

ENGROSSED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 14

(By Senators Sypolt, Walters, Blair,
Cole (Mr. President) and Takubo)

[Originating in the Committee on Education;
reported February 18, 2015.]

A BILL to amend and reenact §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §6C-2-2 of said code; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-9A-2 and §18-9A-12 of said code; to amend and reenact §18-20-5 of said code; to amend said code by adding thereto a new article, designated §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8, §18-33-9, §18-33-10, §18-33-11, §18-33-12, §18-33-13, §18-33-14, §18-33-15, §18-33-16, §18-33-17 and §18-33-18; and to amend and reenact §29-12-5a of said code, all relating to public charter schools; setting forth legislative purpose and intent; defining terms; requiring state superintendent to report on the charter school program; setting forth provisions pertaining to eligibility and enrollment; prohibiting discrimination; allowing a county board to authorize the creation of a start-up public charter school or the conversion of a noncharter public school to a public charter school; capping the number of public charter schools authorized; setting forth the duties of the authorizer; requiring an authorizer to develop and maintain policies and practices consistent with nationally recognized principles and professional standards for authorizing public charter schools; requiring certain authorizers to submit to the state superintendent an annual report summarizing certain information; prohibiting an employee, trustee, agent or representative

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of an authorizer from simultaneously serving as an employee, trustee, agent, representative, vendor or contractor of a public charter school operating under that authorizer; prohibiting a public charter school from being required to purchase services from its authorizer; requiring West Virginia Board of Education to perform certain duties relating to training, appeals, requests for proposals and the two per calendar year cap; limiting West Virginia Board of Education authority on appeal to only upholding the decision or remanding the issue with a recommendation; allowing West Virginia Board of Education to charge up to a certain amount for performing its duties; requiring West Virginia Board of Education to issue and broadly publicize requests for proposals; setting forth such information the requests for proposals shall contain, including a determination on whether to participate in the public employees grievance procedures; setting forth provisions pertaining to application for approval as a public charter school; setting forth provisions pertaining to the application review process; setting forth provisions pertaining to application approval and denial; setting forth provisions pertaining to appeal of application denial; requiring the execution of a charter contract; requiring the performance provisions of a charter contract be based on a performance framework developed by West Virginia Board of Education that sets forth the academic and operational performance indicators that will guide the authorizer's evaluations of each public charter school; requiring performance targets be set by a public charter school in conjunction with its authorizer; setting forth authorizer responsibilities relating to oversight; providing for an initial charter term of five years and a renewal term of five to ten years; setting forth authorizer responsibilities relating to renewal; requiring submission of renewal application; setting forth provisions pertaining to the renewal decision by the authorizer; setting forth provisions pertaining to charter revocation and nonrenewal, including provisions allowing for appeal; providing for public charter school closure and dissolution; establishing priority in the application of laws, rules, regulations and authorities; allowing a charter contract to include one or more schools; allowing a single governing board

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to be issued one or more charter contracts; providing that the school district in which the public charter school is located remains the local education agency; providing that the school district retains responsibility for special education; declaring that the county board remains accountable for the performance of the public charter school; setting forth powers of public charter schools; prohibiting public charter schools from certain activities relating to discrimination, religious practices, charging tuition and delegating or assigning responsibilities set forth in a charter contract; limiting fees that may be charged; setting forth provisions pertaining to the applicability of other laws, rules and regulations to public charter schools; prohibiting county boards from certain actions relating to public charter schools; declaring that personnel hired by the charter school are employed by the charter school; requiring a public charter school to comply with applicable federal laws and regulations regarding the qualifications of teachers and other instructional staff; providing that all public charter school classroom teachers are subject to the same licensing requirements applicable to classroom teachers in noncharter public schools; providing that all personnel in a public charter school continue to accrue seniority in the same manner that they would accrue seniority if employed in a noncharter public school for purposes of employment in noncharter public schools; setting forth provisions pertaining to accounting, financial reporting and auditing; setting forth provisions pertaining to funding for public charter schools; allowing a public charter school to contract with a local school district or other entity for transportation services; requiring any entity providing transportation services to comply with all transportation and safety and administrative regulations applicable to noncharter public schools; setting forth provisions pertaining to public charter school facilities and property; clarifying that county boards not required to seek funds for certain facility-related purposes; setting forth provisions pertaining to building inspections, codes, regulations and fees; setting forth provisions pertaining to the transfer of credits; setting forth provisions pertaining to extracurricular and interscholastic activities; requiring that public charter school employees

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participate in the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, whichever is applicable; requiring that all public charter school employees participate in insurance plans established by the Public Employees Insurance Agency; providing for teacher approval of converting existing noncharter public school to public school prior to application; and setting forth provisions related to Board of Risk and Insurance Management coverage of certain public charter schools.

Be it enacted by the Legislature of West Virginia:

That §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §6C-2-2 of said code be amended and reenacted; that §18-7A-3 of said code be amended and reenacted; that §18-7B-2 of said code be amended and reenacted; that §18-9A-2 and §18-9A-12 of said code be amended and reenacted; that §18-20-5 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8, §18-33-9, §18-33-10, §18-33-11, §18-33-12, §18-33-13, §18-33-14, §18-33-15, §18-33-16, §18-33-17 and §18-33-18; and that §29-12-5a of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is clearly
2 indicated by the context, have the following meanings:

3 (1) "Agency" means the Public Employees Insurance Agency created by this article.

4 (2) "Director" means the Director of the Public Employees Insurance Agency created by this

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1 article.

2 (3) “Employee” means any person, including an elected officer, who works regularly full time
3 in the service of the state of West Virginia and, for the purpose of this article only, the term
4 “employee” also means any person, including an elected officer, who works regularly full time in
5 the service of a county board of education; a public charter school established pursuant to article
6 thirty-three, chapter eighteen of this code; a county, city or town in the state; any separate corporation
7 or instrumentality established by one or more counties, cities or towns, as permitted by law; any
8 corporation or instrumentality supported in most part by counties, cities or towns; any public
9 corporation charged by law with the performance of a governmental function and whose jurisdiction
10 is coextensive with one or more counties, cities or towns; any comprehensive community mental
11 health center or ~~comprehensive mental retardation~~ intellectually and developmentally disabled
12 facility established, operated or licensed by the Secretary of Health and Human Resources pursuant
13 to section one, article two-a, chapter twenty-seven of this code and which is supported in part by
14 state, county or municipal funds; any person who works regularly full time in the service of the
15 Higher Education Policy Commission, the West Virginia Council for Community and Technical
16 College Education or a governing board, as defined in section two, article one, chapter eighteen-b
17 of this code; any person who works regularly full time in the service of a combined city-county
18 health department created pursuant to article two, chapter sixteen of this code; any person designated
19 as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this
20 code; and any person who works as a long-term substitute as defined in section one, article one,
21 chapter eighteen-a of this code in the service of a county board of education: *Provided*, That a long-
22 term substitute who is continuously employed for at least one hundred thirty-three instructional days
23 during an instructional term, and until the end of that instructional term, is eligible for the benefits
24 provided in this article until September 1 following that instructional term: *Provided, however*, That
25 a long-term substitute employed fewer than one hundred thirty-three instructional days during an
26 instructional term is eligible for the benefits provided in this article only during such time as he or

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1 she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election
2 by a county board of education to allow elected board members to participate in the Public
3 Employees Insurance Program pursuant to this article, any person elected to a county board of
4 education shall be considered to be an “employee” during the term of office of the elected member.
5 Upon election by the State Board of Education to allow appointed board members to participate in
6 the Public Employees Insurance Program pursuant to this article, any person appointed to the State
7 Board of Education is considered an “employee” during the term of office of the appointed member:
8 *Provided further*, That the elected member of a county board of education and the appointed member
9 of the State Board of Education shall pay the entire cost of the premium if he or she elects to be
10 covered under this article. Any matters of doubt as to who is an employee within the meaning of this
11 article shall be decided by the director.

12 On or after July 1, 1997, a person shall be considered an “employee” if that person meets the
13 following criteria:

14 (i) Participates in a job-sharing arrangement as defined in section one, article one, chapter
15 eighteen-a of this code;

16 (ii) Has been designated, in writing, by all other participants in that job-sharing arrangement
17 as the “employee” for purposes of this section; and

18 (iii) Works at least one third of the time required for a full-time employee.

19 (4) “Employer” means the State of West Virginia, its boards, agencies, commissions,
20 departments, institutions or spending units; a county board of education; a public charter school
21 established pursuant to article thirty-three, chapter eighteen of this code; a county, city or town in
22 the state; any separate corporation or instrumentality established by one or more counties, cities or
23 towns, as permitted by law; any corporation or instrumentality supported in most part by counties,
24 cities or towns; any public corporation charged by law with the performance of a governmental
25 function and whose jurisdiction is coextensive with one or more counties, cities or towns; any
26 comprehensive community mental health center or comprehensive mental retardation facility

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1 established, operated or licensed by the Secretary of Health and Human Resources pursuant to
2 section one, article two-a, chapter twenty-seven of this code and which is supported in part by state,
3 county or municipal funds; a combined city-county health department created pursuant to article two,
4 chapter sixteen of this code; and a corporation meeting the description set forth in section three,
5 article twelve, chapter eighteen-b of this code that is employing a 21st Century Learner Fellow
6 pursuant to section eleven, article three, chapter eighteen of this code but the corporation is not
7 considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any
8 matters of doubt as to who is an “employer” within the meaning of this article shall be decided by
9 the director. The term “employer” does not include within its meaning the National Guard.

10 (5) “Finance board” means the Public Employees Insurance Agency finance board created
11 by this article.

12 (6) “Person” means any individual, company, association, organization, corporation or other
13 legal entity, including, but not limited to, hospital, medical or dental service corporations; health
14 maintenance organizations or similar organization providing prepaid health benefits; or individuals
15 entitled to benefits under the provisions of this article.

16 (7) “Plan”, unless the context indicates otherwise, means the medical indemnity plan, the
17 managed care plan option or the group life insurance plan offered by the agency.

18 (8) “Retired employee” means an employee of the state who retired after April 29, 1971, and
19 an employee of the Higher Education Policy Commission, the Council for Community and Technical
20 College Education, a state institution of higher education or a county board of education who retires
21 on or after April 21, 1972, and all additional eligible employees who retire on or after the effective
22 date of this article, meet the minimum eligibility requirements for their respective state retirement
23 system and whose last employer immediately prior to retirement under the state retirement system
24 is a participating employer in the state retirement system and in the Public Employees Insurance
25 Agency: *Provided*, That for the purposes of this article, the employees who are not covered by a
26 state retirement system, but who are covered by a state-approved or state-contracted retirement

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1 program or a system approved by the director, shall, in the case of education employees, meet the
2 minimum eligibility requirements of the state Teachers Retirement System and in all other cases,
3 meet the minimum eligibility requirements of the Public Employees Retirement System and may
4 participate in the Public Employees Insurance Agency as retired employees upon terms as the
5 director sets by rule as authorized in this article. Employers with employees who are, or who are
6 eligible to become, retired employees under this article shall be mandatory participants in the Retiree
7 Health Benefit Trust Fund created pursuant to article sixteen-d of this chapter. Nonstate employers
8 may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit
9 Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to
10 retirees of the nonstate employer, but may do so only upon the written certification, under oath, of
11 an authorized officer of the employer that the employer has no employees who are, or who are
12 eligible to become, retired employees and that the employer will defend and hold harmless the Public
13 Employees Insurance Agency from any claim by one of the employer's past, present or future
14 employees for eligibility to participate in the Public Employees Insurance Agency as a retired
15 employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any
16 respect to provide plan benefits to a retired employee of a nonstate employer which has opted out
17 of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund
18 pursuant to this section.

19 **§5-16-22. Permissive participation; exemptions.**

20 The provisions of this article are not mandatory upon any employee or employer who is not
21 an employee of or is not the State of West Virginia, its boards, agencies, commissions, departments,
22 institutions or spending units, ~~or~~ a county board of education or a public charter school authorized
23 pursuant to article thirty-three, chapter eighteen of this code and nothing contained in this article may
24 be construed so as to compel any employee or employer to enroll in or subscribe to any insurance
25 plan authorized by the provisions of this article.

26 Those employees enrolled in the insurance program authorized under the provisions of article

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1 two-b, chapter twenty-one-a of this code may not be required to enroll in or subscribe to an insurance
2 plan or plans authorized by the provisions of this article, and the employees of any department which
3 has an existing insurance program for its employees to which the government of the United States
4 contributes any part or all of the premium or cost of the premium may be exempted from the
5 provisions of this article. Any employee or employer exempted under the provisions of this
6 paragraph may enroll in any insurance program authorized by the provisions of this article at any
7 time, to the same extent as any other qualified employee or employer, but employee or employer may
8 not remain enrolled in both programs. The provisions of articles fourteen, fifteen and sixteen,
9 chapter thirty-three of this code, relating to group life insurance, accident and sickness insurance, and
10 group accident and sickness insurance, are not applicable to the provisions of this article whenever
11 the provisions of articles fourteen, fifteen and sixteen, chapter thirty-three of this code are in conflict
12 with or contrary to any provision set forth in this article or to any plan or plans established by the
13 Public Employees Insurance Agency.

14 Employers, other than the state of West Virginia, its boards, agencies, commissions,
15 departments, institutions, spending units, ~~or a county board of education~~ or a public charter school
16 authorized pursuant to article thirty-three, chapter eighteen of this code are exempt from participating
17 in the insurance program provided for by the provisions of this article unless participation by the
18 employer has been approved by a majority vote of the employer's governing body. It is the duty of
19 the clerk or secretary of the governing body of an employer who by majority vote becomes a
20 participant in the insurance program to notify the director not later than ten days after the vote.

21 Any employer, whether the employer participates in the Public Employees Insurance Agency
22 insurance program as a group or not, which has retired employees, their dependents or surviving
23 dependents of deceased retired employees who participate in the Public Employees Insurance
24 Agency insurance program as authorized by this article shall pay to the agency the same contribution
25 toward the cost of coverage for its retired employees, their dependents or surviving dependents of
26 deceased retired employees as the state of West Virginia, its boards, agencies, commissions,

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1 departments, institutions, spending units, ~~or~~ a county board of education or a public charter school
2 authorized pursuant to article thirty-three, chapter eighteen of this code pay for their retired
3 employees, their dependents and surviving dependents of deceased retired employees, as determined
4 by the finance board: *Provided*, That after June 30, 1996, an employer not mandated to participate
5 in the plan is only required to pay a contribution toward the cost of coverage for its retired
6 employees, their dependents or the surviving dependents of deceased retired employees who elect
7 coverage when the retired employee participated in the plan as an active employee of the employer
8 for at least five years: *Provided, however*, That those retired employees of an employer not
9 participating in the plan who retire on or after July 1, 2010, who have participated in the plan as
10 active employees of the employer for less than five years are responsible for the entire premium cost
11 for coverage and the Public Employees Insurance Agency shall bill for and collect the entire
12 premium from the retired employees, unless the employer elects to pay the employer share of the
13 premium. Each employer is hereby authorized and required to budget for and make such payments
14 as are required by this section.

15 **CHAPTER 6C. PUBLIC EMPLOYEES.**

16 **ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.**

17 **§6C-2-2. Definitions.**

18 For the purpose of this article and article three of this chapter:

19 (a) "Board" means the West Virginia Public Employees Grievance Board created in article
20 three of this chapter.

21 (b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor,
22 director, president, secretary or head of any state department, board, commission, agency, state
23 institution of higher education, commission or council, the state superintendent, the county
24 superintendent, the executive director of a regional educational service agency or the director of a
25 multicounty vocational center who is vested with the authority to resolve a grievance. If a public
26 charter school authorized pursuant to article thirty-three, chapter eighteen of this code includes in

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1 its approved charter application a determination that this article applies to the charter school and its
2 employees, “chief administrator” also means the principal of the public charter school. A “chief
3 administrator” includes a designee, with the authority delegated by the chief administrator, appointed
4 to handle any aspect of the grievance procedure as established by this article.

5 (c) "Days" means working days exclusive of Saturday, Sunday, official holidays and any day
6 in which the employee’s workplace is legally closed under the authority of the chief administrator
7 due to weather or other cause provided for by statute, rule, policy or practice.

8 (d) “Discrimination” means any differences in the treatment of similarly situated employees,
9 unless the differences are related to the actual job responsibilities of the employees or are agreed to
10 in writing by the employees.

11 (e) (1) "Employee" means any person hired for permanent employment by an employer for
12 a probationary, full- or part-time position.

13 (2) A substitute education employee is considered an “employee” only on matters related to
14 days worked or when there is a violation, misapplication or misinterpretation of a statute, policy, rule
15 or written agreement relating to the substitute.

16 (3) “Employee” does not mean a member of the West Virginia State Police employed
17 pursuant to article two, chapter fifteen of this code, but does include civilian employees hired by the
18 superintendent of the State Police. “Employee” does not mean an employee of a constitutional
19 officer unless he or she is covered under the civil service system, an employee of the Legislature or
20 a patient or inmate employed by a state institution.

21 (4) If a public charter school authorized pursuant to article thirty-three, chapter eighteen of
22 this code includes in its approved charter application a determination that this article applies to the
23 charter school and its employees, “employee” also means a person employed by the public charter
24 school.

25 (f) "Employee organization" means an employee advocacy organization with employee
26 members that has filed with the board the name, address, chief officer and membership criteria of

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1 the organization.

2 (g) "Employer" means a state agency, department, board, commission, college, university,
3 institution, State Board of Education, Department of Education, county board of education, regional
4 educational service agency or multicounty vocational center, or agent thereof, using the services of
5 an employee as defined in this section. If a public charter school authorized pursuant to article thirty-
6 three, chapter eighteen of this code includes in its approved charter application a determination that
7 this article applies to the charter school and its employees, "employer" also includes the public
8 charter school.

9 (h) "Favoritism" means unfair treatment of an employee as demonstrated by preferential,
10 exceptional or advantageous treatment of a similarly situated employee unless the treatment is related
11 to the actual job responsibilities of the employee or is agreed to in writing by the employee.

12 (i) (1) "Grievance" means a claim by an employee alleging a violation, a misapplication or
13 a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee
14 including:

15 (i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms
16 and conditions of employment, employment status or discrimination;

17 (ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices
18 of his or her employer;

19 (iii) Any specifically identified incident of harassment;

20 (iv) Any specifically identified incident of favoritism; or

21 (v) Any action, policy or practice constituting a substantial detriment to or interference with
22 the effective job performance of the employee or the health and safety of the employee.

23 (2) "Grievance" does not mean any pension matter or other issue relating to public employees
24 insurance in accordance with article sixteen, chapter five of this code, retirement or any other matter
25 in which the authority to act is not vested with the employer.

26 (j) "Grievance proceeding", "proceeding" or the plural means a conference, level one hearing,

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1 mediation, private mediation, private arbitration or level three hearing, or any combination, unless
2 the context clearly indicates otherwise.

3 (k) "Grievant" means an employee or group of similarly situated employees filing a
4 grievance.

5 (l) "Harassment" means repeated or continual disturbance, irritation or annoyance of an
6 employee that is contrary to the behavior expected by law, policy and profession.

7 (m) "Party", or the plural, means the grievant, intervenor, employer and the Director of the
8 Division of Personnel or his or her designee, for state government employee grievances. The
9 Division of Personnel shall not be a party to grievances involving higher education employees.

10 (n) "Representative" means any employee organization, fellow employee, attorney or other
11 person designated by the grievant or intervenor as his or her representative and may not include a
12 supervisor who evaluates the grievant.

13 (o) "Reprisal" means the retaliation of an employer toward a grievant, witness, representative
14 or any other participant in the grievance procedure either for an alleged injury itself or any lawful
15 attempt to redress it.

16 **CHAPTER 18. EDUCATION.**

17 **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

18 **§18-7A-3. Definitions.**

19 As used in this article, unless the context clearly requires a different meaning:

20 (1) "Accumulated contributions" means all deposits and all deductions from the gross salary
21 of a contributor plus regular interest.

22 (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf
23 of a retired member.

24 (3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value
25 computed upon the basis of the mortality table and interest rates as set and adopted by the retirement
26 board in accordance with the provisions of this article: *Provided*, That when used in the context of

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1 compliance with the federal maximum benefit requirements of section 415 of the Internal Revenue
2 Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required
3 to comply with those requirements.

4 (4) "Annuities" means the annual retirement payments for life granted beneficiaries in
5 accordance with this article.

6 (5) "Average final salary" means the average of the five highest fiscal year salaries earned
7 as a member within the last fifteen fiscal years of total service credit, including military service as
8 provided in this article, or if total service is less than fifteen years, the average annual salary for the
9 period on which contributions were made: *Provided*, That salaries for determining benefits during
10 any determination period may not exceed the maximum compensation allowed as adjusted for cost
11 of living in accordance with section seven, article ten-d, chapter five of this code and section 401 (a)
12 (17) of the Internal Revenue Code.

13 (6) "Beneficiary" means the recipient of annuity payments made under the retirement system.

14 (7) "Contributor" means a member of the retirement system who has an account in the
15 teachers accumulation fund.

16 (8) "Deposit" means a voluntary payment to his or her account by a member.

17 (9) "Employer" means the agency of and within the state which has employed or employs a
18 member.

19 (10) "Employer error" means an omission, misrepresentation or violation of relevant
20 provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the
21 relevant provisions of both the West Virginia Code and of the West Virginia Code of State
22 Regulations by the participating public employer that has resulted in an underpayment or
23 overpayment of contributions required. A deliberate act contrary to the provisions of this section by
24 a participating public employer does not constitute employer error.

25 (11) "Employment term" means employment for at least ten months, a month being defined
26 as twenty employment days.

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1 (12) "Gross salary" means the fixed annual or periodic cash wages paid by a participating
2 public employer to a member for performing duties for the participating public employer for which
3 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the
4 work was done. Gross salary also includes retroactive payments made to a member to correct a
5 clerical error, or made pursuant to a court order or final order of an administrative agency charged
6 with enforcing federal or state law pertaining to the member's rights to employment or wages, with
7 all retroactive salary payments to be allocated to and considered paid in the periods in which the
8 work was or would have been done. Gross salary does not include lump sum payments for bonuses,
9 early retirement incentives, severance pay or any other fringe benefit of any kind including, but not
10 limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments
11 for unused, accrued leave of any type or character.

12 (13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been
13 amended.

14 (14) "Member" means any person who has accumulated contributions standing to his or her
15 credit in the state Teachers Retirement System. A member shall remain a member until the benefits
16 to which he or she is entitled under this article are paid or forfeited, or until cessation of membership
17 pursuant to section thirteen of this article.

18 (15) "Members of the administrative staff of the public schools" means deans of instruction,
19 deans of men, deans of women, and financial and administrative secretaries.

20 (16) "Members of the extension staff of the public schools" means every agricultural agent,
21 boys' and girls' club agent and every member of the agricultural extension staff whose work is not
22 primarily stenographic, clerical or secretarial.

23 (17) "New entrant" means a teacher who is not a present teacher.

24 (18) "Nonteaching member" means any person, except a teacher member, who is regularly
25 employed for full-time service by: (A) Any county board of education; (B) the State Board of
26 Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for

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1 Community and Technical College Education; ~~or~~ (E) a governing board, as defined in section two,
2 article one, chapter eighteen-b of this code; or (F) a public charter school established pursuant to
3 article thirty-three of this chapter: *Provided*, That any person whose employment with the Higher
4 Education Policy Commission, the West Virginia Council for Community and Technical College
5 Education or a governing board commences on or after July 1, 1991, is not considered a nonteaching
6 member.

7 (19) "Plan year" means the twelve-month period commencing on July 1 and ending the
8 following June 30 of any designated year.

9 (20) "Present member" means a present teacher or nonteacher who is a member of the
10 retirement system.

11 (21) "Present teacher" means any person who was a teacher within the thirty-five years
12 beginning July 1, 1934, and whose membership in the retirement system is currently active.

13 (22) "Prior service" means all service as a teacher completed prior to July 1, 1941, and all
14 service of a present member who was employed as a teacher and did not contribute to a retirement
15 account because he or she was legally ineligible for membership during the service.

16 (23) "Public schools" means all publicly supported schools, including colleges and
17 universities in this state.

18 (24) "Refund beneficiary" means the estate of a deceased contributor or a person he or she
19 has nominated as beneficiary of his or her contributions by written designation duly executed and
20 filed with the retirement board.

21 (25) "Regular interest" means interest at four percent compounded annually, or a higher
22 earnable rate if set forth in the formula established in legislative rules, series seven of the
23 Consolidated Public Retirement Board, 162 CSR 7.

24 (26) "Regularly employed for full-time service" means employment in a regular position or
25 job throughout the employment term regardless of the number of hours worked or the method of pay.

26 (27) "Required beginning date" means April 1 of the calendar year following the later of: (A)

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1 The calendar year in which the member attains age seventy and one-half years; or (B) the calendar
2 year in which the member retires or ceases covered employment under the system after having
3 attained the age of seventy and one-half years.

4 (28) "Retirant" means any member who commences an annuity payable by the retirement
5 system.

6 (29) "Retirement board" means the Consolidated Public Retirement Board created pursuant
7 to article ten-d, chapter five of this code.

8 (30) "Retirement system" means the state Teachers Retirement System established by this
9 article.

10 (31) "Teacher member" means the following persons, if regularly employed for full-time
11 service: (A) Any person employed for instructional service in the public schools of West Virginia;
12 (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county
13 superintendents of schools; (E) any county school attendance director holding a West Virginia
14 teacher's certificate; (F) members of the research, extension, administrative or library staffs of the
15 public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions
16 under his or her supervision, or any other employee under the state superintendent performing
17 services of an educational nature; (H) employees of the State Board of Education who are performing
18 services of an educational nature; (I) any person employed in a nonteaching capacity by the State
19 Board of Education, any county board of education, the State Department of Education or the State
20 Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools;
21 (J) all classroom teachers, principals and educational administrators in schools under the supervision
22 of the Division of Corrections, the Division of Health or the Division of Human Services; (K) an
23 employee of the State Board of School Finance, if that person was formerly employed as a teacher
24 in the public schools; ~~and~~ (L) any person designated as a 21st Century Learner Fellow pursuant to
25 section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the
26 State Teachers Retirement System provided in this article; and (M) any person employed by a public

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1 charter school established pursuant to article thirty-three of this chapter.

2 (32) "Total service" means all service as a teacher or nonteacher while a member of the
3 retirement system since last becoming a member and, in addition thereto, credit for prior service, if
4 any.

5 Age in excess of seventy years shall be considered to be seventy years.

6 **ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

7 **§18-7B-2. Definitions.**

8 As used in this article, unless the context clearly requires a different meaning:

9 (1) "Annual addition" means, for purposes of the limitations under section 415 (c) of the
10 Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A)
11 Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cashouts
12 or contributions as described in section 415 (k) (3) of the Internal Revenue Code, rollover
13 contributions and picked-up employee contributions to a defined benefit plan shall not be treated as
14 annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1;

15 (2) "Annuity account" or "annuity" means an account established for each member to record
16 the deposit of member contributions and employer contributions and interest, dividends or other
17 accumulations credited on behalf of the member;

18 (3) "Compensation" means the full compensation actually received by members for service
19 whether or not a part of the compensation is received from other funds, federal or otherwise, than
20 those provided by the state or its subdivisions: *Provided*, That annual compensation for determining
21 contributions during any determination period may not exceed the maximum compensation allowed
22 as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code
23 and section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That solely for purposes
24 of applying the limitations of section 415 of the Internal Revenue Code to any annual addition,
25 "compensation" has the meaning given it in subsection (d), section thirteen of this article;

26 (4) "Consolidated board" or "board" means the Consolidated Public Retirement Board

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1 created and established pursuant to article ten-d, chapter five of this code;

2 (5) “Defined contribution system” or “system” means the Teachers’ Defined Contribution
3 Retirement System created and established by this article;

4 (6) “Employer” means the agency of and within the state of West Virginia which has
5 employed or employs a member;

6 (7) “Employer contribution” means an amount deposited into the member’s individual
7 annuity account on a periodic basis coinciding with the employee’s regular pay period by an
8 employer from its own funds;

9 (8) “Employment term” means employment for at least ten months in any plan year with a
10 month being defined as twenty employment days;

11 (9) “Existing employer” means any employer who employed or employs a member of the
12 system;

13 (10) “Existing retirement system” means the state Teachers Retirement System established
14 in article seven-a of this chapter;

15 (11) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been
16 amended;

17 (12) “Member” or “employee” means the following persons, if regularly employed for full-
18 time service: (A) Any person employed for instructional service in the public schools of West
19 Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant
20 county superintendents of schools; (E) any county school attendance director holding a West
21 Virginia teacher’s certificate; (F) members of the research, extension, administrative or library staffs
22 of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the
23 divisions under his or her supervision or any other employee under the state superintendent
24 performing services of an educational nature; (H) employees of the State Board of Education who
25 are performing services of an educational nature; (I) any person employed in a nonteaching capacity
26 by the State Board of Education, any county board of education or the State Department of

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1 Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom
2 teachers, principals and educational administrators in schools under the supervision of the Division
3 of Corrections and the Department of Health and Human Resources; (K) any person who is regularly
4 employed for full-time service by any county board of education or the State Board of Education;
5 (L) the administrative staff of the public schools including deans of instruction, deans of men and
6 deans of women, and financial and administrative secretaries; ~~and~~ (M) any person designated as a
7 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code
8 who elects to remain a member of the Teachers' Defined Contribution Retirement System
9 established by this article; and (N) any person employed by a public charter school established
10 pursuant to article thirty-three of this chapter;

11 (13) "Member contribution" means an amount reduced from the employee's regular pay
12 periods, and deposited into the member's individual annuity account within the Teachers' Defined
13 Contribution Retirement System;

14 (14) "Permanent, total disability" means a mental or physical incapacity requiring absence
15 from employment service for at least six months: *Provided*, That the incapacity is shown by an
16 examination by a physician or physicians selected by the board: *Provided, however*, That for
17 employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage
18 in substantial gainful activity by reason of any medically determinable physical or mental impairment
19 that can be expected to result in death, or has lasted or can be expected to last for a continuous period
20 of not less than twelve months and the incapacity is so severe that the member is likely to be
21 permanently unable to perform the duties of the position the member occupied immediately prior to
22 his or her disabling injury or illness;

23 (15) "Plan year" means the twelve-month period commencing on July 1 of any designated
24 year and ending on the following June 30;

25 (16) "Public schools" means all publicly supported schools, including normal schools,
26 colleges and universities in this state;

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1 (17) “Regularly employed for full-time service” means employment in a regular position or
2 job throughout the employment term regardless of the number of hours worked or the method of pay;

3 (18) “Required beginning date” means April 1 of the calendar year following the later of: (A)
4 The calendar year in which the member attains age seventy and one-half years; or (B) the calendar
5 year in which the member retires or otherwise ceases employment with a participating employer after
6 having attained the age of seventy and one-half years;

7 (19) “Retirement” means a member’s withdrawal from the active employment of a
8 participating employer and completion of all conditions precedent to retirement;

9 (20) “Year of employment service” means employment for at least ten months, with a month
10 being defined as twenty employment days: *Provided*, That no more than one year of service may be
11 accumulated in any twelve-month period.

12 **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

13 **§18-9A-2. Definitions.**

14 For the purpose of this article:

15 (a) “State board” means the West Virginia Board of Education.

16 (b) “County board” or “board” means a county board of education.

17 (c) “Professional salaries” means the state legally mandated salaries of the professional
18 educators as provided in article four, chapter eighteen-a of this code.

19 (d) “Professional educator” shall be synonymous with and shall have the same meaning as
20 “teacher” as defined in section one, article one of this chapter and includes technology integration
21 specialists.

22 (e) “Professional instructional personnel” means a professional educator whose regular duty
23 is as that of a classroom teacher, librarian, attendance director or school psychologist. A professional
24 educator having both instructional and administrative or other duties shall be included as
25 professional instructional personnel for that ratio of the school day for which he or she is assigned
26 and serves on a regular full-time basis in appropriate instruction, library, attendance or psychologist

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1 duties.

2 (f) “Professional student support personnel” means a “teacher” as defined in section one,
3 article one of this chapter who is assigned and serves on a regular full-time basis as a counselor or
4 as a school nurse with a bachelor’s degree and who is licensed by the West Virginia Board of
5 Examiners for Registered Professional Nurses. For all purposes except for the determination of the
6 allowance for professional educators pursuant to section four of this article, professional student
7 support personnel are professional educators.

8 (g) “Service personnel salaries” means the state legally mandated salaries for service
9 personnel as provided in section eight-a, article four, chapter eighteen-a of this code.

10 (h) “Service personnel” means all personnel as provided in section eight, article four, chapter
11 eighteen-a of this code. For the purpose of computations under this article of ratios of service
12 personnel to net enrollment, a service employee shall be counted as that number found by dividing
13 his or her number of employment days in a fiscal year by two hundred: *Provided*, That the
14 computation for any service person employed for three and one-half hours or less per day as provided
15 in section eight-a, article four, chapter eighteen-a of this code shall be calculated as one-half an
16 employment day.

17 (i) “Net enrollment” means the number of pupils enrolled in special education programs,
18 kindergarten programs and grades one to twelve, inclusive, of the public schools of the county,
19 subject to the following:

20 (1) Net enrollment further shall include:

21 ~~(†)~~ (A) Adults enrolled in regular secondary vocational programs existing as of the effective
22 date of this section, subject to the following:

23 ~~(A)~~ (i) Net enrollment includes no more than one thousand of those adults counted on the
24 basis of full-time equivalency and apportioned annually to each county in proportion to the adults
25 participating in regular secondary vocational programs in the prior year counted on the basis of
26 full-time equivalency; and

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1 ~~(B)~~ (ii) Net enrollment does not include any adult charged tuition or special fees beyond that
2 required of the regular secondary vocational student; and

3 ~~(2)~~ (B) Students enrolled in early childhood education programs as provided in section
4 forty-four, article five of this chapter, counted on the basis of full-time equivalency;

5 ~~(3)~~ (2) No pupil shall be counted more than once by reason of transfer within the county or
6 from another county within the state and no pupil shall be counted who attends school in this state
7 from another state;

8 ~~(4)~~ (3) The enrollment shall be modified to the equivalent of the instructional term and in
9 accordance with the eligibility requirements and rules established by the state board; ~~and~~

10 ~~(5)~~ (4) For the purposes of determining the county's basic foundation program only, for any
11 county whose net enrollment as determined under all other provisions of this definition is less than
12 one thousand four hundred, the net enrollment of the county shall be increased by an amount to be
13 determined in accordance with the following:

14 (A) Divide the state's lowest county student population density by the county's actual student
15 population density;

16 (B) Multiply the amount derived from the calculation in subparagraph (A) of this paragraph
17 by the difference between one thousand four hundred and the county's actual net enrollment;

18 (C) If the increase in net enrollment as determined under this paragraph plus the county's net
19 enrollment as determined under all other provisions of this section is greater than one thousand four
20 hundred, the increase in net enrollment shall be reduced so that the total does not exceed one
21 thousand four hundred; and

22 (D) During the 2008-2009 interim period and every three interim periods thereafter, the
23 Legislative Oversight Commission on Education Accountability shall review this paragraph to
24 determine whether or not these provisions properly address the needs of counties with low
25 enrollment and a sparse population density; and

26 (5) Net enrollment shall include students enrolled in a public charter school established

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1 pursuant to article thirty-three of this chapter.

2 (j) “Sparse-density county” means a county whose ratio of net enrollment, excluding any
3 increase in the net enrollment of counties, pursuant to paragraph (5), subdivision (i) of this section,
4 of the definition of “net enrollment”, to the square miles of the county is less than five.

5 (k) “Low-density county” means a county whose ratio of net enrollment, excluding any
6 increase in the net enrollment of counties, pursuant to paragraph (5), subdivision (i) of this section,
7 of the definition of “net enrollment”, to the square miles of the county is equal to or greater than five
8 but less than ten.

9 (l) “Medium-density county” means a county whose ratio of net enrollment, excluding any
10 increase in the net enrollment of counties, pursuant to paragraph (5), subdivision (i) of this section,
11 of the definition of “net enrollment”, to the square miles of the county is equal to or greater than ten
12 but less than twenty.

13 (m) “High-density county” means a county whose ratio of net enrollment, excluding any
14 increase in the net enrollment of counties, pursuant to paragraph (5), subdivision (i) of this section,
15 of the definition of “net enrollment”, to the square miles of the county is equal to or greater than
16 twenty.

17 (n) “Levies for general current expense purposes” means ninety percent of the levy rate for
18 county boards of education calculated or set by the Legislature pursuant to section six-f, article eight,
19 chapter eleven of this code.

20 (o) “Technology integration specialist” means a professional educator who has expertise in
21 the technology field and is assigned as a resource teacher to provide information and guidance to
22 classroom teachers on the integration of technology into the curriculum.

23 (p) “State aid eligible personnel” means all professional educators and service personnel
24 employed by a county board in positions that are eligible to be funded under this article and whose
25 salaries are not funded by a specific funding source such as a federal or state grant, donation,
26 contribution or other specific funding source not listed.

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1 **§18-9A-12. County basic foundation; total basic state aid allowance.**

2 (a) The basic foundation program for each county for the fiscal year shall be the sum of the
3 amounts computed in accordance with the provisions of sections four, five, six, seven, eight, nine
4 and ten of this article. On the first working day of July in each year, the state board shall determine
5 the basic foundation program for each county for that fiscal year. Data used in the computations
6 relating to net and adjusted enrollment, and the number of professional educators, shall be for the
7 second month of the prior school term. Transportation expenditures used in these computations shall
8 be for the most recent year in which data are available. The allocated state aid share of the county's
9 basic foundation program shall be the difference between the cost of its basic foundation program
10 and the county's local share as determined in section eleven of this article except as provided in
11 subsection (b) of this section.

12 (b) The allocated state aid share shall be adjusted in the following circumstances in the
13 following manner: *Provided*, That prior to such adjustment, the State Tax Commissioner shall
14 provide the State board, by January 15 of each year, a certified listing of those counties in which such
15 adjustment shall be made pursuant to this subsection, together with the amount of revenue which will
16 not be available to each county board in the ensuing fiscal year as a result of the circumstance:

17 (1) In those instances where the local share as computed under section eleven of this article
18 is not reflective of local funds available because the county is under a final court order, or a final
19 decision of a board of assessment appeals under section twenty-four-b, article three, chapter eleven
20 of this code, to refund or credit property taxes paid in prior years, the allocated state aid share shall
21 be the county's basic foundation program, minus the local share as computed under section eleven
22 of this article, plus the amount of property tax the county is unable to collect or must refund due to
23 the final court order or final decision of a board of assessment appeals: *Provided*, That said
24 adjustment shall not be made or shall only be made proportionately when the Legislature fails to
25 fund or funds only in part the public school basic foundation support plan state share at a level
26 sufficient to cover the reduction in state share: *Provided, however*, That nothing herein provided

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1 shall be construed to require or mandate any level of funding by the Legislature.

2 (2) In those instances where the local share as computed under section eleven of this article
3 is not reflective of local funds available because the county is collecting tax based upon an assessed
4 value which is less than that determined by the Tax Commissioner in the most recent published
5 survey of property valuations in the state due to an error in the published survey, which error is
6 certified to by the Tax Commissioner, the allocated state aid share shall be the county's basic
7 foundation program, minus the local share as computed under section eleven of this article, plus the
8 amount of property tax the county is unable to collect based on differences in the assessed valuation
9 between those in the most recent published survey of valuation and the corrected assessed value
10 actually levied upon by the county: *Provided*, That said adjustment shall not be made or shall only
11 be made proportionately when the Legislature fails to fund or funds only in part the public school
12 basic foundation support plan state share at a level sufficient to cover the reduction in state share:
13 *Provided, however*, That nothing herein provided shall be construed to require or mandate any level
14 of funding by the Legislature.

15 (3) In instances where a county is unable to collect property taxes from a taxpayer during the
16 pendency of any court proceeding, the allocated state aid share shall be the county's basic foundation
17 program minus the local share as computed under section eleven of this article, plus the amount the
18 county is unable to collect as a result of the pending court proceedings as certified by the Tax
19 Commissioner: *Provided*, That the county is required to reimburse the amount of allocated state aid
20 share attributable to the amount of property tax it later receives upon completion of court
21 proceedings, which shall be paid into the General Revenue Fund of the state: *Provided, however*,
22 That said adjustment shall not be made or shall only be made proportionately when the Legislature
23 fails to fund or funds only in part the public school basic foundation support plan state share at a
24 level sufficient to cover the reduction in state share: *Provided further*, That nothing herein provided
25 shall be construed to require or mandate any level of funding by the Legislature.

26 (4) In instances where a public charter school is authorized and has or will begin operations

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1 in a county school district pursuant to article thirty-three of this chapter, the total program allowance
2 for the district shall be reduced by the county's per pupil total basic foundation allowance multiplied
3 by the second month net enrollment of the public charter school authorized to operate in the county.

4 (c) The allocated state aid share shall be adjusted in any county receiving payments or
5 contributions in lieu of property taxes. In instances where a county receives payments or
6 contributions in lieu of property taxes, the allocated state aid share shall be the county's basic
7 foundation program minus the local share as computed under section eleven of this article, plus any
8 amounts added pursuant to subsection (b) of this section minus the payments or contributions in lieu
9 of property taxes which are distributed by the sheriff to the county board of education. In
10 determining the amount of such contribution or payment in lieu of taxes, each county commission
11 shall provide to the State Tax Commissioner, by January 1 of each year, the total amount of such
12 payments or contributions paid to the county and the proportion of the total amount that has been or
13 will be distributed to the county board of education. The State Tax Commissioner then shall provide
14 the state board, by January 15 of each year, a certified listing of those counties in which an
15 adjustment pursuant to this section shall be made, together with the amount of revenue which will
16 be available to each county board in the ensuing fiscal year as a result of contribution or payment in
17 lieu of taxes.

18 (d) Total basic state aid to the county shall be the computed state share of basic foundation
19 support. After such computation is completed, the State board shall immediately certify to each
20 county board the amount of state aid allocated to the county for that fiscal year, subject to any
21 qualifying provisions of this article.

22 **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

23 **§18-20-5. Powers and duties of state superintendent.**

24 (a) The State Superintendent of Schools shall organize, promote, administer and be
25 responsible for:

26 (1) Stimulating and assisting county boards of ~~education~~ in establishing, organizing and

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1 maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher
2 services.

3 (2) Cooperating with all other public and private agencies engaged in relieving, caring for,
4 curing, educating and rehabilitating exceptional children, and in helping coordinate the services of
5 such agencies.

6 (3) (A) Preparing the necessary rules, policies, formula for distribution of available
7 appropriated funds, reporting forms and procedures necessary to define minimum standards in
8 providing suitable facilities for education of exceptional children and ensuring the employment,
9 certification and approval of qualified teachers and therapists subject to approval by the State Board
10 of Education: *Provided*, That no state rule, policy or standard under this article or any county board
11 rule, policy or standard governing special education may exceed the requirements of federal law or
12 regulation.

13 (B) The state superintendent shall annually review the rules, policies and standards of the
14 state and federal law for serving the needs of exceptional children enrolled in the public schools and
15 shall report to the Legislative Oversight Commission on Education Accountability by December 1
16 ~~or as soon thereafter as requested by the commission, 2008, and in each year thereafter, of each~~
17 year the findings of the review along with an accounting of the services provided and the costs
18 thereof for exceptional children enrolled in the public schools of this state during the latest available
19 school year. An appropriation shall be made to the Department of Education to be distributed to
20 county boards and public charter schools authorized pursuant to article thirty-three of this article to
21 support children with high acuity needs that exceed the capacity of county or the public charter
22 school to provide with funds available. Each county board and public charter school shall apply to
23 the state superintendent for receipt of this funding in a manner set forth by the state superintendent
24 that assesses and takes into account varying acuity levels of the exceptional students. Any remaining
25 funds at the end of a fiscal year from the appropriation shall be carried over to the next fiscal year.
26 When possible, federal funds shall be distributed to county boards and public charter schools for this

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1 purpose before any of the state appropriation is distributed. The state board shall promulgate a rule
2 in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that
3 implements the provisions of this subdivision relating to distributing the funds to the county boards
4 and public charter schools. The rule at least shall include a definition for “children with high acuity
5 needs”.

6 (4) Receiving from county boards ~~of education~~ their applications, annual reports and claims
7 for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims
8 and preparing vouchers to reimburse said counties the amounts reimbursable to them.

9 (5) Assuring that all exceptional children in the state, including children in mental health
10 facilities, residential institutions, private schools and correctional facilities as provided in section
11 thirteen-f, article two of this chapter receive an education in accordance with state and federal laws:
12 *Provided*, That the state superintendent shall also assure that adults in correctional facilities and
13 regional jails receive an education to the extent funds are provided therefor.

14 (6) Performing other duties and assuming other responsibilities in connection with this
15 program as needed.

16 ~~(7) Receive the county plan for integrated classroom submitted by the county boards of~~
17 ~~education and submit a state plan, approved by the State Board of Education, to the Legislative~~
18 ~~Oversight commission on education accountability no later than December 1, 1995.~~

19 (b) Nothing contained in this section shall be construed to prevent any county board ~~of~~
20 ~~education~~ from establishing and maintaining special schools, classes, regular class programs,
21 home-teaching or visiting-teacher services out of funds available from local revenue.

22 **ARTICLE 33. WEST VIRGINIANA PUBLIC CHARTER SCHOOLS ACT OF 2015.**

23 **§18-33-1. Legislative purpose and intent.**

24 The West Virginia Legislature hereby establishes public charter schools to benefit students,
25 parents, teachers and community members by creating new, innovative and more flexible ways of
26 educating all children within the public school system and by advancing a renewed commitment to

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1 the mission, goals and diversity of public education. The purposes of the charter school initiative
2 are to:

3 (a) Improve student learning by creating more quality public schools with high standards for
4 student performance;

5 (b) Encourage the use of different, high quality models of teaching, governing, scheduling
6 or other aspects of public schooling that meet a variety of student needs;

7 (c) Close achievement gaps between high-performing and low-performing groups of public
8 school students;

9 (d) Allow schools freedom and flexibility in exchange for exceptional levels of results-driven
10 accountability;

11 (e) Increase high-quality educational opportunities within the public education system for all
12 students, especially those at risk of academic failure; and

13 (f) Provide students, parents, community members and local entities with expanded
14 opportunities for involvement in the public education system.

15 **§18-33-2. Definitions.**

16 As used in this chapter, unless the context otherwise indicates, the following terms have the
17 following meanings:

18 (a) “Applicant” means teachers, parents, school administrators, community residents, public
19 organizations, private nonprofit organizations, a noncharter public school, a noncharter public school
20 program or a combination thereof that seek approval from a charter school authorizer to establish
21 a public charter school;

22 (b) “Charter application” means a proposal from an applicant to an authorizer to enter into
23 a charter contract whereby the proposed school obtains public charter school status;

24 (c) “Authorizer” means an entity empowered under this article to review applications, decide
25 whether to approve or reject applications, enter into charter contracts with applicants, oversee and
26 monitor public charter schools and decide whether to renew, not renew or revoke charter contracts;

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1 (d) “Charter contract” means a performance-based contract for a fixed term between a public
2 charter school and an authorizer that describes performance expectations, defines operational
3 responsibilities and outlines the autonomy and accountability for each party to the contract;

4 (e) “Conversion public charter school” means a public charter school that existed as a
5 noncharter public school before becoming a public charter school;

6 (f) “Education service provider” means an education management organization, charter
7 management organization, school design provider or any other partner entity with whom a public
8 charter school intends to contract for education services and resources, including education design,
9 implementation or management;

10 (g) “Governing board” means the independent board of a public charter school that is party
11 to the charter contract with the authorizer and whose members have been elected or selected pursuant
12 to the school’s application;

13 (h) “County board” means a board exercising management and control of a school district
14 other than a public charter school formed under this article. A county board’s management and
15 control of a public charter school is limited to only that granted under this article as the authorizer;

16 (i) “Noncharter public school” means a public school other than a school formed pursuant
17 to this article;

18 (j) “Public charter school” means a public school formed pursuant to this article that:

19 (1) Is part of the state’s system of public education; is nonhome school based and not
20 affiliated with or espousing any specific religious denomination, organization, sect or belief or the
21 promotion or engaging in any religious practices in terms of its educational program. Nor shall a
22 public charter school, as defined in this article, be affiliated with any organized group whose
23 espoused beliefs attack or malign an entire class of people, typically for immutable characteristics,
24 as identified through listings of such groups as may be made by the U. S. Department of Justice, the
25 Federal Bureau of Investigation, or officials having similar jurisdiction in this state;

26 (2) Has autonomy over key decisions, including, but not limited to, decisions concerning

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1 finance, personnel, scheduling, curriculum and instruction;

2 (3) Is governed by a board that is independent of a county board except for the county board's
3 responsibilities under this article as the public charter school's authorizer;

4 (4) Is established and operated under the terms of a legally binding charter contract between
5 the governing board and its authorizer in accordance with this article;

6 (5) Is a public school to which parents choose to send their children;

7 (6) Ensures student participation in required state assessments of student performance, as
8 required of other public school students under section five, article two-e of this chapter;

9 (7) Designs its educational program to meet or exceed the student performance standards set
10 forth in section five, article two-e of this chapter;

11 (8) Provides instructional time that is at least equal to the number of days or their equivalent
12 required by section forty-five, article five of this chapter;

13 (9) Adheres to all generally accepted accounting principles;

14 (10) Requires a criminal history check pursuant to section ten, article three, chapter eighteen-
15 a of this code for any staff person that would be required to be licensed if employed in a noncharter
16 public school unless a criminal history check has already been completed for that staff person
17 pursuant to that section;

18 (11) Prohibits contractors or service providers or their employees from making direct,
19 unaccompanied contact with students or access school grounds unaccompanied when students are
20 present if it cannot be verified that the contractors, service providers or employees have not
21 previously been convicted of a qualifying offense pursuant to section fifteen-c, article five of this
22 chapter;

23 (12) Complies with the provisions of article one, chapter twenty-nine-b of this code relating
24 to freedom of information and the provisions of article nine-a, chapter six relating to open
25 governmental proceedings;

26 (13) Ensures students meet the compulsory school attendance requirements of section forty-

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1 four, chapter five of this chapter and section one-a, article eight of this chapter, as applicable;

2 (14) Provides a program of public education that:

3 (A) Includes one or more of the following: Prekindergarten and any grade or grades from
4 kindergarten to grade 12;

5 (B) May include a focus on students with special needs, such as at-risk pupils, English
6 language learners or students involved with the juvenile justice system; and

7 (C) May include a specific academic approach or theme;

8 (15) Provides programs and services to a student with a disability in accordance with the
9 student's individualized education program and all federal and state laws, rules and regulations. A
10 charter school shall deliver the services directly or contract with another provider to deliver the
11 services;

12 (16) Operates in pursuit of a specific set of educational objectives as defined in its charter
13 contract; and

14 (17) Operates under the oversight of the authorizer from which its charter contract is granted
15 and in accordance with its approved charter contract; and

16 (k) "Start-up public charter school" means a public charter school that did not exist as a
17 noncharter public school prior to becoming a public charter school.

18 **§18-33-3. Reports.**

19 One year after public charter schools have been in operation, and each year thereafter, the
20 state superintendent shall issue to the Governor, the Legislature and the general public a report on
21 the state's public charter school program, drawing from the annual reports submitted by authorizers
22 pursuant to section five of this article as well as any additional relevant data compiled by the state
23 superintendent up to the school year ending in the preceding calendar year. The report must include
24 an assessment of the public charter school program's successes, challenges and areas for
25 improvement in meeting the purposes of this chapter and any suggested changes in state law or
26 policy necessary to strengthen the public charter school program.

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1 **§18-33-4. Public charter school eligibility; enrollment.**

2 (a) *Eligibility.* -- Any student residing in the state is eligible to apply to a public charter
3 school.

4 (b) *Enrollment.* -- A public charter school shall enroll students in accordance with this
5 subsection.

6 (1) Public charter school organizers shall include all segments of the populations served by
7 the existing noncharter public schools in their area in their recruitment efforts.

8 (2) Unless the number of students exceeds the enrollment capacity of a program, class, grade
9 level or building, a public charter school shall:

10 (A) Automatically enroll all students residing in the attendance area in which the school is
11 located except for any students that opt out of enrollment; and

12 (B) Enroll all other students who wish to attend the school.

13 (3) Enrollment decisions shall be made in a nondiscriminatory way and shall not be based
14 on intellectual ability, measures of achievement of aptitude, athletic ability, disability, creed, race,
15 gender, national origin, religion or ancestry.

16 (4) Except as otherwise provided in this subsection, if capacity is insufficient to enroll all
17 students who wish to attend the school, the public charter school shall select students from among
18 the list of applicants by a random selection lottery. A list maintained to fill potential vacancies may
19 be carried over to the succeeding year. Any student residing within the attendance area shall
20 automatically be included in the list of applicants unless the student opts out of being included.

21 (5) Any noncharter public school converting partially or entirely to a public charter school
22 shall adopt and maintain a policy that gives enrollment preference to pupils who reside within the
23 former attendance area of that noncharter public school and that requires automatic enrollment of
24 pupils who were previously enrolled in the noncharter public school except for any students that opt
25 out of enrollment in the school.

26 (6) A public charter school shall give enrollment preference to pupils enrolled in the public

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1 charter school the previous school year and to siblings of pupils already enrolled in the public charter
2 school.

3 (7) A public charter school may establish enrollment preferences that enable the school to
4 give enrollment preference to at-risk students and students not succeeding in noncharter public
5 schools.

6 (8) A public charter school may give enrollment preference to children of a public charter
7 school's governing board members and full-time employees, as long as they constitute no more than
8 ten percent of the school's total student population.

9 (c) *Discrimination prohibited.* -- A public charter school may not discriminate on the basis
10 of race, ethnicity, national origin, religion, gender, sexual orientation, income level, disabling
11 condition, proficiency in the English language or academic or athletic ability, except that nothing in
12 this subsection may be construed to limit the formation of a public charter school that is dedicated
13 to focusing education services on at-risk pupils, students with disabilities and students who pose
14 such severe disciplinary problems that they warrant a specific education program.

15 **§18-33-5. Authorizers.**

16 (a) *Eligible authorizer.* -- A county board may authorize the creation of a start-up public
17 charter school or the conversion of a noncharter public school to a public charter school within the
18 boundaries of the school district governed by that county board pursuant to this article. This
19 authority for a county board to authorize a charter school pursuant to this subsection is applicable
20 even if the county school system is under state board intervention pursuant to section five, article
21 two-e of this chapter.

22 (b) *Cap.* -- No more than two public charter schools shall be authorized per calendar year for
23 the first five years public charter schools are in operation. During the first five calendar years public
24 charter schools are in operation:

25 (1) Year one is the first calendar year in which a public charter school is authorized;

26 (2) As soon as feasible after an authorizer authorizes a public charter school, the authorizer

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1 shall notify the state board;

2 (3) After two public charter schools have been authorized during any calendar year, the state
3 board shall notify as soon as feasible all authorizers that no more public charter schools may be
4 authorized for the remainder of that calendar year;

5 (4) In determining which schools are authorized under the cap, priority shall be given to the
6 first two schools that are authorized, as determined by the date of authorization, and any other
7 authorization during that calendar year is null and void; and

8 (5) If as a result of multiple schools being authorized on the same date the cap is exceeded,
9 the state board shall determine which of the multiple schools authorized on the same date are to
10 remain authorized and the other authorizations on the same date are null and void.

11 (c) *Duties.* -- An authorizer shall:

12 (1) Evaluate applications from organizers of proposed public charter schools;

13 (2) Approve or deny applications pursuant to section eight of this article;

14 (3) Create a framework to guide the development of charter contracts;

15 (4) Negotiate and execute sound charter contracts with each approved public charter school;

16 (5) Monitor the performance and compliance of public charter schools;

17 (6) Determine whether each charter contract merits renewal or revocation; and

18 (7) Establish and follow charter granting policies and practices that are transparent, based on
19 merit and avoid all conflicts of interest.

20 (d) *Principles and professional standards.* -- An authorizer shall develop and maintain
21 policies and practices consistent with nationally recognized principles and professional standards for
22 authorizing public charter schools, including standards relating to:

23 (1) Organizational capacity and infrastructure;

24 (2) Evaluating applications;

25 (3) Performance contracting;

26 (4) Ongoing public charter school oversight and evaluation; and

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1 (5) Charter approval, renewal, and revocation decisionmaking.

2 (e) *Reporting and evaluation.* -- An authorizer, that has authorized at least one public charter
3 school that is currently in operation, shall submit to the state superintendent for presentation to the
4 state board an annual report within sixty days of the end of each school fiscal year summarizing:

5 (1) The authorizer's strategic vision for chartering and progress toward achieving that vision;

6 (2) The performance of all operating public charter schools overseen by the authorizer,
7 according to the performance measures and expectations specified in the charter contracts;

8 (3) The status of the authorizer's public charter school portfolio of approved charter
9 applications, identifying all public charter schools within that portfolio as:

10 (A) Approved, but not yet open;

11 (B) Operating;

12 (C) Renewed;

13 (D) Transferred;

14 (E) Terminated;

15 (F) Closed; or

16 (G) Never opened; and

17 (4) The authorizing duties and functions provided by the authorizer during the previous
18 academic year.

19 (f) *Conflicts of interest.* -- An employee, trustee, agent or representative of an authorizer may
20 not simultaneously serve as an employee, trustee, agent, representative, vendor or contractor of a
21 public charter school operating under that authorizer.

22 (g) *Services purchased from authorizer.* -- A public charter school may not be required to
23 purchase services from its authorizer as a condition of charter approval or of executing a charter
24 contract, nor may any such condition be implied. However, a public charter school may, at its
25 discretion, choose to purchase services from its authorizer. In such event, the public charter school
26 and authorizer shall execute an annual service contract, separate from the charter contract, stating

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1 the parties' mutual agreement concerning any services to be provided by the authorizer and any
2 service fees to be charged to the public charter school.

3 **§18-33-6. Appeals, training and other duties of the West Virginia Board of Education.**

4 (a) *Duties.* -- The state board shall, pursuant to this article:

5 (1) Establish training programs for charter school applicants, administrators, and governing
6 board members;

7 (2) Hear appeals from applicants for authorization and from public charter school governing
8 boards relating to renewal and revocation: *Provided*, That the state board only may uphold the
9 decision or remand the issue to the authorizer with a recommendation and may not in any case
10 reverse a decision of an authorizer;

11 (3) Issue and broadly publicize requests for proposals pursuant to section seven of this article
12 to invite, solicit, encourage and guide the development of high-quality public charter school
13 applications; and

14 (4) Pursuant to subsection (b), section five of this article, for the first five calendar years
15 public charter schools are in operation:

16 (A) After the two per calendar year cap is exceeded, notifying authorizers that no more public
17 charter schools may be authorized for the remainder of that calendar year; and

18 (B) Determining which schools are authorized when authorization of multiple schools on the
19 same date results in the two per calendar year cap being exceeded.

20 (b) *Funding.* -- The state board may charge up to one percent of the funding received
21 pursuant to subsection (b), section fourteen of this article in order to perform its duties under this
22 article.

23 (c) *Training.* -- The state board shall consult with nationally recognized charter school
24 organizations in establishing training programs for charter school applicants, administrators and
25 governing board members. The training for administrators and governing board members shall
26 include at least twelve training sessions annually. Administrators and governing board members

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1 may miss no more than one training session annually without a valid excuse, as determined by the
2 authorizer. No charter may be granted until the applicant, administrators and governing board
3 members have received the initial training offered by the state board.

4 **§18-33-7. Request for proposals.**

5 (a) *Issuance.* -- To invite, solicit, encourage and guide the development of high-quality public
6 charter school applications, the state board shall issue and broadly publicize requests for proposals
7 by June 30, 2016, and by June 30 of each year thereafter. The content and dissemination of the
8 requests for proposals shall be consistent with the purposes and requirements of this article.

9 (b) *Content.* -- The state board's request for proposals shall contain information set forth in
10 this subsection.

11 (1) A request for proposals shall present the state board's strategic vision for and interest in
12 chartering.

13 (2) The state board may give priority to proposals that expand opportunities for children who
14 are not realizing their full potential, who may be disaffected or disengaged in their current education
15 situations and who may be at risk of failure academically, socially, economically or personally. The
16 state board may encourage proposals that include a specific academic approach or theme to address
17 the diverse educational needs of communities in the state. A request for proposals shall include a
18 clear statement of any priority or preference the state board wishes to grant to particular types of
19 applications. Notwithstanding the state board's statement of any priority or preference, an authorizer
20 shall consider each application submitted to it based on the merits of that particular application.

21 (3) A request for proposals shall include or otherwise direct applicants to the performance
22 framework that the state board has developed for public charter school oversight and evaluation in
23 accordance with section ten of this article.

24 (4) A request for proposals shall include the criteria and standards that will guide the
25 authorizer's decision to approve or deny an application.

26 (5) A request for proposals shall state clear, appropriately detailed questions as well as

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1 guidelines concerning the format and content essential for applicants to demonstrate the capacities
2 necessary to establish and operate a successful public charter school.

3 (6) A request for proposals shall require applications to provide or describe thoroughly, at
4 a minimum, all of the following essential elements of the proposed public charter school plan:

5 (A) The proposed public charter school's vision, including:

6 (i) An executive summary; and

7 (ii) The mission and vision of the proposed public charter school, including identification of
8 the targeted student population and the community the school hopes to serve; and

9 (B) The proposed public charter school's governance plan, which shall include:

10 (i) A governing board which shall include the following nine members: Three parents of
11 children attending the public charter school; two faculty; one service person; a representative of
12 business; a person knowledgeable of finance; and the principal of the school who shall be an ex
13 officio voting member;

14 (ii) Background information on proposed governing board members, except the principal
15 member, and any assurances or certifications required by the authorizer;

16 (iii) The election of the principal by the governing board;

17 (iv) Proposed governing bylaws which at least include good governing practices and
18 provisions for the removal of board members;

19 (v) An organization chart that clearly presents the school's organizational structure, including
20 lines of authority and reporting between the governing board, principal, staff and any related bodies
21 such as advisory bodies or parent and teacher councils;

22 (vi) A clear description of the roles and responsibilities for the governing board, the principal
23 and management team and any other entities shown on the organization chart; and

24 (vii) Identification of the proposed founding governing board members other than the
25 principal member;

26 (C) The proposed public charter school's plan of organization, including:

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- 1 (i) The location or geographic area of the school;
- 2 (ii) The grades to be served each year for the full term of the charter;
- 3 (iii) Minimum, planned and maximum enrollment per grade per year for the term of the
4 charter;
- 5 (iv) The school's proposed calendar and sample daily schedule;
- 6 (v) Plans and timelines for student recruitment and enrollment, including lottery procedures;
- 7 (vi) Explanations of any partnerships or contractual relationships central to the school's
8 operations or mission;
- 9 (vii) The school's proposals for providing transportation, food service and other significant
10 operational or ancillary services;
- 11 (viii) A facilities plan, including backup or contingency plans if appropriate; and
- 12 (ix) A detailed school start-up plan, identifying tasks, timelines and responsible individuals;
- 13 and
- 14 (D) The proposed public charter school's finances, including:
- 15 (i) A description of the school's financial plan and policies, including financial controls and
16 audit requirements;
- 17 (ii) Start-up and three-year budgets with clearly stated assumptions;
- 18 (iii) Start-up and first-year cash-flow projections with clearly stated assumptions;
- 19 (iv) Evidence of anticipated fund-raising contributions, if claimed in the application; and
- 20 (v) A description of the insurance coverage the school proposes to obtain, including a
21 determination as to whether the public charter school will elect to obtain insurance coverage from
22 the Board of Risk and Insurance Management pursuant to section five-a, article twelve, chapter
23 twenty-nine of this code;
- 24 (E) The proposed public charter school's student policy, including:
- 25 (i) The school's plans for identifying and successfully serving students with the wide range
26 of learning needs and styles typically found in noncharter public schools of the sending area,

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1 including special education and English language learners;

2 (ii) The school's plans for compliance with all applicable federal and state laws, rules and
3 regulations; and

4 (iii) The school's student discipline plans and policies, including those for special education
5 students;

6 (F) The proposed public charter school's academic program, including:

7 (i) A description of the academic program the proposed charter school will use;

8 (ii) A description of the school's instructional design, including the type of learning
9 environment, such as classroom-based or independent study, class size and structure, curriculum
10 overview, teaching methods and research basis;

11 (iii) The school's plan for using internal and external assessments to measure and report
12 student progress on the measures and metrics of the performance framework developed by the
13 authorizer in accordance with section ten of this article; and

14 (iv) A description of co-curricular or extracurricular programs and how they will be funded
15 and delivered;

16 (G) The proposed public charter school's staff policy, including:

17 (i) A staffing chart for the school's first year and a staffing plan for the term of the charter;

18 (ii) Plans for recruiting and developing school leadership and staff;

19 (iii) The school's leadership, teacher and service personnel employment policies, including
20 performance evaluation plans and method or methods of selection, subject to subparagraph (iii),
21 paragraph (B) of this subdivision;

22 (iv) A determination as to whether article two, chapter six-c of this code, relating to the
23 public employees grievance procedure, applies to the charter school and its employees; and

24 (v) Opportunities and expectations for parent involvement; and

25 (H) The proposed public charter school's school closure protocol, including:

26 (i) Timely notification to parents;

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1 (ii) Orderly transition of students and student records to new schools;

2 (iii) Proper disposition of school funds, property, and assets in accordance with section
3 twelve of this article; and

4 (iv) Tasks, timelines and responsible parties, including delineating the respective duties of
5 the school and the authorizer.

6 (7) With respect to the conversion of an existing noncharter public school to public charter
7 school status, in addition to the other requirements of this article, the request for proposals shall
8 require applicants to demonstrate support for the proposed conversion to a public charter school by:

9 (A) Submitting certification that sixty percent of the teachers voted to apply for conversion
10 to a public charter school; and

11 (B) Submitting a petition signed by the parents, guardians or custodians of sixty percent of
12 the students enrolled in the school.

13 **§18-33-8. Charter applications.**

14 (a) *Application.* -- An applicant for approval as a public charter school must submit an
15 application that satisfies the requirements of the state board's request for proposals required by
16 section seven of this article. An applicant may submit a proposal for a particular public charter
17 school to no more than one authorizer at a time. The purposes of the application are to present the
18 proposed public charter school's academic and operational vision and plans, demonstrate the
19 applicant's capacities to execute the proposed vision and plans to increase student achievement and
20 provide the authorizer a clear basis for assessing the applicant's plans and capacities.

21 (b) *Application review process.* -- In reviewing and evaluating applications, authorizers shall
22 employ procedures, practices, criteria and standards consistent with nationally recognized principles
23 and standards for authorizing high-quality public charter schools.

24 (1) The application review process shall include a thorough evaluation of each application,
25 an in-person interview with the applicant, a thirty-day comment period and a public hearing.

26 (2) In deciding whether to approve applications, authorizers shall:

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1 (A) Grant charters only to applicants that have demonstrated competence in each element of
2 the state board's published approval criteria and are likely to open and operate a public charter
3 school that will increase student achievement;

4 (B) Base decisions on documented evidence collected through the application review process;
5 and

6 (C) Follow charter-granting policies and practices that are transparent, based on merit and
7 avoid conflicts of interest or any appearance of a conflict of interest.

8 (c) *Approval; denial.* -- No later than ninety days after the filing of an application, an
9 authorizer shall decide to approve or deny the application. The authorizer shall make and announce
10 all charter approval or denial decisions in a meeting open to the public.

11 (1) An approval decision may include, if appropriate, reasonable conditions that the applicant
12 must meet before a charter contract may be executed.

13 (2) If the authorizer denies an application, the authorizer shall clearly state, for public record,
14 its reasons for denial at the time of rendering the decision to deny. An applicant may subsequently
15 reapply to that authorizer or appeal to the state board.

16 (3) Within ten days of taking action to approve or deny an application, the authorizer shall
17 report to the state superintendent the action it has taken. The authorizer shall provide a copy of the
18 report to the applicant at the same time that the report is submitted to the state superintendent.

19 (4) The state superintendent shall register the charters approved by all chartering authorities
20 in chronological order by date of approval.

21 (5) An approved application may not serve as a school's charter contract nor may it be
22 incorporated by reference into the charter contract.

23 (6) A decision on an application shall be conveyed in writing to the applicant. A decision
24 may grant approval or conditional approval, request resubmission or reject the application and must
25 include written reasons for the decisions.

26 (7) Any appeal of a denial of an application shall be made to the state board within sixty days

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1 of the time the denial is received in writing by the applicant. Within sixty days, the state board only
2 may uphold the decision or remand the issue to the authorizer with a recommendation. The state
3 board may not reverse a decision of the authorizer. The state board shall report to the state
4 superintendent any recommendation it has made on appeal within ten days. If the issue is remanded
5 and the application is again denied by the authorizer, the applicant may continue to appeal within
6 the sixty days, but the state board only may uphold the decision or remand any further appeal to the
7 authorizer with a recommendation and may not reverse the authorizer's decision.

8 **§18-33-9. Charter contracts.**

9 (a) When an application is approved, a charter contract shall be executed in accordance with
10 this section.

11 (b) After approval of an application and no later than ninety days after charter application
12 approval, the authorizer and the governing board shall execute a charter contract that sets forth:

13 (1) The term of the charter contract;

14 (2) Performance provisions describing the academic and operational performance
15 expectations and measures by which the public charter school will be judged;

16 (3) Administrative provisions articulating the administrative relationship between the
17 authorizer and the public charter school, including each party's rights and duties;

18 (4) The process the authorizer will use to provide ongoing oversight, including a process to
19 conduct annual site visits;

20 (5) The process the authorizer will use to notify the charter school of any deficiencies and
21 the process by which the charter school may submit an improvement plan;

22 (6) The agreed-upon process for amending the approved charter contract;

23 (7) The process agreed to by the authorizer and the charter school that identifies how disputes
24 will be handled and resolved; and

25 (8) Any conditions set by the authorizer and agreed to by the charter school to commence
26 operations of the school.

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1 (c) The performance provisions set forth in a charter contract under subsection (b) of this
2 section shall include applicable federal accountability requirements and state accreditation
3 requirements that will allow the state board to issue the public charter school a level of accreditation
4 pursuant to subdivision (2), subsection (l), section five, article two-e of this chapter.

5 (d) The performance provisions set forth in a charter contract under subsection (b) of this
6 section may be refined or amended by mutual agreement of the parties to the charter contract after
7 the public charter school is operating and has collected baseline achievement data for its enrolled
8 students.

9 (e) A charter contract shall be signed by a designated representative of the authorizer and of
10 the public charter school's governing board.

11 (f) A public charter school may not commence operations without a charter contract executed
12 in accordance with this section and approved in a meeting open to the public.

13 **§18-33-10. Public charter school performance framework.**

14 (a) *Performance framework.* -- The performance provisions of a charter contract shall be
15 based on a performance framework developed by the state board that sets forth the academic and
16 operational performance indicators that will guide the authorizer's evaluations of each public charter
17 school.

18 (b) *Data elements.* -- The performance framework developed under subsection (a) of this
19 section shall include, at a minimum, indicators for:

- 20 (1) Student academic proficiency;
- 21 (2) Student achievement goals;
- 22 (3) Achievement gaps in both proficiency and growth between major student subgroups;
- 23 (4) Attendance;
- 24 (5) Recurrent enrollment from year to year;
- 25 (6) With respect to high school, postsecondary readiness;
- 26 (7) Financial performance and sustainability;

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1 (8) Governing board performance and stewardship; and

2 (9) Parent and community engagement.

3 (c) *Annual performance targets.* -- Annual performance targets shall be set by a public charter
4 school in conjunction with its authorizer and shall be designed to help each school meet applicable
5 federal and state requirements and authorizer expectations.

6 (d) *Data disaggregation.* -- The performance framework developed under subsection (a) of
7 this section shall require the disaggregation of all student performance data by major student
8 subgroups.

9 **§18-33-11. Oversight.**

10 (a) *Data collection; monitoring.* -- For each public charter school it oversees, the authorizer
11 is responsible for collecting, analyzing and reporting all data from state assessments in accordance
12 with the performance framework required by section ten of this article. An authorizer shall monitor
13 the performance and legal compliance of the public charter schools it oversees, including collecting
14 and analyzing all data to support ongoing evaluation according to the charter contract.

15 (b) *Notification of unsatisfactory performance or compliance.* -- In the event that a public
16 charter school's performance or legal compliance appears unsatisfactory, the authorizer shall
17 promptly notify in writing the public charter school of perceived problems and provide reasonable
18 opportunity for the school to remedy the problems.

19 **§18-33-12. Charter term renewal.**

20 (a) *Initial charter term.* -- An initial charter shall be granted for a term of five operating years.
21 The charter term commences on the public charter school's first day of operation. An approved
22 public charter school may delay its opening for one school year in order to plan and prepare for the
23 school's opening. If the public charter school requires an opening delay of more than one school
24 year, the public charter school shall request an extension from its authorizer. The authorizer may
25 grant or deny the extension depending on the particular public charter school's circumstances.

26 (b) *Charter renewal term.* -- A charter may be renewed for successive terms of five years,

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1 although an authorizer may grant a renewal for a term not to exceed ten years based on the school's
2 performance data, demonstrated capacities and particular circumstance of each public charter school.

3 (c) *Authorizer renewal responsibilities.* -- No later than June 30 of a public charter school's
4 fourth year of operation under each five-year term of a charter contract, the authorizer shall issue a
5 public charter school performance report. If the charter of the public charter school is expiring, the
6 authorizer shall offer charter renewal application guidance to the school.

7 (1) The performance report required in this subsection shall summarize the public charter
8 school's performance record to date, based on the data collected under the performance framework
9 in section ten of this article and the charter contract, and shall provide notice of any weaknesses or
10 concerns perceived by the authorizer concerning the school that may jeopardize its position in
11 seeking renewal if not timely rectified. The school and the authorizer shall mutually agree to a
12 reasonable time period for the charter school to respond to the performance report and submit any
13 corrections for the report.

14 (2) The renewal application guidance required by this subsection shall include or refer
15 explicitly to the criteria and standards that will guide the authorizer's renewal decisions, which shall
16 be based on the performance framework set forth in section ten of this article, as set forth in the
17 charter contract and consistent with this article. The renewal application guidance shall, at a
18 minimum, require and provide an opportunity for the public charter school to:

19 (A) Present additional evidence, beyond the data contained in the performance report,
20 supporting its case for charter renewal;

21 (B) Describe improvements undertaken or planned for the school; and

22 (C) Detail the school's plans for the next charter term.

23 (d) *Renewal application.* -- No later than September 30 of a public charter school's fifth year
24 of operation under a term of a charter contract or September 30 of a public charter school's final
25 authorized year of operation under a term of a charter contract, the governing board of a public
26 charter school seeking renewal shall submit a renewal application to the authorizer pursuant to any

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1 renewal application guidance offered by the authorizer under subsection (c) of this section.

2 (e) *Renewal decision.* -- An authorizer shall rule in a public meeting and by resolution on a
3 renewal application no later than forty-five days after the filing of the renewal application. In
4 making charter renewal decisions, every authorizer shall:

5 (1) Ground its decisions on a thorough analysis of evidence of the school's performance over
6 the term of the charter contract in accordance with the terms and measures established in the
7 performance framework set forth in the charter contract;

8 (2) Ensure that data used in making renewal decisions are available to the public charter
9 school and the public;

10 (3) Provide a public report summarizing the evidence basis for each decision; and

11 (4) In instances where the authorizer declines to renew the charter, allow the school twenty
12 days to respond in writing to the decision and public report before that decision becomes final. The
13 school shall be allowed to provide the authorizer with such arguments and supporting information
14 as it sees fit, and the authorizer shall consider all such timely submitted material prior to rendering
15 its final determination. The authorizer shall render its final determination within ten days of receiving
16 the school's written response, arguments, and supporting information.

17 (f) *Charter revocation and nonrenewal.* --

18 (1) A decision by an authorizer to revoke or not to renew the charter of a public charter
19 school must be made in accordance with this subsection.

20 (2) A charter may be revoked at any time or not renewed if the authorizer determines that the
21 public charter school failed to comply with the provisions of this article or:

22 (A) Committed a material violation of any of the terms, conditions, standards or procedures
23 required under this chapter or the charter contract;

24 (B) Failed to meet the performance expectations set forth in the charter contract;

25 (C) Failed to meet generally accepted standards of fiscal management; or

26 (D) Violated any provision of law from which the school was not exempted.

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1 (3) If an authorizer revokes or does not renew a charter, the authorizer shall clearly state, in
2 a resolution of its governing entity in a public meeting, the reasons for the revocation or nonrenewal.

3 (4) The charter school authorizer may place a charter school on probationary status to allow
4 the implementation of a remedial action plan. The failure of a charter school to comply with the
5 terms and conditions of a remedial action plan may result in revocation of the school's charter.

6 (5) If an authorizer revokes or does not renew a charter, the county board of the district in
7 which the school is located shall determine whether the school converts to noncharter public school
8 status or the school is to be closed.

9 (6) If the county board elects to close a public charter school, the board shall clearly state,
10 in a resolution in a public meeting, the reasons for the closure.

11 (g) *Notification to state superintendent.* -- Within ten days of taking action to renew, not
12 renew or revoke a charter under this section and within ten days of taking action to close a public
13 charter school, the authorizer or county board, as applicable, shall report to the state superintendent
14 the action taken and shall provide a copy of the report to the public charter school at the same time
15 that the report is submitted to the state superintendent. The report shall include a copy of the
16 governing entity of the authorizer's or the county board's resolution setting forth the action taken and
17 reasons for the decision.

18 (h) *Appeal of nonrenewal or revocation.* -- Any appeal of a nonrenewal or revocation of a
19 charter shall be made to the state board within sixty days of the authorizer stating its reasons by
20 resolution in a public meeting the reasons for the revocation or nonrenewal. Within sixty days, the
21 state board only may uphold the decision or remand the issue to the authorizer with a
22 recommendation. The state board may not reverse a decision of the authorizer. The state board shall
23 report to the state superintendent any recommendation it has made on appeal within ten days. If the
24 issue is remanded and the decision is again to not renew or to revoke the charter, the applicant may
25 continue to appeal within the sixty days, but the state board only may uphold the decision or remand
26 any further appeal to the authorizer with a recommendation and may not reverse the authorizer's

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1 decision.

2 (i) *School closure and dissolution.* --

3 (1) In the event of a public charter school closure for any reason, the authorizer shall oversee
4 and work with the closing school to ensure a smooth and orderly closure and transition for students
5 and parents, as guided by the closure protocol required to be included in the application pursuant to
6 section seven of this article.

7 (2) If a public charter school closes for any reason:

8 (A) The authorizer shall oversee and work with the closing public charter school to ensure
9 timely notification to parents, orderly transition of students and student records to new schools and
10 proper disposition of school funds, property and assets in accordance with the requirements of this
11 chapter; and

12 (B) The assets of the public charter school shall be distributed first to satisfy outstanding
13 payroll obligations for employees of the public charter school and then to creditors of the public
14 charter school. Any remaining funds shall be paid to the county board. If the assets of the public
15 charter school are insufficient to pay all parties to whom the public charter school owes
16 compensation, the prioritization of distribution of assets may be determined by decree of a court of
17 law.

18 **§18-33-13. Operations.**

19 (a) *Legal status.* -- Notwithstanding any provision of law to the contrary, to the extent that
20 any provision of this article is inconsistent with any other state or local law, rule or regulation, the
21 provisions of this article govern and are controlling.

22 (1) A public charter school is subject to all federal laws and authorities, and anything in this
23 article that is in conflict with federal laws and authorities is null and void.

24 (2) A charter contract may include one or more schools, to the extent approved by the
25 authorizer and consistent with applicable law. Each public charter school that is part of a charter
26 contract must be separate and distinct from any others.

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1 (3) A single governing board may be issued one or more charter contracts. Each public
2 charter school operating under its own contract is a discrete legal entity, separate and distinct from
3 any others.

4 (b) *Local educational agency status.* --

5 (1) The school district in which the public charter school is located remains the local
6 educational agency and the public charter school is a school within that local educational agency
7 except that the public charter school is treated as a local educational agency for purposes of applying
8 for competitive federal grants;

9 (2) The school district retains responsibility for special education and serves students in
10 public charter schools in a manner consistent with local educational agency obligations under
11 applicable federal, state and local law and the charter contract; and

12 (3) The county board remains accountable for the performance of the public charter school
13 pursuant to subsection (m), section five, article two-e of this chapter.

14 (c) *Powers of public charter schools.* -- A public charter school has all the powers necessary
15 for carrying out the terms of its charter contract, including the powers to:

16 (1) Receive and disburse funds and gifts for educational purposes;

17 (2) Contract or cooperate with noncharter public schools for service for students with special
18 needs, English language learner students and other specialized populations, as well as for mutually
19 agreed administrative services;

20 (3) Secure appropriate insurance and enter into contracts and leases, free from the prevailing
21 wage laws set forth in article five-a, chapter twenty-one of this code;

22 (4) Contract with an education service provider for education services and resources related
23 to the management and operation of the public charter school, as long as the public charter school's
24 governing board retains authority over the oversight and management of the public charter school;

25 (5) Incur debt in reasonable anticipation of the receipt of public or private funds, except that
26 an authorizer is not responsible for any debt incurred by the public charter school;

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1 (6) Pledge, assign or encumber its assets to be used as collateral for loans or extensions of
2 credit;

3 (7) Solicit and accept any gifts or grants for public charter school purposes subject to
4 applicable laws and the terms of its charter contract;

5 (8) Acquire real property for use as its facility or facilities from public or private sources; and

6 (9) Sue and be sued in its own name.

7 (d) *General requirements.* -- A public charter school is subject to the general requirements
8 set out in this subsection.

9 (1) A public charter school may not discriminate against any person on the basis of race,
10 color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin
11 or on any other basis that would be unlawful if done by a noncharter public school.

12 (2) A public charter school may not engage in any religious practices in its educational
13 program, admissions or employment policies or operations.

14 (3) A public charter school may not charge tuition and may only charge such fees as may be
15 imposed by other noncharter public schools in the state.

16 (4) The powers, obligations and responsibilities set forth in a charter contract may not be
17 delegated or assigned by either party.

18 (e) *Applicability of other laws, rules and regulations.* -- The applicability of other laws, rules
19 and regulations to public charter schools is as set out in this subsection.

20 (1) Public charter schools are subject to the same civil rights, health, life and safety, and
21 financial requirements applicable to other noncharter public schools in the state, except as otherwise
22 specifically provided in this chapter.

23 (2) Public charter schools are subject to the same student assessment and accreditation
24 requirements applicable to other noncharter public schools in the state, but only to the extent that will
25 allow the state board to issue the public charter school a level of accreditation pursuant to
26 subdivision (2), subsection (1), section five of this chapter. Nothing in this article precludes a public

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1 charter school from establishing additional student assessment measures that go beyond state
2 requirements if the school's authorizer approves the measures.

3 (3) Governing boards are subject to and must comply with the state's open meeting law
4 pursuant to article nine-a, chapter six of this code.

5 (4) Except as provided in this article and its charter contract, a public charter school is
6 exempt from all statutes and rules applicable to a noncharter public school or a local school district.

7 (5) Employees, governing body members and other public charter school personnel are
8 subject to criminal history record checks and fingerprinting requirements applicable to other
9 noncharter public schools.

10 (6) No county board shall require any employee of the local school district to be employed
11 in a charter school or any student enrolled in the school district to attend a charter school. No county
12 board shall harass, threaten, discipline, discharge, retaliate or in any manner discriminate against any
13 district employee involved directly or indirectly with an application to establish a charter school as
14 authorized under this section.

15 (7) A county board shall not discriminate against a charter school in publicizing the district's
16 educational options through advertising, direct mail, availability of mailing lists or other
17 informational activities.

18 (8) Public charter schools are subject to the same federal nutrition standards applicable to
19 other noncharter public schools.

20 (f) *Teachers and other school personnel.* -- This subsection governs school personnel
21 employment in a public charter school.

22 (1) Personnel hired by a public charter school are employed by the charter school. The
23 charter school is ultimately responsible for processing employee paychecks, managing its employees'
24 participation in the applicable retirement system and managing its employees' participation in
25 insurance plans established by the Public Employees Insurance Agency: *Provided*, That nothing in
26 this subdivision prohibits the public charter school from contracting with another person or entity

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1 to perform services relating to managing its employees' participation in the retirement system or
2 insurance plan.

3 (2) A public charter school must comply with applicable federal laws and regulations
4 regarding the qualification of teachers and other instructional staff.

5 (3) All classroom teachers in a public charter school are subject to the same licensing
6 requirements applicable to classroom teachers in a noncharter public school.

7 (4) All personnel in a public charter school continue to accrue seniority in the same manner
8 that they would accrue seniority if employed in a noncharter public school for purposes of
9 employment in noncharter public schools.

10 (g) *Accounting requirements.* -- A public charter school shall comply with all applicable
11 accounting and financial reporting requirements as prescribed for regular public schools, including
12 adherence to generally accepted accounting principles. A public charter school shall annually engage
13 an external auditor to perform an independent audit of the school's finances. The public charter
14 school shall submit the audit to its authorizer and to the state superintendent within nine months of
15 the end of the fiscal year for which the audit is performed.

16 **§18-33-14. Funding.**

17 (a) *Enrollment count.* -- Each charter school shall report to its county board the number of
18 students enrolled in its school based on second month enrollment. Each county board shall report
19 to the West Virginia Department of Education the enrollment of all public charter schools in the
20 county based on second month enrollment.

21 (b) *Revenue provisions.* -- On or before October 1 of each year, each public charter school
22 shall submit its budget request to the state board. The request shall not exceed the statewide per
23 pupil total program allowance as computed under article nine-a of this chapter multiplied by the
24 second month net enrollment of the public charter school: *Provided*, That for the funding for the first
25 year of operation, the limit on the appropriation request shall be based on the projected second month
26 net enrollment of the public charter school, with the funding for the public charter school and the

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1 authorizing county board to be subsequently adjusted, if necessary, in the first year of operation,
2 based on the actual second month net enrollment. The state board shall include in its appropriation
3 request to the Governor a request for an appropriation for public charter schools equal to the total
4 amount requested by all charter schools. The Governor shall request an appropriation in the amount
5 requested by the state board at the next legislative session. The state board shall distribute the
6 funding appropriated for the public charter schools to the county boards in which each charter school
7 is located. Each county board shall distribute the funding received to each public charter school in
8 a timely manner.

9 (c) *Special Education Funding.* -- The following provisions govern special education
10 funding:

11 (1) The county board shall pay directly to the public charter school any federal or state aid
12 attributable to a student with a disability attending the public charter school in proportion to the level
13 of services for the student with a disability that the public charter school provides directly or
14 indirectly; and

15 (2) Public charter schools have the same access as county boards to funding for students with
16 high acuity needs pursuant to section five, article twenty of this chapter.

17 (d) *Federal Funds.* -- Except as otherwise provided in this article, the state shall send
18 applicable federal funds to public charter schools attended by eligible students. Public charter
19 schools with students eligible for funds under Title I of the federal Elementary and Secondary
20 Education Act of 1965, 20 U. S. C., section 6301, *et seq.*, must receive and use these funds in
21 accordance with federal and state law. During the first year of operation, a public charter school must
22 receive Title I funds on the basis of an estimated enrollment of eligible students, as agreed with its
23 authorizer.

24 (e) *Gifts and Grants.* -- A public charter school may receive gifts and grants from private
25 sources in any manner that is available to a local school district. Nothing in this article may be
26 construed to prohibit any person or organization from providing funding or other assistance for the

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1 establishment or operation of a public charter school. The governing board of a public charter school
2 may accept gifts, donations or grants of any kind made to the school and expend or use such gifts,
3 donations or grants in accordance with the conditions prescribed by the donor except that a gift,
4 donation or grant may not be accepted if subject to a condition that is contrary to any provision of
5 law or term of the charter contract.

6 (f) *Disclosure of funding sources.* -- Each public charter school annually shall submit to the
7 state board its sources of funding along with its budget request required to be submitted to the state
8 board pursuant to subsection (b) of this section. The state board shall make the public charter
9 school's funding sources available publicly.

10 **§18-33-15. Transportation.**

11 (a) A charter school may contract with a local school district or other entity for transportation
12 services.

13 (b) A charter school or any entity providing transportation for a charter school shall comply
14 with all transportation and safety laws and administrative regulations applicable to public schools.

15 **§18-33-16. Facilities.**

16 (a) *Facilities; property.* -- A public charter school may acquire facilities and property in
17 accordance with this subsection.

18 (1) A public charter school has a right of first refusal to purchase or lease at or below fair
19 market value a closed noncharter public school facility or property or unused portions of a noncharter
20 public school facility or property located in a school district from which it draws its students if the
21 school district decides to sell or lease the noncharter public school facility or property. The school
22 district may not require purchase or lease payments that exceed the fair market value of the property.

23 (2) A public charter school may negotiate and contract with a school district, the governing
24 board of a state institution of higher education or any other public or for-profit or nonprofit private
25 entity for the use of a school building.

26 (3) Library, community service, museum, performing arts, theater, cinema, church,

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1 community college, college and university facilities may provide space to public charter schools
2 within their facilities under their preexisting zoning and land-use designations.

3 (4) A public charter school may purchase or lease at or below fair market value part or all of
4 any surplus or unused state-owned facility or property located in the state. The state agency in control
5 of the facility may not require purchase or lease payments that exceed the fair market value of the
6 property.

7 (5) The same zoning rules that apply to other noncharter public schools apply to public
8 charter schools.

9 (b) Nothing in this section requires the county board to seek funds from any source, including
10 the School Building Authority, for conversion of any existing district school facility or for
11 constructing a district school or facility for use by the public charter school.

12 (c) *Inspection; building code.* -- The West Virginia State Fire Marshal is the agency that has
13 jurisdiction over inspection of any facility used by the public charter school and issuance of a
14 certificate of occupancy for the facility. A facility used by a public charter school is subject to the
15 same building codes, regulations and fees that apply to other noncharter public schools including
16 inspections by the West Virginia Department of Education, Office of School Facilities as required
17 by subsection (c), section sixteen, article nine-d of this chapter.

18 **§18-33-17. Miscellaneous.**

19 (a) *Transfer of credits.* -- If a student who was previously enrolled in a public charter school
20 enrolls in another noncharter public school in this state, the school to which the student transfers
21 shall accept credits earned by the student in courses or instructional programs at the public charter
22 school in a uniform and consistent manner and according to the same criteria that are used to accept
23 academic credits from other noncharter public schools.

24 (b) *Access to extracurricular and interscholastic activities.* -- A public charter school is
25 eligible for state-sponsored or school district sponsored interscholastic leagues, competitions,
26 awards, scholarships and recognition programs for students, educators, administrators and schools

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1 to the same extent as noncharter public schools. A public charter school student is eligible to
2 participate in extracurricular activities not offered by the student's public charter school at the
3 noncharter public school within the attendance boundaries of which the student's custodial parent
4 or legal guardian resides or the noncharter public school from which the student withdrew for the
5 purpose of attending a public charter school. A public charter school student is eligible for
6 extracurricular activities at a noncharter public school subject to eligibility standards applied to full-
7 time students of the noncharter public school. A school district or noncharter public school may not
8 impose additional requirements on a public charter school student to participate in extracurricular
9 activities that are not imposed on full-time students of the noncharter public school. Public charter
10 school students shall pay the same fees as other students to participate in extracurricular or co-
11 curricular activities. For each public charter school student who participates in an extracurricular or
12 co-curricular activity at a noncharter public school, the public charter school must pay a reasonable
13 share of the noncharter public school's costs for the activity, as determined through negotiations
14 between the schools involved.

15 (c) *Retirement.* -- All public charter school employees shall participate in the Teachers
16 Retirement System or the Teachers' Defined Contribution Retirement System, whichever is
17 applicable in accordance with articles seven-a, seven-b and seven-d of this chapter.

18 (d) *Insurance.* -- All public charter school employees shall participate in insurance plans
19 established by the Public Employees Insurance Agency pursuant to article sixteen, chapter five of
20 this code.

21 **§18-33-18. Teacher approval of converting existing noncharter public school to public charter**
22 **school status.**

23 (a) A teacher shall be eligible to vote in accordance with the provisions of this section if the
24 teacher is regularly employed at the school.

25 (b) A secret ballot vote at a special meeting of all teachers regularly employed at the school
26 shall be conducted to determine the level of employee commitment to apply to convert to a public

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1 charter school.

2 (c) A panel consisting of the elected officers of the faculty senate of the school and three
3 parent members appointed by the local school improvement council shall call the meeting required
4 in subsection (b) of this section, conduct the votes and certify the results. The panel shall provide
5 notice of the special meeting to all employees eligible to vote at least two weeks prior to the meeting
6 and shall provide an absentee ballot to each employee eligible to vote who cannot attend the meeting
7 to vote.

8 (d) At least sixty percent of the teachers who are eligible to vote in accordance with this
9 section must vote to apply for conversion to a public charter school before the level of teacher
10 commitment at the school is sufficient for the school to apply for conversion to a public charter
11 school.

12 **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

13 **ARTICLE 12. STATE INSURANCE.**

14 **§29-12-5a. Liability insurance for county boards of education, their employees and members,**
15 **the county superintendent of schools, public charter schools electing to obtain coverage,**
16 **and for employees and officers of the state Department of Corrections.**

17 (a) In accordance with the provisions of this article, the state Board of Risk and Insurance
18 Management shall provide appropriate professional or other liability insurance for all county boards
19 of education, teachers, supervisory and administrative staff members, service personnel, county
20 superintendents of schools, and school board members and for all employees and officers of the state
21 Department of Corrections: *Provided*, That the ~~board~~ Board of Risk and Insurance Management is
22 not required to provide insurance for every property, activity or responsibility of county boards of
23 education, teachers, supervisory and administrative staff members, service personnel, county
24 superintendents of schools and school board members and for all employees and officers of the state
25 Department of Corrections.

26 (b) Insurance provided by the ~~board~~ Board of Risk and Insurance Management pursuant to

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1 the provisions of subsection (a) of this section shall cover claims, demands, actions, suits or
2 judgments by reason of alleged negligence or other acts resulting in bodily injury or property damage
3 to any person within or without any school building or correctional institution if, at the time of the
4 alleged injury, the teacher, supervisor, administrator, service personnel employee, county
5 superintendent, school board member, or employee or officer of the Department of Corrections was
6 acting in the discharge of his or her duties, within the scope of his or her office, position or
7 employment, under the direction of the county board of education, or Commissioner of Corrections
8 or in an official capacity as a county superintendent or as a school board member or as
9 Commissioner of Corrections.

10 (c) Insurance coverage provided by the ~~board~~ Board of Risk and Insurance Management
11 pursuant to subsection (a) of this section shall be in an amount to be determined by the state Board
12 of Risk and Insurance Management, but in no event less than \$1 million for each occurrence. In
13 addition, each county board of education shall purchase, through the ~~board~~ Board of Risk and
14 Insurance Management, excess coverage of at least \$5 million for each occurrence. The cost of this
15 excess coverage will be paid by the respective county boards of education. Any insurance purchased
16 under this section shall be obtained from a company licensed to do business in this state.

17 (d) The insurance policy provided by the ~~board~~ Board of Risk and Insurance Management
18 pursuant to subsection (a) of this section shall include comprehensive coverage, personal injury
19 coverage, malpractice coverage, corporal punishment coverage, legal liability coverage as well as
20 a provision for the payment of the cost of attorney's fees in connection with any claim, demand,
21 action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury
22 under the conditions specified in this section.

23 (e) The county superintendent and other school personnel shall be defended by the county
24 board of education or an insurer in the case of suit, unless the act or omission shall not have been
25 within the course or scope of employment or official responsibility or was motivated by malicious
26 or criminal intent.

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1 (f) The provisions of this section only apply to public charter schools authorized pursuant to
2 article thirty-three, chapter eighteen of this code that have included in their approved charter
3 application a determination to obtain insurance coverage from the Board of Risk and Insurance
4 Management pursuant to this section. If a public charter school elects to obtain coverage pursuant
5 to this section:

6 (1) Any provision in this section applicable to a county board of education also applies to a
7 charter school governing board;

8 (2) Any provision in this section applicable to a school board member also applies to a
9 member of a charter school governing board; and

10 (3) Any provision of this section applicable to teachers, supervisory and administrative staff
11 members and service personnel employed by a county board of education also applies to teachers,
12 supervisory or administrative staff members and service personnel employed by a public charter
13 school.