

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 124

FISCAL
NOTE

BY SENATORS KARNES, RUCKER, MAYNARD, AND TAKUBO

[Introduced January 10, 2018; Referred
to the Committee on Education; and then to the
Committee on 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 §18-9A-12a; to amend and reenact §18-20-5 of said
5 code; to amend said code by adding thereto a new article, designated §18-33-1, §18-33-2,
6 §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8, §18-33-9, §18-33-10,
7 §18-33-11, §18-33-12 and §18-33-13; and to amend and reenact §29-12-5a of said code,
8 all relating to providing for the authorization and oversight of public charter schools;
9 providing for charter school employee participation in public employee insurance and
10 applicable Teachers Retirement System; 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"; 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; prohibiting 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 the article when
65 inconsistent with any other laws, rules or regulations; granting authorization for one or
66 more schools under single contract; granting authorization of one or more contracts for
67 single governing board; providing that a public charter school authorized by the authorizer
68 board is a local education agency; providing for county board accreditation accountability
69 for charter school authorized by county board; prohibiting county board requiring
70 employee to be employed in charter school; prohibiting any retaliatory action against
71 district employee involved in application to establish charter school; prohibiting
72 discrimination against charter school in district advertising of educational options;
73 providing for accrual of seniority with the county board of personnel employed in charter
74 school; and authorizing charter school liability coverage through Board of Risk and
75 Insurance Management.

Be it enacted by the Legislature of West Virginia:

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
10 §18-33-1 et seq. of this code; a county, city or town in the state; any separate corporation or
11 instrumentality established by one or more counties, cities or towns, as permitted by law; any
12 corporation or instrumentality supported in most part by counties, cities or towns; any public
13 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 §27-2A-1 of this code and which is supported in part by state,
18 county or municipal funds; any person who works regularly full time in the service of the Higher
19 Education Policy Commission, the West Virginia Council for Community and Technical College
20 Education or a governing board, as defined in §18B-1-2 of this code; any person who works

21 regularly full time in the service of a combined city-county health department created pursuant to
22 §16-2-1 *et seq.* of this code; any person designated as a 21st Century Learner Fellow pursuant
23 to §18B-3-11 of this code; and any person who works as a long-term substitute as defined in
24 §18A-1-1 of this code in the service of a county board of education: *Provided*, That a long-term
25 substitute who is continuously employed for at least one hundred thirty-three instructional days
26 during an instructional term, and until the end of that instructional term, is eligible for the benefits
27 provided in this article until September 1, following that instructional term: *Provided, however*,
28 That a long-term substitute employed fewer than one hundred thirty-three instructional days
29 during an instructional term is eligible for the benefits provided in this article only during such time
30 as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and
31 upon election by a county board of education to allow elected board members to participate in the
32 Public Employees Insurance Program pursuant to this article, any person elected to a county
33 board of education shall be considered to be an “employee” during the term of office of the elected
34 member. Upon election by the State Board of Education to allow appointed board members to
35 participate in the Public Employees Insurance Program pursuant to this article, any person
36 appointed to the State Board of Education is considered an “employee” during the term of office
37 of the appointed member: *Provided further*, That the elected member of a county board of
38 education and the appointed member of the State Board of Education shall pay the entire cost of
39 the premium if he or she elects to be covered under this article. Any matters of doubt as to who
40 is an employee within the meaning of this article shall be decided by the director.

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

- 43 (i) Participates in a job-sharing arrangement as defined in §18A-1-1 of this code;
- 44 (ii) Has been designated, in writing, by all other participants in that job-sharing
45 arrangement as the “employee” for purposes of this section; and
- 46 (iii) Works at least one third of the time required for a full-time employee.

47 (4) "Employer" means the State of West Virginia, its boards, agencies, commissions,
48 departments, institutions or spending units; a county board of education; a public charter school
49 established pursuant to §18-33-1 et seq. of this code; a county, city or town in the state; any
50 separate corporation or instrumentality established by one or more counties, cities or towns, as
51 permitted by law; any corporation or instrumentality supported in most part by counties, cities or
52 towns; any public corporation charged by law with the performance of a governmental function
53 and whose jurisdiction is coextensive with one or more counties, cities or towns; any
54 comprehensive community mental health center or comprehensive mental retardation facility
55 established, operated or licensed by the Secretary of Health and Human Resources pursuant to
56 §27-2A-1 of this code and which is supported in part by state, county or municipal funds; a
57 combined city-county health department created pursuant to §16-2-1 et seq. of this code; and a
58 corporation meeting the description set forth in §18B-12-3 of this code that is employing a 21st
59 Century Learner Fellow pursuant to §18-3-11 of this code but the corporation is not considered
60 an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters
61 of doubt as to who is an "employer" within the meaning of this article shall be decided by the
62 director. The term "employer" does not include within its meaning the National Guard.

63 (5) "Finance board" means the Public Employees Insurance Agency Finance Board
64 created by this article.

65 (6) "Person" means any individual, company, association, organization, corporation or
66 other legal entity, including, but not limited to, hospital, medical or dental service corporations;
67 health maintenance organizations or similar organization providing prepaid health benefits; or
68 individuals entitled to benefits under the provisions of this article.

69 (7) "Plan", unless the context indicates otherwise, means the medical indemnity plan, the
70 managed care plan option or the group life insurance plan offered by the agency.

71 (8) "Retired employee" means an employee of the state who retired after April 29, 1971,
72 and an employee of the Higher Education Policy Commission, the Council for Community and

73 Technical College Education, a state institution of higher education or a county board of education
74 who retires on or after April 21, 1972, and all additional eligible employees who retire on or after
75 the effective date of this article, meet the minimum eligibility requirements for their respective
76 state retirement system and whose last employer immediately prior to retirement under the state
77 retirement system is a participating employer in the state retirement system and in the Public
78 Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who
79 are not covered by a state retirement system, but who are covered by a state-approved or state-
80 contracted retirement program or a system approved by the director, shall, in the case of
81 education employees, meet the minimum eligibility requirements of the state Teachers Retirement
82 System and in all other cases, meet the minimum eligibility requirements of the Public Employees
83 Retirement System and may participate in the Public Employees Insurance Agency as retired
84 employees upon terms as the director sets by rule as authorized in this article. Employers with
85 employees who are, or who are eligible to become, retired employees under this article shall be
86 mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to §18-16D-1
87 *et seq.* of this code. Nonstate employers may opt out of the West Virginia other post-employment
88 benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the
89 Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only
90 upon the written certification, under oath, of an authorized officer of the employer that the
91 employer has no employees who are, or who are eligible to become, retired employees and that
92 the employer will defend and hold harmless the Public Employees Insurance Agency from any
93 claim by one of the employer's past, present or future employees for eligibility to participate in the
94 Public Employees Insurance Agency as a retired employee. As a matter of law, the Public
95 Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired
96 employee of a nonstate employer which has opted out of the West Virginia other post-employment
97 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 §18-33-1 et seq. of this code and nothing contained in this article
5 compels any employee or employer to enroll in or subscribe to any insurance plan authorized by
6 the provisions of this article.

7 Those employees enrolled in the insurance program authorized under the provisions of
8 §21A-2B-1 *et seq.* of this code are not required to enroll in or subscribe to an insurance plan or
9 plans authorized by the provisions of this article, and the employees of any department which has
10 an existing insurance program for its employees to which the government of the United States
11 contributes any part or all of the premium or cost of the premium may be exempted from the
12 provisions of this article. Any employee or employer exempted under the provisions of this
13 paragraph may enroll in any insurance program authorized by the provisions of this article at any
14 time, to the same extent as any other qualified employee or employer, but employee or employer
15 may not remain enrolled in both programs.

16 Any plan established or administered by the Public Employees Insurance Agency
17 pursuant to this article is exempt from the provisions of §33-1-1 *et seq.* of this code unless
18 explicitly stated. Notwithstanding any provision of this code to the contrary, the Public Employees
19 Insurance Agency is not an insurer or engaged in the business of insurance as defined in ~~chapter~~
20 ~~thirty-three of this code.~~ that chapter.

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 §18-33-1 et seq. of this code are exempt from participating in the
24 insurance program provided for by the provisions of this article unless participation by the
25 employer has been approved by a majority vote of the employer's governing body. It is the duty
26 of the clerk or secretary of the governing body of an employer who by majority vote becomes a

27 participant in the insurance program to notify the director not later than ten days after the vote.

28 Any employer, whether the employer participates in the Public Employees Insurance
29 Agency Insurance Program as a group or not, which has retired employees, their dependents or
30 surviving dependents of deceased retired employees who participate in the Public Employees
31 Insurance Agency Insurance Program as authorized by this article, shall pay to the agency the
32 same contribution toward the cost of coverage for its retired employees, their dependents or
33 surviving dependents of deceased retired employees as the State of West Virginia, its boards,
34 agencies, commissions, departments, institutions, spending units or a county board of education
35 or a public charter school established pursuant to §18-33-1 et seq. of this code pay for their retired
36 employees, their dependents and surviving dependents of deceased retired employees, as
37 determined by the finance board: *Provided*, That after June 30, 1996, an employer not mandated
38 to participate in the plan is only required to pay a contribution toward the cost of coverage for its
39 retired employees, their dependents or the surviving dependents of deceased retired employees
40 who elect coverage when the retired employee participated in the plan as an active employee of
41 the employer for at least five years: *Provided, however*, That those retired employees of an
42 employer not participating in the plan who retire on or after July 1, 2010, who have participated in
43 the plan as active employees of the employer for less than five years are responsible for the entire
44 premium cost for coverage and the Public Employees Insurance Agency shall bill for and collect
45 the entire premium from the retired employees, unless the employer elects to pay the employer
46 share of the premium. Each employer is hereby authorized and required to budget for and make
47 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 §5-10D-7 of this code and Section 401(a)(17) of the Internal
20 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 §18-7A-13 of this code.

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 §18B-1-2
63 of this code; or (F) a public charter school established pursuant to §18-33-1 et seq. of this code:
64 *Provided*, That any person whose employment with the Higher Education Policy Commission, the
65 West Virginia Council for Community and Technical College Education or a governing board
66 commences on or after July 1, 1991, is not considered a nonteaching member.

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

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

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

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

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

78 (24) "Refund beneficiary" means the estate of a deceased contributor or a person he or
79 she has nominated as beneficiary of his or her contributions by written designation duly executed

80 and filed with the retirement board.

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

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

87 (27) "Required beginning date" means April 1 of the calendar year following the later of:
88 (A) The calendar year in which the member attains age seventy and one-half years; or (B) the
89 calendar year in which the member retires or ceases covered employment under the system after
90 having attained the age of seventy and one-half years.

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

93 (29) "Retirement board" means the Consolidated Public Retirement Board created
94 pursuant to §5-10D-1 *et seq.* of this code.

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

97 (31) "Teacher member" means the following persons, if regularly employed for full-time
98 service: (A) Any person employed for instructional service in the public schools of West Virginia;
99 (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county
100 superintendents of schools; (E) any county school attendance director holding a West Virginia
101 teacher's certificate; (F) members of the research, extension, administrative or library staffs of the
102 public schools;(G) the state superintendent of schools, heads and assistant heads of the divisions
103 under his or her supervision, or any other employee under the state superintendent performing
104 services of an educational nature;(H) employees of the State Board of Education who are
105 performing services of an educational nature;(I) any person employed in a nonteaching capacity

106 by the State Board of Education, any county board of education, the State Department of
 107 Education or the State Teachers Retirement Board, if that person was formerly employed as a
 108 teacher in the public schools;(J) all classroom teachers, principals and educational administrators
 109 in schools under the supervision of the Division of Corrections, the Division of Health or the
 110 Division of Human Services;(K) an employee of the State Board of School Finance, if that person
 111 was formerly employed as a teacher in the public schools; ~~and~~ (L) any person designated as a
 112 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member
 113 of the State Teachers Retirement System provided in this article; and (M) any person employed
 114 by a public charter school established pursuant to §18-33-1 et seq. of this code.

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

118 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 service

12 whether or not a part of the compensation is received from other funds, federal or otherwise, than
13 those provided by the state or its subdivisions: *Provided*, That annual compensation for
14 determining contributions during any determination period may not exceed the maximum
15 compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and
16 Section 401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of
17 applying the limitations of Section 415 of the Internal Revenue Code to any annual addition,
18 “compensation” has the meaning given it in §18-7B-13(d) of this code;

19 (4) “Consolidated board” or “board” means the Consolidated Public Retirement Board
20 created and established pursuant to §5-10D-1 *et seq.* of this code;

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

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

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

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

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

32 (10) “Existing retirement system” means the State Teachers Retirement System
33 established in §18-7A-1 *et seq.* of this code;

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

36 (12) “Member” or “employee” means the following persons, if regularly employed for full-
37 time service: (A) Any person employed for instructional service in the public schools of West

38 Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant
39 county superintendents of schools; (E) any county school attendance director holding a West
40 Virginia teacher's certificate; (F) members of the research, extension, administrative or library
41 staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads
42 of the divisions under his or her supervision or any other employee under the state superintendent
43 performing services of an educational nature; (H) employees of the State Board of Education who
44 are performing services of an educational nature; (I) any person employed in a nonteaching
45 capacity by the State Board of Education, any county board of education or the State Department
46 of Education, if that person was formerly employed as a teacher in the public schools; (J) all
47 classroom teachers, principals and educational administrators in schools under the supervision
48 of the Division of Corrections and the Department of Health and Human Resources; (K) any
49 person who is regularly employed for full-time service by any county board of education or the
50 State Board of Education; (L) the administrative staff of the public schools including deans of
51 instruction, deans of men and deans of women, and financial and administrative secretaries; ~~and~~
52 (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code
53 who elects to remain a member of the Teachers' Defined Contribution Retirement System
54 established by this article; and (N) any person employed by a public charter school established
55 pursuant to §18-33-1 et seq. of this code.

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

59 (14) "Permanent, total disability" means a mental or physical incapacity requiring absence
60 from employment service for at least six months: *Provided*, That the incapacity is shown by an
61 examination by a physician or physicians selected by the board: *Provided, however*, That for
62 employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage
63 in substantial gainful activity by reason of any medically determinable physical or mental

64 impairment that can be expected to result in death, or has lasted or can be expected to last for a
65 continuous period of not less than twelve months and the incapacity is so severe that the member
66 is likely to be permanently unable to perform the duties of the position the member occupied
67 immediately prior to his or her disabling injury or illness;

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

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

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

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

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

81 (20) "Year of employment service" means employment for at least ten months, with a
82 month being defined as twenty employment days: *Provided*, That no more than one year of
83 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 §18A-4-1 *et seq.* of this code.

6 (d) "Professional educator" shall be synonymous with and shall have the same meaning
7 as "teacher" as defined in §18-1-1 of this code, and includes technology integration specialists.

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

14 (f) "Professional student support personnel" means a "teacher" as defined in §18-1-1 of
15 this code who is assigned and serves on a regular full-time basis as a counselor or as a school
16 nurse with a bachelor's degree and who is licensed by the West Virginia Board of Examiners for
17 Registered Professional Nurses. For all purposes except for the determination of the allowance
18 for professional educators pursuant to §18-1-4 of this code, professional student support
19 personnel are professional educators.

20 (g) "Service personnel salaries" means the state legally mandated salaries for service
21 personnel as provided in §18A-4-8a of this code.

22 (h) "Service personnel" means all personnel as provided in §18A-4-8 of this code. For the
23 purpose of computations under this article of ratios of service personnel to net enrollment, a
24 service employee shall be counted as that number found by dividing his or her number of
25 employment days in a fiscal year by two hundred: *Provided*, That the computation for any service
26 person employed for three and one-half hours or less per day as provided in §18A-4-8a of this
27 code shall be calculated as one half an employment day.

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

31 (1) Net enrollment further shall include:

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

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

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

40 ~~(2)~~ (B) Students enrolled in early childhood education programs as provided in §18-44 of
41 this code counted on the basis of full-time equivalency;

42 ~~(3)~~ (2) No pupil shall be counted more than once by reason of transfer within the county
43 or from another county within the state, and no pupil shall be counted who attends school in this
44 state from another state;

45 ~~(4)~~ (3) The enrollment shall be modified to the equivalent of the instructional term and in
46 accordance with the eligibility requirements and rules established by the state board; ~~and~~

47 ~~(5)~~ (4) For the purposes of determining the county's basic foundation program only, for
48 any county whose net enrollment as determined under all other provisions of this definition is less
49 than one thousand four hundred, the net enrollment of the county shall be increased by an amount
50 to be determined in accordance with the following:

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

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

55 (C) If the increase in net enrollment as determined under this subdivision plus the county's
56 net enrollment as determined under all other provisions of this subsection is greater than one

57 thousand four hundred, the increase in net enrollment shall be reduced so that the total does not
58 exceed one thousand four hundred; and

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

63 (5) Net enrollment shall include students enrolled in a public charter school established
64 pursuant to §18-33-1 et seq. of this code.

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

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

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

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

80 (n) "Levies for general current expense purposes" means ninety percent of the levy rate
81 for county boards of education calculated or set by the Legislature pursuant to §11-8-6f of this
82 code.

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

86 (p) "State aid eligible personnel" means all professional educators and service personnel
87 employed by a county board in positions that are eligible to be funded under this article and whose
88 salaries are not funded by a specific funding source such as a federal or state grant, donation,
89 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 §18-9A-12(a) of this code, for any county within which a public charter
2 school is authorized in accordance with §18-33-1 et seq. of this code and the school's net
3 enrollment is included in the calculation of the basic foundation program for the county, the basic
4 foundation program for the county shall be reduced by the county's total per pupil basic foundation
5 program multiplied by the second month net enrollment of the public charter school.

6 (b) If a public charter school is authorized in accordance with §18-33-1 et seq. of this code
7 and will begin its initial year of operation in the county during the next school year, the basic
8 foundation program for the county shall be reduced by the county's total per pupil basic foundation
9 program multiplied by the estimated second month net enrollment of the public charter school.
10 The funding for the public charter school and the county board shall be subsequently adjusted, if
11 necessary, in the first year of operation, based on the public charter school's actual second month
12 net enrollment.

13 (c) The basic foundation program for each public charter school authorized and operating
14 in accordance with §18-33-1 et seq. of this code, shall be the total per pupil basic foundation
15 program of the county in which it is located multiplied by the second month net enrollment of the
16 public charter school.

17 (d) The basic foundation program for public charter schools authorized and operating in
 18 accordance with §18-33-1 et seq. of this code, is a part of the Public School Support Program.

19 (e) The basic foundation program for public charter schools shall be allocated and
 20 distributed in accordance with §18-33-6 of this code.

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) An appropriation shall be made to the Department of Education to be distributed to~~
 17 ~~county boards to support children with high acuity needs that exceed the capacity of county to~~
 18 ~~provide with funds available. Each county board shall apply to the state superintendent for receipt~~

19 ~~of this funding in a manner set forth by the state superintendent that assesses and takes into~~
20 ~~account varying acuity levels of the exceptional students. Any remaining funds at the end of a~~
21 ~~fiscal year from the appropriation shall be carried over to the next fiscal year. When possible,~~
22 ~~federal funds shall be distributed to county boards for this purpose before any of the state~~
23 ~~appropriation is distributed. The state board shall promulgate a rule in accordance with the~~
24 ~~provisions of article three-b, chapter twenty-nine-a of this code that implements the provisions of~~
25 ~~this subdivision relating to distributing the funds to the county boards. The rule at least shall~~
26 ~~include a definition for “children with high acuity needs”~~

27 (B) An “exceptional child with high cost/high acuity special needs” is a student with a
28 disability for whom the costs to the county or school exceed three times the average per pupil
29 expenditure.

30 (C) Effective for the school year beginning July 1, 2019, and thereafter:

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

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

38 (iii) The disbursement method shall further provide that, whenever the separate
39 appropriation under this paragraph, when combined with federal funds available for this purpose,
40 is insufficient to reimburse all eligible county boards and public charter schools fully for their costs
41 of serving the exceptional children with high cost/high acuity special needs enrolled in their
42 counties and schools, the county boards and public charter schools shall receive disbursements
43 that equalize, as near as reasonably possible, the budget percentage for each county board and

44 public charter schools that is consumed by eligible, but not reimbursed, expenditures for serving
45 exceptional children with high cost/high acuity special needs so that no county board's or public
46 charter school's budget is affected disproportionately.

47 (iv) Each county board and public charter school shall apply to the state superintendent to
48 receive this funding in a manner set forth by the state superintendent. Any remaining funds at the
49 end of a fiscal year from the appropriation shall be carried over to the next fiscal year. When
50 possible, federal funds shall be disbursed to county boards and public charter schools for this
51 purpose before any of the state appropriation is disbursed. The state board shall promulgate a
52 rule in accordance with the provisions of §29A-3B-1 et seq. of this code that implements this
53 subdivision relating to distributing the funds to the county boards. The rule at least shall include a
54 definition for children with high acuity 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 §18-2-
61 13f of this code receive an education in accordance with state and federal laws: *Provided*, That
62 the state superintendent shall also assure that adults in correctional facilities and regional jails
63 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 “Authorizer” or “authorizing authority” means the West Virginia Public Charter School
8 Oversight and Authorizer Board or a county board with full accreditation status empowered under
9 this article to review applications, decide whether to approve or reject applications, enter into
10 charter contracts with applicants, oversee and monitor public charter schools and decide whether

11 to renew, not renew or revoke charter contracts;

12 “Charter application” means a proposal from an applicant to an authorizer in accordance
13 with §18-33-10 of this code to enter into a charter contract whereby the proposed school obtains
14 public charter school status;

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 §18-33-11 of this code;

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 multicounty 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 §18-2E-5 of this code,
26 “county board” means the state board: *Provided*, That the state board may not be an authorizing
27 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 “Program conversion public charter school” means a program within an existing
34 noncharter public school that is either preexisting and converted or newly created to become a
35 separate and discreet program within the noncharter public school and that is governed and

36 operated in accordance with this article;

37 “Public charter school” means a public school or program within a public school that is
38 open to all students and is formed in accordance with the provisions of this article and includes
39 each of the features described in the definition of a public charter school under §18-33-3 of this
40 code whether start-up, conversion or program conversion unless otherwise provided; 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 §18-2E-5 of this code and, through its authorizer, for meeting
7 the terms of its charter contract and performance framework standards the required for public
8 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 §18-33-9(b)(6) of this code which set forth the
32 requirements for a public charter school's governance plan including, but not limited to, the
33 membership composition and qualifications of a public charter school governing board;

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

36 (C) Complies with the provisions of §29B-1-1 et seq. of this code relating to freedom of
37 information, and the provisions of §6-9A-1 et seq. of this code relating to open governmental
38 proceedings;

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

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

43 (13) Is subject to the same student assessment and accreditation requirements applicable
44 to noncharter public schools in this state, but only to the extent that will allow the state board to
45 issue the public charter school a level of accreditation pursuant to §18-2E-5 of this code. Nothing
46 precludes a public charter school from establishing additional student assessment measures that
47 go beyond state requirements;

48 (14) Is subject to the Student Data Accessibility, Transparency and Accountability Act
49 pursuant to §18-2-5h of this code;

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

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

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

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

61 (B) May include a focus on students with special needs, such as at-risk students, English
62 language learners or students involved with the Juvenile Justice System; and

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

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

67 A charter school shall deliver the services directly or contract with a county board or another

68 provider to deliver the services as set forth in its charter contract;

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

71 (20) Designs its educational program to meet or exceed the student performance
72 standards required of noncharter public school students under §18-2E-5 of this code;

73 (21) Provides instructional time that is at least equal to the number of days or their
74 equivalent required of noncharter public school students under §18-5-45 of this code;

75 (22) Ensures students meet the compulsory school attendance requirements of §18-3-44
76 of this code and §18-8-1a of this code, as applicable;

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

80 (24) Adheres to all applicable accounting and financial reporting requirements as
81 prescribed for public schools, including adherence to generally accepted accounting principles.

82 A public charter school shall annually engage an external Auditor to perform an independent audit
83 of the school's finances. The public charter school shall submit the audit to its authorizer and to
84 the state superintendent within nine months of the end of the fiscal year for which the audit is
85 performed;

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

93 (26) Requires the participation of all public charter school employees in the Teachers
94 Retirement System or the Teachers' Defined Contribution Retirement System, whichever is
95 applicable in accordance with §18-7A-1 et seq., §18-7B-1 et seq. and §18-7D-1 et seq. of this
96 code;

97 (27) Requires the participation of all public charter school employees in insurance plans
98 established by the Public Employees Insurance Agency pursuant to §15-16-1 et seq. of this code;

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

102 (29) Requires a criminal history check pursuant to §18A-3-10 of this code for any staff
103 person that would be required if the person was employed in a noncharter public school, unless
104 a criminal history check has already been completed for that staff person pursuant to that section.
105 Governing board members and other public charter school personnel are subject to criminal
106 history record checks and fingerprinting requirements applicable to noncharter public schools in
107 this state;

108 (30) Prohibits contractors or service providers or their employees from making direct,
109 unaccompanied contact with students or from access to school grounds unaccompanied when
110 students are present if it cannot be verified that the contractors, service providers or employees
111 have not previously been convicted of a qualifying offense pursuant to §18-5-15c of this code;

112 (31) Complies with the provisions of §29B-1-1 et seq. of this code relating to freedom of
113 information and the provisions of §6-9A-1 et seq. of this code relating to open governmental
114 proceedings;

115 (32) Is subject to the same zoning rules for its facilities that apply to noncharter public
116 schools in this state;

117 (33) Is subject to the same building codes, regulations and fees for its facilities that apply

118 to noncharter public schools in this state, including any inspections required for noncharter public
119 schools under this chapter, and is subject to the jurisdiction of the West Virginia State Fire Marshal
120 for inspection and issuance of a Certificate of Occupancy for any facility used by the public charter
121 school; and

122 (34) Complies with all transportation and safety laws and administrative rules applicable
123 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 §29-12-5a of this code;

9 (3) Contract with a multicounty regional educational service agency established pursuant
10 to §18-2-26 of this code for education services and resources;

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

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

15 (6) Solicit, accept and expend any gifts or grants for public charter school purposes from
16 private sources in any manner that is available to a local school district. Nothing in this article may
17 be construed to prohibit any person or organization from providing funding or other assistance for
18 the establishment or operation of a public charter school. The governing board of a public charter

19 school may accept gifts, donations or grants of any kind made to the school and expend or use
20 such gifts, donations or grants in accordance with the conditions prescribed by the donor except
21 that a gift, donation or grant may not be accepted if subject to a condition that is contrary to any
22 provision of law or term of the charter contract. Any moneys received by a charter school from
23 any source remaining in the charter school's accounts at the end of a budget year must remain in
24 the charter school's accounts for use by the charter school during subsequent budget years;

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

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

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

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

39 (D) A public charter school may purchase or lease at or below fair market value part or all
40 of any surplus or unused state-owned facility or property located in the state. The state agency in
41 control of the facility may not require purchase or lease payments that exceed the fair market
42 value of the property; and

43 (E) Nothing in this subdivision requires or prohibits the county board to seek funds from

44 any source, including the School Building Authority, for conversion of any existing district school
45 facility or for constructing a district school facility for use by the public charter school;

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

50 (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 subsection, if the remaining enrollment capacity of the program, class, grade level or building of
52 a 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
93 §18-2-5h of this code, and shall report information on student and school performance to parents,
94 policy-makers and the general public in the same manner as noncharter public schools utilizing
95 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 §18-9A-12a of this code.

6 (b) A public charter school that is authorized in accordance with this article and will begin
7 its 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 foundation program
11 funding directly to the public charter school at the same time and in the same manner as
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 foundation program funding received by the
15 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 §18-20-5 of this code; 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 based on 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 §18-2E-5 of this code.
11 Consistent with the provisions of this article, the Public Charter School Oversight and Authorizer
12 Board has statewide chartering jurisdiction and authority and shall be an independent state
13 agency. Except as otherwise authorized in this article, no other governmental agency or entity
14 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, 2018. The
45 Public Charter School Oversight and Authorizer Board shall meet as soon as practical after
46 September 1, 2018, 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 §18-33-11 of this
35 code;

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 §18-33-11 of this code;

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 §18-33-9 of this code
- 69 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 article, 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, 2019, 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 §18-33-11 of this code 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 §29-12-5a of this code;

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

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

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

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

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

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

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

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

99 (iv) A description of cocurricular or extracurricular programs and how they will be funded
100 and delivered;

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

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

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

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

107 (v) Opportunities and expectations for parent involvement; and
 108 (H) The proposed public charter school’s school closure protocol, including:
 109 (i) Timely notification to parents;
 110 (ii) Orderly transition of students and student records to new schools;
 111 (iii) Proper disposition of school funds, property, and assets in accordance with §18-33-12
 112 of this code; and

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

115 (7) With respect to an application for a conversion public charter school, in addition to the
 116 other requirements of this article, the request for proposals shall require applicants to demonstrate
 117 support for the proposed conversion to a public charter school by:

118 (A) Submitting a petition for conversion signed by a majority of the employees of the school
 119 proposed for conversion; and

120 (B) Submitting a petition for conversion signed by a majority of the parents, guardians or
 121 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 §18-33-9 of
11 this code. 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 that intends to proceed as the authorizing authority,
25 shall include a thorough evaluation of each application, an in-person interview with the applicant,
26 a thirty-day comment period and a public hearing. In reviewing and evaluating applications,
27 authorizers shall employ procedures, practices, criteria and standards consistent with nationally
28 recognized principles and standards for authorizing high-quality public charter schools. In
29 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 a
 3 designated representative of the authorizer and of the public charter school's governing board. A
 4 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 §18-33-6(d) of this code.

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, post-secondary readiness, including the percentage of
43 graduates submitting applications to post-secondary institutions, high school completion, and
44 post-secondary 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 §18-2E-5 of this code.

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

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

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

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

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

**§18-33-12. Charter contract renewal; performance report by authorizer and renewal
guidance; renewal application; renewal term; nonrenewal 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 §18-33-11 of this
5 code and the charter contract, and shall provide notice of any weaknesses or concerns perceived
6 by the authorizer concerning the school that may jeopardize its position in seeking renewal if not
7 timely rectified. The school and the authorizer shall mutually agree to a reasonable time period
8 for the charter school to respond to the performance report and submit any corrections for the
9 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 §18-33-11 of this code, as set forth in the charter contract and consistent
15 with this article. The renewal application guidance shall, at a minimum, require and provide an
16 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 §18-2E-5
51 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 §18-2E-5 of this code for
20 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
39 §18-33-1 et seq. of this code that have included in their approved charter application a
40 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 a five-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 bill requires 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.