Committee Substitute

for

Senate Bill 453

BY SENATORS NELSON AND HUNT

[Originating in the Committee on Pensions; reported on February 9, 2023]
A BILL to amend and reenact §18-5G-6 and §18-5G-10 of the Code of West Virginia, 1931, as amended, all relating to public charter schools; providing for successor liability and delinquent retirement contributions; and including retirement contribution payments as payroll obligation in distribution of assets.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-6. Authorizer powers and duties.

(a) Each authorizing authority is responsible for exercising in accordance with this article the following powers and duties with respect to the oversight and authorization of public charter schools:

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

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

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

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

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

(3) Solicit applications and guide the development of high-quality public charter school applications;

(4) Approve new charter applications that meet the requirements of this article, and on the basis of their application satisfying all requirements of §18-5G-8 of this code, that demonstrate the ability to operate the school in an educationally and fiscally sound manner, and that are likely to improve student achievement through the program detailed in the charter application;

(5) Decline to approve charter applications that fail to meet the requirements of §18-5G-8 of this code;
(6) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

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

(8) Determine whether each charter contract it authorizes merits renewal or revocation.

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

(1) Complete a thorough review process;

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

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

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

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

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

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

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-8 of this code;

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

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

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open
meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

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

(f) An authorizer shall conduct or require oversight activities that enable it to fulfill its responsibilities under this article, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this article, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to charter schools. In the event that a public charter school’s performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify, in writing, the public charter school governing board of perceived problems and provide reasonable opportunity for the school to remedy the problems.

(g) An authorizer shall take appropriate corrective actions or exercise sanctions in response to apparent deficiencies in a charter school’s performance or legal compliance. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified time frame;

(h) An authorizer shall require each charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the statutory requirements of this act and the charter contract.

(i) To cover authorizer costs for overseeing public charter schools, each public charter school shall remit to its respective authorizer an oversight fee drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school as established by the state board by rule pursuant to §18-5G-5 of this code.

(j) An authorizer may receive and expend appropriate gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants, or donations are given, and may apply for any federal funds that may be available for the implementation of public charter school programs;
(k) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither Except to the extent the provisions of §5-10D-11 or §5-10D-13 of this code may be applicable relating to successor liability for, and collection of, delinquent retirement contributions, neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(l) Regulation of public charter schools by the state board and a county board shall be limited to those powers and duties of authorizers prescribed in this article and general supervision consistent with the spirit and intent of this article.

§18-5G-10. Charter contract renewal; performance report by authorizer and renewal guidance; renewal application; renewal term; nonrenewal; closure and dissolution.

(a) No later than June 30 of a public charter school’s fourth year of operation under each five-year term of a charter contract, the authorizer shall issue a performance report on the public charter school. The performance report shall summarize the public charter school’s performance record to date, based on the data collected under the statutory requirements of this act and the charter contract, and shall provide notice of any weaknesses or concerns perceived by the authorizer concerning the school that may jeopardize its position in seeking renewal if not timely rectified. The school and the authorizer shall mutually agree to a reasonable time period for the public charter school to respond to the performance report and submit any corrections for the report.

(b) No later than June 30 of the school year before a public charter school’s final year of operation under terms of a charter contract, the authorizer shall issue contract renewal application guidance to the school. The renewal application guidance required by this subsection shall include or refer explicitly to the criteria and standards that will guide the authorizer’s renewal decisions as it pertains to the named public charter school. These criteria and standards shall be based on the
statutory requirements of this act and the charter contract. The renewal application guidance shall, at a minimum, require and provide an opportunity for the public charter school to:

(1) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

(2) Describe improvements undertaken or planned for the school; and

(3) Detail the school’s plans for the next charter term.

(c) No later than September 30 of a public charter school’s final authorized year of operation under a term of a charter contract, the governing board of the public charter school seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal application guidance offered by the authorizer under subsection (b) of this section. The authorizer shall rule in a public meeting and by resolution on the renewal application no later than 45 days after the filing of the renewal application. In making charter renewal decisions, the authorizer shall:

(1) Ground its decisions on a thorough analysis of evidence of the school’s performance over the term of the charter contract in accordance with the terms set forth in the charter contract, annual performance reports and any required financial audits;

(2) Ensure that data used in making renewal decisions are available to the public charter school and the public;

(3) Provide a public report summarizing the evidence basis for each decision; and

(4) Include one of the following rulings:

(A) Renew the charter contract for another term of up to five years based on the school’s performance data and demonstrated capacities of the public charter school; or

(B) Decline to renew the charter contract. The authorizer shall clearly state in a resolution the reasons for the nonrenewal. The governing board of the school shall be granted 30 days to respond in writing to the decision and public report before that decision becomes final. The governing board shall be allowed to provide the authorizer with such arguments and supporting information as it sees fit, and also shall be granted an opportunity for a recorded public hearing,
at the request of the governing board. The governing board may be represented by counsel at
the hearing and may call witnesses to testify. The authorizer shall consider the governing board’s
response, testimony, and documentation, as well as the recorded public hearing, prior to
rendering a final decision on the renewal of the charter contract. The authorizer shall render its
final determination within 10 days of the close of the 30-day period. Any nonrenewal of a charter
contract may be appealed to the state board pursuant to §18-5G-13 of this code.

(d) The failure of the authorizer to act on a renewal application within the designated time
frames shall be deemed an approval of the renewal application.

(e) Within 10 days of taking final action to renew or not renew a charter under this section,
the authorizer shall report the action taken and reasons for the decision to the school’s governing
board and the state board or affected county board, as applicable. A copy of the report shall be
submitted at the same time to the state superintendent.

(f) A charter contract may be not renewed. Renewal of a charter contract may be denied if
the authorizer determines that the health and safety of students attending the public charter
school is threatened or, at such time following the process set forth in this section, if the public
charter school has:

(A) Failed to substantially comply with the provisions of this article:

(B) Committed a material violation of any of the terms, conditions, standards, or
procedures required under this chapter or the charter contract;

(C) Failed to substantially meet the performance expectations set forth in the charter
contract;

(D) Failed to substantially meet generally accepted standards of fiscal management; or

(E) Violated any provision of law from which the school was not exempted.

(g) If an authorizer revokes or does not renew a charter contract, the authorizer shall close
the school: Provided, That when the charter is revoked or not renewed for a school that began as
a conversion public charter school or program conversion public charter school, the county board
of the district in which the school is located may return it to noncharter public school status.

(h) A charter contract may be revoked at any time if the authorizer determines that the
health and safety of students attending the public charter school is threatened, if an administrator
employed by or member of the governing board over the charter school is convicted of fraud or
misappropriation of funds, if there is a failure to meet generally accepted standards of financial
management, if there is a material breach of the charter contract, there is a substantial violation
of any provision of law from which the public charter school is not exempted, or if there are dire
and chronic academic deficiencies.

(i) In the event of a public charter school closure for any reason, the authorizer shall
oversee and work with the closing school to ensure a smooth and orderly closure and transition
for students and parents, as guided by the closure protocol established by the state board
including, but not limited to, the following:

(1) Overseeing and working with the closing public charter school to ensure timely
notification to parents, orderly transition of students and student records to new schools and
proper disposition of school funds, property, and assets in accordance with the requirements of
this chapter; and

(2) Distributing the assets of the public charter school first to satisfy outstanding payroll
obligations to and required payments to retirement systems on behalf of employees of the
public charter school and then to creditors of the public charter school. Any remaining funds shall
be paid to the county board. If the assets of the public charter school are insufficient to pay all
parties to whom the public charter school owes compensation, the prioritization of distribution of
assets may be determined by decree of a court of law.

(j) If a public charter school is subject to closure or transition, following exhaustion of any
appeal allowed under §18-5G-13 of this code, an authorizer may remove at will at any time any
or all of the members of the board of directors of the public charter school in connection with
ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.