

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 4011

FISCAL  
NOTE

BY DELEGATES ESPINOSA, OVERINGTON, ROMINE,  
UPSON, STATLER, NELSON, E., FAST, ELLINGTON AND  
WALTERS

[Introduced January 20, 2016; Referred  
to the Committee on Education then Finance.]

1 A BILL to amend and reenact §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as  
2 amended; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2  
3 of said code; to amend and reenact §18-9A-2 of said code; to amend said code by adding  
4 thereto a new section, designated section §18-9A-12a; to amend and reenact §18-20-5 of  
5 said code; to amend said code by adding thereto a new article, designated §18-33-1,  
6 §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8, §18-33-9,  
7 §18-33-10, §18-33-11, §18-33-12 and §18-33-13; and to amend and reenact §29-12-5a  
8 of said code, all relating to providing for the authorization and oversight of public charter  
9 schools; providing for charter school employee participation in public employee insurance  
10 and applicable teachers retirement systems; including charter school students in net  
11 enrollment of county; providing calculation of charter school basic foundation program and  
12 corresponding reduction in county's basic foundation program; defining exceptional child  
13 with high cost/high acuity special needs and providing for establishment of method for  
14 disbursing state appropriated funds; providing for charter school application for funds;  
15 removing certain reports; creating charter school act to establish process for creation,  
16 providing for governance and oversight accountability of public charter schools; stating  
17 purposes; establishing charter schools as public schools and part of public education  
18 system; providing for liberal interpretation; prohibiting conversion of private schools into  
19 charter schools under act; prohibiting establishment of charter virtual schools under act;  
20 providing general definitions; limiting county board management and control of charter  
21 school; prohibiting state board as authorizing authority; defining terms; providing for  
22 authorizations, eligibilities, compliances and prohibitions; providing for general supervision  
23 by state board for meeting student performance standards required of other public school  
24 students; providing powers of public charter schools; establishing processes for  
25 determining capacity and enrolling students; prohibiting discrimination in enrollment  
26 decisions; providing for credit transfers; authorizing charter student participation in state

27 and school district sponsored interscholastic leagues, competitions, awards, scholarships  
28 and recognition programs and specifying parameters; requiring access to and requiring  
29 utilization of electronic education information system for reporting certain information and  
30 subject to student data accessibility, transparency and accountability; providing for  
31 certification of charter school enrollment, attendance and program participation to county  
32 board and department; providing for distribution of charter school basic foundation  
33 program funds and allowing authorizer charge for oversight costs; providing for payment  
34 of special education and federal funds to charter schools; requiring charter school  
35 submission of budget and sources of funds to state board and requiring public availability;  
36 creating public charter school oversight and authorizer board and specifying mission,  
37 agency status and degree of oversight and supervision by state board; providing for  
38 appointment of members, qualifications, terms, removal, civil liability and limited scope of  
39 acts of ex officio members; requiring appointment of executive director and duties and  
40 qualifications; setting forth meetings. expenses, powers and duties of board; requiring  
41 annual report to state board and availability to public and Legislature; granting authority to  
42 require annual reports from charter schools; establishing limitations on regulation by state  
43 board, oversight and authorizer board and county board authorizers; requiring annual  
44 request for proposals; providing contents of requests for proposals; providing for  
45 application for authorization of public charter school; requiring notice of intent to establish  
46 by organizers; requiring timelines for notice and submission of application; providing  
47 option for county board to proceed as authorizer or forward application to oversight and  
48 authorizer board; establishing process for application review and evaluation; granting  
49 period for applicant response to authorizer decision prior to final determination; requiring  
50 report of final action; setting forth registration of approved charters by state  
51 superintendent; stating effect of approved application; providing authorizer powers and  
52 duties respecting charter contracts; providing timelines for execution of charter contract

53 and authorization to appeal to executive director to finalize terms; providing minimum  
54 provisions of contract, including performance provisions; prohibiting delegation and  
55 assignment of powers; setting forth obligations and responsibilities set forth in charter  
56 contract; requiring performance report prior to contract renewal and period to rectify  
57 weaknesses; requiring offer of contract application renewal guidance; requiring timelines  
58 for submission of renewal application; provisions for authorizer decisions on renewals;  
59 permitting authorizer report of renewal decisions; prohibition on contract renewal of school  
60 given failing level of accreditation during final operating year; authorizing contract  
61 revocation at any time or nonrenewal for certain violations and failures; requiring report of  
62 revocation and nonrenewal with statement of reasons; providing for options of county  
63 board for disposition of school when contract revoked or not renewed; duties of authorizer  
64 when contract revoked or not renewed; establishing supremacy of article when  
65 inconsistent with any other laws rules or regulations; granting authorization for one or more  
66 schools under single contract; granting authorization of one or more contracts for single  
67 governing board; providing that local education agency status when charter school  
68 authorized county board and local education agency status when charter school  
69 authorized oversight and authorizer board; providing for county board accreditation  
70 accountability for charter school authorized by county board; prohibition on county board  
71 requiring employee to be employed in charter school; prohibition on any retaliatory action  
72 against district employee involved in application to establish charter school; prohibiting  
73 discrimination against charter school in district advertising of educational options;  
74 providing for accrual of seniority with the county board of personnel employed in charter  
75 school; and authorizing charter school liability coverage through Board of Risk and  
76 Insurance Management.

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

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

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

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§5-16-2. Definitions.**

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

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

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

6 (3) "Employee" means any person, including an elected officer, who works regularly full  
 7 time in the service of the State of West Virginia and, for the purpose of this article only, the term  
 8 "employee" also means any person, including an elected officer, who works regularly full time in  
 9 the service of a county board of education; a public charter school established pursuant to article  
 10 thirty-three, chapter eighteen of this code; a county, city or town in the state; any separate

11 corporation or instrumentality established by one or more counties, cities or towns, as permitted  
12 by law; any corporation or instrumentality supported in most part by counties, cities or towns; any  
13 public corporation charged by law with the performance of a governmental function and whose  
14 jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive  
15 community mental health center or ~~comprehensive mental retardation~~ intellectually and  
16 developmentally disabled facility established, operated or licensed by the Secretary of Health and  
17 Human Resources pursuant to section one, article two-a, chapter twenty-seven of this code and  
18 which is supported in part by state, county or municipal funds; any person who works regularly  
19 full time in the service of the Higher Education Policy Commission, the West Virginia Council for  
20 Community and Technical College Education or a governing board, as defined in section two,  
21 article one, chapter eighteen-b of this code; any person who works regularly full time in the service  
22 of a combined city-county health department created pursuant to article two, chapter sixteen of  
23 this code; any person designated as a 21st Century Learner Fellow pursuant to section eleven,  
24 article three, chapter eighteen-a of this code; and any person who works as a long-term substitute  
25 as defined in section one, article one, chapter eighteen-a of this code in the service of a county  
26 board of education: *Provided*, That a long-term substitute who is continuously employed for at  
27 least one hundred thirty-three instructional days during an instructional term, and until the end of  
28 that instructional term, is eligible for the benefits provided in this article until September 1,  
29 following that instructional term: *Provided, however*, That a long-term substitute employed fewer  
30 than one hundred thirty-three instructional days during an instructional term is eligible for the  
31 benefits provided in this article only during such time as he or she is actually employed as a long-  
32 term substitute. On and after January 1, 1994, and upon election by a county board of education  
33 to allow elected board members to participate in the Public Employees Insurance Program  
34 pursuant to this article, any person elected to a county board of education shall be considered to  
35 be an "employee" during the term of office of the elected member. Upon election by the State  
36 Board of Education to allow appointed board members to participate in the Public Employees

37 Insurance Program pursuant to this article, any person appointed to the State Board of Education  
38 is considered an “employee” during the term of office of the appointed member: *Provided further,*  
39 That the elected member of a county board of education and the appointed member of the State  
40 Board of Education shall pay the entire cost of the premium if he or she elects to be covered under  
41 this article. Any matters of doubt as to who is an employee within the meaning of this article shall  
42 be decided by the director.

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

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

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

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

50 (4) “Employer” means the State of West Virginia, its boards, agencies, commissions,  
51 departments, institutions or spending units; a county board of education; a public charter school  
52 established pursuant to article thirty-three, chapter eighteen of this code; a county, city or town in  
53 the state; any separate corporation or instrumentality established by one or more counties, cities  
54 or towns, as permitted by law; any corporation or instrumentality supported in most part by  
55 counties, cities or towns; any public corporation charged by law with the performance of a  
56 governmental function and whose jurisdiction is coextensive with one or more counties, cities or  
57 towns; any comprehensive community mental health center or comprehensive mental retardation  
58 facility established, operated or licensed by the Secretary of Health and Human Resources  
59 pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported  
60 in part by state, county or municipal funds; a combined city-county health department created  
61 pursuant to article two, chapter sixteen of this code; and a corporation meeting the description set  
62 forth in section three, article twelve, chapter eighteen-b of this code that is employing a 21st

63 Century Learner Fellow pursuant to section eleven, article three, chapter eighteen of this code  
64 but the corporation is not considered an employer with respect to any employee other than a 21st  
65 Century Learner Fellow. Any matters of doubt as to who is an “employer” within the meaning of  
66 this article shall be decided by the director. The term “employer” does not include within its  
67 meaning the National Guard.

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

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

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

76 (8) “Retired employee” means an employee of the state who retired after April 29, 1971,  
77 and an employee of the Higher Education Policy Commission, the Council for Community and  
78 Technical College Education, a state institution of higher education or a county board of education  
79 who retires on or after April 21, 1972, and all additional eligible employees who retire on or after  
80 the effective date of this article, meet the minimum eligibility requirements for their respective  
81 state retirement system and whose last employer immediately prior to retirement under the state  
82 retirement system is a participating employer in the state retirement system and in the Public  
83 Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who  
84 are not covered by a state retirement system, but who are covered by a state-approved or state-  
85 contracted retirement program or a system approved by the director, shall, in the case of  
86 education employees, meet the minimum eligibility requirements of the state Teachers Retirement  
87 System and in all other cases, meet the minimum eligibility requirements of the Public Employees  
88 Retirement System and may participate in the Public Employees Insurance Agency as retired



89 employees upon terms as the director sets by rule as authorized in this article. Employers with  
90 employees who are, or who are eligible to become, retired employees under this article shall be  
91 mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to article  
92 sixteen-d of this chapter. Nonstate employers may opt out of the West Virginia other post-  
93 employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide  
94 benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but  
95 may do so only upon the written certification, under oath, of an authorized officer of the employer  
96 that the employer has no employees who are, or who are eligible to become, retired employees  
97 and that the employer will defend and hold harmless the Public Employees Insurance Agency  
98 from any claim by one of the employer's past, present or future employees for eligibility to  
99 participate in the Public Employees Insurance Agency as a retired employee. As a matter of law,  
100 the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits  
101 to a retired employee of a nonstate employer which has opted out of the West Virginia other post-  
102 employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

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

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

7 Those employees enrolled in the insurance program authorized under the provisions of  
8 article two-b, chapter twenty-one-a of this code may not be required to enroll in or subscribe to an  
9 insurance plan or plans authorized by the provisions of this article, and the employees of any  
10 department which has an existing insurance program for its employees to which the government  
11 of the United States contributes any part or all of the premium or cost of the premium may be

12 exempted from the provisions of this article. Any employee or employer exempted under the  
13 provisions of this paragraph may enroll in any insurance program authorized by the provisions of  
14 this article at any time, to the same extent as any other qualified employee or employer, but  
15 employee or employer may not remain enrolled in both programs. The provisions of articles  
16 fourteen, fifteen and sixteen, chapter thirty-three of this code, relating to group life insurance,  
17 accident and sickness insurance, and group accident and sickness insurance, are not applicable  
18 to the provisions of this article whenever the provisions of articles fourteen, fifteen and sixteen,  
19 chapter thirty-three of this code are in conflict with or contrary to any provision set forth in this  
20 article or to any plan or plans established by the Public Employees Insurance Agency.

21 Employers, other than the State of West Virginia, its boards, agencies, commissions,  
22 departments, institutions, spending units or a county board of education or a public charter school  
23 established pursuant to article thirty-three, chapter eighteen of this code are exempt from  
24 participating in the insurance program provided for by the provisions of this article unless  
25 participation by the employer has been approved by a majority vote of the employer's governing  
26 body. It is the duty of the clerk or secretary of the governing body of an employer who by majority  
27 vote becomes a participant in the insurance program to notify the director not later than ten days  
28 after the vote.

29 Any employer, whether the employer participates in the Public Employees Insurance  
30 Agency insurance program as a group or not, which has retired employees, their dependents or  
31 surviving dependents of deceased retired employees who participate in the Public Employees  
32 Insurance Agency insurance program as authorized by this article, shall pay to the agency the  
33 same contribution toward the cost of coverage for its retired employees, their dependents or  
34 surviving dependents of deceased retired employees as the State of West Virginia, its boards,  
35 agencies, commissions, departments, institutions, spending units or a county board of education  
36 or a public charter school established pursuant to article thirty-three, chapter eighteen of this code  
37 pay for their retired employees, their dependents and surviving dependents of deceased retired

38 employees, as determined by the finance board: *Provided*, That after June 30, 1996, an employer  
39 not mandated to participate in the plan is only required to pay a contribution toward the cost of  
40 coverage for its retired employees, their dependents or the surviving dependents of deceased  
41 retired employees who elect coverage when the retired employee participated in the plan as an  
42 active employee of the employer for at least five years: *Provided, however*, That those retired  
43 employees of an employer not participating in the plan who retire on or after July 1, 2010, who  
44 have participated in the plan as active employees of the employer for less than five years are  
45 responsible for the entire premium cost for coverage and the Public Employees Insurance Agency  
46 shall bill for and collect the entire premium from the retired employees, unless the employer elects  
47 to pay the employer share of the premium. Each employer is hereby authorized and required to  
48 budget for and make such payments as are required by this section.

## **CHAPTER 18. EDUCATION.**

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

#### **§18-7A-3. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

36 (12) "Gross salary" means the fixed annual or periodic cash wages paid by a participating  
37 public employer to a member for performing duties for the participating public employer for which

38 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the  
39 work was done. Gross salary also includes retroactive payments made to a member to correct a  
40 clerical error, or made pursuant to a court order or final order of an administrative agency charged  
41 with enforcing federal or state law pertaining to the member's rights to employment or wages, with  
42 all retroactive salary payments to be allocated to and considered paid in the periods in which the  
43 work was or would have been done. Gross salary does not include lump sum payments for  
44 bonuses, early retirement incentives, severance pay or any other fringe benefit of any kind  
45 including, but not limited to, transportation allowances, automobiles or automobile allowances, or  
46 lump sum payments for unused, accrued leave of any type or character.

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

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

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

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

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

59 (18) "Nonteaching member" means any person, except a teacher member, who is  
60 regularly employed for full-time service by: (A) Any county board of education; (B) the State Board  
61 of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for  
62 Community and Technical College Education; ~~or~~ (E) a governing board, as defined in section two,  
63 article one, chapter eighteen-b of this code; or (F) a public charter school established pursuant to

64 article thirty-three of this chapter: *Provided*, That any person whose employment with the Higher  
65 Education Policy Commission, the West Virginia Council for Community and Technical College  
66 Education or a governing board commences on or after July 1, 1991, is not considered a  
67 nonteaching member.

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

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

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

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

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

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

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

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

88 (27) "Required beginning date" means April 1 of the calendar year following the later of:  
89 (A) The calendar year in which the member attains age seventy and one-half years; or (B) the

90 calendar year in which the member retires or ceases covered employment under the system after  
91 having attained the age of seventy and one-half years.

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

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

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

98 (31) "Teacher member" means the following persons, if regularly employed for full-time  
99 service: (A) Any person employed for instructional service in the public schools of West Virginia;  
100 (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county  
101 superintendents of schools; (E) any county school attendance director holding a West Virginia  
102 teacher's certificate; (F) members of the research, extension, administrative or library staffs of the  
103 public schools;(G) the State Superintendent of Schools, heads and assistant heads of the  
104 divisions under his or her supervision, or any other employee under the state superintendent  
105 performing services of an educational nature;(H) employees of the State Board of Education who  
106 are performing services of an educational nature;(I) any person employed in a nonteaching  
107 capacity by the State Board of Education, any county board of education, the State Department  
108 of Education or the State Teachers Retirement Board, if that person was formerly employed as a  
109 teacher in the public schools;(J) all classroom teachers, principals and educational administrators  
110 in schools under the supervision of the Division of Corrections, the Division of Health or the  
111 Division of Human Services;(K) an employee of the State Board of School Finance, if that person  
112 was formerly employed as a teacher in the public schools; ~~and~~(L) any person designated as a  
113 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this  
114 code who elects to remain a member of the State Teachers Retirement System provided in this  
115 article; and (M) any person employed by a public charter school established pursuant to article

116 thirty-three of this chapter.

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

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

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

### **§18-7B-2. Definitions.**

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

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

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

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



19 subsection (d), section thirteen of this article;

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

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

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

26 (7) "Employer contribution" means an amount deposited into the member's individual  
27 annuity account on a periodic basis coinciding with the employee's regular pay period by an  
28 employer from its own funds;

29 (8) "Employment term" means employment for at least ten months in any plan year with a  
30 month being defined as twenty employment days;

31 (9) "Existing employer" means any employer who employed or employs a member of the  
32 system;

33 (10) "Existing retirement system" means the State Teachers Retirement System  
34 established in article seven-a of this chapter;

35 (11) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been  
36 amended;

37 (12) "Member" or "employee" means the following persons, if regularly employed for full-  
38 time service: (A) Any person employed for instructional service in the public schools of West  
39 Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant  
40 county superintendents of schools; (E) any county school attendance director holding a West  
41 Virginia teacher's certificate; (F) members of the research, extension, administrative or library  
42 staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads  
43 of the divisions under his or her supervision or any other employee under the state superintendent  
44 performing services of an educational nature; (H) employees of the State Board of Education who

45 are performing services of an educational nature; (I) any person employed in a nonteaching  
46 capacity by the State Board of Education, any county board of education or the State Department  
47 of Education, if that person was formerly employed as a teacher in the public schools; (J) all  
48 classroom teachers, principals and educational administrators in schools under the supervision  
49 of the Division of Corrections and the Department of Health and Human Resources; (K) any  
50 person who is regularly employed for full-time service by any county board of education or the  
51 State Board of Education; (L) the administrative staff of the public schools including deans of  
52 instruction, deans of men and deans of women, and financial and administrative secretaries;~~and~~  
53 (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article  
54 three, chapter eighteen-a of this code who elects to remain a member of the Teachers' Defined  
55 Contribution Retirement System established by this article; and (N) any person employed by a  
56 public charter school established pursuant to article thirty-three of this chapter.

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

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

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

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

73 (17) "Regularly employed for full-time service" means employment in a regular position or  
74 job throughout the employment term regardless of the number of hours worked or the method of  
75 pay;

76 (18) "Required beginning date" means April 1 of the calendar year following the later of:  
77 (A) The calendar year in which the member attains age seventy and one-half years; or (B) the  
78 calendar year in which the member retires or otherwise ceases employment with a participating  
79 employer after having attained the age of seventy and one-half years;

80 (19) "Retirement" means a member's withdrawal from the active employment of a  
81 participating employer and completion of all conditions precedent to retirement;

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

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

### **§18-9A-2. Definitions.**

1 For the purpose of this article:

2 (a) "State board" means the West Virginia Board of Education.

3 (b) "County board" or "board" means a county board of education.

4 (c) "Professional salaries" means the state legally mandated salaries of the professional  
5 educators as provided in article four, chapter eighteen-a of this code.

6 (d) "Professional educator" shall be synonymous with and shall have the same meaning  
7 as "teacher" as defined in section one, article one of this chapter, and includes technology  
8 integration specialists.

9 (e) "Professional instructional personnel" means a professional educator whose regular

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

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

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

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

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

33 (1) Net enrollment further shall include:

34 (4) (A) Adults enrolled in regular secondary vocational programs existing as of the effective  
35 date of this section, subject to the following:

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

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

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

44           ~~(3)~~ (2) No pupil shall be counted more than once by reason of transfer within the county  
45 or from another county within the state, and no pupil shall be counted who attends school in this  
46 state from another state;

47           ~~(4)~~ (3) The enrollment shall be modified to the equivalent of the instructional term and in  
48 accordance with the eligibility requirements and rules established by the state board; and

49           ~~(5)~~ (4) For the purposes of determining the county's basic foundation program only, for  
50 any county whose net enrollment as determined under all other provisions of this definition is less  
51 than one thousand four hundred, the net enrollment of the county shall be increased by an amount  
52 to be determined in accordance with the following:

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

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

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

61           (D) During the 2008-2009 interim period and every three interim periods thereafter, the

62 Legislative Oversight Commission on Education Accountability shall review this subdivision to  
63 determine whether or not these provisions properly address the needs of counties with low  
64 enrollment and a sparse population density; and

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

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

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

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

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

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

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

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

**§18-9A-12a. Basic foundation program adjustment for public charter school enrollment;  
inclusion Public School Support Program; allocation to public charter schools.**

1 (a) Notwithstanding subsection (a), section twelve of this article, for any county within  
2 which a public charter school is authorized in accordance with article thirty-three of this chapter  
3 and the school's net enrollment is included in the calculation of the basic foundation program for  
4 the county, the basic foundation program for the county shall be reduced by the county's total per  
5 pupil basic foundation program multiplied by the second month net enrollment of the public charter  
6 school.

7 (b) If a public charter school is authorized in accordance with article thirty-three of this  
8 chapter and will begin its initial year of operation in the county during the next school year, the  
9 basic foundation program for the county shall be reduced by the county's total per pupil basic  
10 foundation program multiplied by the estimated second month net enrollment of the public charter  
11 school. The funding for the public charter school and the county board shall be subsequently  
12 adjusted, if necessary, in the first year of operation, based on the public charter school's actual  
13 second month net enrollment.

14 (c) The basic foundation program for each public charter school authorized and operating  
15 in accordance with article thirty-three of this chapter, shall be the total per pupil basic foundation  
16 program of the county in which it is located multiplied by the second month net enrollment of the  
17 public charter school.

18 (d) The basic foundation program for public charter schools authorized and operating in  
19 accordance with article thirty-three of this chapter, is a part of the Public School Support Program.

20 (e) The basic foundation program for public charter schools shall be allocated and  
21 distributed in accordance with section six, article thirty-three of this chapter.

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

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

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

3 (1) Stimulating and assisting county boards of education in establishing, organizing and  
4 maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher  
5 services for exceptional children.

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

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

16 ~~(B) The state superintendent shall annually review the rules, policies and standards of the~~  
17 ~~state and federal law for serving the needs of exceptional children enrolled in the public schools~~  
18 ~~and shall report to the Legislative Oversight commission on education accountability by December~~  
19 ~~1, or as soon thereafter as requested by the commission, 2008, and in each year thereafter, the~~  
20 ~~findings of the review along with an accounting of the services provided and the costs thereof for~~



21 ~~exceptional children enrolled in the public schools of this state during the latest available school~~  
22 ~~year. An~~ A separate appropriation shall be made to the Department of Education to be distributed  
23 disbursed to county boards and public charter schools to support children assist them with serving  
24 exceptional children with high cost/high acuity special needs. that exceed the capacity of county  
25 ~~to provide with funds available~~ An “exceptional child with high cost/high acuity special needs” is  
26 a student with a disability for whom the costs to the county or school exceed three times the  
27 average per pupil expenditure.

28 (C) Effective for the school year beginning July 1, 2017, and thereafter:

29 (i) The state superintendent shall establish, in consultation and coordination with  
30 representatives of the affected county boards and public charter schools, a method for disbursing  
31 the separate appropriation for exceptional children with high cost/high acuity special needs.

32 (ii) The disbursement method shall reasonably account for and endeavor to equitably  
33 mitigate the differing budgetary impacts that enrolled exceptional children with high cost/high  
34 acuity special needs have on individual county boards’ or public charter schools’ abilities to serve  
35 all of their enrolled students.

36 (iii) The disbursement method shall further provide that, whenever the separate  
37 appropriation under this paragraph, when combined with federal funds available for this purpose,  
38 is insufficient to reimburse all eligible county boards and public charter schools fully for their costs  
39 of serving the exceptional children with high cost/high acuity special needs enrolled in their  
40 counties and schools, the county boards and public charter schools shall receive disbursements  
41 that equalize, as near as reasonably possible, the budget percentage for each county board and  
42 public charter schools that is consumed by eligible, but not reimbursed, expenditures for serving  
43 exceptional children with high cost/high acuity special needs so that no county board's or public  
44 charter school's budget is affected disproportionately.

45 (iv) Each county board and public charter school shall apply to the state superintendent

46 ~~for receipt of~~ to receive this funding in a manner set forth by the state superintendent. ~~that~~  
47 ~~assesses and takes into account varying acuity levels of the exceptional students~~ Any remaining  
48 funds at the end of a fiscal year from the appropriation shall be carried over to the next fiscal year.  
49 When possible, federal funds shall be ~~distributed~~ disbursed to county boards and public charter  
50 schools for this purpose before any of the state appropriation is ~~distributed~~ disbursed. The state  
51 board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-  
52 nine-a of this code that implements ~~the provisions of~~ this subdivision relating to distributing the  
53 funds to the county boards. The rule at least shall include a definition for “children with high acuity  
54 needs”.

55 (4) Receiving from county boards ~~of education~~ and public charter schools their  
56 applications, annual reports and claims for reimbursement from such moneys as are appropriated  
57 by the Legislature, auditing such claims and preparing vouchers to reimburse said counties the  
58 amounts reimbursable to them.

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

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

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

69 (b) Nothing contained in this section shall be construed to prevent any county board of  
70 education from establishing and maintaining special schools, classes, regular class programs,

71 home-teaching or visiting-teacher services for exceptional children out of funds available from  
72 local revenue.

**ARTICLE 33. WEST VIRGINIA PUBLIC CHARTER SCHOOLS ACT.**

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

1 (a) The Legislature hereby establishes a process for the creation, governance and  
2 oversight accountability of public charter schools to benefit students, parents, teachers and  
3 community members by empowering new, innovative and more flexible ways of educating all  
4 children within the public school system and by advancing a renewed commitment to the mission,  
5 goals and diversity of public education. The purposes of the public charter school initiative are  
6 to:

7 (1) Improve student learning by enabling the creation of more options for students to  
8 attend quality public schools with high standards for student performance;

9 (2) Increase high-quality educational opportunities within the public school system for all  
10 students, especially those at risk of academic failure;

11 (3) Allow authorized public schools and programs within public schools exceptional levels  
12 of self-direction and flexibility in exchange for exceptional levels of results-driven accountability  
13 for student learning;

14 (4) Encourage the use of different, high quality models of teaching, governing, scheduling  
15 and other aspects of public schooling that meet a variety of student needs;

16 (5) Create new professional opportunities for teachers, school administrators and other  
17 school personnel that allow them to have a direct voice in the operation of their school or program  
18 and to create a culture of shared decision-making toward the ultimate goal of raising student  
19 achievement;

20 (6) Close achievement gaps between high-performing and low-performing groups of public  
21 school students;

22 (7) Provide students, parents, community members and local entities with expanded  
23 opportunities for involvement in the public school system; and

24 (8) To encourage the replication of successful strategies for improving student learning.

25 (b) All public charter schools in the state established under this article are public schools  
26 and are part of the state's public education system.

27 (c) The provisions of this article shall be interpreted liberally to support the purposes of  
28 this section and to advance a renewed commitment by the state to the mission, goals and diversity  
29 of public education.

30 (d) No provision of this article may be interpreted to allow the conversion of private schools  
31 into public charter schools.

32 (e) No provision of this article may be interpreted to allow the establishment of public  
33 charter virtual schools.

**§18-33-2. General definitions.**

1 As used in this article, unless the context otherwise indicates, the following terms have the  
2 following meanings:

3 “Applicant” means teachers, parents, school administrators, community residents, county  
4 boards, institutions of higher education or other public or private nonprofit organizations, a  
5 noncharter public school, a noncharter public school program or any combination thereof that  
6 seek approval from a charter school authorizer to establish a public charter school;

7 “Charter application” means a proposal from an applicant to an authorizer in accordance  
8 with section ten of this article to enter into a charter contract whereby the proposed school obtains  
9 public charter school status;

10 “Authorizer” or “authorizing authority” means the West Virginia Public Charter School  
11 Oversight and Authorizer Board or a county board with full accreditation status empowered under  
12 this article to review applications, decide whether to approve or reject applications, enter into

13 charter contracts with applicants, oversee and monitor public charter schools and decide whether  
14 to renew, not renew or revoke charter contracts;

15 “Charter contract” means a performance-based contract for a fixed term between a public  
16 charter school and an authorizer that describes performance expectations, defines operational  
17 responsibilities and outlines the autonomy and accountability for each party to the contract in  
18 accordance with section eleven of this article;

19 “Conversion public charter school” means a public charter school that existed as a  
20 noncharter public school, in whole or in part, before becoming a public charter school;

21 “County board” means a board exercising management and control of a school district or  
22 of a multi-county vocational or technical center, other than a public charter school formed under  
23 this article. A county board’s management and control of a public charter school is limited to only  
24 that granted under this article. In the case of a school district in which the state board has  
25 intervened and limited the authority of the county board to act pursuant to section five, article two-  
26 e of this chapter, “county board” means the state board: *Provided*, That the state board may not  
27 be an authorizing authority;

28 “Governing board” means the independent board of a public charter school that is party to  
29 the charter contract with the authorizer and whose members have been elected or selected in  
30 accordance with this article;

31 “Noncharter public school” means a public school other than a school formed pursuant to  
32 this article;

33 “Public charter school” means a public school or program within a public school that is  
34 open to all students and is formed in accordance with the provisions of this article and includes  
35 each of the features described in the definition of a public charter school under section three of  
36 this article, whether start-up, conversion or program conversion unless otherwise provided;

37 “Program conversion public charter school” means a program within an existing

38 noncharter public school that is either preexisting and converted or newly created to become a  
39 separate and discreet program within the noncharter public school and that is governed and  
40 operated in accordance with this article; and

41 “Start-up public charter school” means a public charter school that did not exist as a  
42 noncharter public school prior to becoming a public charter school.

**§18-33-3. Public charter school defined.**

1 A public charter school as may be authorized pursuant to this article is a public school that  
2 meets the following criteria except in instances where otherwise specifically provided in this article  
3 with respect to program conversion public charter schools:

4 (1) Is part of the state’s system of public education and is subject to general supervision  
5 by the West Virginia Board of Education for meeting the student performance standards required  
6 of other public school students under section five, article two-e of this chapter and, through its  
7 authorizer, for meeting the terms of its charter contract and performance framework standards  
8 the required for public charter schools established in accordance with this article;

9 (2) Is established under and operates in accordance with its approved charter contract  
10 under the direct oversight of the authorizer granting the contract, and is exempt from all statutes  
11 and rules applicable to a noncharter public school or a local school district except as provided in  
12 this article and its charter contract;

13 (3) Is subject to all federal laws and authorities, and anything in this article that is in conflict  
14 with federal laws and authorities is null and void;

15 (4) Is subject to the same federal nutrition standards applicable to noncharter public  
16 schools in this state;

17 (5) Is not home school-based;

18 (6) Is not affiliated with or espouses any specific religious denomination, organization, sect  
19 or belief and does not promote or engage in any religious practices in its educational program.

20 admissions, employment policies or operations;

21 (7) Is not affiliated with any organized group whose espoused beliefs attack or malign an  
22 entire class of people, typically for immutable characteristics, as identified through listings of such  
23 groups as may be made by the U. S. Department of Justice, the Federal Bureau of Investigation,  
24 or officials having similar jurisdiction in this state;

25 (8) Is subject to the same civil rights, health, life and safety requirements applicable to  
26 noncharter public schools in this state;

27 (9) Has autonomy over key decisions, including, but not limited to, decisions concerning  
28 finance, personnel, scheduling, curriculum and instruction except as provided in this article and  
29 its charter contract;

30 (10) Is governed by a board that:

31 (A) Meets the requirements established in subdivision (6), subsection (b), section nine of  
32 this article which set forth the requirements for a public charter school's governance plan  
33 including, but not limited to the membership composition and qualifications of a public charter  
34 school governing board;

35 (B) Is independent of a county board except for the county board's responsibilities as  
36 provided in this article and the school's charter contract; and

37 (C) Complies with the provisions of article one, chapter twenty-nine-b of this code relating  
38 to freedom of information, and the provisions of article nine-a, chapter six of this code relating to  
39 open governmental proceedings;

40 (11) Is a public school to which parents or legal guardians choose to send their child or  
41 children;

42 (12) Does not charge tuition and may only charge such fees as may be imposed by  
43 noncharter public schools in this state;

44 (13) Is subject to the same student assessment and accreditation requirements applicable

45 to noncharter public schools in this state, but only to the extent that will allow the state board to  
46 issue the public charter school a level of accreditation pursuant to section five, article two-e of this  
47 chapter. Nothing precludes a public charter school from establishing additional student  
48 assessment measures that go beyond state requirements;

49 (14) Is subject to the Student Data Accessibility, Transparency and Accountability Act  
50 pursuant to section five-h, article two of this chapter;

51 (15) Has access to and shall utilize the electronic education information system  
52 established by the West Virginia Department of Education;

53 (16) Reports information on student and school performance to parents, policy-makers  
54 and the general public in the same manner as noncharter public schools utilizing the electronic  
55 format established by the West Virginia Department of Education. Nothing precludes a public  
56 charter school from utilizing additional measures for reporting information on student and school  
57 performance that go beyond state requirements;

58 (17) Provides a program of public education that:

59 (A) Includes one or more of the following: Prekindergarten and any grade or grades from  
60 kindergarten to grade twelve including any associated post-secondary dual credit, advanced  
61 placement and industry or workforce credential programs;

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

64 (C) May include a specific academic approach or theme including, but not limited to,  
65 approaches or themes such as STEM education, early college, or fine and performing arts;

66 (18) Provides programs and services to a student with a disability in accordance with the  
67 student's individualized education program and all federal and state laws, rules and regulations.

68 A charter school shall deliver the services directly or contract with a county board or another  
69 provider to deliver the services as set forth in its charter contract;



70 (19) Operates in pursuit of a specific set of educational objectives as defined in its charter  
71 contract;

72 (20) Designs its educational program to meet or exceed the student performance  
73 standards required of noncharter public school students under section five, article two-e of this  
74 chapter;

75 (21) Provides instructional time that is at least equal to the number of days or their  
76 equivalent required of noncharter public school students under section forty-five, article five of this  
77 chapter;

78 (22) Ensures students meet the compulsory school attendance requirements of section  
79 forty-four, article five of this chapter and section one-a, article eight of this chapter, as applicable;

80 (23) Is eligible to participate in state-sponsored or district-sponsored athletic and academic  
81 interscholastic leagues, competitions, awards, scholarships and recognition programs for  
82 students, educators, administrators and schools to the same extent as noncharter public schools;

83 (24) Adheres to all applicable accounting and financial reporting requirements as  
84 prescribed for public schools, including adherence to generally accepted accounting principles.  
85 A public charter school shall annually engage an external auditor to perform an independent audit  
86 of the school's finances. The public charter school shall submit the audit to its authorizer and to  
87 the state superintendent within nine months of the end of the fiscal year for which the audit is  
88 performed;

89 (25) Employs its own personnel as employees of the public charter school and is ultimately  
90 responsible for processing employee paychecks, managing its employees' participation in the  
91 applicable retirement system and managing its employees' participation in insurance plans  
92 established by the Public Employees Insurance Agency: *Provided*, That nothing in this subdivision  
93 prohibits the public charter school from contracting with another person or entity to perform  
94 services relating to managing its employees' participation in the retirement system or insurance

95 plan;

96 (26) Requires the participation of all public charter school employees in the Teachers  
97 Retirement System or the Teachers' Defined Contribution Retirement System, whichever is  
98 applicable in accordance with articles seven-a, seven-b and seven-d of this chapter;

99 (27) Requires the participation of all public charter school employees in insurance plans  
100 established by the Public Employees Insurance Agency pursuant to article sixteen, chapter five  
101 of this code;

102 (28) Is subject to the same licensing requirements applicable to classroom teachers in a  
103 noncharter public school. A public charter school must comply with applicable federal laws and  
104 regulations regarding the qualification of teachers and other instructional staff;

105 (29) Requires a criminal history check pursuant to section ten, article three, chapter  
106 eighteen-a of this code for any staff person that would be required if the person was employed in  
107 a noncharter public school, unless a criminal history check has already been completed for that  
108 staff person pursuant to that section. Governing board members and other public charter school  
109 personnel are subject to criminal history record checks and fingerprinting requirements applicable  
110 to noncharter public schools in this state;

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

116 (31) Complies with the provisions of article one, chapter twenty-nine-b of this code relating  
117 to freedom of information and the provisions of article nine-a, chapter six of this code relating to  
118 open governmental proceedings;

119 (32) Is subject to the same zoning rules for its facilities that apply to noncharter public

120 schools in this state;

121 (33) Is subject to the same building codes, regulations and fees for its facilities that apply  
122 to noncharter public schools in this state, including any inspections required for noncharter public  
123 schools under this chapter, and is subject to the jurisdiction of the West Virginia State Fire Marshal  
124 for inspection and issuance of a certificate of occupancy for any facility used by the public charter  
125 school; and

126 (34) Complies with all transportation and safety laws and administrative rules applicable  
127 to public schools.

**§18-33-4. Powers of public charter schools.**

1 A public charter school has all the powers necessary for carrying out the terms of its  
2 charter contract including, but not limited to, the powers to:

3 (1) Enter into contracts and leases including, but not limited to, contracting or cooperating  
4 with noncharter public schools and school districts for services for students with special needs,  
5 English language learner students and other specialized populations, as well as for mutually  
6 agreed administrative services;

7 (2) Secure appropriate insurance. The school may elect to obtain insurance coverage  
8 from the Board of Risk and Insurance Management pursuant to section five-a, article twelve,  
9 chapter twenty-nine of this code;

10 (3) Contract with a multi-county regional educational service agency established pursuant  
11 section twenty-six, article two of this chapter for education services and resources;

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

14 (5) Pledge, assign or encumber its assets to be used as collateral for loans or extensions  
15 of credit;

16 (6) Solicit, accept and expend any gifts or grants for public charter school purposes from

17 private sources in any manner that is available to a local school district. Nothing in this article may  
18 be construed to prohibit any person or organization from providing funding or other assistance for  
19 the establishment or operation of a public charter school. The governing board of a public charter  
20 school may accept gifts, donations or grants of any kind made to the school and expend or use  
21 such gifts, donations or grants in accordance with the conditions prescribed by the donor except  
22 that a gift, donation or grant may not be accepted if subject to a condition that is contrary to any  
23 provision of law or term of the charter contract. Any moneys received by a charter school from  
24 any source remaining in the charter school's accounts at the end of a budget year must remain in  
25 the charter school's accounts for use by the charter school during subsequent budget years;

26 (7) Acquire real property by purchase or lease for use as its facility or facilities from public  
27 or private sources including, but not limited to, the following:

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

33 (B) A public charter school may negotiate and contract with a school district, the governing  
34 board of a state institution of higher education or community college or any other public or for-  
35 profit or nonprofit private entity for the use of a facility;

36 (C) Public or private nonprofit entities, including but not limited to entities such as libraries,  
37 community centers, museums, fine or performing arts organizations, theaters, community  
38 colleges, colleges and universities may provide space to public charter schools within their  
39 facilities under their preexisting zoning and land-use designations;

40 (D) A public charter school may purchase or lease at or below fair market value part or all  
41 of any surplus or unused state-owned facility or property located in the state. The state agency in

42 control of the facility may not require purchase or lease payments that exceed the fair market  
43 value of the property; and

44 (E) Nothing in this subdivision requires or prohibits the county board to seek funds from  
45 any source, including the School Building Authority, for conversion of any existing district school  
46 facility or for constructing a district school facility for use by the public charter school;

47 (8) Contract with a local school district or other entity for transportation and other services  
48 as set forth in its charter contract. A public charter school or any entity providing transportation  
49 for a charter school shall comply with all transportation and safety laws and administrative  
50 regulations applicable to public schools; and

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

**§18-33-5. Public charter school students; enrollment and eligibility; enrollment preferences; random selection lottery; enrollment discrimination prohibited; credit transfers; participation in interscholastic sports.**

1 (a) Public charter schools are open for enrollment to all students of appropriate grade level  
2 age and all students shall be enrolled in accordance with the following:

3 (1) A public charter school shall provide or publicize to parents and the general public  
4 information about the public charter school as an enrollment option for students and the process  
5 for application and enrollment, including dates and timelines. A public charter school's  
6 recruitment efforts shall include all segments of the student populations served by noncharter  
7 public schools of comparable grade levels in their attendance area;

8 (2) A school district shall provide or publicize to parents and the general public information  
9 about public charter schools within the district as an enrollment option to the same extent and  
10 through the same means that the district provides and publicizes information about noncharter  
11 public schools in the district;

12 (3) An authorizer may not restrict the number of students a public charter school may

13 enroll. The capacity of the public charter school shall be determined annually by the governing  
14 board of the public charter school in conjunction with the authorizer and in consideration of the  
15 public charter school's ability to facilitate the academic success of its students, to achieve the  
16 other objectives specified in the charter contract, and to ensure that the student enrollment does  
17 not exceed the capacity of its facility or site;

18 (4) A school district may not require any student residing in the school district to enroll in  
19 a public charter school;

20 (5) The attendance area of a public charter school must be designated in its charter  
21 contract. An attendance area may include territory in more than one county;

22 (6) A start-up public charter school shall enroll all students who apply to attend the school  
23 subject to an enrollment preference which shall be given to students who reside within the school's  
24 attendance area. An enrollment preference also shall be given to students enrolled in the public  
25 charter school the previous school year and to siblings of students already enrolled in the public  
26 charter school. If the school has excess capacity after enrolling students within the attendance  
27 area and those with preference, students outside the attendance area are eligible for enrollment;

28 (7) A conversion public charter school shall guarantee enrollment to all students who were  
29 previously enrolled in the noncharter public school and to all students who reside in the school's  
30 attendance area, and the school shall adopt and maintain a policy that gives enrollment  
31 preference to students who reside within the attendance area as established prior to the  
32 conversion of the school. An enrollment preference also shall be given to students enrolled in the  
33 public charter school the previous school year and to siblings of students already enrolled in the  
34 public charter school. If the school has excess capacity after enrolling students within the  
35 attendance area and those with preference, students outside the attendance area are eligible for  
36 enrollment;

37 (8) A program conversion public charter school shall enroll all students who apply for

38 enrollment in the program who, at the time of authorization, are enrolled in the noncharter public  
39 school at which the program is operated. If the program has excess capacity after enrolling these  
40 students, students from other schools are eligible for enrollment;

41 (9) If established in the mission of the public charter school, an enrollment preference shall  
42 be given to at-risk students and students not succeeding in noncharter public schools. Any public  
43 charter school may adopt a policy that enables it to give an enrollment preference to at-risk  
44 students and students not succeeding in noncharter public schools. An enrollment preference  
45 also may be given to children of full-time employees of the school as long as the number of  
46 students enrolled under these preferences constitute no more than ten percent of the school's  
47 total student enrollment;

48 (10) Students with an enrollment preference shall be enrolled by date of application, but  
49 the enrollment is subject to space available and a preference is not a guarantee of enrollment.

50 (11) After enrolling all students in accordance with subdivisions (6), (7) and (8) of this  
51 section, if the remaining enrollment capacity of the program, class, grade level or building of a  
52 public charter school is insufficient to enroll all additional students who have applied, the public  
53 charter school shall select students from among the list of applicants by a random selection lottery,  
54 subject to the following:

55 (A) The school's lottery procedures and timelines support equal and open access for all  
56 students and take place in an open meeting; and

57 (B) A list of applicants not selected by the lottery shall be maintained to fill potential  
58 vacancies and may be carried over to the succeeding year; and

59 (12) Enrollment decisions may not discriminate against any person on any basis which  
60 would be unlawful for noncharter public schools in the school district. Except as provided in this  
61 section, a public charter school may not establish admission policies or limit student admissions  
62 in any manner in which a public school is not permitted to establish admission policies or limit

63 student admissions. This subdivision may not be construed to limit the formation of a public  
64 charter school that is dedicated to focusing its education program and services on at-risk students,  
65 students with disabilities and students who pose such severe disciplinary problems that they  
66 warrant a specific education program.

67 (b) If a student who was previously enrolled in a public charter school transfers enrollment  
68 to a noncharter public school in this state, the school to which the student transfers shall accept  
69 credits earned by the student in courses or instructional programs at the public charter school in  
70 a uniform and consistent manner and according to the same criteria that are used to accept  
71 academic credits from other noncharter public schools or that consider content competency when  
72 appropriate due to differences in curriculum delivery, instructional methods and strategies, or  
73 course designations and sequence.

74 (c) A public charter school student is eligible to participate in state-sponsored or school  
75 district sponsored interscholastic leagues, competitions, awards, scholarships and recognition  
76 programs for students and schools to the same extent as noncharter public school students. A  
77 public charter school student is eligible to participate in extracurricular activities not offered by the  
78 student's public charter school at the noncharter public school within the attendance boundaries  
79 in which the student's custodial parent or legal guardian resides or the noncharter public school  
80 from which the student withdrew for the purpose of attending a public charter school. A public  
81 charter school student is eligible for extracurricular activities at a noncharter public school subject  
82 to eligibility standards applied to full-time students of the noncharter public school. A school district  
83 or noncharter public school may not impose additional requirements on a public charter school  
84 student to participate in extracurricular activities that are not imposed on full-time students of the  
85 noncharter public school. Public charter school students shall pay the same fees as other students  
86 to participate in extracurricular or cocurricular activities. For each public charter school student  
87 who participates in an extracurricular or cocurricular activity at a noncharter public school, the



88 public charter school must pay a reasonable share of the noncharter public school's costs for the  
89 activity, as determined through negotiations between the schools involved.

90 (d) Each public charter school shall be given access to and shall utilize the electronic  
91 education information system established by the West Virginia Department of Education, is  
92 subject to the Student Data Accessibility, Transparency and Accountability Act pursuant to section  
93 five-h, article two of this chapter, and shall report information on student and school performance  
94 to parents, policy-makers and the general public in the same manner as noncharter public schools  
95 utilizing the electronic format established by the West Virginia Department of Education.

96 (e) Each public charter school shall certify annually to the State Department of Education  
97 and to the county board of the school district in which the charter school is located its student  
98 enrollment, average daily attendance and student participation in the national school lunch  
99 program, special education, vocational education, gifted education and federal programs in the  
100 same manner as school districts.

**§18-33-6. Basic foundation program allocation for public charter schools; special  
education and federal funding; disclosure of funding sources.**

1 (a) The basic foundation program for each public charter school authorized and operating  
2 in accordance with this article, shall be the total per pupil basic foundation program of the county  
3 in which it is located multiplied by the second month net enrollment of the public charter school,  
4 or initial year estimated second month net enrollment, as applicable, determined in accordance  
5 with section twelve-a, article nine-a of this chapter.

6 (b) A public charter school that is authorized in accordance this article and will begin its  
7 initial year of operation in the next school year shall submit its estimated second month net  
8 enrollment to the West Virginia Department of Education on or before October 1 of the year prior  
9 to its initial year of operation in a manner determined by the state board.

10 (c) The state board shall distribute each public charter school's basic foundation program

11 funding directly to the public charter school at the same time and in the same manner as basic  
12 foundation funds are distributed to county boards.

13 (d) To cover the costs of overseeing a public charter school authorized by it, the authorizer  
14 may charge the school up to three percent of the basic foundation program funding received by  
15 the public charter school per school year.

16 (e) The following provisions govern special education funding:

17 (1) Subject to any modifying agreement for serving the needs of students with disabilities  
18 that is set forth in the charter contract, the county board shall pay directly to the public charter  
19 school any federal or state aid attributable to a student with a disability attending the public charter  
20 school in proportion to the level of services for the student with a disability that the public charter  
21 school provides directly or indirectly; and

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

24 (3) All funding due a public charter school under this subsection shall promptly be  
25 forwarded to the public charter school.

26 (f) Except as otherwise provided in this article or the charter contract, the state board or  
27 county board, as applicable, shall send federal funds for programs and services for eligible  
28 students enrolled at a public charter school to the public charter school. Public charter schools  
29 with students eligible for funds under Title I of the federal Elementary and Secondary Education  
30 Act of 1965, 20 U.S.C., §6301 et seq., must receive and use these funds in accordance with  
31 federal and state law. During the first year of operation, a public charter school must receive Title  
32 I funds on the basis of an estimated enrollment of eligible students, as agreed with its authorizer.

33 (g) Each public charter school annually shall submit to the state board its sources of  
34 funding along with its budget. The state board shall make the public charter school's funding  
35 sources and budget available publicly.

**§18-33-7. West Virginia Public Charter School Oversight and Authorizer Board; members; appointments; meetings.**

1        (a) There is hereby created the West Virginia Public Charter School Oversight and  
2 Authorizer Board which shall report directly to and be responsible to the state board, separate  
3 from the Department of Education, for carrying out its duties in accordance with this article. The  
4 mission of the West Virginia Public Charter School Oversight and Authorizer Board is to authorize  
5 high-quality public charter schools throughout the state that provide more options for students to  
6 attain a thorough and efficient education, particularly through schools designed to expand the  
7 opportunities for at-risk students. The Public Charter School Oversight and Authorizer Board and  
8 public charter schools authorized in accordance with this article are subject to the general  
9 supervision by the state board solely for the purposes of accountability for meeting the standards  
10 for student performance required of other public school students under section five, article two-e  
11 of this chapter. Consistent with the provisions of this article, the Public Charter School Oversight  
12 and Authorizer Board has statewide charting jurisdiction and authority and shall be an  
13 independent state agency. Except as otherwise authorized in this article, no other governmental  
14 agency or entity may assume any charter authorizing function or duty in any form.

15        (b) The Public Charter School Oversight and Authorizer Board shall consist of nine voting  
16 members, as follows:

17            (1) The Governor or his or her designee;

18            (2) The State Superintendent of Schools;

19            (3) The Chancellor of the Higher Education Policy Commission;

20            (4) The Chancellor for community and technical college education; and

21            (5) Five members appointed by the Governor, with the advice and consent of the Senate,  
22 for staggered terms of four years. Each appointed member shall be a citizen of the state, shall  
23 represent the public interest and shall understand and be committed to achieving the goals and

24 objectives set forth in this article. Members appointed to the Public Charter School Oversight and  
25 Authorizer Board collectively must possess strong experience and expertise in public and  
26 nonprofit governance, management and finance, public school leadership, assessment,  
27 curriculum and instruction, and public education law. Each member appointed to the Public  
28 Charter School Oversight and Authorizer Board must have demonstrated an understanding of  
29 and commitment to charter schooling as a strategy for strengthening public education. Members  
30 appointed to the Public Charter School Oversight and Authorizer Board collectively shall represent  
31 diverse geographical areas of the state. The Governor may not appoint any person to be a  
32 member of the Public Charter School Oversight and Authorizer Board who is the holder of any  
33 other public office or public employment under the government of this state or any of its political  
34 subdivisions, or who is an appointee or employee of any charter school governing board or an  
35 immediate family member of any employee under the jurisdiction of the Public Charter School  
36 Oversight and Authorizer Board or any charter school governing board. An individual may not  
37 serve on the authorizer board who is engaged in, or employed by a person or company whose  
38 primary function involves, the sale of services and activities to public charter schools or charter  
39 school governing boards. Not more than three of the appointed members may be members of  
40 the same political party.

41 (c) To establish staggered terms of office for the members appointed to the Public Charter  
42 School Oversight and Authorizer Board, of the initial members, one shall serve a term of two  
43 years, one shall serve a term of three years, one shall serve a term of four years and two shall  
44 serve a term of five years. The initial appointments must be made before September 1, 2016.  
45 The Public Charter School Oversight and Authorizer Board shall meet as soon as practical after  
46 September 1, 2016, upon the call of the Governor, and shall organize for business by selecting a  
47 chairman and adopting bylaws. Subsequent meetings shall be called by the chairman.

48 (d) A member of the Public Charter School Oversight and Authorizer Board may be

49 removed from office by the Governor for official misconduct, incompetence, neglect of duty or  
50 gross immorality. A member may also be removed if the member's personal incapacity renders  
51 the member incapable or unfit to discharge the duties of the office or if the member is absent from  
52 a number of meetings of the board as determined and specified by the board in its bylaws.  
53 Whenever an appointed member vacancy on the Public Charter School Oversight and Authorizer  
54 Board exists, the Governor shall appoint a member for the remaining portion of the term.

55 (e) Except in the case of gross negligence or reckless disregard of the safety and well-  
56 being of another person, the Public Charter School Oversight and Authorizer Board and members  
57 of the board in their official capacity are immune from civil liability with respect to all activities  
58 related to a public charter school approved by the board. The official actions of the members of  
59 the board who are serving in an ex officio capacity by virtue of their designation or employment in  
60 another position are board member actions only, and may not be construed as official actions or  
61 positions of such member's employing entity.

62 (f) The Public Charter School Oversight and Authorizer Board shall appoint an executive  
63 director and may employ such additional staff as may be necessary. The executive director shall  
64 serve at the will and pleasure of the board. The executive director shall devote his or her full time  
65 to the proper administration of the board and the duties assigned by the board and shall be paid  
66 a salary established by the board, subject to the availability of funding. The executive director  
67 must have demonstrated an understanding of and commitment to charter schooling as a strategy  
68 for strengthening public education and must possess an understanding of state and federal  
69 education law.

70 (g) The Public Charter School Oversight and Authorizer Board shall meet at least  
71 quarterly. From funds appropriated or otherwise made available for such purpose, its members  
72 shall be reimbursed for reasonable and necessary expenses actually incurred in the performance  
73 of official duties upon submission of an itemized statement in a manner consistent with guidelines

74 of the travel management office of the Department of Administration.

**§18-33-8. West Virginia Public Charter School Oversight and Authorizer Board; powers and duties for implementation, administration and support.**

1 (a) The West Virginia Public Charter School Oversight and Authorizer Board shall  
2 establish and maintain public charter school policies and practices applicable for all authorizers  
3 that are consistent with this article and that are transparent, based on merit and avoid all conflicts  
4 of interest. The policies and practices shall be consistent with nationally recognized principles and  
5 professional standards for quality public charter school authorizing and governance in all major  
6 areas of authorizing and governance responsibility, including but not limited to, policies and  
7 practices in the following areas:

- 8 (1) Organizational capacity and infrastructure;
- 9 (2) Solicitation and evaluation of charter applications;
- 10 (3) A framework to guide the development of charter contracts;
- 11 (4) Performance contracting including a performance framework;
- 12 (5) Ongoing charter school oversight and evaluation; and
- 13 (6) Charter approval, renewal, and revocation decision-making;

14 (b) The West Virginia Public Charter School Oversight and Authorizer is responsible for  
15 exercising, in accordance with this article, the following powers and duties with respect to the  
16 oversight and authorization of public charter schools:

17 (1) Consult with nationally recognized charter school organizations and establish training  
18 programs for public charter school applicants, administrators and governing board members. The  
19 programs shall include preapplication training programs to assist in the development of high  
20 quality public charter school applications. The training programs shall include, as their framework,  
21 information necessary for response to requests for proposals issued by the oversight and  
22 authorizer board, the required components of the public charter school application and the charter

23 contract as set forth in this article. For public charter schools in their first year and beyond, every  
24 governing board member shall attend annual training throughout the member's term on the board.  
25 All new board members shall attend an initial training of no less than six hours on the board's  
26 statutory role and responsibilities, West Virginia employment policies and practices, charter  
27 school contract oversight and financial management. A new board member who does not begin  
28 the required initial training within six months after being seated and complete that training within  
29 twelve months of being seated on the board is automatically ineligible to continue to serve as a  
30 board member. Board members serving more than one year shall attend annual training of no  
31 less than six hours. The school shall include in its annual report the training attended by each  
32 board member during the previous year;

33 (2) Collect, analyze and report all data on the performance of all authorized public charter  
34 schools, by type, in accordance with the performance framework required by section eleven of  
35 this article;

36 (3) Monitor the performance and legal compliance of all authorizers and public charter  
37 schools authorized in accordance with this article, including the establishment of reporting  
38 requirements for county board authorizers that enable the oversight and authorizer board to  
39 perform its oversight duties;

40 (4) Report directly to and be responsible to the state board for carrying out its duties under  
41 the provisions of this article;

42 (5) Submit to the state board an annual report within sixty days of the end of each school  
43 year summarizing:

44 (A) The oversight and authorizer board's strategic vision for chartering and progress  
45 toward achieving that vision;

46 (B) The performance of all operating public charter schools in accordance with the  
47 performance framework required by section eleven of this article;

48 (C) The authorization status of all public charter schools within the last school year,  
49 identifying all public charter schools as:

50 (i) Application pending;

51 (ii) Application denied;

52 (iii) Application approved, but not yet operating;

53 (iv) Operating and years of operation;

54 (v) Renewed and years of operation;

55 (vi) Terminated;

56 (vii) Closed;

57 (viii) Never opened;

58 (ix) The authorizing duties and functions provided by authorizers during the school year;

59 and

60 (x) Any successful innovations applied in authorized schools which may be replicated in  
61 other schools. The report shall provide information about how noncharter public schools may  
62 implement these innovations; and

63 (6) Make the annual report to the state board available to the public and the Legislature at  
64 the same time as it is submitted to the state board.

65 (c) Each authorizing authority is responsible for exercising, in accordance with this article  
66 and the policies of the Oversight and Authorizer Board, the following powers and duties with  
67 respect to the oversight and authorization of public charter schools:

68 (1) Issue and broadly publicize requests for proposals pursuant to section nine of this  
69 article to invite, solicit, encourage and guide the development of high-quality public charter school  
70 applications;

71 (2) Receive and expend appropriate gifts, grants and donations of any kind from any public  
72 or private entity to carry out the purposes of this act, subject to all lawful terms and conditions



73 under which the gifts, grants or donations are given;

74 (3) Apply for any federal funds that may be available for the implementation of public  
75 charter school programs;

76 (4) Conduct or require oversight activities that enable it to fulfill its responsibilities under  
77 this article, including conducting appropriate inquiries and investigations, so long as those  
78 activities are consistent with the intent of this article, adhere to the terms of the charter contract  
79 and do not unduly inhibit the autonomy granted to charter schools;

80 (5) In the event that a public charter school's performance or legal compliance appears  
81 unsatisfactory, promptly notify in writing the public charter school of perceived problems and  
82 provide reasonable opportunity for the school to remedy the problems: *Provided*, That if the  
83 problem warrants revocation, the revocation time frames will apply;

84 (6) Take appropriate corrective actions or exercise sanctions in response to apparent  
85 deficiencies in a charter school's performance or legal compliance. If warranted, the actions or  
86 sanctions may include requiring a charter school to develop and execute a corrective action plan  
87 within a specified time frame;

88 (d) An authorizer may require each charter school it oversees to submit an annual report  
89 to assist the authorizer in gathering complete information about each school, consistent with the  
90 performance framework.

91 (e) Regulation by the state board, the Public Charter School Oversight and Authorizer  
92 Board and a county board authorizer shall be limited to those powers and duties prescribed in  
93 this article and all others prescribed by law, consistent with the spirit and intent of this article.

**§18-33-9. Request for proposals; content; demonstration of support required for proposed  
conversion public charter school.**

1 (a) *Issuance.* -- To invite, solicit, encourage and guide the development of high-quality  
2 public charter school applications, the Public Charter School Oversight and Authorizer Board shall

3 issue and broadly publicize requests for proposals by June 30, 2017, and by June 30 of each year  
4 thereafter. The content and dissemination of the requests for proposals shall be consistent with  
5 the purposes and requirements of this article.

6 (b) Content. -- The Public Charter School Oversight and Authorizer Board's request for  
7 proposals shall contain information set forth in this subsection.

8 (1) A request for proposals shall present the Public Charter School Oversight and  
9 Authorizer Board's strategic vision for and interest in chartering.

10 (2) The Public Charter School Oversight and Authorizer Board may give priority and may  
11 assign additional points in evaluating proposals that expand opportunities for children who are  
12 not realizing their full potential, who may be disaffected or disengaged in their current education  
13 situations and who may be at risk of failure academically, socially, economically or personally.  
14 The oversight and authorizer board may encourage proposals that include a specific academic  
15 approach or theme to address the diverse educational needs of communities in the state. A  
16 request for proposals shall include a clear statement of any priority or preference.  
17 Notwithstanding the statement of any priority or preference, each application submitted shall be  
18 considered for approval based on the merits of that particular application.

19 (3) A request for proposals shall include or otherwise direct applicants to the performance  
20 framework developed for public charter school oversight and evaluation in accordance with  
21 section eleven of this article for incorporation in the charter contract.

22 (4) A request for proposals shall include the criteria and standards that will guide the  
23 decision to approve or deny an application.

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

27 (6) A request for proposals shall require applications to provide or describe thoroughly, at

28 a minimum, all of the following essential elements of the proposed public charter school plan:

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

30 (i) An executive summary; and

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

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

34 (i) A governing board consisting of nine voting members, at least three of whom shall be  
35 parents of children attending the public charter school and four nonvoting members as follows:

36 Two faculty members, elected by a majority vote of the school's faculty members; one service  
37 personnel, elected by a majority vote of all of the school's service personnel, and the school's  
38 principal. The voting members of the governing board shall collectively possess strong experience  
39 and expertise in public and nonprofit governance, management and finance, public school  
40 leadership, assessment, curriculum and instruction, public education law and other areas  
41 applicable to any particular program, focus or academic approach of the public charter school. All  
42 members of a governing board shall have demonstrated understanding of and commitment to  
43 charter schooling as a strategy for strengthening public education;

44 (ii) Proposed governing bylaws which at least include good governing practices, provisions  
45 for the election of officers and for the removal of board members, the school's organizational  
46 structure and lines of authority and reporting, the process for board oversight and evaluation of  
47 the school's academic and financial performance, the election and evaluation of the performance  
48 of the principal by the board, succession planning, the selection of members, member training  
49 and self-evaluation of member and board performance;

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

- 53 (iv) A clear description of the roles and responsibilities for the governing board, the  
54 principal and management team and any other entities shown on the organization chart; and
- 55 (v) Identification of and background information on the proposed founding governing board  
56 members other than the principal, and any assurances or certifications required by the authorizer;
- 57 (C) The proposed public charter school's plan of organization, including:
- 58 (i) The location or geographic area of the school;  
59 (ii) The grades to be served each year for the full term of the charter;  
60 (iii) Minimum, planned and maximum enrollment per grade per year for the term of the  
61 charter;
- 62 (iv) The school's proposed calendar and sample daily schedule;
- 63 (v) Plans and timelines for student recruitment and enrollment that demonstrate an  
64 outreach and recruitment plan to ensure equal and open access for all students, including a  
65 complete and cohesive description and timelines of the school's lottery procedures that support  
66 equal and open access for all students and will take place in an open meeting;
- 67 (vi) Explanations of any partnerships or contractual relationships central to the school's  
68 operations or mission;
- 69 (vii) The school's proposals for providing transportation, food service and other significant  
70 operational or ancillary services;
- 71 (viii) A facilities plan, including backup or contingency plans if appropriate; and  
72 (ix) A detailed school start-up plan, identifying tasks, timelines and responsible individuals;  
73 and
- 74 (D) The proposed public charter school's finances, including:
- 75 (i) A description of the school's financial plan and policies, including financial controls and  
76 audit requirements;
- 77 (ii) Start-up and three-year budgets with clearly stated assumptions;

78 (iii) Start-up and first-year cash-flow projections with clearly stated assumptions;  
79 (iv) Evidence of anticipated fund-raising contributions, if claimed in the application; and  
80 (v) A description of the insurance coverage the school proposes to obtain, including a  
81 determination as to whether the public charter school will elect to obtain insurance coverage from  
82 the Board of Risk and Insurance Management pursuant to section five-a, article twelve, chapter  
83 twenty-nine of this code;

84 (E) The proposed public charter school's student policy, including:

85 (i) The school's plans for identifying and successfully serving students with the wide range  
86 of learning needs and styles typically found in noncharter public schools of the sending area,  
87 including special education and English language learners;

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

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

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

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

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

97 (iii) The school's plan for using internal and external assessments to measure and report  
98 student progress on the measures and metrics of the performance framework required for a  
99 charter contract; and

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

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

- 103 (i) A staffing chart for the school's first year and a staffing plan for the term of the charter;  
104 (ii) Plans for recruiting and developing school leadership and staff;  
105 (iii) The school's leadership, teacher and service personnel employment policies, including  
106 performance evaluation plans and method or methods of selection, subject to subparagraph (iii),  
107 paragraph (B) of this subdivision; and  
108 (v) Opportunities and expectations for parent involvement; and  
109 (H) The proposed public charter school's school closure protocol, including:  
110 (i) Timely notification to parents;  
111 (ii) Orderly transition of students and student records to new schools;  
112 (iii) Proper disposition of school funds, property, and assets in accordance with section  
113 twelve of this article; and  
114 (iv) Tasks, timelines and responsible parties, including delineating the respective duties of  
115 the school and the authorizer.  
116 (7) With respect to an application for a conversion public charter school, in addition to the  
117 other requirements of this article, the request for proposals shall require applicants to demonstrate  
118 support for the proposed conversion to a public charter school by:  
119 (A) Submitting a petition for conversion signed by a majority of the employees of the school  
120 proposed for conversion; and  
121 (B) Submitting a petition for conversion signed by a majority of the parents, guardians or  
122 custodians of the students enrolled in the school proposed for conversion.

**§18-33-10. Application for authorization of public charter school; written notice of intent to apply; submission of application; review process; approval or denial of authorization.**

- 1 (a) No later than the second Tuesday in January of the year in which an application will  
2 be filed, the organizers of a proposed public charter school shall provide written notice of their

3 intent to establish the school to the Public Charter School Oversight and Authorizer Board and  
4 the county board of the school district in which the public charter school is proposed to be located.  
5 Failure to provide notice by this date may result an application not being accepted.

6 (b) Applications for authorization to establish a public charter school shall be submitted  
7 between June 1 and July 1 to be eligible for consideration during the following fiscal year:  
8 Provided, That the July 1 deadline may be waived upon agreement of the applicant and the  
9 authorizing authority. An application for authorization must satisfy the requirements of the Public  
10 Charter School Oversight and Authorizer Board's request for proposals required by section nine  
11 of this article. The application shall be submitted to the county board of the county in which the  
12 proposed public charter school facility will be physically located if that county board is a qualified  
13 authorizing authority or, if not, to the Public Charter School Oversight and Authorizer Board.  
14 When an application is submitted to the county board, a notice of application also shall be  
15 submitted to the Public Charter School Oversight and Authorizer Board on the date of submission  
16 to the county board.

17 (b) The purposes of the application are to present the proposed public charter school's  
18 academic and operational vision and plans, demonstrate the applicant's capacities to execute the  
19 proposed vision and plans to increase student achievement and provide a clear basis for  
20 assessing the applicant's plans and capacities. The county board shall preliminarily assess the  
21 application and, within thirty days, determine whether it will proceed as the authorizing authority  
22 or forward the application to the Public Charter School Oversight and Authorizer Board.

23 (c) The application review and evaluation process of the Public Charter School Oversight  
24 and Authorizer Board, and of a county board county board that intends to proceed as the  
25 authorizing authority, shall include a thorough evaluation of each application, an in-person  
26 interview with the applicant, a thirty-day comment period and a public hearing. In reviewing and  
27 evaluating applications, authorizers shall employ procedures, practices, criteria and standards

28 consistent with nationally recognized principles and standards for authorizing high-quality public  
29 charter schools. In deciding whether to approve applications, authorizers shall:

30 (1) Grant authorization only to applicants that have demonstrated competence in each  
31 element of the Public Charter School Oversight and Authorizer Board's published approval criteria  
32 and who are likely to open and operate a public charter school that will increase student  
33 achievement;

34 (2) Base decisions on documented evidence collected through the application review  
35 process; and

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

38 (d) No later than ninety days after receipt of an application, the authorizer shall decide to  
39 approve or deny the application in accordance with the following:

40 (1) Approve quality charter applications that meet identified educational needs and  
41 promote a diversity of educational choices. An approval decision may include, if appropriate,  
42 reasonable conditions that the applicant must meet before a charter contract may be executed,  
43 including resubmission;

44 (2) Decline to approve weak or inadequate charter applications. If the authorizer denies  
45 an application, the authorizer shall clearly state, for public record, its reasons for denial at the time  
46 of rendering the decision to deny. An applicant may apply again to that authorizer in response to  
47 a subsequent request for proposals;

48 (3) Make and announce all charter approval or denial decisions in a meeting open to the  
49 public and clearly stating in a resolution the reasons for the decisions; and

50 (4) Convey the decision on an application in writing to the applicant.

51 (e) The applicant shall be granted thirty days to respond in writing to the decision before  
52 it becomes final. The applicant shall be allowed to provide the authorizing authority with such



53 arguments and supporting information as it sees fit, and the authorizing authority shall consider  
54 all such timely submitted material prior to rendering a final determination. The authorizer shall  
55 render its final determination within ten days of receiving the written response, arguments, and  
56 supporting information.

57 (f) Within ten days of taking final action to approve or deny an application, the authorizer  
58 shall report the action it has taken to the applicant and to the oversight and authorizer board or  
59 affected county board, as applicable. The authorizer shall at the same time provide a copy of the  
60 report to the state superintendent. The state superintendent shall register the charters approved  
61 by all chartering authorities in chronological order by date of approval.

62 (g) An approved application may not serve as a school's charter contract nor may it be  
63 incorporated by reference into the charter contract. An approved application is an authorization  
64 to begin contract negotiations with the authorizer. A public charter school may not commence or  
65 continue operations without a signed contract between the authorizer and the governing board.

**§18-33-11. Charter contracts; duties of authorizers; terms; performance provisions;**  
**administrative provisions; processes for modification and amendment.**

1 (a) The authorizer has the following powers and duties with respect to charter contracts:

2 (1) Negotiating and executing sound charter contracts with the governing board of a public  
3 charter school approved by the authorizer;

4 (2) Monitoring, in accordance with the terms of the charter contract, the performance and  
5 legal compliance of the public charter school; and

6 (3) Determining whether the charter contract merits renewal, nonrenewal or revocation.

1 (b) Within thirty days of the approval of a public charter school application, the authorizer  
2 and the governing board shall execute a charter contract. A charter contract shall be signed by  
3 a designated representative of the authorizer and of the public charter school's governing board.  
4 A public charter school may not commence operations without a charter contract executed in

5 accordance with this section and approved in a meeting open to the public. If the authorizer and  
6 the governing board fail to agree upon the terms of or enter into a contract within thirty days of  
7 the approval of the application, either party may appeal to the executive director of the Public  
8 Charter School Oversight and Authorizer Board to finalize the terms of the contract. This appeal  
9 must be made in writing to the executive director within forty-five days of the approval of the  
10 application.

11 (c) A charter contract shall, at a minimum, set forth the following:

12 (1) Any material term of the charter application as determined by the parties to the  
13 contract;

14 (2) The mission statement of the public charter school and how the school will report on  
15 implementation of its mission;

16 (3) A statement of admission policies and procedures;

17 (4) Signed assurances from the public charter school's governing board members  
18 regarding compliance with all federal and state laws governing organizational, programmatic and  
19 financial requirements applicable to charter schools;

20 (5) A detailed description of how the authorizer will use any basic foundation program  
21 funding that it charges the school pursuant to subsection (d), section six of this article;

22 (6) The types and amounts of insurance liability coverage to be obtained by the public  
23 charter school;

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

30 circumstances;

31 (8) Performance provisions describing the academic and operational performance  
32 expectations and measures by which the public charter school will be judged. The performance  
33 provisions of a charter contract shall be based on a performance framework developed by the  
34 Public Charter School Oversight and Authorizer Board that sets forth the academic and  
35 operational performance indicators that will guide the authorizer's evaluations of each public  
36 charter school including, but not limited to, the following data elements:

37 (A) Student academic proficiency;

38 (B) Student academic growth;

39 (C) Achievement gaps in both proficiency and growth between major student subgroups;

40 (D) Attendance;

41 (E) Recurrent enrollment from year to year;

42 (F) With respect to high school, postsecondary readiness, including the percentage of  
43 graduates submitting applications to postsecondary institutions, high school completion, and  
44 postsecondary enrollment or employment;

45 (G) Financial performance and sustainability;

46 (H) Governing board performance and stewardship, including compliance with all  
47 applicable laws, regulations and terms of the charter contract; and

48 (I) Parent and community engagement.

49 (9) Annual performance targets set by a public charter school and its authorizer that are  
50 designed to help each school meet applicable federal and state requirements and authorizer  
51 expectations. The performance framework must allow the inclusion of additional rigorous, valid  
52 and reliable indicators set by a public charter school and its authorizer to augment external  
53 evaluations of its performance;

54 (10) The process and criteria that the authorizer will use to annually monitor and evaluate

55 the fiscal, overall governance and student performance of the public charter school, including a  
56 process to conduct annual site visits;

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

59 (12) Information needed by the authorizer from the charter school governing board for the  
60 authorizer's reports must be required and included as a material part of the charter contract;

61 (13) Administrative provisions articulating the administrative relationship between the  
62 authorizer and the public charter school, including each party's rights and duties. A public charter  
63 school may not be required to purchase services from its authorizer as a condition of charter  
64 approval or of executing a charter contract, nor may any such condition be implied. However, a  
65 public charter school may, at its discretion, choose to purchase services from its authorizer. In  
66 such event, the public charter school and authorizer shall execute an annual service contract,  
67 separate from the charter contract, stating the parties' mutual agreement concerning any services  
68 to be provided by the authorizer and any service fees to be charged to the public charter school.

69 (14) The agreed-upon process for amending the approved charter contract;

70 (15) The processes agreed to by the authorizer and the charter school that identifies how  
71 disputes will be handled and resolved. The processes shall, at a minimum, include:

72 (A) Written notice of the intent to invoke the dispute resolution process, which notice shall  
73 include a description of the matter in dispute;

74 (B) A time limit for response to the notice and cure of the matter in dispute;

75 (C) A procedure for selection of a neutral third party to assist in resolving the dispute if  
76 requested by either party;

77 (D) A process for apportionment of any costs related to the dispute resolution process;

78 and

79 (E) A process for final resolution of the issue reviewed under the dispute resolution

80 process; and

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

83 (d) The performance provisions set forth in a charter contract shall include applicable  
84 federal accountability requirements and state accreditation requirements that will allow the state  
85 board to issue the public charter school a level of accreditation pursuant to section five, article  
86 two-e of this chapter.

87 (e) The performance provisions set forth in a charter contract may be refined or amended  
88 by mutual agreement of the parties to the charter contract after the public charter school is  
89 operating and has collected baseline achievement data for its enrolled students.

90 (f) The performance framework developed under this section shall require the  
91 disaggregation of all student performance data by major student subgroups.

92 (g) The authorizer shall collect, analyze and report all data from state assessments in  
93 accordance with the performance framework for each charter school authorized by it. Multiple  
94 schools overseen by a single governing board must report their performance as separate,  
95 individual schools, and each school must be held independently accountable for its performance.

96 (h) Each charter contract shall contain specific language addressing the parameters under  
97 which the authorizer may intervene, place a charter school on probationary status, require a  
98 remedial action plan and potentially revoke authorization in the event that the charter school is  
99 unwilling or unable to fulfill its obligations. At a minimum, these parameters shall include the  
100 circumstances involving poor fiscal management, lack of academic progress and operating in a  
101 discriminatory manner. The failure of a charter school to comply with the terms and conditions of  
102 a remedial action plan may result in revocation of the school's charter.

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

**§18-33-12. Charter contract renewal; performance report by authorizer and renewal guidance; renewal application; renewal term; non-renewal and revocation; closure and dissolution.**

1        (a) No later than June 30 of a public charter school's fourth year of operation under each  
2 five-year term of a charter contract, the authorizer shall issue a performance report on the public  
3 charter school. The performance report shall summarize the public charter school's performance  
4 record to date, based on the data collected under the performance framework in section eleven  
5 of this article and the charter contract, and shall provide notice of any weaknesses or concerns  
6 perceived by the authorizer concerning the school that may jeopardize its position in seeking  
7 renewal if not timely rectified. The school and the authorizer shall mutually agree to a reasonable  
8 time period for the charter school to respond to the performance report and submit any corrections  
9 for the report.

10        (b) If the public charter school's contract is expiring, the authorizer shall offer contract  
11 renewal application guidance to the school. The renewal application guidance required by this  
12 subsection shall include or refer explicitly to the criteria and standards that will guide the  
13 authorizer's renewal decisions. These criteria and standards shall be based on the performance  
14 framework set forth in section eleven of this article, as set forth in the charter contract and  
15 consistent with this article. The renewal application guidance shall, at a minimum, require and  
16 provide an opportunity for the public charter school to:

17            (1) Present additional evidence, beyond the data contained in the performance report,  
18 supporting its case for charter renewal;

19            (2) Describe improvements undertaken or planned for the school; and

20            (3) Detail the school's plans for the next charter term.

21        (c) No later than September 30 of a public charter school's final authorized year of  
22 operation under a term of a charter contract, the governing board of the public charter school

23 seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal  
24 application guidance offered by the authorizer under subsection (b) of this section. The authorizer  
25 shall rule in a public meeting and by resolution on the renewal application no later than forty-five  
26 days after the filing of the renewal application. In making charter renewal decisions, the authorizer  
27 shall:

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

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

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

34 (4) Include one of the following rulings:

35 (A) Renew the charter contract for another term of five years based on the school's  
36 performance data and demonstrated capacities of the public charter school; or

37 (B) Decline to renew the charter contract. The authorizer shall clearly state in a resolution  
38 the reasons for the nonrenewal. The governing board of the school shall be granted thirty days to  
39 respond in writing to the decision and public report before that decision becomes final. The school  
40 shall be allowed to provide the authorizer with such arguments and supporting information as it  
41 sees fit, and the authorizer shall consider all such timely submitted material prior to rendering a  
42 final determination. The authorizer shall render its final determination within ten days of receiving  
43 the schools written response, arguments, and supporting information.

44 (d) Within ten days of taking final action to renew, not renew or revoke a charter under this  
45 section, the authorizer shall report the action taken and reasons for the decision to the school's  
46 governing board and the oversight and authorizer board or affected county board, as applicable.  
47 A copy of the report shall be submitted at the same time to the state superintendent.

48 (e) Notwithstanding any provision to the contrary, the authorizer may not renew the  
49 contract of any charter school that, during the school's final operating year under the term of the  
50 charter contract, is given a failing level of accreditation by the state board pursuant to section five,  
51 article two-e of this code;

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

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

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

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

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

59 (g) If an authorizer revokes or does not renew a charter pursuant to subsection (f) of this  
60 section, the authorizer shall clearly state in a resolution in a public meeting, the reasons for the  
61 revocation or nonrenewal.

62 (h) If an authorizer revokes or does not renew a charter, the county board of the district in  
63 which the school is located shall close the school: *Provided*, That when the charter is revoked or  
64 not renewed for a school that began as a conversion public charter school or program conversion  
65 public charter school, the county board may return it to noncharter public school status.

66 (i) If a public charter school is closed by the county board, the board shall clearly state in  
67 a resolution in a public meeting, the reasons for the closure.

68 (j) In the event of a public charter school closure for any reason, the authorizer shall  
69 oversee and work with the closing school to ensure a smooth and orderly closure and transition  
70 for students and parents, as guided by the closure protocol established by the Public Charter  
71 School Oversight and Authorizer Board including, but not limited to, the following:

72 (1) Overseeing and working with the closing public charter school to ensure timely



73 notification to parents, orderly transition of students and student records to new schools and  
74 proper disposition of school funds, property and assets in accordance with the requirements of  
75 this chapter; and

76 (2) Distributing the assets of the public charter school first to satisfy outstanding payroll  
77 obligations for employees of the public charter school and then to creditors of the public charter  
78 school. Any remaining funds shall be paid to the county board. If the assets of the public charter  
79 school are insufficient to pay all parties to whom the public charter school owes compensation,  
80 the prioritization of distribution of assets may be determined by decree of a court of law.

**§18-33-13. Miscellaneous.**

1 (a) Notwithstanding any provision of law to the contrary, to the extent that any provision of  
2 this article is inconsistent with any other state or local law, rule or regulation, the provisions of this  
3 article govern and are controlling.

4 (b) A charter contract may include one or more schools to the extent approved by the  
5 authorizer and consistent with applicable law: *Provided*, That each public charter school that is  
6 part of a charter contract must be separate and distinct from any others.

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

10 (d) The school district in which the public charter school is located remains the local  
11 educational agency for all public charter schools authorized by the county board and the public  
12 charter school is a school within that local educational agency except that the public charter school  
13 is treated as a local educational agency for purposes of applying for competitive federal grants.  
14 The school district retains responsibility for special education and serves students in public charter  
15 schools in a manner consistent with local educational agency obligations under applicable federal,  
16 state and local law and the charter contract.

17 (e) A public charter school authorized by the Public Charter School Oversight and  
18 Authorizer Board is a local education agency for all purposes.

19 (f) The county board remains accountable in accordance with section five, article two-e of  
20 this chapter for the performance of the public charter school authorized by it.

21 (g) No county board shall require any employee of the local school district to be employed  
22 in a charter school. No county board shall harass, threaten, discipline, discharge, retaliate or in  
23 any manner discriminate against any district employee involved directly or indirectly with an  
24 application to establish a charter school as authorized under this section.

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

28 (i) All personnel in a public charter school shall continue to accrue seniority with the county  
29 board in the same manner that they would accrue seniority if employed in a noncharter public  
30 school in the county for purposes of employment in noncharter public schools.

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

### **ARTICLE 12. STATE INSURANCE.**

**§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, and for employees and officers of the state Department of Corrections.**

1 (a) In accordance with the provisions of this article, the state Board of Risk and Insurance  
2 Management shall provide appropriate professional or other liability insurance for all county  
3 boards of education, teachers, supervisory and administrative staff members, service personnel,  
4 county superintendents of schools and school board members and for all employees and officers  
5 of the state Department of Corrections: *Provided*, That the Board of Risk and Insurance

6 Management is not required to provide insurance for every property, activity or responsibility of  
7 county boards of education, teachers, supervisory and administrative staff members, service  
8 personnel, county superintendents of schools and school board members and for all employees  
9 and officers of the state Department of Corrections.

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

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

28 (d) The insurance policy provided by the Board of Risk and Insurance Management  
29 pursuant to subsection (a) of this section shall include comprehensive coverage, personal injury  
30 coverage, malpractice coverage, corporal punishment coverage, legal liability coverage as well

31 as a provision for the payment of the cost of attorney's fees in connection with any claim, demand,  
32 action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury  
33 under the conditions specified in this section.

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

38 (f) This section applies only to those public charter schools authorized pursuant to article  
39 thirty-three, chapter eighteen of this code that have included in their approved charter application  
40 a determination to obtain insurance coverage from the Board of Risk and Insurance Management  
41 pursuant to this section. If a public charter school elects to obtain coverage pursuant to this  
42 section:

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

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

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

NOTE: The purpose of this bill is to increase high-quality educational opportunities within the public school system by allowing authorized public schools and programs exceptional levels of self-direction and flexibility in exchange for exceptional levels of results-driven accountability. To accomplish this, the bill provides an infrastructure for the authorization and oversight of new start-up schools, conversions of existing schools or conversions of programs within existing schools that are accountable for student learning, operations and governance under a performance contract or charter subject to 5-year renewal, but then are exempt from the regulatory framework applicable to public schools without a charter

contract. However, the bill includes a detailed and comprehensive definition of public charter schools that lists what these schools may and may not do, what rules and statutes they must abide by and how they are to be governed. The bill creates a statewide Public Charter School Oversight and Authorizer Board to develop policy, provide training, and perform oversight, administrative and reporting functions, including reporting directly to the State Board. The organizers of these charter schools must apply to the county board who may choose to be the authorizer of the school or forward the application to the statewide board for consideration and authorization.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.