WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 304

By SENATORS CARMICHAEL (MR. PRESIDENT), TAKUBO, AND BLAIR

[Introduced January 17, 2018; Referred to the Committee on Education; and then to the Committee on Finance]
A BILL to amend and reenact §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §18-5D-1, §18-5D-2, §18-5D-3, §18-5D-4, §18-5D-5, §18-5D-6, §18-5D-7, §18-5D-8, §18-5D-9, §18-5D-10, §18-5D-11, and §18-5D-12; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-20-5 of said code; and to amend and reenact §29-12-5a of said code, all relating generally to the authorization of the establishment of charter schools; including charter school employees as covered by the Public Employees Insurance Act; establishing charter school employees’ permissive participation in PEIA; establishing charter school employee eligibility for the State Teachers Retirement System; establishing charter school employee eligibility for the Teachers’ Defined Contribution Retirement System; providing the legislative purpose and intent; defining terms; authorizing the establishment of public charter schools beginning in 2018-2019; establishing requirements and powers for public charter schools; providing for the creation of governing boards; setting requirements for enrollment in public charter schools; creating process and requirements for application to establish public charter schools; providing duties and responsibilities for authorizers; establishing requirements for charter school contracts; establishing process for renewal, nonrenewal, and revocation of contracts, including required rules by the State Board of Education; establishing funding for charter school enrollment; creating appeals process for the denial of a charter application, the nonrenewal of a charter contract, or the revocation of a charter contract; creating prohibitions; establishing reporting requirements; providing that appropriation will be disbursed to the public charter schools to serve the needs of exceptional children; and including public charter schools in coverage by the Board of Risk and 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.

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

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

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

(3) “Employee” means any person, including an elected officer, who works regularly full
time in the service of the State of West Virginia and, for the purpose of this article only, the term
“employee” also means any person, including an elected officer, who works regularly full time in
the service of a county board of education; a public charter school established pursuant to §18-5D-1
et seq. of this code; a county, city or town in the state; any separate corporation or
instrumentality established by one or more counties, cities or towns, as permitted by law; any
 corporation or instrumentality supported in most part by counties, cities or towns; any public
corporation charged by law with the performance of a governmental function and whose
jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive
community mental health center or comprehensive mental retardation intellectually and
developmentally disabled facility established, operated or licensed by the Secretary of Health and
Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state,
county or municipal funds; any person who works regularly full time in the service of the Higher
Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in §18B-1-2 of this code; any person who works regularly full time in the service of a combined city-county health department created pursuant to §16-2-1 et seq. of this code; any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a long-term substitute as defined in §18A-1-1 of this code in the service of a county board of education: Provided, That a long-term substitute who is continuously employed for at least one hundred thirty-three instructional days during an instructional term, and until the end of that instructional term, is eligible for the benefits provided in this article until September 1, following that instructional term: Provided, however, That a long-term substitute employed fewer than one hundred thirty-three instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an “employee” during the term of office of the elected member. Upon election by the state Board of Education to allow appointed board members to participate in the Public Employees Insurance Program pursuant to this article, any person appointed to the state Board of Education is considered an “employee” during the term of office of the appointed member: Provided further, That the elected member of a county board of education and the appointed member of the state Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

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

(i) Participates in a job-sharing arrangement as defined in §18A-1-1 of this code;

(ii) Has been designated, in writing, by all other participants in that job-sharing
(iii) Works at least one third of the time required for a full-time employee.

(4) “Employer” means the State of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; a county board of education; a public charter school established pursuant to §18-5D-1 et seq. of this code; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state, county or municipal funds; a combined city-county health department created pursuant to §16-2-1 et seq. of this code; and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a 21st Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an “employer” within the meaning of this article shall be decided by the director. The term “employer” does not include within its meaning the National Guard.

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

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

(7) “Plan”, unless the context indicates otherwise, means the medical indemnity plan, the managed care plan option or the group life insurance plan offered by the agency.
(8) “Retired employee” means an employee of the state who retired after April 29, 1971, and an employee of the Higher Education Policy Commission, the Council for Community and Technical College Education, a state institution of higher education or a county board of education who retires on or after April 21, 1972, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state retirement system and in the Public Employees Insurance Agency: Provided, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements of the state Teachers Retirement System and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired employees upon terms as the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to 5-16D-1 et seq. of this code. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer’s past, present or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-employment
benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

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

The provisions of this article are not mandatory upon any employee or employer who is not an employee of or is not the State of West Virginia, its boards, agencies, commissions, departments, institutions or spending units, or a county board of education or a public charter school authorized pursuant to §18-5D-1 et seq. of this code, and nothing contained in this article may be construed so as to compel any employee or employer to enroll in or subscribe to any insurance plan authorized by the provisions of this article.

Those employees enrolled in the insurance program authorized under the provisions of §21A-2B-1 et seq. of this code may not be required to enroll in or subscribe to an insurance plan or plans authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes any part or all of the premium or cost of the premium may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions of this article at any time, to the same extent as any other qualified employee or employer, but employee or employer may not remain enrolled in both programs. The provisions of §33-14-1 et seq. through §33-16-1 et seq. of this code, relating to group life insurance, accident and sickness insurance, and group accident and sickness insurance, are not applicable to the provisions of this article whenever the provisions of §33-14-1 et seq. through §33-16-1 et seq. of this code are in conflict with or contrary to any provision set forth in this article or to any plan or plans established by the Public Employees Insurance Agency.

Employers, other than the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education or a public charter school authorized pursuant to §18-5D-1 et seq. of this code are exempt from participating in the insurance program provided for by the provisions of this article unless participation by the
employer has been approved by a majority vote of the employer’s governing body. It is the duty of the clerk or secretary of the governing body of an employer who by majority vote becomes a participant in the insurance program to notify the director not later than ten days after the vote.

Any employer, whether the employer participates in the Public Employees Insurance Agency insurance program as a group or not, which has retired employees, their dependents or surviving dependents of deceased retired employees who participate in the Public Employees Insurance Agency insurance program as authorized by this article, shall pay to the agency the same contribution toward the cost of coverage for its retired employees, their dependents or surviving dependents of deceased retired employees as the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education or a public charter school authorized pursuant to §18-5D-1 et seq. of this code pay for their retired employees, their dependents and surviving dependents of deceased retired employees, as determined by the finance board: Provided, That after June 30, 1996, an employer not mandated to participate in the plan is only required to pay a contribution toward the cost of coverage for its retired employees, their dependents or the surviving dependents of deceased retired employees who elect coverage when the retired employee participated in the plan as an active employee of the employer for at least five years: Provided, however, That those retired employees of an employer not participating in the plan who retire on or after July 1, 2010, who have participated in the plan as active employees of the employer for less than five years are responsible for the entire premium cost for coverage and the Public Employees Insurance Agency shall bill for and collect the entire premium from the retired employees, unless the employer elects to pay the employer share of the premium. Each employer is hereby authorized and required to budget for and make such payments as are required by this section.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

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

1. “Accumulated contributions” means all deposits and all deductions from the gross salary of a contributor plus regular interest.

2. “Accumulated net benefit” means the aggregate amount of all benefits paid to or on behalf of a retired member.

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

4. “Annuities” means the annual retirement payments for life granted beneficiaries in accordance with this article.

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

6. “Beneficiary” means the recipient of annuity payments made under the retirement system.

7. “Contributor” means a member of the retirement system who has an account in the teachers accumulation fund.

8. “Deposit” means a voluntary payment to his or her account by a member.
(9) “Employer” means the agency of and within the state which has employed or employs a member.

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

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

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

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

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

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

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

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

(18) "Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; or (E) a governing board, as defined in section two, article one, chapter eighteen-b of this code; or (F) a public charter school established pursuant to §18-5D-1 et seq. of this code: Provided, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

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

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

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

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

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

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

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

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

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

(28) “Retirant” means any member who commences an annuity payable by the retirement system.

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

(30) “Retirement system” means the state Teachers Retirement System established by this article.

(31) “Teacher member” means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the
divisions under his or her supervision, or any other employee under the state superintendent
performing services of an educational nature; (H) employees of the State Board of Education who
are performing services of an educational nature; (I) any person employed in a nonteaching
capacity by the State Board of Education, any county board of education, the State Department
of Education or the State Teachers Retirement Board, if that person was formerly employed as a
teacher in the public schools; (J) all classroom teachers, principals and educational administrators
in schools under the supervision of the Division of Corrections, the Division of Health or the
Division of Human Services; (K) an employee of the State Board of School Finance, if that person
was formerly employed as a teacher in the public schools; and (L) any person designated as a
21st Century Learner Fellow pursuant to §18A-3-11 et seq. of this code who elects to remain a
member of the State Teachers Retirement System provided in this article; and (M) any person
employed by a public charter school established pursuant to §18-5D-1 et seq. of this code.

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

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

ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

(12) “Member” or “employee” means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers’ Defined Contribution Retirement System established by this article; and (N) any person employed by a public charter school established pursuant to §18-5D-1 et seq. of this code;

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

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

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

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

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

(18) “Required beginning date” means April 1 of the calendar year following the later of:

(A) The calendar year in which the member attains age seventy and one-half years; or (B) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of seventy and one-half years;

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

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

ARTICLE 5D. SPECIALIZED PUBLIC CHARTER SCHOOLS.

§18-5D-1. Legislative purpose and intent.

The West Virginia Legislature hereby authorizes the establishment of specialized public
charter schools to benefit students, parents, teachers and community members by creating new, innovative and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals, and diversity of public education. The purposes of the specialized public charter school initiative are to:

(a) Provide innovative educational methods and practices through specialized programs that engage students in the learning process, thus resulting in higher student achievement;

(b) Improve student learning by creating more diverse public schools with high standards for student performance;

(c) Enable schools to establish a distinctive school curriculum established a specialized academic theme or method of instruction; and

(d) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

§18-5D-2. Definitions.

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(a) “Applicant” means a person, persons, group, organization, or entity that seeks approval from a public charter school authorizer to establish a public charter school.

(b) “Authorizer” means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(1) A county school board in which a public charter school is located; or

(2) Two or more county school boards that collaborate to oversee a regional public charter school located within one of such counties.

(c) “Charter application” means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status.
(d) “Charter contract” or “contract” means a fixed-term, renewable contract between a public charter school’s governing board and an authorized that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article.

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

(f) “Education service provider” means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management.

(g) “Governing board” means the independent board of directors for a public charter school that is a party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the charter application.

(h) “Noncharter public school” means a public school other than a public charter school established pursuant to this article;

(i) “Parent” means a parent, guardian, or other person or entity having legal custody over a child.

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

1. Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

2. Operates in pursuit of a specialized academic priority, which is specifically set forth in the charter contract;

3. Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

4. Is governed by a governing board that is independent of a county board except for the county board’s responsibilities under this article as the public charter school’s authorizer;

5. Is established and operating under the terms of a charter contract between the public
charter school’s board of directors and its authorizer;

(6) Is a public school to which parents choose to send their children that want to participate in the specialized academic program offered by the public charter school;

(7) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated;

(8) Has a student population whose racial and socio-economic composition is reasonably reflective of the authorizer’s district;

(9) Offers a comprehensive instructional program that meets or exceeds the student performance standards set forth in §18-2E-5 of this code; and

(10) Operates under the oversight of its authorizer in accordance with its charter contract.

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

(l) “Student” means any child that is eligible for attendance in a public school in West Virginia.

(m) “Virtual public charter school” means a public charter school that offers education services primarily or completely through an online program.

§18-5D-3. Authorization for the establishment of public charter schools; governing board.

(a) Beginning in the 2018-2019 school year, up to two public charter schools may be authorized in this state. The state board of education has the authority to increase the number of public charter schools that may be authorized.

(b) A public charter school shall be part of the state’s system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article: Provided, That public charter schools shall adhere to the same immunization, civil rights and disability rights requirements applicable to traditional public schools: Provided, however, That nothing in the article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to traditional public schools.
(c) A public charter school shall be considered a separate local education agency than its
authorizer, unless expressly stated otherwise in the charter contract between the public charter
school’s governing board and the authorizer.

(d) A public charter school shall not be a virtual public charter school: Provided, That the
public charter school may offer online courses and allow virtual opportunities as part of its
specialized program as set forth in its charter application and charter contract:

(e) A public charter school shall not have entrance requirements or charge tuition or fees:
Provided, That a public charter school may require the payment of fees on the same basis and to
the same extent as noncharter public schools.

(f) A public charter school shall not have the power to levy taxes.

(g) A public charter school shall:

(1) Be governed by a governing board;

(2) Be established and operate in pursuit of a specific specialized academic objective,
supported by an institution of higher education, as defined in the charter contract between the
governing board and the authorizer;

(3) Provide instructional time that is at least equal to the number of days or their equivalent
required by §18-5-45 of this code;

(4) Hire only teachers holding a valid teaching certificate or endorsement in this state;

(5) Require criminal background checks for staff and volunteers, including members of its
governing board, as required of all noncharter public school employees and volunteers;

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

(7) Ensure student participation in the required state summative assessment pursuant to
§18-2E-5 of this code:
(8) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures and audit requirements applicable to noncharter public schools;

(9) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(10) Comply with the Freedom of Information Act as set forth in §29B-1-1 et seq. of this code;

(11) Comply with purchasing requirements and limitations as set forth in state board of education policy or provide the governing board a detailed monthly report of school purchases over $10,000;

(12) Operate under the oversight of its authorizer in accordance with its charter application and application;

(13) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains oversight and authority over the school;

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

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities, from public or private sources;

(14) Enroll students in the public charter school pursuant to §18-5D-4 of this code;

(15) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(16) Serve one or more of grades pre-K through twelve and shall limit admission to
students within the grade levels served; and

(17) Provide programs and services to a student with a disability in accordance with the student’s individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(h) A public charter school may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space; and

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extra-curricular activities to the same extent as noncharter public schools: Provided, That a student is eligible to participate in an extra-curricular activity at the noncharter public school located in his or her attendance zone if that extra-curricular activity is not offered by the public charter school: Provided, however, That the student complies with the same eligibility requirements as noncharter public school students.

(i) Public charter school governing board.

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than three members.

(2) The governing board shall consist of at least two parents of students attending the
public charter school operating under the governing board.

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7, and shall be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school’s specialized program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 et seq. of this code.

§18-5D-4. Enrollment in a public charter school.

(a) A public charter school authorized by a county board or collaborating county boards may enroll students who reside within the boundaries of the district or districts represented by the county board or collaborating county boards.

(b) The racial and socio-economic composition of the students enrolled to attend the public charter school student population shall be reasonably reflective of the authorizer’s district or
(c) If capacity is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: Provided, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(d) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5D-4(c) of this code.

(e) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

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

§18-5D-5. Application to establish public charter school.

(a) To establish a public charter school, an applicant shall submit a charter application to an authorizer. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed specialized program;

(3) The identity, role, and responsibilities of the institution of higher education to support, enhance, and advance the proposed specialized program;

(4) The student achievement goals for the public charter school's specialized program and
the chosen methods of evaluating whether students have attained the skills and knowledge
specified for those goals;

(5) The school’s plan for using data derived from student evaluations and assessments,
including the statewide summative assessment, to drive instruction and promote continued school
improvement;

(6) An explanation of how the school’s proposed specialized program is likely to improve
the achievement of traditionally underperforming students in the local school district;

(7) The proposed governance structure of the school, including a list of members of the
initial governing board, a draft of bylaws that include the description of the qualifications, terms,
and methods of appointment or election of directors, and the organizational structure of the school
that clearly presents lines of authority and reporting between the governing board, school
administrators, staff, any related bodies such as advisory bodies or parent and teacher councils,
and any external organizations that will play a role in managing the school;

(8) Plans and timelines for student enrollment, including policies and procedures for
conducting transparent and random admission lotteries that are open to the public, and that are
consistent with this article;

(9) A proposed five year budget, including the start-up year and projections for four
additional years with clearly stated assumptions;

(10) Proposed fiscal and internal control policies for the public charter school;

(11) Acknowledgement that the public charter school will participate in the state’s
accountability system;

(12) A proposed handbook that outlines the personnel policies of the public charter school,
including the criteria to be used in the hiring of qualified teachers, school administrators, and other
school employees, a description of staff responsibilities, and the school’s plan to evaluate
personnel on an annual basis;

(13) An explanation of student discipline procedures, including disciplinary procedures for
students with disabilities, which shall be consistent with the requirements of due process and with
state and federal laws and regulations governing the placement of students with disabilities;

(14) A description of the facilities to be used by the public charter school, including the
location of the school and how the facility supports the implementation of the school's specialized
program. The school shall obtain all required occupation and operation certificates and licenses
prior to the first instructional day for students;

(15) The proposed ages and grade levels to be served by the public charter school,
including the planned, minimum, and maximum enrollment per grade per year;

(16) The school calendar and school day schedule, which shall meet the requirements of
§18-5-45 of this code;

(17) Types and amounts of insurance coverage to be obtained by the public charter
school, which shall include adequate insurance for liability, property loss, and the personal injury
of students comparable to noncharter public schools within the local school district operated by
the county board;

(18) A description of the health and food services to be provided to students attending the
school;

(19) Process and procedures to be followed in the case of the closure or dissolution of the
public charter school, including provisions for the transfer of students and student records to the
local school district in which the public charter school is located and an assurance and agreement
to payment of net assets or equity, after payment of debts as specified in §18-5D-8 of this code;

(20) A code of ethics for the school setting forth the standards of conduct expected of its
governing board, officers, and employees;

(21) The public charter school's plan for successfully serving students with disabilities,
students who are English language learners, bilingual students, and students who are
academically behind and gifted, including, but not limited to, the school's plan for compliance with
all applicable federal and state laws and regulations;
(22) A description of cocurricular and extra-curricular programs to be offered by the public
charter school and how they will be funded and delivered;
(23) The process by which the school will resolve any disputes with the authorizer; and
(24) A detailed start-up plan, including financing, tasks, timelines, and individuals
responsible for carrying out the plan.
(c) If the applicant intends to contract with an education service provider for educational
program implementation or comprehensive management, the application shall additionally require
the applicant to provide the following information with respect to the educational service provider:
(1) Evidence of success in serving student populations similar to the targeted population,
including demonstrated academic achievement as well as successful management of
nonacademic school functions, if applicable;
(2) Student performance data and financial audit reports for all current and past public
charter schools;
(3) Documentation of and explanation for any actions taken, legal or otherwise, against
any of its public charter schools for academic, financial, or ethical concerns;
(4) The proposed duration of the service contract;
(5) The annual proposed fees and other amounts to be paid to the education service
provider;
(6) The roles and responsibilities of the board of directors, the school staff, and the
education service provider;
(7) The scope of services and resources to be provided by the education service provider;
(8) Performance evaluation measures and timelines;
(9) Methods of contract oversight and enforcement;
(10) Investment disclosure;
(11) Conditions for renewal and termination of the contract; and
(12) Disclosure and explanation any existing or potential conflicts of interest between the
governing board and the proposed education service provider or any affiliated business entities.

§18-5D.6. Authorizer duties and responsibilities.

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and section five of this article, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the specialized program detailed in the charter application: Provided, That no more than two public charter schools may be authorized in this state:

(3) Decline to approve charter applications that:

(A) Fail to meet the requirements of §18-5D-5 of this code; or

(B) Are for a school that would be wholly or partly under the control or direction of any religious denomination;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes:

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

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

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision making.
(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;
(2) Conduct an in-person interview with the applicant;
(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;
(4) Provide a detailed analysis of the application to the applicant or applicants;
(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and
(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5D-5 of this code;
(2) Base decisions on documented evidence collected through the application review process; and
(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than one hundred twenty days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed a denial by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education for final approval.

(f) An applicant whose charter application has been denied may appeal the authorizer's
decision to the West Virginia Board of Education pursuant to §18-5D-9 of this code.

(g) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

§18-5D-7. Charter contract requirements; term of contract.

(a) Within ninety days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: Provided, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5D-3(b) and §18-5D-5(b) of this code;

(3) The rights and duties of the authorizer, the public charter school, and the institution of higher education;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The allocation of state, local, and federal funds, and the schedule to disburse funds to the public charter school by the authorizer;

(6) The process the authorizer will use to provide ongoing oversight;

(7) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(8) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(9) The process for revision or amendment to the terms of the charter contract agreed to
by the authorizer and the governing board;

(10) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled;

(11) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Board of directors' performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board of education. A copy of the charter contract shall be provided to the state superintendent of schools.

(f) No public charter school may commence operations without a charter contract that
meets the requirements of this section, has been properly executed, and has been approved by a county board of education.

§18-5D-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: Provided, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board’s response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer’s final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a
charter contract;

(7) Approval of the authorizer’s decision shall be adopted by the county board of education during an open meeting; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed a denial of the renewal application and thus subject to appeal pursuant to the provisions of §18-5D-9 of this code.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the specialized program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) The State Board of Education shall promulgate a rule establishing the process for revoking a charter contract. At a minimum, this rule shall include:

(1) The information that must be included in the authorizer’s initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer’s initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer’s initial decision to revoke the charter contract;
(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board’s response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(6) The information that must be included in the authorizer’s final decision if it determines to revoke the charter contract;

(7) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(8) Approval of the authorizer’s decision shall be adopted by the county board of education during an open meeting; and

(9) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed a denial of the renewal application and thus subject to appeal pursuant to the provisions of §18-5D-9 of this code.

(e) Notwithstanding the process set forth in §18-5D-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened. A governing board whose charter contract has been revoked pursuant to this provision may appeal the authorizer’s action to the State Board of Education: Provided, That the charter contract shall remain revoked unless and until the State Board of Education directs otherwise.

(f) A governing board whose charter contract has not been renewed or has been revoked may appeal the authorizer’s final decision to the West Virginia Board of Education pursuant to §18-5D-9 of this code.

(g) An authorizer shall develop a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and
proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol. If a public charter school is subject to closure, following exhaustion of any appeal allowed under §18-5D-9 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure of the public charter school in the name and interest of the public charter school.

§18-5D-9. Appeal of authorizer’s decision to West Virginia Board of Education.

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application, the nonrenewal of a charter contract, or the revocation of a charter contract to the State Board of Education within thirty days of the authorizer’s decision.

(b) The State Board of Education shall promulgate a rule establishing the process and timeline for appeals filed pursuant to §18-5D-9(a) of this code.

(c) If the state board finds that the authorizer’s decision was contrary to the best interest of the students or the community, the state board shall either:

(1) Remand the decision to the authorizer with written instructions for reconsideration of the authorizer’s decision; or

(2) Remand the decision to the authorizer with written instructions to approve the application, or renew or reinstate the charter contract.


Notwithstanding any provision in this article that may be interpreted to the contrary, a
A public charter school shall not:

(1) Be home-school based;

(2) Be affiliated with or espouse any specific religious denomination, organization, sect or belief or the promotion or engaging in any religious practices in terms of its educational program;

(3) Be affiliated with any organized group whose espoused beliefs attack or malign an entire class of people, typically for immutable characteristics, as identified through listings of such groups as may be made by the U. S. Department of Justice, the Federal Bureau of Investigation, or officials having similar jurisdiction in this state;

(4) Discriminate on the basis of race, ethnicity, national origin, religion, gender, sexual orientation, income level, disabling condition, proficiency in the English language, or academic or athletic ability: Provided, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

§18-5D-11. Funding for charter school enrollment.

(a) A public charter school established pursuant to this article is considered a public school of the authorizer for purposes of public school support. Students attending a public charter school shall be included in net enrollment total provided for in §18-9A-2(i) of this code.

(b) The authorizer or authorizers shall make payment to any authorized public charter school in the amount of the authorizer’s per pupil total basic foundation allowance multiplied by the second month net enrollment of the public charter school. These funds shall be transferred in accordance with the charter contract establishing the public charter school. If a student is enrolled in the public charter school from a county other than the authorizer, in the initial year of public charter school enrollment, the sending county will be responsible for paying tuition for the student in an amount equal to that county’s per pupil total basic foundation allowance. Thereafter, the student will be included in the net enrollment of the authorizer and payment shall come from
§18-5D-12. Reports.

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board an annual report within sixty days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

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

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

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

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

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

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

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

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

(B) An separate appropriation shall be made to the Department of Education to be distributed to county boards and public charter schools authorized pursuant to §18-5D-1 et seq. of this code to support children assist them with serving exceptional children with high cost/high acuity special needs that exceed the capacity of county to provide with funds available. Each county board and public charter school shall apply to the state superintendent for receipt of this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of the exceptional students. Any remaining funds at the end of a fiscal year from the appropriation shall be carried over to the next fiscal year. When possible, federal funds shall be distributed to county boards and public charter schools for this purpose before any of the state appropriation is distributed. The state board shall promulgate a rule in accordance with the provisions of §29A-3B-1 et seq. of this code that implements the provisions of this subdivision relating to distributing the funds to the county boards and public charter schools. The rule at least shall include a definition for "children with high acuity needs".

(4) Receiving from county boards of education and public charter schools, their applications, annual reports and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims and preparing vouchers to reimburse said counties the amounts reimbursable to them.
(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions, private schools and correctional facilities as provided in §18-2-13f of this code receive an education in accordance with state and federal laws: Provided, That the state superintendent shall also assure that adults in correctional facilities and regional jails receive an education to the extent funds are provided therefor.

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

(7) Receive the county plan for integrated classroom submitted by the county boards of education and submit a state plan, approved by the State Board of Education, to the Legislative Oversight Commission on Education Accountability no later than December 1, 1995

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

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, public charter schools electing to obtain coverage, and for employees and officers of the state Department of Corrections.

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

(b) Insurance provided by the Board of Risk and Insurance Management pursuant to the provisions of §29-12-5a(a) of this code shall cover claims, demands, actions, suits or judgments by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or without any school building or correctional institution if, at the time of the alleged injury, the teacher, supervisor, administrator, service personnel employee, county superintendent, school board member, or employee or officer of the Department of Corrections was acting in the discharge of his or her duties, within the scope of his or her office, position or employment, under the direction of the county board of education, or Commissioner of Corrections or in an official capacity as a county superintendent or as a school board member or as Commissioner of Corrections.

(c) Insurance coverage provided by the Board of Risk and Insurance Management pursuant to §29-12-5a(a) of this code shall be in an amount to be determined by the state Board of Risk and Insurance Management, but in no event less than $1 million for each occurrence. In addition, each county board of education shall purchase, through the Board of Risk and Insurance Management, excess coverage of at least $5 million for each occurrence. The cost of this excess coverage will be paid by the respective county boards of education. Any insurance purchased under this section shall be obtained from a company licensed to do business in this state.

(d) The insurance policy provided by the Board of Risk and Insurance Management pursuant to §29-12-5a(a) of this code shall include comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage as well as a provision for the payment of the cost of attorney’s fees in connection with any claim, demand,
action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury under the conditions specified in this section.

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

(f) The provisions of this section apply to public charter schools that have been authorized pursuant to §18-5D-1 et seq. of this code and that have included in their approved charter application a determination to obtain insurance coverage from the Board of Risk and Insurance Management pursuant to this section. If a public charter school elects to obtain coverage pursuant to this section:

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

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

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

NOTE: The purpose of this bill is to establish public charter schools in West Virginia.

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