

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 14**

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

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

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9 \_\_\_\_\_ **FISCAL  
NOTE**

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

1 of a public charter school operating under that authorizer; prohibiting a public charter school  
2 from being required to purchase services from its authorizer; establishing the West Virginia  
3 Board of Charter School Appeals and Training; setting forth provisions pertaining to board  
4 membership, member terms, board officers, board meetings, removal of board members,  
5 employees, duties, funding and training; requiring the state charter school board to issue and  
6 broadly publicize requests for proposals; setting forth information the requests for proposals  
7 shall contain, including a determination on whether to participate in the public employees  
8 grievance procedures; setting forth provisions pertaining to application for approval as a  
9 public charter school; setting forth provisions pertaining to the application review process;  
10 setting forth provisions pertaining to application approval and denial; setting forth provisions  
11 pertaining to appeal of application denial; requiring the execution of a charter contract;  
12 requiring the performance provisions of a charter contract be based on a performance  
13 framework developed by the state charter school board that sets forth the academic and  
14 operational performance indicators that will guide the authorizer's evaluations of each public  
15 charter school; requiring performance targets be set by a public charter school in conjunction  
16 with its authorizer; setting forth authorizer responsibilities relating to oversight; providing  
17 for an initial charter term of five years and a renewal term of five to ten years; setting forth  
18 authorizer responsibilities relating to renewal; requiring submission of renewal application;  
19 setting forth provisions pertaining to the renewal decision by the authorizer; setting forth  
20 provisions pertaining to charter revocation and nonrenewal, including provisions allowing  
21 for appeal; providing for public charter school closure and dissolution; establishing priority  
22 in the application of laws, rules, regulations and authorities; allowing a charter contract to  
23 include one or more schools; allowing a single governing board to be issued one or more  
24 charter contracts; providing that the school district in which the public charter school is  
25 located remains the local education agency; providing that the school district retains  
26 responsibility for special education; declaring that the county board remains accountable for  
27 the performance of the public charter school; setting forth powers of public charter schools;  
28 prohibiting public charter schools from certain activities relating to discrimination, religious

1 practices, charging tuition and delegating or assigning responsibilities set forth in a charter  
2 contract; limiting fees that may be charged; setting forth provisions pertaining to the  
3 applicability of other laws, rules and regulations to public charter schools; prohibiting county  
4 boards from certain actions relating to public charter schools; declaring that personnel hired  
5 by the charter school are employed by the charter school; requiring a public charter school  
6 to comply with applicable federal laws and regulations regarding the qualifications of  
7 teachers and other instructional staff; providing that all public charter school classroom  
8 teachers are subject to the same licensing requirements applicable to classroom teachers in  
9 noncharter public schools; providing that all personnel in a public charter school continue  
10 to accrue seniority in the same manner that they would accrue seniority if employed in a  
11 noncharter public school for purposes of employment in noncharter public schools; setting  
12 forth provisions pertaining to accounting, financial reporting and auditing; setting forth  
13 provisions pertaining to funding for public charter schools; allowing a public charter school  
14 to contract with a local school district or other entity for transportation services; requiring  
15 any entity providing transportation services to comply with all transportation and safety and  
16 administrative regulations applicable to noncharter public schools; setting forth provisions  
17 pertaining to public charter school facilities and property; clarifying that county boards not  
18 required to seek funds for certain facility-related purposes; setting forth provisions pertaining  
19 to building inspections, codes, regulations and fees; setting forth provisions pertaining to the  
20 transfer of credits; setting forth provisions pertaining to extracurricular and interscholastic  
21 activities; requiring that public charter school employees participate in the Teachers  
22 Retirement System or the Teachers' Defined Contribution Retirement System, whichever is  
23 applicable; and requiring that all public charter school employees participate in insurance  
24 plans established by the Public Employees Insurance Agency.

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

26 That §5-16-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted;  
27 that §6C-2-2 of said code be amended and reenacted; that §18-7A-3 of said code be amended and  
28 reenacted; that §18-7B-2 of said code be amended and reenacted; that §18-9A-2 and §18-9A-12 of

1 said code be amended and reenacted; that §18-20-5 of said code be amended and reenacted; that said  
2 code be amended by adding thereto a new article, designated §18-33-1, §18-33-2, §18-33-3,  
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 ,  
4 §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  
5 code be amended and reenacted, all to read as follows:

6 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**  
7 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;**  
8 **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**  
9 **ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

10 **§5-16-2. Definitions.**

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

13 (1) “Agency” means the Public Employees Insurance Agency created by this article.

14 (2) “Director” means the Director of the Public Employees Insurance Agency created by this  
15 article.

16 (3) “Employee” means any person, including an elected officer, who works regularly full time  
17 in the service of the State of West Virginia and, for the purpose of this article only, the term  
18 “employee” also means any person, including an elected officer, who works regularly full time in  
19 the service of a county board of education; a public charter school established pursuant to article  
20 thirty-three, chapter eighteen of this code; a county, city or town in the state; any separate corporation  
21 or instrumentality established by one or more counties, cities or towns, as permitted by law; any  
22 corporation or instrumentality supported in most part by counties, cities or towns; any public  
23 corporation charged by law with the performance of a governmental function and whose jurisdiction  
24 is coextensive with one or more counties, cities or towns; any comprehensive community mental  
25 health center or ~~comprehensive mental retardation~~ intellectually and developmentally disabled  
26 facility established, operated or licensed by the Secretary of Health and Human Resources pursuant  
27 to section one, article two-a, chapter twenty-seven of this code and which is supported in part by  
28 state, county or municipal funds; any person who works regularly full time in the service of the

1 Higher Education Policy Commission, the West Virginia Council for Community and Technical  
2 College Education or a governing board, as defined in section two, article one, chapter eighteen-b  
3 of this code; any person who works regularly full time in the service of a combined city-county  
4 health department created pursuant to article two, chapter sixteen of this code; any person designated  
5 as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this  
6 code; and any person who works as a long-term substitute as defined in section one, article one,  
7 chapter eighteen-a of this code in the service of a county board of education: *Provided*, That a long-  
8 term substitute who is continuously employed for at least one hundred thirty-three instructional days  
9 during an instructional term, and until the end of that instructional term, is eligible for the benefits  
10 provided in this article until September 1, following that instructional term: *Provided, however*, That  
11 a long-term substitute employed fewer than one hundred thirty-three instructional days during an  
12 instructional term is eligible for the benefits provided in this article only during such time as he or  
13 she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election  
14 by a county board of education to allow elected board members to participate in the Public  
15 Employees Insurance Program pursuant to this article, any person elected to a county board of  
16 education shall be considered to be an “employee” during the term of office of the elected member.  
17 Upon election by the state Board of Education to allow appointed board members to participate in  
18 the Public Employees Insurance Program pursuant to this article, any person appointed to the state  
19 Board of Education is considered an “employee” during the term of office of the appointed member:  
20 *Provided further*, That the elected member of a county board of education and the appointed member  
21 of the state Board of Education shall pay the entire cost of the premium if he or she elects to be  
22 covered under this article. Any matters of doubt as to who is an employee within the meaning of this  
23 article shall be decided by the director.

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

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

28           (ii) Has been designated, in writing, by all other participants in that job-sharing arrangement

1 as the “employee” for purposes of this section; and

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

3 (4) “Employer” means the State of West Virginia, its boards, agencies, commissions,  
4 departments, institutions or spending units; a county board of education; a public charter school  
5 established pursuant to article thirty-three, chapter eighteen of this code; a county, city or town in  
6 the state; any separate corporation or instrumentality established by one or more counties, cities or  
7 towns, as permitted by law; any corporation or instrumentality supported in most part by counties,  
8 cities or towns; any public corporation charged by law with the performance of a governmental  
9 function and whose jurisdiction is coextensive with one or more counties, cities or towns; any  
10 comprehensive community mental health center or comprehensive mental retardation facility  
11 established, operated or licensed by the Secretary of Health and Human Resources pursuant to  
12 section one, article two-a, chapter twenty-seven of this code and which is supported in part by state,  
13 county or municipal funds; a combined city-county health department created pursuant to article two,  
14 chapter sixteen of this code; and a corporation meeting the description set forth in section three,  
15 article twelve, chapter eighteen-b of this code that is employing a 21st Century Learner Fellow  
16 pursuant to section eleven, article three, chapter eighteen of this code but the corporation is not  
17 considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any  
18 matters of doubt as to who is an “employer” within the meaning of this article shall be decided by  
19 the director. The term “employer” does not include within its meaning the National Guard.

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

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

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

28 (8) “Retired employee” means an employee of the state who retired after April 29, 1971, and

1 an employee of the Higher Education Policy Commission, the Council for Community and Technical  
2 College Education, a state institution of higher education or a county board of education who retires  
3 on or after April 21, 1972, and all additional eligible employees who retire on or after the effective  
4 date of this article, meet the minimum eligibility requirements for their respective state retirement  
5 system and whose last employer immediately prior to retirement under the state retirement system  
6 is a participating employer in the state retirement system and in the Public Employees Insurance  
7 Agency: *Provided*, That for the purposes of this article, the employees who are not covered by a  
8 state retirement system, but who are covered by a state-approved or state-contracted retirement  
9 program or a system approved by the director, shall, in the case of education employees, meet the  
10 minimum eligibility requirements of the state Teachers Retirement System and in all other cases,  
11 meet the minimum eligibility requirements of the Public Employees Retirement System and may  
12 participate in the Public Employees Insurance Agency as retired employees upon terms as the  
13 director sets by rule as authorized in this article. Employers with employees who are, or who are  
14 eligible to become, retired employees under this article shall be mandatory participants in the Retiree  
15 Health Benefit Trust Fund created pursuant to article sixteen-d of this chapter. Nonstate employers  
16 may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit  
17 Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to  
18 retirees of the nonstate employer, but may do so only upon the written certification, under oath, of  
19 an authorized officer of the employer that the employer has no employees who are, or who are  
20 eligible to become, retired employees and that the employer will defend and hold harmless the Public  
21 Employees Insurance Agency from any claim by one of the employer's past, present or future  
22 employees for eligibility to participate in the Public Employees Insurance Agency as a retired  
23 employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any  
24 respect to provide plan benefits to a retired employee of a nonstate employer which has opted out  
25 of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund  
26 pursuant to this section.

27 **CHAPTER 6C. PUBLIC EMPLOYEES.**

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

1 **§6C-2-2. Definitions.**

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

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

5 (b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor,  
6 director, president, secretary or head of any state department, board, commission, agency, state  
7 institution of higher education, commission or council, the state superintendent, the county  
8 superintendent, the executive director of a regional educational service agency or the director of a  
9 multicounty vocational center who is vested with the authority to resolve a grievance. If a public  
10 charter school authorized pursuant to article thirty-three, chapter eighteen of this code includes in  
11 its approved charter application a determination that this article applies to the charter school and its  
12 employees, "chief administrator" also means the principal of the public charter school. A "chief  
13 administrator" includes a designee, with the authority delegated by the chief administrator, appointed  
14 to handle any aspect of the grievance procedure as established by this article.

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

18 (d) "Discrimination" means any differences in the treatment of similarly situated employees,  
19 unless the differences are related to the actual job responsibilities of the employees or are agreed to  
20 in writing by the employees.

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

23 (2) A substitute education employee is considered an "employee" only on matters related to  
24 days worked or when there is a violation, misapplication or misinterpretation of a statute, policy, rule  
25 or written agreement relating to the substitute.

26 (3) "Employee" does not mean a member of the West Virginia State Police employed  
27 pursuant to article two, chapter fifteen of this code, but does include civilian employees hired by the  
28 superintendent of the State Police. "Employee" does not mean an employee of a Constitutional

1 officer unless he or she is covered under the civil service system, an employee of the Legislature or  
2 a patient or inmate employed by a state institution.

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

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

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

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

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

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

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

27 (iii) Any specifically identified incident of harassment;

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

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

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

6 (j) "Grievance proceeding", "proceeding" or the plural means a conference, level one hearing,  
7 mediation, private mediation, private arbitration or level three hearing, or any combination, unless  
8 the context clearly indicates otherwise.

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

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

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

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

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

## 22 **CHAPTER 18. EDUCATION.**

### 23 **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

#### 24 **§18-7A-3. Definitions.**

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

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

28 (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf

1 of a retired member.

2 (3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value  
3 computed upon the basis of the mortality table and interest rates as set and adopted by the retirement  
4 board in accordance with the provisions of this article: *Provided*, That when used in the context of  
5 compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue  
6 Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required  
7 to comply with those requirements.

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

10 (5) "Average final salary" means the average of the five highest fiscal year salaries earned  
11 as a member within the last fifteen fiscal years of total service credit, including military service as  
12 provided in this article, or if total service is less than fifteen years, the average annual salary for the  
13 period on which contributions were made: *Provided*, That salaries for determining benefits during  
14 any determination period may not exceed the maximum compensation allowed as adjusted for cost  
15 of living in accordance with section seven, article ten-d, chapter five of this code and Section  
16 401(a)(17) of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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)  
27 The calendar year in which the member attains age seventy and one-half years; or (B) the calendar  
28 year in which the member retires or ceases covered employment under the system after having

1 attained the age of seventy and one-half years.

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

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

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

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

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

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

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

3 **§18-7B-2. Definitions.**

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

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

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

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

22 (4) "Consolidated board" or "board" means the Consolidated Public Retirement Board  
23 created and established pursuant to article ten-d, chapter five of this code;

24 (5) "Defined contribution system" or "system" means the Teachers' Defined Contribution  
25 Retirement System created and established by this article;

26 (6) "Employer" means the agency of and within the State of West Virginia which has  
27 employed or employs a member;

28 (7) "Employer contribution" means an amount deposited into the member's individual

1 annuity account on a periodic basis coinciding with the employee’s regular pay period by an  
2 employer from its own funds;

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

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

7 (10) “Existing retirement system” means the State Teachers Retirement System established  
8 in article seven-a of this chapter;

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

11 (12) “Member” or “employee” means the following persons, if regularly employed for full-  
12 time service: (A) Any person employed for instructional service in the public schools of West  
13 Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant  
14 county superintendents of schools; (E) any county school attendance director holding a West  
15 Virginia teacher’s certificate; (F) members of the research, extension, administrative or library staffs  
16 of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the  
17 divisions under his or her supervision or any other employee under the state superintendent  
18 performing services of an educational nature; (H) employees of the State Board of Education who  
19 are performing services of an educational nature; (I) any person employed in a nonteaching capacity  
20 by the State Board of Education, any county board of education or the State Department of  
21 Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom  
22 teachers, principals and educational administrators in schools under the supervision of the Division  
23 of Corrections and the Department of Health and Human Resources; (K) any person who is regularly  
24 employed for full-time service by any county board of education or the State Board of Education;  
25 (L) the administrative staff of the public schools including deans of instruction, deans of men and  
26 deans of women, and financial and administrative secretaries; ~~and~~ (M) any person designated as a  
27 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code  
28 who elects to remain a member of the Teachers’ Defined Contribution Retirement System

1 established by this article; and (N) any person employed by a public charter school established  
2 pursuant to article thirty-three of this chapter;

3 (13) “Member contribution” means an amount reduced from the employee’s regular pay  
4 periods, and deposited into the member’s individual annuity account within the Teachers' Defined  
5 Contribution Retirement System;

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

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

17 (16) “Public schools” means all publicly supported schools, including normal schools,  
18 colleges and universities in this state;

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

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

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

27 (20) “Year of employment service” means employment for at least ten months, with a month  
28 being defined as twenty employment days: *Provided*, That no more than one year of service may be

1 accumulated in any twelve-month period.

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

3 **§18-9A-2. Definitions.**

4 For the purpose of this article:

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

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

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

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

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

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

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

26 (h) “Service personnel” means all personnel as provided in section eight, article four, chapter  
27 eighteen-a of this code. For the purpose of computations under this article of ratios of service  
28 personnel to net enrollment, a service employee shall be counted as that number found by dividing

1 his or her number of employment days in a fiscal year by two hundred: *Provided*, That the  
2 computation for any service person employed for three and one-half hours or less per day as provided  
3 in section eight-a, article four, chapter eighteen-a of this code shall be calculated as one half an  
4 employment day.

5 (i) "Net enrollment" means the number of pupils enrolled in special education programs,  
6 kindergarten programs and grades one to twelve, inclusive, of the public schools of the county,  
7 subject to the following:

8 (1) Net enrollment further shall include:

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

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

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

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

19 ~~(3)~~ (2) No pupil shall be counted more than once by reason of transfer within the county or  
20 from another county within the state, and no pupil shall be counted who attends school in this state  
21 from another state;

22 ~~(4)~~ (3) The enrollment shall be modified to the equivalent of the instructional term and in  
23 accordance with the eligibility requirements and rules established by the state board; ~~and~~

24 ~~(5)~~ (4) For the purposes of determining the county's basic foundation program only, for any  
25 county whose net enrollment as determined under all other provisions of this definition is less than  
26 one thousand four hundred, the net enrollment of the county shall be increased by an amount to be  
27 determined in accordance with the following:

28 (A) Divide the state's lowest county student population density by the county's actual student

1 population density;

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

4 (C) If the increase in net enrollment as determined under this subdivision plus the county's  
5 net enrollment as determined under all other provisions of this subsection is greater than one  
6 thousand four hundred, the increase in net enrollment shall be reduced so that the total does not  
7 exceed one thousand four hundred; and

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

12 (5) Net enrollment shall include students enrolled in a public charter school established  
13 pursuant to article thirty-three of this chapter.

14 (j) "Sparse-density county" means a county whose ratio of net enrollment, excluding any  
15 increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section,  
16 of the definition of "net enrollment", to the square miles of the county is less than five.

17 (k) "Low-density county" means a county whose ratio of net enrollment, excluding any  
18 increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section,  
19 of the definition of "net enrollment", to the square miles of the county is equal to or greater than five  
20 but less than ten.

21 (l) "Medium-density county" means a county whose ratio of net enrollment, excluding any  
22 increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section,  
23 of the definition of "net enrollment", to the square miles of the county is equal to or greater than ten  
24 but less than twenty.

25 (m) "High-density county" means a county whose ratio of net enrollment, excluding any  
26 increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section,  
27 of the definition of "net enrollment", to the square miles of the county is equal to or greater than  
28 twenty.

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

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

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

11 **§18-9A-12. County basic foundation; total basic state aid allowance.**

12 (a) The basic foundation program for each county for the fiscal year shall be the sum of the  
13 amounts computed in accordance with the provisions of sections four, five, six, seven, eight, nine  
14 and ten of this article. On the first working day of July in each year, the State Board shall determine  
15 the basic foundation program for each county for that fiscal year. Data used in the computations  
16 relating to net and adjusted enrollment, and the number of professional educators, shall be for the  
17 second month of the prior school term. Transportation expenditures used in these computations shall  
18 be for the most recent year in which data are available. The allocated state aid share of the county's  
19 basic foundation program shall be the difference between the cost of its basic foundation program  
20 and the county's local share as determined in section eleven of this article except as provided in  
21 subsection (b) of this section.

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

28 (1) In those instances where the local share as computed under section eleven of this article

1 is not reflective of local funds available because the county is under a final court order, or a final  
2 decision of a board of assessment appeals under section twenty-four-b, article three, chapter eleven  
3 of this code, to refund or credit property taxes paid in prior years, the allocated state aid share shall  
4 be the county's basic foundation program, minus the local share as computed under section eleven  
5 of this article, plus the amount of property tax the county is unable to collect or must refund due to  
6 the final court order or final decision of a board of assessment appeals: *Provided*, That said  
7 adjustment shall not be made or shall only be made proportionately when the Legislature fails to  
8 fund or funds only in part the public school basic foundation support plan state share at a level  
9 sufficient to cover the reduction in state share: *Provided, however*, That nothing herein provided  
10 shall be construed to require or mandate any level of funding by the Legislature.

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

24 (3) In instances where a county is unable to collect property taxes from a taxpayer during the  
25 pendency of any court proceeding, the allocated state aid share shall be the county's basic foundation  
26 program minus the local share as computed under section eleven of this article, plus the amount the  
27 county is unable to collect as a result of the pending court proceedings as certified by the Tax  
28 Commissioner: *Provided*, That the county is required to reimburse the amount of allocated state aid

1 share attributable to the amount of property tax it later receives upon completion of court  
2 proceedings, which shall be paid into the General Revenue Fund of the state: *Provided, however,*  
3 That said adjustment shall not be made or shall only be made proportionately when the Legislature  
4 fails to fund or funds only in part the public school basic foundation support plan state share at a  
5 level sufficient to cover the reduction in state share: *Provided further,* That nothing herein provided  
6 shall be construed to require or mandate any level of funding by the Legislature.

7 (4) In instances where a public charter school is authorized and has or will begin operations  
8 in a county school district pursuant to article thirty-three of this chapter, the total program allowance  
9 for the district shall be reduced by the county's per pupil total basic foundation allowance multiplied  
10 by the second month net enrollment of the public charter school authorized to operate in the county.

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

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

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

2 **§18-20-5. Powers and duties of state superintendent.**

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

5 (1) Stimulating and assisting county boards ~~of education~~ in establishing, organizing and  
6 maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher  
7 services.

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

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

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

1 that assesses and takes into account varying acuity levels of the exceptional students. Any remaining  
2 funds at the end of a fiscal year from the appropriation shall be carried over to the next fiscal year.  
3 When possible, federal funds shall be distributed to county boards and public charter schools for this  
4 purpose before any of the state appropriation is distributed. The state board shall promulgate a rule  
5 in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that  
6 implements the provisions of this subdivision relating to distributing the funds to the county boards  
7 and public charter schools. The rule at least shall include a definition for “children with high acuity  
8 needs”.

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

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

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

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

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

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

26 **§18-33-1. Legislative purpose and intent.**

27 The West Virginia Legislature hereby establishes public charter schools to benefit students,  
28 parents, teachers and community members by creating new, innovative and more flexible ways of

1 educating all children within the public school system and by advancing a renewed commitment to  
2 the mission, goals, and diversity of public education. The purposes of the charter school initiative  
3 are to:

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

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

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

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

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

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

16 **§18-33-2. Definitions.**

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

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

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

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

28 (d) “Charter contract” means a performance-based contract for a fixed term between a public

1 charter school and an authorizer that describes performance expectations, defines operational  
2 responsibilities and outlines the autonomy and accountability for each party to the contract;

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

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

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

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

15 (i) “Non-charter public school” means a public school other than a school formed pursuant  
16 to this article;

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

18 (1) Is part of the state’s system of public education; is non-home school based and not  
19 affiliated with or espousing any specific religious denomination, organization, sect or belief or the  
20 promotion or engaging in any religious practices in terms of its educational program;

21 (2) Has autonomy over key decisions, including, but not limited to, decisions concerning  
22 finance, personnel, scheduling, curriculum and instruction;

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

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

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

28 (6) Ensures student participation in required state assessments of student performance, as

1 required of other public school students under section five, article two-e of this chapter;

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

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

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

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

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

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

19 (13) Ensures students meet the compulsory school attendance requirements of section forty-  
20 four, chapter five of this chapter and section one-a, article eight of this chapter, as applicable.

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

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

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

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

27 (15) Provides programs and services to a student with a disability in accordance with the  
28 student's individualized education program and all federal and state laws, rules, and regulations. A

1 charter school shall deliver the services directly or contract with another provider to deliver the  
2 services;

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

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

7 (k) “Start-up public charter school” means a public charter school that did not exist as a non-  
8 charter public school prior to becoming a public charter school.

9 (l) “State charter school board” means the West Virginia Board of Charter School Appeals  
10 and Training.

11 **§18-33-3. Reports.**

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

20 **§18-33-4. Public charter school eligibility; enrollment.**

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

22 (b) *Enrollment.* A public charter school shall enroll students in accordance with this  
23 subsection.

24 (1) Public charter school organizers shall include all segments of the populations served by  
25 the existing non-charter public schools in their area in their recruitment efforts.

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

28 (A) Automatically enroll all students residing in the attendance area in which the school is

1 located except for any students that opt out of enrollment; and

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

3 (3) Enrollment decisions shall be made in a non-discriminatory way and shall not be based  
4 on intellectual ability, measures of achievement of aptitude, athletic ability, disability, creed, race,  
5 gender, national origin, religion or ancestry.

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

11 (5) Any non-charter public school converting partially or entirely to a public charter school  
12 shall adopt and maintain a policy that gives enrollment preference to pupils who reside within the  
13 former attendance area of that non-charter public school and that requires automatic enrollment of  
14 pupils who were previously enrolled in the non-charter public school except for any students that opt  
15 out of enrollment in the school.

16 (6) A public charter school shall give enrollment preference to pupils enrolled in the public  
17 charter school the previous school year and to siblings of pupils already enrolled in the public charter  
18 school.

19 (7) A public charter school may establish enrollment preferences that enable the school to  
20 preference at-risk students and students not succeeding in non-charter public schools.

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

24 (c) *Discrimination prohibited.* A public charter school may not discriminate on the basis of  
25 race, ethnicity, national origin, religion, gender, sexual orientation, income level, disabling condition,  
26 proficiency in the English language or academic or athletic ability, except that nothing in this  
27 subsection may be construed to limit the formation of a public charter school that is dedicated to  
28 focusing education services on at-risk pupils, students with disabilities and students who pose such

1 severe disciplinary problems that they warrant a specific education program.

2 **§18-33-5. Authorizers.**

3 (a) *Eligible authorizer.* A county board may authorize the creation of a start-up public  
4 charter school or the conversion of a non-charter public school to a public charter school within the  
5 boundaries of the school district governed by that county board pursuant to this article. This  
6 authority for a county board to authorize a charter school pursuant to this subsection is applicable  
7 even if the county school system is under state board intervention pursuant to section five, article  
8 two-e of this chapter.

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

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

13 (2) As soon as feasible after an authorizer authorizes a public charter school, the authorizer  
14 shall notify the state charter school board;

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

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

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

24 (c) *Duties.* An authorizer shall:

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

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

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

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

- 1 (5) Monitor the performance and compliance of public charter schools:
- 2 (6) Determine whether each charter contract merits renewal or revocation; and
- 3 (7) Establish and follow charter granting policies and practices that are transparent, based on
- 4 merit and avoid all conflicts of interest.

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

- 8 (1) Organizational capacity and infrastructure;
- 9 (2) Evaluating applications;
- 10 (3) Performance contracting;
- 11 (4) Ongoing public charter school oversight and evaluation; and
- 12 (5) Charter approval, renewal, and revocation decision making.

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

- 16 (1) The authorizer’s strategic vision for chartering and progress toward achieving that vision;
- 17 (2) The performance of all operating public charter schools overseen by the authorizer,  
18 according to the performance measures and expectations specified in the charter contracts;
- 19 (3) The status of the authorizer’s public charter school portfolio of approved charter  
20 applications, identifying all public charter schools within that portfolio as:

- 21 (A) Approved, but not yet open;
- 22 (B) Operating;
- 23 (C) Renewed;
- 24 (D) Transferred;
- 25 (E) Terminated;
- 26 (F) Closed; or
- 27 (G) Never opened; and
- 28 (4) The authorizing duties and functions provided by the authorizer during the previous

1 academic year and a detailed account of the use of administrative fees to carry out these duties and  
2 functions.

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

6 (g) *Services purchased from authorizer.* A public charter school may not be required to  
7 purchase services from its authorizer as a condition of charter approval or of executing a charter  
8 contract, nor may any such condition be implied. However, a public charter school may, at its  
9 discretion, choose to purchase services from its authorizer. In such event, the public charter school  
10 and authorizer shall execute an annual service contract, separate from the charter contract, stating  
11 the parties' mutual agreement concerning any services to be provided by the authorizer and any  
12 service fees to be charged to the public charter school.

13 **§18-33-6. West Virginia Board of Charter School Appeals and Training.**

14 (a) *Board membership.* The West Virginia Board of Charter School Appeals and Training  
15 consists of four members, including:

16 (1) Three members employed by teacher education programs at regionally accredited higher  
17 education institutions within the state appointed by the Chancellor for Higher Education: *Provided,*  
18 That no more than one employee from a private higher education institution may serve on the board  
19 at any one time; and

20 (2) The state superintendent who shall serve as an ex officio, nonvoting member.

21 (b) *Terms.* The three appointed members shall serve for three year terms, and shall be  
22 appointed from the teacher education programs on a rotating basis so that no member from the same  
23 teacher education program is appointed again until members from the other teacher education  
24 programs have been appointed: *Provided,* That for the initial appointments, one member shall serve  
25 for a term of one year, one member shall serve for a term of two years and one member shall serve  
26 for a term of three years.

27 (c) *Officers.* The state charter school board shall elect a chair, and may elect other officers  
28 it determines necessary.

1 (d) *Meetings*. The state charter school board shall meet at least one time per year and as  
2 necessary to perform its duties pursuant to this article.

3 (e) *Removal of members*. The Chancellor for Higher Education may remove an appointed  
4 member for incompetency, neglect of duty, moral turpitude or malfeasance in office. If an appointed  
5 member is removed or ceases to serve for any reason, the Chancellor for Higher Education shall fill  
6 the vacancy for the remainder of the unexpired term with a member employed by the same higher  
7 education teacher education program that the former member was employed by.

8 (f) *Employees*. The state charter school board may hire an executive director and other  
9 employees, subject to the availability of funding.

10 (g) *Duties*. The state charter school board shall, pursuant to this article:

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

13 (2) Hear appeals from applicants for authorization and from public charter school governing  
14 boards relating to renewal and revocation;

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

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

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

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

24 (h) *Funding*. The state charter school board may charge up to one percent of the funding  
25 received pursuant to subsection (b), section fourteen of this article in order to perform its duties  
26 under this article.

27 (i) *Training*. The state charter school board shall consult with nationally recognized charter  
28 school organizations in establishing training programs for charter school applicants, administrators

1 and governing board members. The training for administrators and governing board members shall  
2 include at least twelve training sessions annually. Administrators and governing board members  
3 may miss no more than one training session annually without a valid excuse, as determined by the  
4 authorizer. No charter may be granted until the applicant, administrators and governing board  
5 members have received the initial training offered by the state charter school board.

6 **§18-33-7. Request for proposals.**

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

12 (b) *Content.* The state charter school board's request for proposals shall contain information  
13 set forth in this subsection.

14 (1) A request for proposals shall present the state charter school board's strategic vision for  
15 and interest in chartering.

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

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

28 (4) A request for proposals shall include the criteria and standards that will guide the

1 authorizer’s decision to approve or deny an application.

2 (5) A request for proposals shall state clear, appropriately detailed questions as well as  
3 guidelines concerning the format and content essential for applicants to demonstrate the capacities  
4 necessary to establish and operate a successful public charter school.

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

7 (A) The proposed public charter school’s vision, including:

8 (i) An executive summary; and

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

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

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

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

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

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

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

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

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

28 (C) The proposed public charter school’s plan of organization, including:

- 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 non-charter public schools of the sending area,  
27 including special education and English language learners;
- 28 (ii) The school's plans for compliance with all applicable federal and state laws, rules and

1 regulations; and

2 (iii) The school’s student discipline plans and policies, including those for special education  
3 students;

4 (F) The proposed public charter school’s academic program, including:

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

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

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

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

14 (G) The proposed public charter school’s staff policy, including:

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

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

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

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

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

23 (H) The proposed public charter school’s school closure protocol, including:

24 (i) Timely notification to parents;

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

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

28 (iv) Tasks, timelines and responsible parties, including delineating the respective duties of

1 the school and the authorizer.

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

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

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

9 **§18-33-8. Charter applications.**

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

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

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

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

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

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

28 (C) Follow charter-granting policies and practices that are transparent, based on merit and

1 avoid conflicts of interest or any appearance of a conflict of interest.

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

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

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

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

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

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

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

20 (7) Any appeal of a denial of an application shall be made to the state charter school board  
21 within sixty days of the time the denial is received in writing by the applicant. Within sixty days,  
22 the state charter school board shall either affirm the authorizer's denial decision, reverse the denial  
23 decision or remand to the authorizer for further consideration. The state charter school board shall  
24 report to the state superintendent any action it has taken on appeal within ten days. If the decision  
25 is remanded and the application is again denied by the authorizer, the applicant may continue to  
26 appeal within the sixty days.

27 **§18-33-9. Charter contracts.**

28 (a) When an application is approved, a charter contract shall be executed in accordance with

1 this section.

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

4 (1) The term of the charter contract;

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

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

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

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

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

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

16 (9) Any conditions set by the authorizer and agreed to by the charter school to commence  
17 operations of the school.

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

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

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

28 (f) A public charter school may not commence operations without a charter contract executed

1 in accordance with this section and approved in a meeting open to the public.

2 **§18-33-10. Public charter school performance framework.**

3 (a) *Performance framework.* The performance provisions of a charter contract shall be based  
4 on a performance framework developed by the state charter school board that sets forth the academic  
5 and operational performance indicators that will guide the authorizer’s evaluations of each public  
6 charter school.

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

- 9 (1) Student academic proficiency;
- 10 (2) Student achievement goals;
- 11 (3) Achievement gaps in both proficiency and growth between major student subgroups;
- 12 (4) Attendance;
- 13 (5) Recurrent enrollment from year to year;
- 14 (6) With respect to high school, postsecondary readiness;
- 15 (7) Financial performance and sustainability;
- 16 (8) Governing board performance and stewardship; and
- 17 (9) Parent and community engagement.

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

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

23 **§18-33-11. Oversight.**

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

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

5 **§18-33-12. Charter term renewal.**

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

12           (b) *Charter renewal term.* A charter may be renewed for successive terms of five years,  
13 although an authorizer may grant a renewal for a term not to exceed ten years based on the school's  
14 performance data, demonstrated capacities and particular circumstance of each public charter school.

15           (c) *Authorizer renewal responsibilities.* No later than June 30 of a public charter school's  
16 4<sup>th</sup> year of operation under each five-year term of a charter contract, the authorizer shall issue a  
17 public charter school performance report. If the charter of the public charter school is expiring, the  
18 authorizer shall offer charter renewal application guidance to the school.

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

26           (2) The renewal application guidance required by this subsection shall include or refer  
27 explicitly to the criteria and standards that will guide the authorizer's renewal decisions, which shall  
28 be based on the performance framework set forth in section ten of this article, as set forth in the

1 charter contract and consistent with this article. The renewal application guidance shall, at a  
2 minimum, require and provide an opportunity for the public charter school to:

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

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

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

7 (d) *Renewal application.* No later than September 30 of a public charter school's fifth year  
8 of operation under a term of a charter contract or September 30 of a public charter school's final  
9 authorized year of operation under a term of a charter contract, the governing board of a public  
10 charter school seeking renewal shall submit a renewal application to the authorizer pursuant to any  
11 renewal application guidance offered by the authorizer under subsection (c) of this section.

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

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

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

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

21 (4) In instances where the authorizer declines to renew the charter, allow the school twenty  
22 days to respond in writing to the decision and public report before that decision becomes final. The  
23 school shall be allowed to provide the authorizer with such arguments and supporting information  
24 as it sees fit, and the authorizer shall consider all such timely submitted material prior to rendering  
25 it final determination. The authorizer shall render its final determination within ten days of  
26 receiving the schools written response, arguments, and supporting information.

27 (f) *Charter revocation and nonrenewal.*

28 (1) A decision by an authorizer to revoke or not to renew the charter of a public charter

1 school must be made in accordance with this subsection.

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

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

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

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

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

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

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

14 (5) If an authorizer revokes or does not renew a charter, the county board of the district in  
15 which the school is located shall determine whether the school converts to non-charter public school  
16 status or the school is to be closed.

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

19 (g) *Notification to state superintendent.* Within ten days of taking action to renew, not renew  
20 or revoke a charter under this section and within ten days of taking action to close a public charter  
21 school, the authorizer or county board, as applicable, shall report to the state superintendent the  
22 action taken and shall provide a copy of the report to the public charter school at the same time that  
23 the report is submitted to the state superintendent. The report shall include a copy of the governing  
24 entity of the authorizer's or the county board's resolution setting forth the action taken and reasons  
25 for the decision.

26 (h) *Appeal of nonrenewal or revocation.* Any appeal of a nonrenewal or revocation of a  
27 charter shall be made to the state charter school board within sixty days of the authorizer stating its  
28 reasons by resolution in a public meeting the reasons for the revocation or nonrenewal. Within sixty

1 days, the state charter school board shall either affirm the authorizer’s nonrenewal or revocation  
2 decision, reverse the decision or remand to the authorizer for further consideration. The state charter  
3 school board shall report to the state superintendent any action it has taken on appeal within ten days.  
4 If the decision is remanded and the decision is again to not renew or to revoke the charter, the  
5 applicant may continue to appeal within the sixty days.

6 (i) *School closure and dissolution.*

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

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

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

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

22 **§18-33-13. Operations.**

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

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

28 (2) A charter contract may include one or more schools, to the extent approved by the

1 authorizer and consistent with applicable law. Each public charter school that is part of a charter  
2 contract must be separate and distinct from any others.

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

6 (b) *Local educational agency status.*

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

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

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

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

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

19 (2) Contract or cooperate with non-charter public schools for service for students with special  
20 needs, English language learner students and other specialized populations, as well as for mutually  
21 agreed administrative services;

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

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

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

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 set  
8 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 non-charter 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 non-charter public schools in the State, except as  
22 otherwise specifically provided in this chapter.

23 (2) Public charter schools are subject to the same student assessment and accreditation  
24 requirements applicable to other non-charter public schools in the State, but only to the extent that  
25 will 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  
27 charter school from establishing additional student assessment measures that go beyond state  
28 requirements if the school's authorizer approves such measures.

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

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

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

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

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

16 (8) Public charter schools are subject to the same federal nutrition standards applicable to  
17 other non-charter public schools.

18 (f) *Teachers and other school personnel.* This subsection governs school personnel  
19 employment in a public charter school.

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

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

1 (3) All classroom teachers in a public charter school are subject to the same licensing  
2 requirements applicable to classroom teachers in a non-charter public school.

3 (4) All personnel in a public charter school continue to accrue seniority in the same manner  
4 that they would accrue seniority if employed in a non-charter public school for purposes of  
5 employment in non-charter public schools.

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

12 **§18-33-14. Funding.**

13 (a) *Enrollment count.* Each charter school shall report to its county board the number of  
14 students enrolled in its school based on second month enrollment. Each county board shall report  
15 to the West Virginia Department of Education the enrollment of all public charter schools in the  
16 county based on second month enrollment.

17 (b) *Revenue provisions.* On or before October 1 of each year, each public charter school shall  
18 submit its budget request to the state board. The request shall not exceed the statewide per pupil  
19 total program allowance as computed under article nine-a of this chapter multiplied by the second  
20 month net enrollment of the public charter school: *Provided,* That for the funding for the first year  
21 of operation, the limit on the appropriation request shall be based on the projected second month net  
22 enrollment of the public charter school, with the funding for the public charter school and the  
23 authorizing county board to be subsequently adjusted, if necessary, in the first year of operation,  
24 based on the actual second month net enrollment. The state board shall include in its appropriation  
25 request to the Governor a request for an appropriation for public charter schools equal to the total  
26 amount requested by all charter schools. The Governor shall request an appropriation in the amount  
27 requested by the state board at the next legislative session. The state board shall distribute the  
28 funding appropriated for the public charter schools to the county boards in which each charter school

1 is located. Each county board shall distribute the funding received to each public charter school in  
2 a timely manner.

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

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

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

10 (d) *Federal Funds.* Except as otherwise provided in this article, the state shall send  
11 applicable federal funds to public charter schools attended by eligible students. Public charter  
12 schools with students eligible for funds under Title I of the federal Elementary and Secondary  
13 Education Act of 1965, 20 United States Code, Section 6301 et seq. must receive and use these funds  
14 in accordance with federal and state law. During the first year of operation, a public charter school  
15 must receive Title I funds on the basis of an estimated enrollment of eligible students, as agreed with  
16 its authorizer.

17 (e) *Gifts and Grants.* A public charter school may receive gifts and grants from private  
18 sources in any manner that is available to a local school district. Nothing in this article may be  
19 construed to prohibit any person or organization from providing funding or other assistance for the  
20 establishment or operation of a public charter school. The governing board of a public charter school  
21 may accept gifts, donations or grants of any kind made to the school and expend or use such gifts,  
22 donations or grants in accordance with the conditions prescribed by the donor except that a gift,  
23 donation or grant may not be accepted if subject to a condition that is contrary to any provision of  
24 law or term of the charter contract.

25 (f) *Disclosure of funding sources.* Each public charter school annually shall submit to the  
26 state board its sources of funding along with its budget required to be submitted to the state board  
27 pursuant to subsection (b) of this section. The state board shall make the public charter school's  
28 funding sources available publicly.

1 **§18-33-15. Transportation.**

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

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

6 **§18-33-16. Facilities.**

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

9 (1) A public charter school has a right of first refusal to purchase or lease at or below fair  
10 market value a closed non-charter public school facility or property or unused portions of a non-  
11 charter public school facility or property located in a school district from which it draws its students  
12 if the school district decides to sell or lease the non-charter public school facility or property. The  
13 school district may not require purchase or lease payments that exceed the fair market value of the  
14 property.

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

18 (3) Library, community service, museum, performing arts, theater, cinema, church,  
19 community college, college and university facilities may provide space to public charter schools  
20 within their facilities under their preexisting zoning and land use designations.

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

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

27 (b) Nothing in this section requires the county board to seek funds from any source, including

1 the School Building Authority, for conversion of any existing district school facility or for  
2 constructing a district school or facility for use by the public charter school.

3 (c) *Inspection; building code.* The West Virginia State Fire Marshal is the agency that has  
4 jurisdiction for the purposes of inspection of the facility and issuance of a certificate of occupancy  
5 for the facility. A facility of a public charter school is subject to the same building codes, regulations  
6 and fees that apply to other non-charter public schools including inspections by the West Virginia  
7 Department of Education, Office of School Facilities as required by subsection (c), section sixteen,  
8 article nine-d of this chapter.

9 **§18-33-17. Miscellaneous.**

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

15 (b) *Access to extracurricular and interscholastic activities.* A public charter school is  
16 eligible for state-sponsored or school district sponsored interscholastic leagues, competitions,  
17 awards, scholarships and recognition programs for students, educators, administrators and schools  
18 to the same extent as non-charter public schools. A public charter school student is eligible to  
19 participate in extracurricular activities not offered by the student's public charter school at the non-  
20 charter public school within the attendance boundaries of which the student's custodial parent or  
21 legal guardian resides or the non-charter public school from which the student withdrew for the  
22 purpose of attending a public charter school. A public charter school student is eligible for  
23 extracurricular activities at a non-charter public school subject to eligibility standards applied to full-  
24 time students of the non-charter public school. A school district or non-charter public school may  
25 not impose additional requirements on a public charter school student to participate in extracurricular  
26 activities that are not imposed on full-time students of the non-charter public school. Public charter  
27 school students shall pay the same fees as other students to participate in extracurricular or

1 cocurricular activities. For each public charter school student who participates in an extracurricular  
2 or co-curricular activity at a non-charter public school, the public charter school must pay a  
3 reasonable share of the non-charter public school's costs for the activity, as determined through  
4 negotiations between the schools involved.

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

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

11 **§18-33-18. Teacher and parent approval of converting existing non-charter public school to**  
12 **public charter school status.**

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

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

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

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

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

1 **ARTICLE 12. STATE INSURANCE.**

2 **§29-12-5a. Liability insurance for county boards of education, their employees and members,**  
3 **the county superintendent of schools, public charter schools electing to obtain coverage,**  
4 **and for employees and officers of the state Department of Corrections.**

5 (a) In accordance with the provisions of this article, the state Board of Risk and Insurance  
6 Management shall provide appropriate professional or other liability insurance for all county boards  
7 of education, teachers, supervisory and administrative staff members, service personnel, county  
8 superintendents of schools, and school board members and for all employees and officers of the  
9 state Department of Corrections: *Provided*, That the board of Risk and Insurance Management is  
10 not required to provide insurance for every property, activity or responsibility of county boards of  
11 education, teachers, supervisory and administrative staff members, service personnel, county  
12 superintendents of schools and school board members and for all employees and officers of the state  
13 Department of Corrections.

14 (b) Insurance provided by the board of Risk and Insurance Management pursuant to the  
15 provisions of subsection (a) of this section shall cover claims, demands, actions, suits or judgments  
16 by reason of alleged negligence or other acts resulting in bodily injury or property damage to any  
17 person within or without any school building or correctional institution if, at the time of the alleged  
18 injury, the teacher, supervisor, administrator, service personnel employee, county superintendent,  
19 school board member, or employee or officer of the Department of Corrections was acting in the  
20 discharge of his or her duties, within the scope of his or her office, position or employment, under  
21 the direction of the county board of Education, or Commissioner of Corrections or in an official  
22 capacity as a county superintendent or as a school board member or as Commissioner of Corrections.

23 (c) Insurance coverage provided by the board of Risk and Insurance Management pursuant  
24 to subsection (a) of this section shall be in an amount to be determined by the state Board of Risk  
25 and Insurance Management, but in no event less than \$1 million for each occurrence. In addition,  
26 each county board of education shall purchase, through the board of Risk and Insurance  
27 Management, excess coverage of at least \$5 million for each occurrence. The cost of this excess  
28 coverage will be paid by the respective county boards of education. Any insurance purchased under

1 this section shall be obtained from a company licensed to do business in this state.

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

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

12 (f) The provisions of this section only apply to public charter schools authorized pursuant to  
13 article thirty-three, chapter eighteen of this code that have included in their approved charter  
14 application a determination to obtain insurance coverage from the board of Risk and Insurance  
15 Management pursuant to this section. If a public charter school elects to obtain coverage pursuant  
16 to this section:

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

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

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