic basis during the approval period,  
19          provided that the school shall not be required to provide this documentation  
20          more than once in any 12-month period.

1           (C) If an approved independent school believes that it is or likely will  
2           become financially impaired, as defined in subdivision (D) of this subdivision  
3           (8), during the period of its approved status, the school shall notify the  
4           Secretary of Education within five days of making this determination.  
5           Annually, on or before August 1, an approved independent school shall  
6           compare its student enrollment for the current school year to the immediately  
7           preceding school year and, if its student enrollment has declined by 10 percent  
8           or more over this period, shall notify the Secretary of State within five days of  
9           its determination. If an approved independent school has failed to file its  
10           federal or State tax returns when due (after taking into account permissible  
11           extension periods), it shall notify the Secretary of Education within five days  
12           of the due date.

13           (D) As used in this subsection, the term “financially impaired”  
14           means:

15           (i) the school’s failure to pay debts as they become due in the  
16           ordinary course of business, including the school’s failure to meet its payroll  
17           obligations as they are due, to pay federal or State payroll tax obligations as  
18           they are due, or to pay any of its other expenses within 30 days of their due  
19           date;

1                   (ii) the school's failure to comply with the financial terms of its  
2 debt obligations, including the school's failure to make interest or principal  
3 payments as they are due or to maintain any required financial ratios;

4                   (iii) the withdrawal or conditioning of the school's accreditation  
5 on financial grounds by a private, State, or regional agency recognized by the  
6 State Board for accrediting purposes; or

7                   (iv) the school's insolvency, as defined in 9 V.S.A. § 2286(a).

8                   (E) If the State Board has reasonable cause to believe that an  
9 approved independent school lacks financial capacity to meet its stated  
10 objectives during the period of its approved status due to its financial  
11 impairment, then the State Board shall notify the school in writing of the  
12 reasons for this belief and permit the school a reasonable opportunity to  
13 respond. If the State Board, after having provided the school a reasonable  
14 opportunity to respond, does not find that the school has satisfactorily  
15 responded or demonstrated its financial capacity, the State Board, with the  
16 written consent of the school, may request the Council of Independent Schools  
17 to establish a review team and conduct a school visit to assess the school's  
18 financial capacity and submit a report of its findings and recommendations to  
19 the State Board. The State Board may also require the approved independent  
20 school to submit updated documentation under subdivision (A) of this  
21 subdivision (8), provided that the school shall not be required to provide this

1 documentation more than once in any 12-month period. If the State Board  
2 concludes that an approved independent school lacks financial capacity to meet  
3 its stated objectives during the period of its approved status due to its financial  
4 impairment, the State Board may take any action that is authorized by this  
5 section.

6 (F) Information provided by an independent school to demonstrate its  
7 financial capacity under this subsection that is not already in the public domain  
8 is exempt from public inspection and copying under the Public Records Act  
9 and shall be kept confidential.

10 Sec. 2. EFFECTIVE DATE

11 This act shall take effect on passage.