

**Senate Bill No. 219**

(By Senator Barnes)

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[Introduced January 8, 2014; referred to the Committee on  
Education; and then to the Committee on Finance.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §18-33-1, §18-33-2,  
12 §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8,  
13 §18-33-9, §18-33-10, §18-33-11, §18-33-12, §18-33-13 and  
14 §18-33-14, all relating to the establishment of public  
15 competitive learning academies; setting forth regulatory and  
16 statutory requirements; providing exemptions from state laws  
17 and rules; permitting conversion of public schools to public  
18 competitive learning academies; setting forth an application  
19 process; permitting approval and denial of applications;  
20 establishing a competitive learning academy status term;  
21 permitting the termination of a public competitive learning  
22 academy; setting forth public competitive learning academy  
23 requirements; providing for funding; setting forth enrollment

1 standards; providing for student transportation; permitting  
2 conditional approval; setting forth information on competitive  
3 learning academies; permitting leaves of absence for teachers;  
4 setting forth employment of school personnel and benefits; and  
5 defining terms.

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

7 That the Code of West Virginia, 1931, as amended, be amended  
8 by adding thereto a new article, designated §18-33-1, §18-33-2,  
9 §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8,  
10 §18-33-9, §18-33-10, §18-33-11, §18-33-12, §18-33-13 and §18-33-14,  
11 all to read as follows:

12 **ARTICLE 33. WEST VIRGINIA PUBLIC COMPETITIVE LEARNING ACADEMIES**  
13 **ACT OF 2014.**

14 **§18-33-1. Definitions.**

15 (a) "Governing body" means the organized group of persons who  
16 will operate a public competitive learning academy by deciding  
17 matters including, but not limited to, budgeting, curriculum and  
18 other operating procedures for the public competitive learning  
19 academy and by overseeing management and administration of a public  
20 competitive learning academy. The "governing body" shall include  
21 one nonvoting member appointed by the superintendent of the  
22 district in which the public competitive learning academy is  
23 located.

1 (b) "Public competitive learning academy" means a public  
2 school that is established and operating pursuant to this article.

3 (c) "Sponsor" means any individual, group or other  
4 organization filing an application in support of the establishment  
5 of a public competitive learning academy: *Provided*, That a sponsor  
6 cannot be a for-profit entity, a private school, a religious or  
7 church school or promote the agenda of any religious denomination  
8 or religiously affiliated entity.

9 **§18-33-2. Competitive learning academies.**

10 (a) Public competitive learning academies are a part of the  
11 state program of public education.

12 (b) Public competitive learning academies are subject to any  
13 regulatory and statutory requirements related to:

- 14 (1) Federal and state civil rights;
- 15 (2) Federal, state and local health and safety;
- 16 (3) Federal and state public records;
- 17 (4) Immunizations;
- 18 (5) School nutrition;
- 19 (6) Confidentiality of student data;
- 20 (7) Possession of weapons on school grounds;
- 21 (8) Background checks and fingerprinting of personnel;
- 22 (9) Federal and state special education services;
- 23 (10) Student due process;

- 1 (11) Parental rights;
- 2 (12) Federal and state student assessment and accountability;
- 3 (13) Open meetings;
- 4 (14) Freedom of information;
- 5 (15) Accounting procedures;
- 6 (16) Purchasing procedures;
- 7 (17) All school personnel certification requirements; and
- 8 (18) All other provisions of state and federal law and rule
- 9 except for those specifically listed in subsection (c) of this
- 10 section.

11 (c) Subject to subsection (d), public competitive learning  
12 academies are not subject to state laws and rules related to the  
13 following:

- 14 (1) School calendar;
- 15 (2) Any minimum instructional minutes per day requirement;
- 16 (3) Any personnel laws set forth in chapter eighteen-a of this
- 17 code relating to hiring; termination of employment; evaluations;
- 18 seniority; and reductions in force;
- 19 (4) Required programs of study;
- 20 (5) Instructional goals and methods;
- 21 (6) School uniforms, subject to section seven of this article;
- 22 and
- 23 (7) Class size.

1 (d) In addition to exempting a public competitive learning  
2 academy from the laws and rules set forth in subsection (c) of this  
3 section, the governing body of a public competitive learning  
4 academy may apply to the state board for a waiver of any provisions  
5 of its rules, and may request the Legislature to exempt it from  
6 certain provisions or to change certain school law provisions  
7 generally.

8 **§18-33-3. Creation or conversion of competitive learning**  
9 **academies.**

10 (a) A public competitive learning academy may be formed by  
11 creating a new school or converting an eligible public school to  
12 competitive learning academy status pursuant to the provisions of  
13 this article: *Provided*, That the county board of education in  
14 which the competitive learning academy will be located is the  
15 sponsoring entity for the proposed competitive learning academy.

16 (b) Newly created competitive learning academies are subject  
17 to the following:

18 (1) The sponsor of a public competitive learning academy shall  
19 file a public competitive learning academy application with the  
20 state board;

21 (2) Upon a determination that a sponsor meets the requirements  
22 set forth in this article, the state board shall approve the  
23 application. In determining whether or not to approve the

1 application, the state board shall only consider whether the  
2 requirements of this article are satisfied and shall not consider  
3 any other factor; and

4 (3) A public competitive learning academy shall be operated by  
5 a not-for-profit organization that is exempt from federal taxation  
6 under Section 501(c)(3) of the Internal Revenue Code. No public  
7 competitive learning academy status may be granted to a for-profit  
8 corporation.

9 (c) The conversion of a public school to a public competitive  
10 learning academy is subject to the following:

11 (1) At the time of conversion to a competitive learning  
12 academy, parents whose children are enrolled at the school may  
13 enroll their child in another public school without penalty;

14 (2) The conversion must occur in between employment terms and  
15 shall be in compliance with the provisions of this article; and

16 (3) At the time of conversion to a competitive learning  
17 academy, any person employed at the school, or if dismissed from  
18 employment in their position at the competitive learning academy,  
19 may request transfer to another position within the school district  
20 or be placed on a preferred recall list; and

21 (4) At the time of the conversion to a public competitive  
22 learning academy, the applicant school must be among the bottom  
23 quartile in overall performance on the statewide WESTEST assessment

1 for the prior academic year.

2 (d) No competitive learning academy agreement that authorizes  
3 the conversion of any private, parochial, Internet-based or  
4 home-based school to competitive learning academy status may be  
5 granted under this article.

6 (e) Nothing in this article may be construed to prohibit any  
7 individual or organization from providing funding or other  
8 assistance to the establishment or operation of a public  
9 competitive learning academy, but the funding or assistance may not  
10 entitle the individual or organization to any ownership interest in  
11 the school.

12 **§18-33-4. Application process.**

13 (a) At least sixty days before the proposed public competitive  
14 learning academy plans to begin operation, the sponsor seeking to  
15 establish a public competitive learning academy shall prepare and  
16 file with the state board an application providing the following  
17 information and documents:

18 (1) A statement defining the mission and goals of the proposed  
19 competitive learning academy;

20 (2) The proposed instructional goals and methods for the  
21 school, which at a minimum, shall include teaching and classroom  
22 instruction methods that will be used to provide students with the  
23 knowledge, proficiency and skills needed to reach the goals of the

1 school;

2 (3) An operating budget based on anticipated enrollment;

3 (4) A timetable for commencing operations as public  
4 competitive learning academy;

5 (5) Information on the minimum daily instruction time  
6 requirements, the minimum instructional day per year requirement  
7 and the amount of professional development that will be provided to  
8 personnel employed at the public competitive learning academy;

9 (6) The proposed rules and policies for governance and  
10 operation of the school;

11 (7) The names and addresses of the members of the governing  
12 body;

13 (8) A description of the anticipated student enrollment;

14 (9) The identification of the individuals and entities  
15 sponsoring the proposed public competitive learning academy,  
16 including names and addresses;

17 (10) The plan for management and administration of the school;

18 (11) A copy of the proposed by-laws of the governing body of  
19 the competitive learning academy;

20 (12) A statement of assurance of liability by the governing  
21 body of the competitive learning academy;

22 (13) Types and amounts of insurance coverage to be held by the  
23 competitive learning academy, including provisions for assuring



1 that the insurance provider will notify the state board within ten  
2 days of the cancellation of any insurance it carries on the  
3 competitive learning academy;

4 (14) The plan for transportation for pupils attending the  
5 competitive learning academy if transportation is provided;

6 (15) Information regarding financing commitments from debt  
7 sources for cash or similar liquid assets sufficient to demonstrate  
8 that the competitive learning academy will have liquid assets  
9 sufficiently available to operate the school on an ongoing and  
10 sound financial basis; and

11 (16) Any other reasonable information the state board  
12 determines is necessary to ascertain whether or not the public  
13 competitive learning academy is complying with the requirements set  
14 forth in this article: *Provided*, That the state board may not  
15 require any information that places an undue hardship on the  
16 sponsor or results in unnecessary delay in the competitive learning  
17 academy application process.

18 (b) Where an existing public school is to be converted to a  
19 public competitive learning academy, the sponsor making application  
20 must be the county board of education for the county in which the  
21 school is located.

22 (c) Much of the information required by subsection (a) of this  
23 section is for informational purposes only. Pursuant to section

1 five of this article, the state board only has authority to deny an  
2 application for failure to meet the requirements of this article.

3 **§18-33-5. Approval and denial of application; and competitive**  
4 **learning academy status term.**

5 (a) The state board may approve or deny applications to  
6 establish a public competitive learning academy: *Provided*, That  
7 the state board only may deny an application based on failure to  
8 comply with the requirements of this article. The state board  
9 shall approve any application when the applicant has fully complied  
10 with all the requirements set forth in this article.

11 (b) The state board shall approve or deny a competitive  
12 learning academy application within sixty days of receiving the  
13 application. If the state board fails to approve or deny a  
14 competitive learning academy application within the sixty days, the  
15 application is considered approved.

16 (c) If a decision of the state board is to deny a competitive  
17 learning academy application, it must state its reasons in writing  
18 to the sponsor who submitted the application. The sponsor may  
19 correct any deficiencies in complying with this article and  
20 resubmit the application or submit an amended application, as  
21 applicable. Each time an application is resubmitted or an amended  
22 application is submitted, the state board shall approve or deny the  
23 competitive learning academy application within sixty days. If the

1 state board fails to approve or deny a resubmitted or amended  
2 competitive learning academy application within the sixty days, the  
3 application is considered approved.

4 (d) Approval of a competitive learning academy application is  
5 effective for five years from the date of approval, after which the  
6 school's status as a public competitive learning academy is revoked  
7 unless the sponsor applies for public competitive learning academy  
8 status again pursuant to this article and shows substantive student  
9 improvement on statewide or national assessments.

10 **§18-33-6. Termination of public competitive learning academy.**

11 (a) Upon dissolution of a competitive learning academy for any  
12 reason or if competitive learning academy status is not renewed,  
13 any unencumbered public funds from the competitive learning academy  
14 revert to the county board of the district in which the competitive  
15 learning academy is located.

16 (b) If a competitive learning academy is dissolved for any  
17 reason or competitive learning academy status is not renewed, the  
18 competitive learning academy is responsible for all debts of the  
19 competitive learning academy. Neither the county board of the  
20 district where the competitive learning academy is located nor any  
21 other governmental entity may assume the debt from any contract for  
22 services made between the governing body of the public competitive  
23 learning academy and a third party, except for a debt that is

1 previously detailed and agreed upon in writing by both the county  
2 board and the governing body of the public competitive learning  
3 academy and that may not reasonably be assumed to have been  
4 satisfied by the county board.

5 **§18-33-7. Compliance.**

6 (a) A public competitive learning academy shall:

7 (1) Operate as a public, nonsectarian, nonreligious public  
8 school, with control of instruction vested in the governing body of  
9 the school under the general supervision of the sponsoring  
10 authority and in compliance with the competitive learning academy  
11 agreement and this article;

12 (2) Meet the same performance standards and requirements  
13 adopted by the state board for other public schools, but may apply  
14 for a waiver of certain policies as indicated in its application;

15 (3) Receive state, federal and local funds from the county  
16 board of the district in which the school is located; and

17 (4) Provide special education services as required for all  
18 public schools by federal law unless provided by the county board  
19 of education in another school reasonably within the vicinity.

20 (b) A public competitive learning academy is subject to all  
21 federal and state laws and constitutional provisions prohibiting  
22 discrimination on the basis of disability, race, creed, color,  
23 national origin, religion, ancestry or need for special education

1 services.

2 (c) A public competitive learning academy shall comply with  
3 all applicable health and safety standards, regulations and laws of  
4 the United States and State of West Virginia.

5 (d) A public competitive learning academy is accountable to  
6 the state board for the purpose of ensuring compliance with the  
7 requirements of this article.

8 (e) All contracts for goods and services in excess of \$5,000  
9 shall be bid and approved by the governing body of each public  
10 competitive learning academy.

11 (f) A public competitive learning academy shall be governed  
12 and managed by a governing body.

13 (g) The governing body of a public competitive learning  
14 academy is subject to section five, article two, chapter six-b and  
15 any other ethical standards that are applicable to county board  
16 members.

17 (h) The meetings of the governing body of a public competitive  
18 learning academy are considered public business and shall comply  
19 with the Open Governmental Proceedings Act set forth in article  
20 nine-a, chapter six of this code.

21 (I) A public competitive learning academy is subject to all  
22 state audit procedures and audit requirements, and shall submit  
23 quarterly financial reports to the state board and the county board

1 of the district in which the public competitive learning academy is  
2 located.

3 (j) A public competitive learning academy may not charge  
4 tuition.

5 (k) A public competitive learning academy shall be operated on  
6 a July 1 to June 30 fiscal year and the governing body shall adopt  
7 and operate under an annual budget for the fiscal year. The budget  
8 shall be prepared in the same format as that required for county  
9 boards.

10 (l) A public competitive learning academy shall maintain its  
11 accounts and records in accordance with the Governmental Accounting  
12 Standards Board standards.

13 (m) A public competitive learning academy shall require all  
14 students to wear a school uniform.

15 **§18-33-8. Funding.**

16 (a) The county board of the county in which a public  
17 competitive learning academy is located shall allocate one hundred  
18 percent of the state and local education funds to the public  
19 competitive learning academy based on the per pupil expenditure of  
20 the county board, subject to sections ten and fourteen of this  
21 article. The minimum per pupil expenditure shall be based on the  
22 net enrollment of the district for the previous school year. A  
23 county board may expend additional funds in the operation of the

1 public competitive learning academy: *Provided*, That all funds are  
2 spent according to the budget submitted in the competitive learning  
3 academy agreement, or as otherwise revised by the public  
4 competitive learning academy request of the governing body, subject  
5 to state and federal law. The governing body of a public  
6 competitive learning academy may contract with the county board of  
7 the district in which the public competitive learning academy is  
8 located to act as fiscal agent for a public competitive learning  
9 academy.

10 (b) Notwithstanding subsection (a) of this section, funds  
11 which would otherwise be allocated on the basis of enrollment in  
12 the prior year shall be allocated, during the first full academic  
13 year of operation of any public competitive learning academy, on  
14 the basis of the anticipated enrollment in the competitive learning  
15 academy agreement, which amount shall be subsequently adjusted to  
16 reflect the actual number of students enrolled.

17 (c) A public competitive learning academy also may be funded  
18 by federal grants; grants, gifts, devises or donations from any  
19 private sources; and state funds appropriated for the support of  
20 the public competitive learning academy, if any, and any other  
21 funds that may be received by the county board of the district in  
22 which the public competitive learning academy is located. Receipt  
23 of any of these funds shall be reported to the state board. Public

1 competitive learning academies, county boards and the state  
2 superintendent are encouraged to apply for federal funds  
3 appropriated specifically for the support of competitive learning  
4 academies.

5 **§18-33-9. Enrollment.**

6 (a) Participation in a public competitive learning academy  
7 shall be based on parental choice, or the choice of the legal  
8 guardian or custodian.

9 (b) A public competitive learning academy shall enroll an  
10 eligible pupil who submits a timely application, unless the number  
11 of applications exceeds the capacity of a program, class, grade  
12 level or building. If applications exceed the planned capacity of  
13 the public competitive learning academy, students shall be enrolled  
14 in accordance with the following priorities:

15 (1) Pupils in attendance in the previous school year at any  
16 public school that converts to become a public competitive learning  
17 academy, or those pupils who would have attended the public  
18 competitive learning academy in the previous school year based on  
19 residence;

20 (2) Pupils attending public schools within the district in  
21 which the public competitive learning academy is located;

22 (3) Children residing within the district in which the public  
23 competitive learning academy is located, but who are not enrolled



1 in public schools; and

2 (4) Any other children.

3 (c) If enrollment within a priority grouping set forth in  
4 subsection (b) of this section exceeds the planned capacity of the  
5 school, enrollment within that group shall be determined on the  
6 basis of a lottery.

7 (d) Notwithstanding any other provision of this section to the  
8 contrary:

9 (1) Preference shall be given to the siblings of a pupil who  
10 is already enrolled and to the children of a teacher, sponsor or  
11 member of the governing body of the competitive learning academy;  
12 and

13 (2) In order to promote competition with other public schools  
14 in the county in which a competitive learning academy is located,  
15 the Legislature intends that the student population be similar to  
16 other public schools in the state. Therefore, the enrollment of  
17 students who are enrolled in an individual education program, are  
18 eligible for free and reduced lunch or both shall be given priority  
19 over other pupils until forty percent of the student population of  
20 any proposed competitive learning academy is composed of those  
21 students. The students enrolled in individual education programs  
22 and eligible for free and reduced lunch shall be enrolled in  
23 accordance with the priorities set forth in subsection (b) of this

1 section.

2 **§18-33-10. Student transportation.**

3 A county board of education shall provide transportation for  
4 students to and from a public competitive learning academy,  
5 provided those students live in the vicinity of the public  
6 competitive learning academy and would otherwise be transported to  
7 that school by the county board if the public competitive learning  
8 academy had not become a public competitive learning academy.  
9 Students living outside the vicinity of the public competitive  
10 learning academy who elect to attend the school are responsible for  
11 their own transportation to and from the public competitive  
12 learning academy.

13 **§18-33-11. Conditional approval.**

14 If approval is a prerequisite for the sponsor to raise working  
15 capital, the state board may grant conditional approval for a  
16 public competitive learning academy application. If the sponsor  
17 has satisfied all other requirements set forth in this article, the  
18 state board shall grant full approval subject to the sponsor  
19 providing information regarding financing commitments from debt  
20 sources for cash or working capital sufficient to demonstrate that  
21 a competitive learning academy will have liquid assets sufficiently  
22 available to operate the school on an ongoing and sound financial  
23 basis.

1 **§18-33-12. Information on competitive learning academies.**

2 (a) The state superintendent shall provide information to the  
3 public through its Internet site and otherwise on how to form and  
4 operate a public competitive learning academy. This information  
5 shall include a standard application format which shall include the  
6 information specified in section four of this article.

7 (b) The state superintendent shall monitor the status of  
8 competitive learning academy applications and shall maintain  
9 information on the total number of competitive learning academy  
10 applications, total number of competitive learning academy  
11 applications granted by type of school and total number of  
12 competitive learning academy applications denied.

13 **§18-33-13. Leaves of absence for teachers.**

14 (a) If a teacher employed by a county board makes a written  
15 request for an extended leave of absence to teach at a public  
16 competitive learning academy, the county board may grant the leave  
17 pursuant to section two, article two, chapter eighteen-a of this  
18 code.

19 (b) The seniority acquired by a teacher while on a leave of  
20 absence to teach at a public competitive learning academy will  
21 continue to accrue the same as if the teacher were employed at the  
22 county board of the district in which the teacher was immediately  
23 previously employed.

1 (c) For the purposes of determining salary in accordance with  
2 article four, chapter eighteen of this code, a teacher shall  
3 receive credit toward years of service while teaching at a public  
4 competitive learning academy at a rate of pay the teacher would  
5 have received if teaching in a noncompetitive learning academy  
6 within the school district.

7 **§18-33-14. Employment of school personnel; insurance; retirement.**

8 (a) School personnel employed at a public competitive learning  
9 academy are considered employees of the county board of the  
10 district in which the public competitive learning academy is  
11 located for the purposes of salary and benefits. The competitive  
12 learning academy shall recommend to the county board who to hire  
13 for each position, and the county board shall hire the recommended  
14 individuals and assign them to the public competitive learning  
15 academy. The county board also shall dismiss school personnel  
16 assigned to a public competitive learning academy upon the  
17 recommendation of the governing board of a public competitive  
18 learning academy. The governing board has supervisory authority  
19 over the school personnel assigned to the school.

20 (b) The county board shall pay for the cost of the salaries  
21 and benefits for the school personnel employed by the county board  
22 and assigned to the competitive learning academy.

23 (c) Since school personnel employed at a competitive learning

1 academy are considered employees of a county board all school  
2 personnel employed at a public competitive learning academy are:

3 (1) Eligible for public employee insurance agency benefits in  
4 the same manner that school personnel employed by the county board  
5 of the district in which the school is located are;

6 (2) Eligible to participate in the Teachers Retirement System  
7 or, in the same manner that school personnel employed by the county  
8 board of the district in which the school is located are; and

9 (3) Eligible for any other benefits provided to other school  
10 personnel employed by the county board.

NOTE: The purpose of this bill is to create public competitive learning academies in the state. The bill sets forth the applicable regulatory and statutory requirements, exemptions from state laws and rules, and provides for conversion of public school to public competitive learning academy. The bill also established public competitive learning academy requirements, conditional approval of academies, funding, enrollment of students and their transportation. The bill establishes the school term, provides information on competitive learning academies, sets forth leaves of absence for teachers, employment of school personnel and their benefits. The bill additionally provides a termination process of a public competitive learning academy.

This article is new; therefore, strike-throughs and underscoring have been omitted.