

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENGROSSED

House Bill 5697

By Delegates Ellington, W. Clark, Longanacre, and
Smith

[Originating in the Committee on Education; Reported
on February 21, 2024]

1 A BILL to amend and reenact §18-5G-3 and §18-5G-7 of the Code of West Virginia, 1931, as
2 amended, all relating to providing for technical cleanup of certain provisions of the public
3 charter school code provisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

**§18-5G-3. Public charter school criteria, governance structure and statutory compliance
requirements; applicable federal and state laws.**

1 (a) Public charter schools authorized pursuant to this article shall meet the following
2 general criteria:

3 (1) Are part of the state's system of public schools and are subject to general supervision
4 by the West Virginia Board of Education for meeting the student performance standards required
5 of other public school students under §18-2E-5(d) and (e) of this code;

6 (2) Are subject to the oversight of the school's authorizer for operating in accordance with
7 its approved charter contract and for meeting the terms and performance standards established in
8 the charter contract;

9 (3) Are not home school-based;

10 (4) Are not affiliated with or espouse any specific religious denomination, organization,
11 sect, or belief and do not promote or engage in any religious practices in their educational
12 program, admissions, employment policies, or operations;

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

17 (6) Are public schools to which parents or legal guardians choose to send their child or
18 children;

19 (7) Do not charge full-time tuition and may only charge such tuition or fees as may be
20 imposed by noncharter public schools in this state, such as for part-time Hope Scholarship
21 enrollment or for participation in student activities.

22 (8) Have no requirements that would exclude any child from enrollment who would not be
23 excluded at a noncharter public school.

24 (b) A public charter school authorized pursuant to this article shall be governed by a board
25 that meets the requirements established in §18-5G-7 of this code and:

26 (1) Has autonomy over key decisions, including, but not limited to, decisions concerning
27 finance, personnel, scheduling, curriculum, and instruction except as provided in this article;

28 (2) Has no power to levy taxes;

29 (3) Operates in pursuit of a specific set of educational objectives as defined in its charter
30 contract;

31 (4) Provides a program of public education that:

32 (A) Includes one or more of the following: Prekindergarten and any grade or grades from
33 kindergarten to grade 12 including any associated post-secondary embedded credit, dual credit,
34 advanced placement, internship, and industry or workforce credential programs that the public
35 charter school chooses to incorporate into its programs;

36 (B) May include in its mission a specific focus on students with special needs, including,
37 but not limited to, at-risk students, English language learners, students with severe disciplinary
38 problems at a noncharter public school, or students involved with the juvenile justice system; and

39 (C) May include a specific academic approach or theme including, but not limited to,
40 approaches or themes such as STEM education, mastery-based education, early college, or fine
41 and performing arts;

42 (5) Provides programs and services to a student with a disability in accordance with the
43 student's individualized education program and all federal and state laws, regulations, rules and

44 policies. A charter school shall deliver the services directly or contract with a county board or
45 another provider to deliver the services as set forth in its charter contract;

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

49 (7) Employs its own personnel as employees of the public charter school and is ultimately
50 responsible for processing employee paychecks, managing its employees' participation in the
51 applicable retirement system, and managing its employees' participation in insurance plans:

52 *Provided*, That nothing in this subdivision prohibits the public charter school from contracting with
53 another person or entity to employ personnel or to perform services relating to managing its
54 employees' participation in the retirement system or insurance plan. A county board may not
55 require any employee of its school system to be employed in a public charter school. A county
56 board may not harass, threaten, discipline, discharge, retaliate, or in any manner discriminate
57 against any school system employee involved directly or indirectly with an application to establish
58 a public charter school as authorized under this section. All personnel in a public charter school
59 who were previously employed by the county board shall continue to accrue seniority with the
60 county board in the same manner that they would accrue seniority if employed in a noncharter
61 public school in the county for purposes of employment in noncharter public schools; and

62 (8) Is responsible for establishing a staffing plan that includes the requisite qualifications
63 and any associated certification and/or licensure necessary for teachers and other instructional
64 staff to be employed at the public charter school and for verifying that these requirements are met.

65 (c) A public charter school authorized pursuant to this article is exempt from all statutes
66 and rules applicable to a noncharter public school or board of education except the following:

67 (1) All federal laws and authorities applicable to noncharter public schools in this state
68 including, but not limited to, the same federal nutrition standards, the same civil rights, disability
69 rights and health, life and safety requirements applicable to noncharter public schools in this state;

70 (2) The provisions of §29B-1-1 *et seq.* of this code relating to freedom of information and
71 the provisions of §6-9A-1 *et seq.* of this code relating to open governmental proceedings;

72 (3) The same immunization requirements applicable to noncharter public schools;

73 (4) The same compulsory school attendance requirements applicable to noncharter public
74 schools. When a student is withdrawn from a public charter school and returns to the public school
75 district of that county, the school district of the student's county of residence becomes responsible
76 to track the student for all purposes;

77 (5) The same minimum number of days or an equivalent amount of instructional time per
78 year as required of noncharter public school students under §18-5-45 of this code;

79 (6) The same student assessment requirements applicable to noncharter public schools in
80 this state, but only to the extent that will allow the state board to measure the performance of public
81 charter school students pursuant to §18-2E-5(d) and (e) of this code. Nothing precludes a public
82 charter school from establishing additional student assessment measures that go beyond state
83 requirements. Public charter school teachers shall be permitted to proctor state assessments in
84 the event they are not certified or licensed;

85 (7) The Student Data Accessibility, Transparency and Accountability Act pursuant to §18-
86 2-5h of this code;

87 (8) Use of the electronic education information system established by the West Virginia
88 Department of Education for the purpose of reporting required information;

89 (9) Reporting information on student and school performance to parents, policy-makers,
90 and the general public in the same manner as noncharter public schools utilizing the electronic
91 format established by the West Virginia Department of Education. Nothing precludes a public
92 charter school from utilizing additional measures for reporting information on student and school
93 performance that go beyond state requirements;

94 (10) All applicable accounting and financial reporting requirements as prescribed for public
95 schools, including adherence to generally accepted accounting principles. A public charter school

96 shall annually engage an external auditor to perform an independent audit of the school's
97 finances. The public charter school shall submit the audit to its authorizer and to the state
98 superintendent of schools within nine months of the end of the fiscal year for which the audit is
99 performed;

100 (11) A criminal history check pursuant to §18A-3-10 of this code for any staff person that
101 would be required if the person was employed in a noncharter public school, unless a criminal
102 history check has already been completed for that staff person pursuant to that section.
103 Governing board members and other public charter school personnel are subject to criminal
104 history record checks and fingerprinting requirements applicable to noncharter public schools in
105 this state. Contractors and service providers or their employees are prohibited from making direct,
106 unaccompanied contact with students and from access to school grounds unaccompanied when
107 students are present if it cannot be verified that the contractors, service providers or employees
108 have not previously been convicted of a qualifying offense pursuant to §18-5-15c of this code;

109 (12) The same zoning rules for its facilities that apply to noncharter public schools in this
110 state;

111 (13) The same building codes, regulations and fees for its facilities that apply to noncharter
112 public schools in this state, including any inspections required for noncharter public schools under
113 this chapter and the West Virginia State Fire Marshal for inspection and issuance of a certificate of
114 occupancy for any facility used by the public charter school; and

115 (14) The same student transportation safety laws applicable to public schools when
116 transportation is provided.

§18-5G-7. Public Charter school governing board.

1 (a) To ensure compliance with this article, a public charter school shall be administered by
2 a governing board accountable to the authorizer as set forth in the charter contract. A public
3 charter school governing board shall consist of no fewer than five members elected or selected in
4 a manner specified in the charter application, including at least the following:

5 (1) Two parents of students attending the public charter school operating under the
6 governing board; and

7 ~~(2)~~ Two members who reside in the community served by the public charter school.

8 (b) Members of the governing board shall:

9 ~~(A)~~ (1) Not be an employee of the public charter school administered by the governing
10 board;

11 ~~(B)~~ (2) Not be an employee of an education service provider that provides services to the
12 public charter school;

13 ~~(C)~~ (3) File a full disclosure report to the authorizer identifying potential conflicts of interest,
14 relationships with management organizations, and relationships with family members who are
15 employed by the public charter school or have other business dealings with the school, the
16 management organization of the school, or any other public charter school;

17 ~~(D)~~ (4) Collectively possess expertise in leadership, curriculum and instruction, law, and
18 finance; and

19 ~~(E)~~ (5) Be considered an officer of a school district under the provisions of §6-6-7 of this
20 code and removal from office shall be in accordance with the provisions of that section or by a vote
21 of the governing board.

22 (c) The public charter school governing board shall:

23 (1) Operate under the oversight of its authorizer in accordance with its charter contract;

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

26 (A) Receive and disburse funds for school purposes;

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

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

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

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

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

35 (3) Enroll students in the public charter school pursuant to §18-5G-11 of this code;

36 (4) Require any education service provider contracted with the governing board to provide
37 a monthly detailed budget to the board; and

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

42 (d) A public charter school authorized under this article may:

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

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

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

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

52 and

53 (5) Participate in extracurricular activities to the same extent as noncharter public schools.

54 (e) The public charter school governing board is responsible for the operation of its public
55 charter school, including, but not limited to, ensuring compliance with the public charter school

56 criteria, governance and statutory compliance set forth §18-5G-3 of this code, the preparation of
57 an annual budget, contracting for services, school curriculum, personnel matters, and achieving
58 the objectives and goals of the public charter school's program.

59 (f) The public charter school governing board shall comply with the provisions of §29B-1-1
60 *et seq.* of this code relating to freedom of information and the provisions of §6-9A-1 *et seq.* of this
61 code relating to open governmental proceedings.

62 (g) Notwithstanding anything else in this Code, when a state institution of higher education
63 is an applicant and after its application is approved by an authorizer, the governing board of the
64 public charter school may be an administrative unit of the state institution of higher education, and
65 the governing board may enter into the charter contract on behalf of the state institution of higher
66 education.