

Senate Bill No. 644

(By Senators Barnes, Carmichael and Wells)

[Introduced March 25, 2013; referred to the Committee on
Education; and then to the Committee on Finance.]

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §18-33-1, §18-33-2,
12 §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8,
13 §18-33-9, §18-33-10, §18-33-11, §18-33-12, §18-33-13 and §18-
14 33-14, all relating to public competitive learning academies;
15 definitions; applicable regulatory and statutory requirements;
16 exemptions from state laws and rules; creating public
17 competitive learning academy or conversion of public school to
18 public competitive learning academy; application process;
19 approval and denial of application; competitive learning
20 academy status term; terminating public competitive learning
21 academy; public competitive learning academy requirements;
22 funding; enrollment; student transportation; conditional
23 approval; information on competitive learning academies;

1 leaves of absence for teachers; employment of school
2 personnel; and benefits.

3 *Be it enacted by the Legislature of West Virginia:*

4 That the Code of West Virginia, 1931, as amended, be amended
5 by adding thereto a new article, designated §18-33-1, §18-33-2,
6 §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8, §18-33-
7 9, §18-33-10, §18-33-11, §18-33-12, §18-33-13 and §18-33-14, all to
8 read as follows:

9 **ARTICLE 33. WEST VIRGINIANA PUBLIC COMPETITIVE LEARNING ACADEMIES**
10 **ACT OF 2013.**

11 **§18-33-1. Definitions.**

12 (a) "Governing body" means the organized group of persons who
13 will operate a public competitive learning academy by deciding
14 matters including, but not limited to, budgeting, curriculum and
15 other operating procedures for the public competitive learning
16 academy and by overseeing management and administration of a public
17 competitive learning academy. The "governing body" shall include
18 one nonvoting member appointed by the superintendent of the
19 district in which the public competitive learning academy is
20 located.

21 (b) "Public competitive learning academy" means a public
22 school that is established and operating pursuant to this article.

23 (c) "Sponsor" means any individual, group or other

1 organization filing an application in support of the establishment
2 of a public competitive learning academy: *Provided*, That a sponsor
3 cannot be a for-profit entity, a private school, a religious or
4 church school or promote the agenda of any religious denomination
5 or religiously affiliated entity.

6 **§18-33-2. Competitive learning academies.**

7 (a) Public competitive learning academies are a part of the
8 state program of public education.

9 (b) Public competitive learning academies are subject to any
10 regulatory and statutory requirements related to:

- 11 (1) Federal and state civil rights;
- 12 (2) Federal, state and local health and safety;
- 13 (3) Federal and state public records;
- 14 (4) Immunizations;
- 15 (5) School nutrition;
- 16 (6) Confidentiality of student data;
- 17 (7) Possession of weapons on school grounds;
- 18 (8) Background checks and fingerprinting of personnel;
- 19 (9) Federal and state special education services;
- 20 (10) Student due process;
- 21 (11) Parental rights;
- 22 (12) Federal and state student assessment and accountability;
- 23 (13) Open meetings;

1 (14) Freedom of information;
2 (15) Accounting procedures;
3 (16) Purchasing procedures;
4 (17) All school personnel certification requirements; and
5 (18) All other provisions of state and federal law and rule
6 except for those specifically listed in subsection (c) of this
7 section.

8 (c) Subject to subsection (d), public competitive learning
9 academies are not subject to state laws and rules related to the
10 following:

- 11 (1) School calendar;
- 12 (2) Any minimum instructional minutes per day requirement;
- 13 (3) Any personnel laws set forth in chapter eighteen-a of this
14 code relating to hiring; termination of employment; evaluations;
15 seniority; and reductions in force;
- 16 (4) Required programs of study;
- 17 (5) Instructional goals and methods;
- 18 (6) School uniforms, subject to section seven of this article;
- 19 and
- 20 (7) Class size.

21 (d) In addition to exempting a public competitive learning
22 academy from the laws and rules set forth in subsection (c) of this
23 section, the governing body of a public competitive learning

1 academy may apply to the state board for a waiver of any provisions
2 of its rules, and may request the Legislature to exempt it from
3 certain provisions or to change certain school law provisions
4 generally.

5 **§18-33-3. Creation or conversion of competitive learning**
6 **academies.**

7 (a) A public competitive learning academy may be formed by
8 creating a new school or converting an eligible public school to
9 competitive learning academy status pursuant to the provisions of
10 this article: *Provided*, That the county board of education in
11 which the competitive learning academy will be located is the
12 sponsoring entity for the proposed competitive learning academy.

13 (b) Newly created competitive learning academies are subject
14 to the following:

15 (1) The sponsor of a public competitive learning academy shall
16 file a public competitive learning academy application with the
17 state board;

18 (2) Upon a determination that a sponsor meets the requirements
19 set forth in this article, the state board shall approve the
20 application. In determining whether or not to approve the
21 application, the state board shall only consider whether the
22 requirements of this article are satisfied and shall not consider
23 any other factor; and

1 (3) A public competitive learning academy shall be operated by
2 a not-for-profit organization that is exempt from federal taxation
3 under 501(c)(3) of the Internal Revenue Code. No public
4 competitive learning academy status may be granted to a for-profit
5 corporation.

6 (c) The conversion of a public school to a public competitive
7 learning academy is subject to the following:

8 (1) At the time of conversion to a competitive learning
9 academy, parents whose children are enrolled at the school may
10 enroll their child in another public school without penalty;

11 (2) The conversion must occur in between employment terms and
12 shall be in compliance with the provisions of this article; and

13 (3) At the time of conversion to a competitive learning
14 academy, any person employed at the school, or if dismissed from
15 employment in their position at the competitive learning academy,
16 may request transfer to another position within the school district
17 or be placed on a preferred recall list; and

18 (4) At the time of the conversion to a public competitive
19 learning academy, the applicant school must be among the bottom
20 quartile in overall performance on the statewide WESTEST assessment
21 for the prior academic year.

22 (d) No competitive learning academy agreement that authorizes
23 the conversion of any private, parochial, Internet-based or home-

1 based school to competitive learning academy status may be granted
2 under this article.

3 (e) Nothing in this article may be construed to prohibit any
4 individual or organization from providing funding or other
5 assistance to the establishment or operation of a public
6 competitive learning academy, but the funding or assistance may not
7 entitle the individual or organization to any ownership interest in
8 the school.

9 **§18-33-4. Application process.**

10 (a) At least sixty days before the proposed public competitive
11 learning academy plans to begin operation, the sponsor seeking to
12 establish a public competitive learning academy shall prepare and
13 file with the state board an application providing the following
14 information and documents:

15 (1) A statement defining the mission and goals of the proposed
16 competitive learning academy;

17 (2) The proposed instructional goals and methods for the
18 school, which at a minimum, shall include teaching and classroom
19 instruction methods that will be used to provide students with the
20 knowledge, proficiency and skills needed to reach the goals of the
21 school;

22 (3) An operating budget based on anticipated enrollment;

23 (4) A timetable for commencing operations as public

1 competitive learning academy;

2 (5) Information on the minimum daily instruction time
3 requirements, the minimum instructional day per year requirement
4 and the amount of professional development that will be provided to
5 personnel employed at the public competitive learning academy;

6 (6) The proposed rules and policies for governance and
7 operation of the school;

8 (7) The names and addresses of the members of the governing
9 body;

10 (8) A description of the anticipated student enrollment;

11 (9) The identification of the individuals and entities
12 sponsoring the proposed public competitive learning academy,
13 including names and addresses;

14 (10) The plan for management and administration of the school;

15 (11) A copy of the proposed by-laws of the governing body of
16 the competitive learning academy;

17 (12) A statement of assurance of liability by the governing
18 body of the competitive learning academy;

19 (13) Types and amounts of insurance coverage to be held by the
20 competitive learning academy, including provisions for assuring
21 that the insurance provider will notify the state board within ten
22 days of the cancellation of any insurance it carries on the
23 competitive learning academy;

1 (14) The plan for transportation for pupils attending the
2 competitive learning academy if transportation is provided;

3 (15) Information regarding financing commitments from debt
4 sources for cash or similar liquid assets sufficient to demonstrate
5 that the competitive learning academy will have liquid assets
6 sufficiently available to operate the school on an ongoing and
7 sound financial basis; and

8 (16) Any other reasonable information the state board
9 determines is necessary to ascertain whether or not the public
10 competitive learning academy is complying with the requirements set
11 forth in this article: *Provided*, That the state board may not
12 require any information that places an undue hardship on the
13 sponsor or results in unnecessary delay in the competitive learning
14 academy application process.

15 (b) Where an existing public school is to be converted to a
16 public competitive learning academy, the sponsor making application
17 must be the county board of education for the county in which the
18 school is located.

19 (c) Much of the information required by subsection (a) of this
20 section is for informational purposes only. Pursuant to section
21 five of this article, the state board only has authority to deny an
22 application for failure to meet the requirements of this article.

23 **§18-33-5. Approval and denial of application; and competitive**

1 **learning academy status term.**

2 (a) The state board may approve or deny applications to
3 establish a public competitive learning academy: *Provided*, That
4 the state board only may deny an application based on failure to
5 comply with the requirements of this article. The state board
6 shall approve any application when the applicant has fully complied
7 with all the requirements set forth in this article.

8 (b) The state board shall approve or deny a competitive
9 learning academy application within sixty days of receiving the
10 application. If the state board fails to approve or deny a
11 competitive learning academy application within the sixty days, the
12 application is considered approved.

13 (c) If a decision of the state board is to deny a competitive
14 learning academy application, it must state its reasons in writing
15 to the sponsor who submitted the application. The sponsor may
16 correct any deficiencies in complying with this article and
17 resubmit the application or submit an amended application, as
18 applicable. Each time an application is resubmitted or an amended
19 application is submitted, the state board shall approve or deny the
20 competitive learning academy application within sixty days. If the
21 state board fails to approve or deny a resubmitted or amended
22 competitive learning academy application within the sixty days, the
23 application is considered approved.

1 (d) Approval of a competitive learning academy application is
2 effective for five years from the date of approval, after which the
3 school's status as a public competitive learning academy is revoked
4 unless the sponsor applies for public competitive learning academy
5 status again pursuant to this article and shows substantive student
6 improvement on statewide or national assessments.

7 **§18-33-6. Termination of public competitive learning academy.**

8 (a) Upon dissolution of a competitive learning academy for any
9 reason or if competitive learning academy status is not renewed,
10 any unencumbered public funds from the competitive learning academy
11 revert to the county board of the district in which the competitive
12 learning academy is located.

13 (b) If a competitive learning academy is dissolved for any
14 reason or competitive learning academy status is not renewed, the
15 competitive learning academy is responsible for all debts of the
16 competitive learning academy. Neither the county board of the
17 district where the competitive learning academy is located nor any
18 other governmental entity may assume the debt from any contract for
19 services made between the governing body of the public competitive
20 learning academy and a third party, except for a debt that is
21 previously detailed and agreed upon in writing by both the county
22 board and the governing body of the public competitive learning
23 academy and that may not reasonably be assumed to have been

1 satisfied by the county board.

2 **§18-33-7. Compliance.**

3 (a) A public competitive learning academy shall:

4 (1) Operate as a public, nonsectarian, nonreligious public
5 school, with control of instruction vested in the governing body of
6 the school under the general supervision of the sponsoring
7 authority and in compliance with the competitive learning academy
8 agreement and this article;

9 (2) Meet the same performance standards and requirements
10 adopted by the state board for other public schools, but may apply
11 for a waiver of certain policies as indicated in its application;

12 (3) Receive state, federal and local funds from the county
13 board of the district in which the school is located; and

14 (4) Provide special education services as required for all
15 public schools by federal law unless provided by the county board
16 of education in another school reasonably within the vicinity.

17 (b) A public competitive learning academy is subject to all
18 federal and state laws and Constitutional provisions prohibiting
19 discrimination on the basis of disability, race, creed, color,
20 national origin, religion, ancestry or need for special education
21 services.

22 (c) A public competitive learning academy shall comply with
23 all applicable health and safety standards, regulations and laws of

1 the United States and State of West Virginia.

2 (d) A public competitive learning academy is accountable to
3 the state board for the purposes of ensuring compliance with the
4 requirements of this article.

5 (e) All contracts for goods and services in excess of \$5,000
6 shall be bid and approved by the governing body of each public
7 competitive learning academy.

8 (f) A public competitive learning academy shall be governed
9 and managed by a governing body.

10 (g) The governing body of a public competitive learning
11 academy is subject to section five, article two, chapter six-b and
12 any other ethical standards that are applicable to county board
13 members.

14 (h) The meetings of the governing body of a public competitive
15 learning academy are considered public business and shall comply
16 with the Open Governmental Proceedings Act set forth in article
17 nine-a, chapter six of this code.

18 (i) A public competitive learning academy is subject to all
19 state audit procedures and audit requirements, and shall submit
20 quarterly financial reports to the state board and the county board
21 of the district in which the public competitive learning academy is
22 located.

23 (j) A public competitive learning academy shall not charge

1 tuition.

2 (k) A public competitive learning academy shall be operated on
3 a July 1 to June 30 fiscal year and the governing body shall adopt
4 and operate under an annual budget for the fiscal year. The budget
5 shall be prepared in the same format as that required for county
6 boards.

7 (l) A public competitive learning academy shall maintain its
8 accounts and records in accordance the Governmental Accounting
9 Standards Board standards.

10 (m) A public competitive learning academy shall require all
11 students to wear a school uniform.

12 **§18-33-8. Funding.**

13 (a) The county board of the county in which a public
14 competitive learning academy is located shall allocate one hundred
15 percent of the state and local education funds to the public
16 competitive learning academy based on the per pupil expenditure of
17 the county board, subject to sections ten and fourteen of this
18 article. The minimum per pupil expenditure shall be based on the
19 net enrollment of the district for the previous school year. A
20 county board may expend additional funds in the operation of the
21 public competitive learning academy: *Provided*, That all funds are
22 spent according to the budget submitted in the competitive learning
23 academy agreement, or as otherwise revised by the public

1 competitive learning academy request of the governing body, subject
2 to state and federal law. The governing body of a public
3 competitive learning academy may contract with the county board of
4 the district in which the public competitive learning academy is
5 located to act as fiscal agent for a public competitive learning
6 academy.

7 (b) Notwithstanding subsection (a) above, funds which would
8 otherwise be allocated on the basis of enrollment in the prior year
9 shall be allocated, during the first full academic year of
10 operation of any public competitive learning academy, on the basis
11 of the anticipated enrollment in the competitive learning academy
12 agreement, which amount shall be subsequently adjusted to reflect
13 the actual number of students enrolled.

14 (c) A public competitive learning academy also may be funded
15 by federal grants; grants, gifts, devises or donations from any
16 private sources; and state funds appropriated for the support of
17 the public competitive learning academy, if any, and any other
18 funds that may be received by the county board of the district in
19 which the public competitive learning academy is located. Receipt
20 of any of these funds shall be reported to the state board. Public
21 competitive learning academies, county boards and the state
22 superintendent are encouraged to apply for federal funds
23 appropriated specifically for the support of competitive learning

1 academies.

2 **§18-33-9. Enrollment.**

3 (a) Participation in a public competitive learning academy
4 shall be based on parental choice, or the choice of the legal
5 guardian or custodian.

6 (b) A public competitive learning academy shall enroll an
7 eligible pupil who submits a timely application, unless the number
8 of applications exceeds the capacity of a program, class, grade
9 level or building. If applications exceed the planned capacity of
10 the public competitive learning academy, students shall be enrolled
11 in accordance with the following priorities:

12 (1) Pupils in attendance in the previous school year at any
13 public school that converts to become a public competitive learning
14 academy, or those pupils who would have attended the public
15 competitive learning academy in the previous school year based on
16 residence;

17 (2) Pupils attending public schools within the district in
18 which the public competitive learning academy is located;

19 (3) Children residing within the district in which the public
20 competitive learning academy is located, but who are not enrolled
21 in public schools; and

22 (4) Any other children.

23 (c) If enrollment within a priority grouping set forth in

1 subsection (b) of this section exceeds the planned capacity of the
2 school, enrollment within that group shall be determined on the
3 basis of a lottery.

4 (d) Notwithstanding any other provision of this section to the
5 contrary:

6 (1) Preference shall be given to the siblings of a pupil who
7 is already enrolled and to the children of a teacher, sponsor or
8 member of the governing body of the competitive learning academy;
9 and

10 (2) In order to promote competition with other public schools
11 in the county in which a competitive learning academy is located,
12 the Legislature intends that the student population be similar to
13 other public schools in the state. Therefore, the enrollment of
14 students who are enrolled in an individual education program, are
15 eligible for free and reduced lunch or both shall be given priority
16 over other pupils until forty percent of the student population of
17 any proposed competitive learning academy is composed of those
18 students. The students enrolled in individual education programs
19 and eligible for free and reduced lunch shall be enrolled in
20 accordance with the priorities set forth in subsection (b) of this
21 section.

22 **§18-33-10. Student transportation.**

23 A county board of education shall provide transportation for

1 students to and from a public competitive learning academy,
2 provided those students live in the vicinity of the public
3 competitive learning academy and would otherwise be transported to
4 that school by the county board if the public competitive learning
5 academy had not become a public competitive learning academy.
6 Students living outside the vicinity of the public competitive
7 learning academy who elect to attend the school are responsible for
8 their own transportation to and from the public competitive
9 learning academy.

10 **§18-33-11. Conditional approval.**

11 If approval is a prerequisite for the sponsor to raise working
12 capital, the state board may grant conditional approval for a
13 public competitive learning academy application. If the sponsor
14 has satisfied all other requirements set forth in this article, the
15 state board shall grant full approval subject to the sponsor
16 providing information regarding financing commitments from debt
17 sources for cash or working capital sufficient to demonstrate that
18 competitive learning academy will have liquid assets sufficiently
19 available to operate the school on an ongoing and sound financial
20 basis.

21 **§18-33-12. Information on competitive learning academies.**

22 (a) The state superintendent shall provide information to the
23 public through its Internet site and otherwise on how to form and

1 operate a public competitive learning academy. This information
2 shall include a standard application format which shall include the
3 information specified in section four of this article.

4 (b) The state superintendent shall monitor the status of
5 competitive learning academy applications and shall maintain
6 information on the total number of competitive learning academy
7 applications, total number of competitive learning academy
8 applications granted by type of school and total number of
9 competitive learning academy applications denied.

10 **§18-33-13. Leaves of absence for teachers.**

11 (a) If a teacher employed by a county board makes a written
12 request for an extended leave of absence to teach at a public
13 competitive learning academy, the county board may grant the leave
14 pursuant to section two, article two, chapter eighteen-a of this
15 code.

16 (b) The seniority acquired by a teacher while on a leave of
17 absence to teach at a public competitive learning academy will
18 continue to accrue the same as if the teacher were employed at the
19 county board of the district in which the teacher was immediately
20 previously employed.

21 (c) For the purposes of determining salary in accordance with
22 article four, chapter eighteen of this code, a teacher shall
23 receive credit toward years of service while teaching at a public

1 competitive learning academy at a rate of pay the teacher would
2 have received if teaching in a noncompetitive learning academy
3 within the school district.

4 **§18-33-14. Employment of school personnel; insurance; retirement.**

5 (a) School personnel employed at a public competitive learning
6 academy are considered employees of the county board of the
7 district in which the public competitive learning academy is
8 located for the purposes of salary and benefits. The competitive
9 learning academy shall recommend to the county board who to hire
10 for each position, and the county board shall hire the recommended
11 individuals and assign them to the public competitive learning
12 academy. The county board also shall dismiss school personnel
13 assigned to a public competitive learning academy upon the
14 recommendation of the governing board of a public competitive
15 learning academy. The governing board has supervisory authority
16 over the school personnel assigned to the school.

17 (b) The county board shall pay for the cost of the salaries
18 and benefits for the school personnel employed by the county board
19 and assigned to the competitive learning academy.

20 (c) Since school personnel employed at a competitive learning
21 academy are considered employees of a county board all school
22 personnel employed at a public competitive learning academy are:

23 (1) Eligible for public employee insurance agency benefits in

1 the same manner that school personnel employed by the county board
2 of the district in which the school is located are;

3 (2) Eligible to participate in either the Teachers Retirement
4 System or the defined contribution plan, as applicable, in the same
5 manner that school personnel employed by the county board of the
6 district in which the school is located are; and

7 (3) Eligible for any other benefits provided to other school
8 personnel employed by the county board.

NOTE: The purpose of this bill is to create public competitive learning academies in the state. The bill sets forth the applicable regulatory and statutory requirements, exemptions from state laws and rules, and provides for conversion of public school to public competitive learning academy. The bill also established public competitive learning academy requirements, conditional approval of academies, funding, enrollment of students and their transportation. The bill establishes the school term, provides information on competitive learning academies, sets forth leaves of absence for teachers, employment of school personnel and their benefits. The bill additionally provides a termination process of a public competitive learning academy.

This article is new; therefore, strike-throughs and underscoring have been omitted.