

# **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]

1 A BILL to amend and reenact §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as  
2 amended; to amend said code by adding thereto a new article, designated §18-5D-1, §18-  
3 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-  
4 10, §18-5D-11, and §18-5D-12; to amend and reenact §18-7A-3 of said code; to amend  
5 and reenact §18-7B-2 of said code; to amend and reenact §18-20-5 of said code; and to  
6 amend and reenact §29-12-5a of said code, all relating generally to the authorization of  
7 the establishment of charter schools; including charter school employees as covered by  
8 the Public Employees Insurance Act; establishing charter school employees' permissive  
9 participation in PEIA; establishing charter school employee eligibility for the State  
10 Teachers Retirement System; establishing charter school employee eligibility for the  
11 Teachers' Defined Contribution Retirement System; providing the legislative purpose and  
12 intent; defining terms; authorizing the establishment of public charter schools beginning in  
13 2018-2019; establishing requirements and powers for public charter schools; providing for  
14 the creation of governing boards; setting requirements for enrollment in public charter  
15 schools; creating process and requirements for application to establish public charter  
16 schools; providing duties and responsibilities for authorizers; establishing requirements  
17 for charter school contracts; establishing process for renewal, nonrenewal, and revocation  
18 of contracts, including required rules by the State Board of Education; establishing funding  
19 for charter school enrollment; creating appeals process for the denial of a charter  
20 application, the nonrenewal of a charter contract, or the revocation of a charter contract;  
21 creating prohibitions; establishing reporting requirements; providing that appropriation will  
22 be disbursed to the public charter schools to serve the needs of exceptional children; and  
23 including public charter schools in coverage by the Board of Risk and Insurance  
24 Management.

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

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

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

**§5-16-2. Definitions.**

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

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

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

6           (3) "Employee" means any person, including an elected officer, who works regularly full  
7 time in the service of the State of West Virginia and, for the purpose of this article only, the term  
8 "employee" also means any person, including an elected officer, who works regularly full time in  
9 the service of a county board of education; a public charter school established pursuant to §18-  
10 5D-1 et seq. of this code; a county, city or town in the state; any separate corporation or  
11 instrumentality established by one or more counties, cities or towns, as permitted by law; any  
12 corporation or instrumentality supported in most part by counties, cities or towns; any public  
13 corporation charged by law with the performance of a governmental function and whose  
14 jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive  
15 community mental health center or ~~comprehensive mental retardation~~ intellectually and  
16 developmentally disabled facility established, operated or licensed by the Secretary of Health and  
17 Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state,  
18 county or municipal funds; any person who works regularly full time in the service of the Higher

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

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

- 43 (i) Participates in a job-sharing arrangement as defined in §18A-1-1 of this code;  
44 (ii) Has been designated, in writing, by all other participants in that job-sharing

45 arrangement as the “employee” for purposes of this section; and

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

47 (4) “Employer” means the State of West Virginia, its boards, agencies, commissions,  
48 departments, institutions or spending units; a county board of education; a public charter school  
49 established pursuant to §18-5D-1 et seq. of this code; a county, city or town in the state; any  
50 separate corporation or instrumentality established by one or more counties, cities or towns, as  
51 permitted by law; any corporation or instrumentality supported in most part by counties, cities or  
52 towns; any public corporation charged by law with the performance of a governmental function  
53 and whose jurisdiction is coextensive with one or more counties, cities or towns; any  
54 comprehensive community mental health center or comprehensive mental retardation facility  
55 established, operated or licensed by the Secretary of Health and Human Resources pursuant to  
56 §27-2A-1 of this code and which is supported in part by state, county or municipal funds; a  
57 combined city-county health department created pursuant to §16-2-1 *et seq.* of this code; and a  
58 corporation meeting the description set forth in §18B-12-3 of this code that is employing a 21st  
59 Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is not considered  
60 an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters  
61 of doubt as to who is an “employer” within the meaning of this article shall be decided by the  
62 director. The term “employer” does not include within its meaning the National Guard.

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

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

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

71 (8) "Retired employee" means an employee of the state who retired after April 29, 1971,  
72 and an employee of the Higher Education Policy Commission, the Council for Community and  
73 Technical College Education, a state institution of higher education or a county board of education  
74 who retires on or after April 21, 1972, and all additional eligible employees who retire on or after  
75 the effective date of this article, meet the minimum eligibility requirements for their respective  
76 state retirement system and whose last employer immediately prior to retirement under the state  
77 retirement system is a participating employer in the state retirement system and in the Public  
78 Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who  
79 are not covered by a state retirement system, but who are covered by a state-approved or state-  
80 contracted retirement program or a system approved by the director, shall, in the case of  
81 education employees, meet the minimum eligibility requirements of the state Teachers Retirement  
82 System and in all other cases, meet the minimum eligibility requirements of the Public Employees  
83 Retirement System and may participate in the Public Employees Insurance Agency as retired  
84 employees upon terms as the director sets by rule as authorized in this article. Employers with  
85 employees who are, or who are eligible to become, retired employees under this article shall be  
86 mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to 5-16D-1 et  
87 seq. of this code. Nonstate employers may opt out of the West Virginia other post-employment  
88 benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the  
89 Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only  
90 upon the written certification, under oath, of an authorized officer of the employer that the  
91 employer has no employees who are, or who are eligible to become, retired employees and that  
92 the employer will defend and hold harmless the Public Employees Insurance Agency from any  
93 claim by one of the employer's past, present or future employees for eligibility to participate in the  
94 Public Employees Insurance Agency as a retired employee. As a matter of law, the Public  
95 Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired  
96 employee of a nonstate employer which has opted out of the West Virginia other post-employment

97 benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

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

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

7           Those employees enrolled in the insurance program authorized under the provisions of  
8 §21A-2B-1 et seq. of this code may not be required to enroll in or subscribe to an insurance plan  
9 or plans authorized by the provisions of this article, and the employees of any department which  
10 has an existing insurance program for its employees to which the government of the United States  
11 contributes any part or all of the premium or cost of the premium may be exempted from the  
12 provisions of this article. Any employee or employer exempted under the provisions of this  
13 paragraph may enroll in any insurance program authorized by the provisions of this article at any  
14 time, to the same extent as any other qualified employee or employer, but employee or employer  
15 may not remain enrolled in both programs. The provisions of §33-14-1 et seq. through §33-16-1  
16 et seq. of this code, relating to group life insurance, accident and sickness insurance, and group  
17 accident and sickness insurance, are not applicable to the provisions of this article whenever the  
18 provisions of §33-14-1 et seq. through §33-16-1 et seq. of this code are in conflict with or contrary  
19 to any provision set forth in this article or to any plan or plans established by the Public Employees  
20 Insurance Agency.

21           Employers, other than the State of West Virginia, its boards, agencies, commissions,  
22 departments, institutions, spending units, ~~or~~ a county board of education or a public charter  
23 school authorized pursuant to §18-5D-1 et seq. of this code are exempt from participating in the  
24 insurance program provided for by the provisions of this article unless participation by the

25 employer has been approved by a majority vote of the employer's governing body. It is the duty  
26 of the clerk or secretary of the governing body of an employer who by majority vote becomes a  
27 participant in the insurance program to notify the director not later than ten days after the vote.

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

## **CHAPTER 18. EDUCATION.**

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

**§18-7A-3. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 membership pursuant to section thirteen of this article.

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

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

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

59 (18) "Nonteaching member" means any person, except a teacher member, who is  
60 regularly employed for full-time service by: (A) Any county board of education; (B) the State Board  
61 of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for  
62 Community and Technical College Education; ~~or~~ (E) a governing board, as defined in section two,  
63 article one, chapter eighteen-b of this code; or (F) a public charter school established pursuant to  
64 §18-5D-1 et seq. of this code. *Provided,* That any person whose employment with the Higher  
65 Education Policy Commission, the West Virginia Council for Community and Technical College  
66 Education or a governing board commences on or after July 1, 1991, is not considered a  
67 nonteaching member.

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

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

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

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

77 (23) "Public schools" means all publicly supported schools, including colleges and

78 universities in this state.

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

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

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

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

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

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

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

98 (31) "Teacher member" means the following persons, if regularly employed for full-time  
99 service: (A) Any person employed for instructional service in the public schools of West Virginia;  
100 (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county  
101 superintendents of schools; (E) any county school attendance director holding a West Virginia  
102 teacher's certificate; (F) members of the research, extension, administrative or library staffs of the  
103 public schools; (G) the State Superintendent of Schools, heads and assistant heads of the

104 divisions under his or her supervision, or any other employee under the state superintendent  
 105 performing services of an educational nature; (H) employees of the State Board of Education who  
 106 are performing services of an educational nature; (I) any person employed in a nonteaching  
 107 capacity by the State Board of Education, any county board of education, the State Department  
 108 of Education or the State Teachers Retirement Board, if that person was formerly employed as a  
 109 teacher in the public schools; (J) all classroom teachers, principals and educational administrators  
 110 in schools under the supervision of the Division of Corrections, the Division of Health or the  
 111 Division of Human Services; (K) an employee of the State Board of School Finance, if that person  
 112 was formerly employed as a teacher in the public schools; ~~and~~ (L) any person designated as a  
 113 21st Century Learner Fellow pursuant to §18A-3-11 *et seq.* of this code who elects to remain a  
 114 member of the State Teachers Retirement System provided in this article; and (M) any person  
 115 employed by a public charter school established pursuant to §18-5D-1 *et seq.* of this code.

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

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

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

### **§18-7B-2. Definitions.**

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

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

8 (2) "Annuity account" or "annuity" means an account established for each member to

9 record the deposit of member contributions and employer contributions and interest, dividends or  
10 other accumulations credited on behalf of the member;

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

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

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

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

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

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

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

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

34 (11) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been

35 amended;

36 (12) "Member" or "employee" means the following persons, if regularly employed for full-  
37 time service: (A) Any person employed for instructional service in the public schools of West  
38 Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant  
39 county superintendents of schools; (E) any county school attendance director holding a West  
40 Virginia teacher's certificate; (F) members of the research, extension, administrative or library  
41 staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads  
42 of the divisions under his or her supervision or any other employee under the state superintendent  
43 performing services of an educational nature; (H) employees of the State Board of Education who  
44 are performing services of an educational nature; (I) any person employed in a nonteaching  
45 capacity by the State Board of Education, any county board of education or the State Department  
46 of Education, if that person was formerly employed as a teacher in the public schools; (J) all  
47 classroom teachers, principals and educational administrators in schools under the supervision  
48 of the Division of Corrections and the Department of Health and Human Resources; (K) any  
49 person who is regularly employed for full-time service by any county board of education or the  
50 State Board of Education; (L) the administrative staff of the public schools including deans of  
51 instruction, deans of men and deans of women, and financial and administrative  
52 secretaries; ~~and~~ (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-  
53 3-11 of this code who elects to remain a member of the Teachers' Defined Contribution  
54 Retirement System established by this article; and (N) any person employed by a public charter  
55 school established pursuant to §18-5D-1 et seq. of this code;

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

59 (14) "Permanent, total disability" means a mental or physical incapacity requiring absence  
60 from employment service for at least six months: *Provided*, That the incapacity is shown by an

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

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

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

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

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

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

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

## **ARTICLE 5D. SPECIALIZED PUBLIC CHARTER SCHOOLS.**

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

1 The West Virginia Legislature hereby authorizes the establishment of specialized public

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

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

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

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

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

**§18-5D-2. Definitions.**

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

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

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

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

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

12 (c) "Charter application" means a proposal from an applicant to an authorizer to enter into  
 13 a charter contract whereby the proposed school obtains public charter school status.

14 (d) “Charter contract” or “contract” means a fixed-term, renewable contract between a  
15 public charter school’s governing board and an authorizer that identifies the roles, powers,  
16 responsibilities, operational duties, accountability, and performance expectations for each party  
17 to the contract, consistent with the requirements of this article.

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

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

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

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

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

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

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

33 (2) Operates in pursuit of a specialized academic priority, which is specifically set forth in  
34 the charter contract;

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

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

39 (5) Is established and operating under the terms of a charter contract between the public

40 charter school's board of directors and its authorizer;

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

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

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

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

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

50 (k) "State board" means the West Virginia Board of Education.

51 (l) "Student" means any child that is eligible for attendance in a public school in West  
 52 Virginia.

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

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

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

4 (b) A public charter school shall be part of the state's system of public education but shall  
 5 be exempt from all statutes and administrative regulations applicable to the state board, a county  
 6 board, or a school unless expressly stated otherwise in this article: *Provided*, That public charter  
 7 schools shall adhere to the same immunization, civil rights and disability rights requirements  
 8 applicable to traditional public schools: *Provided, however*, That nothing in the article prohibits a  
 9 public charter school from complying with any statute, state board policy, or county board policy  
 10 applicable to traditional public schools.

11 (c) A public charter school shall be considered a separate local education agency than its  
12 authorizer, unless expressly stated otherwise in the charter contract between the public charter  
13 school's governing board and the authorizer.

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

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

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

21 (g) A public charter school shall:

22 (1) Be governed by a governing board;

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

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

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

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

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

35 (7) Ensure student participation in the required state summative assessment pursuant to  
36 §18-2E-5 of this code;

37 (8) Adhere to generally accepted accounting principles and adhere to the same financial  
38 audits, audit procedures and audit requirements applicable to noncharter public schools;

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

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

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

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

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

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

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

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

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

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

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

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

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

62 (16) Serve one or more of grades pre-K through twelve and shall limit admission to

63 students within the grade levels served; and

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

66 A public charter school shall deliver the services directly or contract with another provider to  
67 deliver the services.

68 (h) A public charter school may:

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

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

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

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

78 and

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

84 (i) Public charter school governing board.

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

88 (2) The governing board shall consist of at least two parents of students attending the

89 public charter school operating under the governing board.

90 (3) Members of the governing board shall:

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

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

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

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

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

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

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

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

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

4 (b) The racial and socio-economic composition of the students enrolled to attend the public  
5 charter school student population shall be reasonably reflective of the authorizer's district or

6 districts.

7 (c) If capacity is insufficient to enroll all students who wish to attend any specific grade  
8 level at a public charter school, the school shall select students through a randomized and  
9 transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student  
10 application and lottery procedures for public charter schools.

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

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

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

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

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

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

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

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

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

11 (4) The student achievement goals for the public charter school's specialized program and

12 the chosen methods of evaluating whether students have attained the skills and knowledge  
13 specified for those goals;

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

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

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

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

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

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

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

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

37 (13) An explanation of student discipline procedures, including disciplinary procedures for

38 students with disabilities, which shall be consistent with the requirements of due process and with  
39 state and federal laws and regulations governing the placement of students with disabilities;

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

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

46 (16) The school calendar and school day schedule, which shall meet the requirements of  
47 §18-5-45 of this code;

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

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

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

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

60 (21) The public charter school's plan for successfully serving students with disabilities,  
61 students who are English language learners, bilingual students, and students who are  
62 academically behind and gifted, including, but not limited to, the school's plan for compliance with  
63 all applicable federal and state laws and regulations;

64 (22) A description of cocurricular and extra-curricular programs to be offered by the public  
65 charter school and how they will be funded and delivered;

66 (23) The process by which the school will resolve any disputes with the authorizer; and

67 (24) A detailed start-up plan, including financing, tasks, timelines, and individuals  
68 responsible for carrying out the plan.

69 (c) If the applicant intends to contract with an education service provider for educational  
70 program implementation or comprehensive management, the application shall additionally require  
71 the applicant to provide the following information with respect to the educational service provider:

72 (1) Evidence of success in serving student populations similar to the targeted population,  
73 including demonstrated academic achievement as well as successful management of  
74 nonacademic school functions, if applicable;

75 (2) Student performance data and financial audit reports for all current and past public  
76 charter schools;

77 (3) Documentation of and explanation for any actions taken, legal or otherwise, against  
78 any of its public charter schools for academic, financial, or ethical concerns;

79 (4) The proposed duration of the service contract;

80 (5) The annual proposed fees and other amounts to be paid to the education service  
81 provider;

82 (6) The roles and responsibilities of the board of directors, the school staff, and the  
83 education service provider;

84 (7) The scope of services and resources to be provided by the education service provider;

85 (8) Performance evaluation measures and timelines;

86 (9) Methods of contract oversight and enforcement;

87 (10) Investment disclosure;

88 (11) Conditions for renewal and termination of the contract; and

89 (12) Disclosure and explanation any existing or potential conflicts of interest between the

90 governing board and the proposed education service provider or any affiliated business entities.

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

1 (a) An authorizer shall:

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

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

9 (3) Decline to approve charter applications that:

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

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

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

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

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

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

21 (A) Organizational capacity and infrastructure;

22 (B) Evaluating applications;

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

24 (D) Charter approval, renewal, and revocation decision making.

25 (b) After an applicant submits a written application to establish a public charter school, the  
26 authorizer shall:

27 (1) Complete a thorough review process;

28 (2) Conduct an in-person interview with the applicant;

29 (3) Provide an opportunity in a public forum for local residents to provide input and learn  
30 about the charter application;

31 (4) Provide a detailed analysis of the application to the applicant or applicants;

32 (5) Allow an applicant a reasonable time to provide additional materials and amendments  
33 to its application to address any identified deficiencies; and

34 (6) Approve or deny a charter application based on established objective criteria or request  
35 additional information.

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

37 (1) Approve charter applications only to applicants that possess competence in all  
38 elements of the application requirements identified in this section and §18-5D-5 of this code;

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

41 (3) Follow charter-granting policies and practices that are transparent, based on merit,  
42 and avoid conflicts of interest.

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

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

50 (f) An applicant whose charter application has been denied may appeal the authorizer's

51 decision to the West Virginia Board of Education pursuant to §18-5D-9 of this code.

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

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

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

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

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

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

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

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

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

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

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

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

19 (9) The process for revision or amendment to the terms of the charter contract agreed to

20 by the authorizer and the governing board;

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

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

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

29 (1) Student academic proficiency;

30 (2) Student academic growth;

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

33 (4) Student attendance;

34 (5) Student suspensions;

35 (6) Student withdrawals;

36 (7) Recurrent enrollment from year to year;

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

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

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

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

45 (f) No public charter school may commence operations without a charter contract that

46 meets the requirements of this section, has been properly executed, and has been approved by  
 47 a county board of education.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 charter contract;

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

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

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

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

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

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

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

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

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

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

47 (3) An opportunity and timeframe for the governing board to provide a response to the  
48 authorizer's initial decision to revoke the charter contract;

49 (4) An opportunity for the governing board to submit documentation and provide testimony  
50 as to why the charter contract should not be revoked;

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

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

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

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

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

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

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

70 (f) A governing board whose charter contract has not been renewed or has been revoked  
71 may appeal the authorizer's final decision to the West Virginia Board of Education pursuant to  
72 §18-5D-9 of this code.

73 (g) An authorizer shall develop a public charter school closure protocol to ensure timely  
74 notification to parents, orderly transition of students and student records to new schools, and

75 proper disposition of school funds, property, and assets. The protocol shall specify tasks,  
76 timelines, and responsible parties, including delineating the respective duties of the public charter  
77 school and the authorizer. If a public charter school closes for any reason, the authorizer shall  
78 oversee and work with the closing school to ensure a smooth and orderly closure and transition  
79 for students and parents, as guided by the closure protocol. If a public charter school is subject  
80 to closure, following exhaustion of any appeal allowed under §18-5D-9 of this code, an authorizer  
81 may remove at will at any time any or all of the members of the board of directors of the public  
82 charter school in connection with ensuring a smooth and orderly closure. If the authorizer removes  
83 members of the board of directors such that the board of directors can no longer function, the  
84 authorizer shall be empowered to take any further necessary and proper acts connected with  
85 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.**

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

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

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

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

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

**§18-5D-10. Prohibitions.**

1 Notwithstanding any provision in this article that may be interpreted to the contrary, a

2 public charter school shall not:

3 (1) Be home-school based;

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

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

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

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

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

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

12 the authorizer.

**§18-5D-12. Reports.**

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

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

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

8 (b) One year after public charter schools have been in operation, and each year thereafter,  
9 the state superintendent shall issue to the Governor, the Legislature and the general public a  
10 report on the state's public charter school program, drawing from the annual reports submitted by  
11 authorizers pursuant to this section, as well as any additional relevant data compiled by the state  
12 superintendent up to the school year ending in the preceding calendar year. The report must  
13 include an assessment of the public charter school program's successes, challenges and areas  
14 for improvement in meeting the purposes of this chapter and any suggested changes in state law  
15 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.**

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

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

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

8 of such agencies.

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

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

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

34 (5) Assuring that all exceptional children in the state, including children in mental health  
 35 facilities, residential institutions, private schools and correctional facilities as provided in §18-2-  
 36 13f of this code receive an education in accordance with state and federal laws: *Provided*, That  
 37 the state superintendent shall also assure that adults in correctional facilities and regional jails  
 38 receive an education to the extent funds are provided therefor.

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

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

44 (b) Nothing contained in this section shall be construed to prevent any county board of  
 45 ~~education~~ from establishing and maintaining special schools, classes, regular class programs,  
 46 home-teaching or visiting-teacher services for exceptional children out of funds available from  
 47 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.**

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

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

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

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

27 (d) The insurance policy provided by the Board of Risk and Insurance Management  
28 pursuant to §29-12-5a(a) of this code shall include comprehensive coverage, personal injury  
29 coverage, malpractice coverage, corporal punishment coverage, legal liability coverage as well  
30 as a provision for the payment of the cost of attorney's fees in connection with any claim, demand,

31 action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury  
32 under the conditions specified in this section.

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

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

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

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

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