

1 S.229

2 Introduced by Senator Baruth

3 Referred to Committee on

4 Date:

5 Subject: Education; approved independent schools; financial capacity

6 Statement of purpose of bill as introduced: This bill proposes to clarify the
7 process and requirements for the State Board of Education to determine
8 whether an independent school seeking approved status satisfies the
9 requirement that it has the financial capacity to meet its stated objective.

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

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

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

13 (b) Approved independent schools. On application, the State Board shall
14 approve an independent school that offers elementary or secondary education
15 if it finds, after opportunity for hearing, that the school provides a minimum
16 course of study pursuant to section 906 of this title and that it substantially
17 complies with the Board's rules for approved independent schools. Except as
18 provided in subdivision (6) of this subsection, the Board's rules must at
19 minimum require that the school has the resources required to meet its stated
20 objectives, including financial capacity, faculty who are qualified by training

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

6 * * *

7 (5) The State Board may revoke ~~or~~, suspend, or impose conditions upon
8 the approval of an approved independent school, after opportunity for hearing,
9 for substantial failure to comply with the minimum course of study, for failure
10 to demonstrate that the school has the resources required to meet its stated
11 objectives, for failure to comply with the Board's rules for approved
12 independent schools, or for failure to report under subdivision (4) of this
13 subsection (~~b~~). Upon revocation or suspension, students required to attend
14 school who are enrolled in that school shall become truant unless they enroll in
15 a public school, an approved or recognized independent school, or a home
16 study program.

17 * * *

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

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

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

4 (II) a licensed certified public accountant or licensed certified
5 public accounting firm; or

6 (III) a peer review team or independent reviewer appointed by
7 the Council of Independent Schools and approved by the Secretary of
8 Education;

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

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

14 (B)(i) The State Board shall find that an independent school that
15 submits any of the documentation under subdivision (A) of this subdivision (8)
16 has demonstrated the financial capacity for approval under this subsection (b)
17 if it finds that:

18 (I) the documentation demonstrates that the school has the
19 financial capacity to meet its stated objective for the period covered by the
20 documentation; and

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

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

9 (iii) If the State Board does not find that the school has
10 demonstrated its financial capacity for approval under this subsection (b), the
11 State Board may approve the school subject to conditions imposed by the State
12 Board that are designed to provide the State Board with assurance that the
13 school will have the financial capacity to meet its stated objective within a
14 reasonable period of time as determined by the State Board.

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

20 (C) If an approved independent school believes that it is or likely will
21 become financially impaired, as defined in subdivision (D) of this subdivision

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

11 (D) As used in this subsection, “financially impaired” means:

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

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

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

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

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

1 approved status due to its financial impairment, the State Board may take any
2 action that is authorized by this section.

3 (F) In considering whether an independent school lacks financial
4 capacity to meet its stated objectives during the period of its approved status
5 due to its financial impairment and what actions the State Board should take if
6 it makes this finding, the State Board may consult with, and draw on the
7 analytical resources of, the Department of Financial Regulation.

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

12 Sec. 2. EFFECTIVE DATE

13 This act shall take effect on passage.