

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2702

BY DELEGATES CAPITO, HIGGINBOTHAM, AND THOMPSON

[Originating in the Committee on Education; reported on March 10, 2021]

1 A BILL to amend and reenact §18-5G-3; of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §18-2-44, all relating to
3 requiring public high school students to complete and submit a free application for federal
4 student aid (FAFSA) prior to graduation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

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

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

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

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

9 (3) Are not home school-based;

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

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

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

19 (7) Do not charge tuition and may only charge such fees as may be imposed by noncharter
20 public schools in this state; and

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

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

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

27 (2) Has no power to levy taxes;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

73 (4) The same compulsory school attendance requirements applicable to noncharter public
74 schools;

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

77 (6) The same student assessment requirements applicable to noncharter public schools
78 in this state, but only to the extent that will allow the state board to measure the performance of
79 public charter school students pursuant to §18-2E-5(d) and §18-2E-5(e) of this code. Nothing
80 precludes a public charter school from establishing additional student assessment measures that
81 go beyond state requirements;

82 (7) The Student Data Accessibility, Transparency and Accountability Act pursuant to §18-
83 2-5h of this code;

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

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

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

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

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

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

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

112 (14) The same student transportation safety laws applicable to public schools when
113 transportation is provided; and

114 (15) The provisions of §18-2-44 of this code.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-44 Financial Aid Application Requirement for High School Graduation.

1 (a) Beginning with the 2021-2022 school year, in addition to any other requirement under
2 this code, as a prerequisite to receiving a high school diploma from a public high school, the

3 parent or guardian or each student legally eligible for federal student aid, or if student is at least
4 18 years of age or legally emancipated under §49-4-115 of this code, the student, if legally eligible
5 for federal student aid, must comply with either of the following:

6 (1) File a Free Application for Federal Student Aid with the United States Department of
7 Education; or

8 (2) On a form created by the state board file a waiver with the student's high school
9 indicating that the parent, current custodian, or guardian, or if applicable, the student, understands
10 what the Free Application for Federal Student Aid (FAFSA) is and has chosen not to file an
11 application under paragraph (1).

12 (b) The state board, as well as the county board, or authorizer, as applicable shall require
13 each high school and each high school student to comply with this section. Each high school must
14 provide to each high school student and, if applicable, his or her parent or guardian, any support
15 or assistance necessary to comply with this section. A county board or authorizer, as applicable,
16 shall award a high school diploma to a student who is unable to meet the requirements of §18-2-
17 44(a) of this code due to extenuating circumstances as determined by the county board if:

18 (1) The student has met all other graduation requirements under this code; and

19 (2) The principal attests that the high school has made a good faith effort to assist the
20 student, or if applicable, his or her parent or guardian in filing an application or a waiver under
21 §18-2-44(a) of this code.

22 (c) The state board may adopt rules to implement this section which shall include:

23 (1) Rules to ensure compliance with federal law regarding confidentiality of student
24 educational information, including the Family Educational Rights and Privacy Act of 1974 (20 U.
25 S. C. 1232g); and

26 (2) Any state law relating or regarding the privacy of student information.

NOTE: The purpose of this bill is to require all public high school students to complete and submit a free application for federal student aid (FAFSA) prior to graduation.

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