

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 628**

BY SENATORS RUCKER AND OLIVERIO

[Originating in the Committee on School Choice;

reported on February 23, 2023]



1 A BILL to amend and reenact §18-5-48 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §18-5G-1, §18-5G-2, §18-5G-3, §18-5G-4, §18-5G-5, §18-5G-7, §18-5G-12,  
3 and §18-5G-15 of said code; and to amend and reenact §18-9A-15 of said code, all  
4 relating to revising provisions related to public charter schools; providing public charter  
5 school access to funding from School Safety Fund; modifying priorities for funds use;  
6 requiring rule on process for needs-based funding requests; expressing legislative intent  
7 on comparable levels of funding for public charter school students; authorizing state  
8 institution of higher education as applicant; prohibiting imposition of requirements on  
9 public charter schools choosing to incorporate post-secondary, industry and workforce  
10 programs that are not required of noncharter public schools; authorizing public charter  
11 schools to include before and after school programs in their education program; excluding  
12 public charter school programs from regulation as child care facility; authorizing public  
13 charter school students to participate on the same basis as other public school students  
14 in extracurricular athletic and academic interscholastic activities sponsored by noncharter  
15 public school serving attendance area if not sponsored by charter school; clarifying public  
16 charter schools are exempt from state board policies unless otherwise specifically  
17 provided; requiring professional charter school board to consult with nationally recognized  
18 organizations along with the state board; requiring state board to establish framework and  
19 procedures for interaction between public charter schools and county boards to facilitate  
20 cooperation and ensure prompt transfer of records; providing for invoicing of certain  
21 funding when student transfers from and to certain entities after the beginning of the  
22 school year; prohibiting sale or other transfer of public facility after public charter school  
23 requests usage; authorizing professional charter school board to receive and expend gifts,  
24 grants, and donations to carry out purposes of act, to apply for federal funds to implement  
25 programs, and to make start-up grants to public charter schools; and requiring for state  
26 board rule on method for providing increased enrollment funding for public charter schools.

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

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

#### **§18-5-48. Safety and security measures for school facilities; Safe Schools Fund created.**

1           (a) Each county board of education, public charter school, and multicounty vocational  
2 center shall annually assess the safety and security of each of the school facilities ~~within its~~  
3 ~~boundaries~~ for which they are responsible. Safety and security measures of each facility shall be  
4 upgraded when necessary to ensure, to the best of the county board's, public charter school  
5 governing board's or multicounty vocational center administrative council's ability, the safety of  
6 the students within each facility. Each county board of education, public charter school governing  
7 board, and multicounty vocational center administrative council shall report annually the safety  
8 and security measures it has put in place, including upgrades thereto, to the State Department of  
9 Education. Annually, the State Department of Education shall compile the information ~~from the~~  
10 ~~county boards of education~~ received and report ~~the information~~ it to the Legislative Oversight  
11 Commission on Education Accountability.

12           (b) As used in this section, "safety and security measures" means action taken by a county  
13 board of education, a public charter school, or multicounty vocational center that improves the  
14 security of a school facility and the safety of the students within such facility, including, but not  
15 limited to, hiring a school resource officer, installing weapon detection systems, upgrading facility  
16 doors or windows.

17           (c) There is hereby created in the State Treasury a special revenue fund to be known as  
18 the Safe Schools Fund. The fund shall consist of all moneys received from legislative  
19 appropriations and other sources to further the purpose of this section: *Provided*, That annually,  
20 the West Virginia Department of Education shall request an appropriation based on the requests  
21 of the county boards of education, public charter school governing boards and multicounty

22 vocational center administrative councils. Subject to legislative appropriation, the funds  
23 appropriated annually to the School Safety Fund shall be distributed to the county boards of  
24 education, public charter schools, and multicounty vocational centers, ~~with the funding amount~~  
25 ~~per school determined by dividing the total annual appropriation by the total number of public~~  
26 ~~schools throughout the state~~ on the basis of need. Moneys distributed from this fund shall not be  
27 used to make permanently affixed improvements, alterations or additions to a physical facility that  
28 a county board of education, public charter school, or multicounty vocational center does not own.  
29 If the West Virginia Department of Education distributes any moneys from this fund for the purpose  
30 of making safety improvements on or in a facility that is not owned, it shall require that the  
31 improvements be accomplished in such a manner that they may be removed with minimal effort.  
32 All moneys distributed from this fund shall be used to support the purpose and intent of this section  
33 and all moneys must be spent to support the school for which the funding was derived: *Provided,*  
34 *however,* That moneys distributed from this fund also may be used for the purposes of §18-20-11  
35 of this code, relating to video cameras in certain special education classrooms. *Provided*  
36 *further,* ~~That for any distributions for the 2019-2020 year and continuing until such time that all~~  
37 ~~districts have fully complied with the special education video camera requirements, county boards~~  
38 ~~shall have the flexibility to spend the safe schools allocation at any school within the district~~  
39 ~~requiring cameras in special education classrooms~~ Until such time as all school facilities are in  
40 full compliance with the special education video requirements, the West Virginia Department of  
41 Education shall first allocate the funding appropriated for the Safe Schools Fund ~~for the 2020-~~  
42 ~~2021 year~~ based on the remaining need for video cameras in ~~each district~~ public school facilities.  
43 After all districts public school facilities have been provided sufficient funds to meet the special  
44 education video camera requirements, the ~~funding distribution shall return to the previously~~  
45 ~~specified method based on the number of public schools~~ funds shall be distributed by the West  
46 Virginia Department of Education to meet the needs of school facilities to have safe school entry  
47 ways. After safe school entry way needs have been met, the West Virginia Department of

48 Education shall distribute funds based upon a determination of need. Any moneys remaining in  
49 the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund  
50 balances shall be invested with the state's Consolidated Investment Fund and any and all interest  
51 shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to  
52 this article.

53 (d) The West Virginia Board of Education shall promulgate rules pursuant to §29A-3B-1  
54 et seq. of this code to establish a process by which county boards of education, public charter  
55 school governing boards and multicounty vocational center administrative councils may submit  
56 requests to obtain needs-based funding from the Safe Schools Fund. Such rules shall address:

- 57 (1) The manner, time line, and process for the submission of a request;  
58 (2) The criteria by which requests shall be evaluated and prioritized; and  
59 (3) Any other matters deemed necessary to further the goals of this article.

## **ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent; liberal interpretation; prohibiting conversion of private schools; prohibiting profit or monetary consideration by elected officials; limiting authorization of public charter schools; legislative auditor report.**

1 (a) The purpose of this article is to establish a process for the creation, governance, and  
2 oversight accountability of public charter schools with a renewed commitment to the mission,  
3 goals, and diversity of public education that benefits students, parents, teachers, and community  
4 members.

5 (b) Public charter schools are intended to empower new, innovative, and more flexible  
6 ways of educating all children within the public school system to:

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

9 (2) Allow innovative educational methods, practices, and programs that engage students  
10 in the learning process, thus resulting in higher student achievement;

11 (3) Enable schools to establish a distinctive school curriculum, a specialized academic or  
12 technical theme, or method of instruction;

13 (4) Provide expanded opportunities within the public schools for parents to choose among  
14 the school curricula, specialized academic or technical themes, and methods of instruction that  
15 best serve the interests or needs of their child;

16 (5) Provide students, parents, community members, and local entities with expanded  
17 opportunities for involvement in the public school system;

18 (6) Allow authorized public schools and programs within public schools exceptional levels  
19 of self-direction and flexibility in exchange for exceptional levels of results-driven accountability  
20 for student learning; and

21 (7) Encourage the replication of successful strategies for improving student learning.

22 (c) All public charter schools established under this article are public schools and are part  
23 of the state's public education system.

24 (d) The provisions of this article shall be interpreted liberally to support the purpose and  
25 intent of this section and to advance a renewed commitment by the state to the mission, goals,  
26 and diversity of public education.

27 (e) No provision of this article may be interpreted to allow the conversion of private schools  
28 into public charter schools.

29 ~~(f) An elected official may not profit or receive any monetary consideration from a charter~~  
30 ~~school: *Provided*, That this prohibition does not apply with respect to the continued employment~~  
31 ~~of an elected official who was employed by a public school prior to its conversion to a public~~  
32 ~~charter school.~~

33 ~~(g)~~(f) The total number of public charter schools authorized and in operation under an  
34 approved contract in this state shall be limited to 10 pilot public charter schools until July 1, 2023.  
35 The State Board shall report to the Legislative Oversight Commission on Education Accountability  
36 by November 1, 2022, and every three years thereafter, on the status of the state's public charter

37 schools. LOCEA shall report its findings and recommendations, if any, to the Legislature during  
38 its next regular session. Beginning July 1, 2023, and every three years thereafter, an additional  
39 10 public charter schools may be authorized and in operation under an approved contract in this  
40 state. The Mountaineer Challenge Academy, if converted to a public charter school, shall not  
41 count towards the limitation established by this subsection.

42 ~~(h)~~(g) Two years after the first public charter school commences operations under the  
43 provisions of this article, the Legislative Auditor shall conduct an audit of the public charter school  
44 program and report the findings to the Legislative Oversight Commission on Education  
45 Accountability.

46 ~~(i)~~(h) It is the intent of the Legislature that public charter school students be considered as  
47 important as all other school students in the state and, to that end, comparable funding levels  
48 from existing and future sources should be maintained for public charter school students.

**§18-5G-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 (1) "Applicant" means any one or more in combination of parents, community members,  
4 teachers, school administrators, or institutions of higher education in this state who are interested  
5 in organizing a public charter school and:

6 (A) Have obtained 501(c)(3) tax-exempt status or have submitted an application for  
7 501(c)(3) tax-exempt status, or be a state institution of higher education as defined in §18B-1-2  
8 of this code; and

9 (B) Have developed and submitted an application to an authorizer to establish a public  
10 charter school;

11 (2) "Authorizer" means the entity empowered under this article to review applications,  
12 decide whether to approve or reject applications, enter into charter contracts with applicants,



13 oversee public charter schools, and decide whether to renew or not renew charter contracts.

14 Authorizers include:

15 (A) A county school board when the charter school or application to form a charter school  
16 includes a primary recruitment area that is wholly within the county over which the board has  
17 jurisdiction;

18 (B) Two or more county school boards who must act together and function as a single  
19 authorizer in all respects under the law when the public charter school or application to form a  
20 public charter school includes a primary recruitment area that encompasses territory in the two or  
21 more counties over which the respective boards have jurisdiction: *Provided*, That if such two or  
22 more school boards functioning together as authorizer reject the application, then one or more of  
23 the individual county boards may approve the application, but in such instance the charter school  
24 site must be located in one of the counties where the application was approved.

25 (C) The West Virginia Professional Charter School Board created pursuant to §18-5G-15  
26 of this code; or

27 (D) The West Virginia Board of Education in the following instances:

28 (i) The charter school or application to form a charter school or to renew a charter contract  
29 is in a county where the state board has intervened in the operation of the school system and  
30 limited the authority of the county board to act pursuant to §18-2E-5 of this code; and

31 (ii) The application to form a public charter school or to renew a charter contract is  
32 approved by the affected county board or boards and is forwarded it to the West Virginia Board  
33 of Education with a request that it perform to the authorizer function.

34 (3) "Charter application" means a proposal from an applicant to an authorizer to enter into  
35 a charter contract whereby the proposed school obtains public charter school status;

36 (4) "Charter contract" or "contract" means a fixed-term, renewable contract between a  
37 public charter school's governing board and an authorizer that identifies the roles, powers,

38 responsibilities, operational duties, accountability, and performance expectations for each party  
39 to the contract, consistent with the requirements of this article;

40 (5) "Conversion public charter school" means a public charter school that existed as a  
41 noncharter public school before becoming a public charter school;

42 (6) "County board" means a board exercising management and control of a school district.  
43 A county board's management and control of a public charter school is limited to only that granted  
44 under this article. In the case of a school district in which the state board has intervened and  
45 limited the authority of the county board to act pursuant to §18-2E-5 of this code, "county board"  
46 means the state board. In the case of a multicounty vocational or technical center, "county board"  
47 means the administrative council of the multicounty center;

48 (7) "Education service provider" means a public or private nonprofit or for-profit education  
49 management organization, school design provider, or any other partner entity with which a public  
50 charter school contracts for educational design, implementation, or comprehensive management;

51 (8) A "full-time virtual public charter school" means a public charter school that offers  
52 educational services predominantly through an online program.

53 (9) "Governing board" means a public charter school governing board that meets the  
54 requirements §18-5G-3 and §18-5G-7 of this code and is party to the charter contract with the  
55 authorizer;

56 (10) "Noncharter public school" means a public school or multicounty vocational center  
57 other than a public charter school established pursuant to this article;

58 (11) "Parent" means a parent, guardian, or other person or entity having legal custody  
59 over a child;

60 (12) "Public charter school" means a public school or program within a public school that  
61 is authorized in accordance with the provisions of this article and meets the general criteria,  
62 governance structure, and statutory compliance requirements described in §18-5G-3 of this code,  
63 and other provisions of this article;

64 (13) "Program conversion public charter school" means a program within an existing  
65 noncharter public school that is either preexisting and converted or newly created to become a  
66 separate and discreet program governed and operated in accordance with this article within the  
67 noncharter public school;

68 (14) "Start-up public charter school" means a public charter school that did not exist as a  
69 noncharter public school prior to becoming a public charter school.

70 (15) "State board" means the West Virginia Board of Education;

71 (16) "Student" means any person that is eligible for attendance in a public school in West  
72 Virginia; and

73 (17) "West Virginia Professional Charter School Board" means the board created pursuant  
74 to §18-5G-15 of this code.

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

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

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

6 (2) Are subject to the oversight of the school's authorizer for operating in accordance with  
7 its approved charter contract and for meeting the terms and performance standards established  
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. If a public charter school chooses to  
35 incorporate post-secondary embedded credit, dual credit, and industry and workforce credential  
36 programs into its educational program, institutions of higher education may not impose any  
37 requirements on the public charter school that are not required of noncharter public schools;

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

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

44 (D) May include before school and/or after school programs as a part of the public charter  
45 school's education program. No part of the education program of a public charter school is subject  
46 to regulation as a child care facility;

47 (5) Provides programs and services to a student with a disability in accordance with the  
48 student's individualized education program and all federal and state laws, regulations, rules and  
49 policies. A charter school shall deliver the services directly or contract with a county board or  
50 another provider to deliver the services as set forth in its charter contract;

51 (6) Is eligible to participate in state-sponsored or district-sponsored athletic and academic  
52 interscholastic leagues, competitions, awards, scholarships, and recognition programs for  
53 students, educators, administrators, and schools to the same extent as noncharter public schools.  
54 If a public charter school does not sponsor an extracurricular athletic and/or academic  
55 interscholastic activity for the students enrolled in the public charter school and the noncharter  
56 public school serving the attendance area in which the public charter school is located sponsors  
57 the activity, the public charter school students may participate in those activities at the noncharter  
58 public school on the same basis as other public school students are able to participate in those  
59 activities at the noncharter public school;

60 (7) Employs its own personnel as employees of the public charter school and is ultimately  
61 responsible for processing employee paychecks, managing its employees' participation in the  
62 applicable retirement system, and managing its employees' participation in insurance plans:  
63 *Provided*, That nothing in this subdivision prohibits the public charter school from contracting with

64 another person or entity to perform services relating to managing its employees' participation in  
65 the retirement system or insurance plan. A county board may not require any employee of its  
66 school system to be employed in a public charter school. A county board may not harass,  
67 threaten, discipline, discharge, retaliate, or in any manner discriminate against any school system  
68 employee involved directly or indirectly with an application to establish a public charter school as  
69 authorized under this section. All personnel in a public charter school who were previously  
70 employed by the county board shall continue to accrue seniority with the county board in the same  
71 manner that they would accrue seniority if employed in a noncharter public school in the county  
72 for purposes of employment in noncharter public schools; and

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

77 (c) A public charter school authorized pursuant to this article is exempt from all statutes,  
78 state board policies and rules applicable to a noncharter public school or board of education  
79 except the following unless otherwise specifically provided in this article:

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

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

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

86 (4) The same compulsory school attendance requirements applicable to noncharter public  
87 schools;

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

90 (6) The same student assessment requirements applicable to noncharter public schools  
91 in this state, but only to the extent that will allow the state board to measure the performance of  
92 public charter school students pursuant to §18-2E-5(d) and (e) of this code. Any virtual public  
93 charter school may administer any required state assessment in a virtual setting utilizing remote  
94 proctoring that best meets the educational needs of the student. Nothing precludes a public  
95 charter school from establishing additional student assessment measures that go beyond state  
96 requirements;

97 (7) The Student Data Accessibility, Transparency and Accountability Act pursuant to §18-  
98 2-5h of this code;

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

101 (9) Reporting information on student and school performance to parents, policymakers,  
102 and the general public in the same manner as noncharter public schools utilizing the electronic  
103 format established by the West Virginia Department of Education. Nothing precludes a public  
104 charter school from utilizing additional measures for reporting information on student and school  
105 performance that go beyond state requirements;

106 (10) All applicable accounting and financial reporting requirements as prescribed for public  
107 schools, including adherence to generally accepted accounting principles. A public charter school  
108 shall annually engage an external auditor to perform an independent audit of the school's  
109 finances. The public charter school shall submit the audit to its authorizer and to the state  
110 superintendent of schools within nine months of the end of the fiscal year for which the audit is  
111 performed;

112 (11) A criminal history check pursuant to §18A-3-10 of this code for any staff person that  
113 would be required if the person was employed in a noncharter public school, unless a criminal  
114 history check has already been completed for that staff person pursuant to that section.  
115 Governing board members and other public charter school personnel are subject to criminal

116 history record checks and fingerprinting requirements applicable to noncharter public schools in  
117 this state. Contractors and service providers or their employees are prohibited from making direct,  
118 unaccompanied contact with students and from access to school grounds unaccompanied when  
119 students are present if it cannot be verified that the contractors, service providers or employees  
120 have not previously been convicted of a qualifying offense pursuant to §18-5-15c of this code:  
121 Provided, That nothing in this subdivision including the reference to §18A-3-10 of this code  
122 requires charter school employees to be certified or licensed as a condition of employment in a  
123 public charter school. A public charter school may, but is not required to, establish certification or  
124 licensure as a condition of employment by the school:

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

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

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

**§18-5G-4. West Virginia Board of Education; powers and duties for implementation,  
general supervision and support of public charter schools.**

1 (a) The state board along with the West Virginia Public Charter School Board established  
2 in §18-5G-15 of this code shall consult with nationally recognized charter school organizations  
3 and establish and maintain a catalogue of best practices for public charter schools applicable for  
4 all applicants, authorizers, governing board members, and administrators that are consistent with  
5 this article and nationally recognized principles and professional standards for quality public  
6 charter school authorizing and governance in all major areas of authorizing and governance  
7 responsibility in the following areas:



- 8 (1) Organizational capacity and infrastructure;
- 9 (2) Solicitation and evaluation of charter applications;
- 10 (3) A framework to guide the development of charter contracts;
- 11 (4) Performance contracting including a performance framework;
- 12 (5) Providing transparency and avoiding all conflicts of interest;
- 13 (6) Ongoing public charter school oversight and evaluation; and
- 14 (7) Charter approval and renewal decision-making.

15 (b) The state board is responsible for exercising, in accordance with this article, the  
16 following powers and duties with respect to the oversight and authorization of public charter  
17 schools:

18 (1) Provide forms to promote the quality and ease of use for authorizers to solicit  
19 applications for public charter schools, for applicants to complete applications, and for  
20 establishing quality charter contracts that include a framework for performance standards. The  
21 forms shall be available for use and solicitations made not later than the beginning of February,  
22 2020. The forms shall include an application deadline of August 31st of the year prior to the  
23 beginning of operations for the proposed school year. No public charter school may begin  
24 operation prior to the beginning of the proposed school year following the previous year August  
25 application;

26 (2) Provide training programs for public charter school applicants, administrators and  
27 governing board members, as applicable, that include, but are not limited to:

28 (i) Pre-application training programs and forms to assist in the development of high quality  
29 public charter school applications;

30 (ii) The required components and the necessary information of the public charter school  
31 application and the charter contract as set forth in this article;

32 (iii) The public charter school board's statutory role and responsibilities;

33 (iv) Public charter school employment policies and practices; and

34 (v) Authorizer responsibilities for public charter school contract oversight and performance  
35 evaluation;

36 (3) Receive and expend appropriate gifts, grants, and donations of any kind from any  
37 public or private entity to carry out the purposes of this act, subject to all lawful terms and  
38 conditions under which the gifts, grants or donations are given;

39 (4) Apply for any and all federal funds that may be available for the implementation of  
40 public charter school programs. The state board shall apply for every potential grant that becomes  
41 available for the implementation of public charter school programs and report to the Legislative  
42 Oversight Commission on Education Accountability by the September 1 of each year the grants  
43 applied for pursuant to this subdivision the previous school year and the outcome of each  
44 application;

45 (5) Establish reporting requirements that enable the state board to monitor the  
46 performance and legal compliance of authorizers and public charter schools;

47 (6) Establish a framework and procedures for interactions between public charter schools  
48 and county boards of education to facilitate cooperation for shared services, training and  
49 information and to ensure the prompt transfer of student records, including IEP's, so as to  
50 minimize the interruption of a student's education when transferring between noncharter public  
51 schools and public charter schools; and

52 ~~(6)~~ (7) Submit to the Governor and the Legislature an annual report within 60 days of the  
53 end of each school year summarizing:

54 (A) The student performance of all operating public charter schools; and

55 (B) The authorization status of all public charter schools within the last school year,  
56 identifying all public charter schools as:

57 (i) Application pending;

58 (ii) Application denied and reasons for denial;

59 (iii) Application approved, but not yet operating;

60 (iv) Operating and years of operation;

61 (v) Renewed and years of operation;

62 (vi) Terminated;

63 (vii) Closed;

64 (viii) Never opened; and

65 (ix) Any successful innovations applied in authorized public charter schools which may be  
66 replicated in other schools. The report shall provide information about how noncharter public  
67 schools may implement these innovations.

68 (c) The state board shall be the authorizer of a public charter school when a county board  
69 or boards approve the application for a public charter school and requests the state board to  
70 perform the authorizer duties and responsibilities or when an application to form a public charter  
71 school or to renew a charter contract is submitted from an applicant within a county in which the  
72 state board has intervened and limited the power of the county board to act pursuant to §18-2E-  
73 5 of this code.

**§18-5G-5. State board rule relating to funding for public charter school enrollment and  
other necessary provisions; local education agency status; authorizer oversight  
fee.**

1 (a) The state board shall promulgate a rule pursuant to the provisions of §29A-3B-1 *et*  
2 *seq.* of this code setting forth requirements for public charter school funding. The rule shall include  
3 a requirement that ~~90~~ 99 percent of the per pupil total basic foundation allowance follow the  
4 student to the public charter school, subject to the following:

5 (1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications  
6 to the calculations set forth in §18-9A-7 of this code regarding the allowance for student  
7 transportation and in §18-9A-9(1) of this code regarding the allowance for current expense for the  
8 purpose of making appropriate adjustments to those allowances to account for student  
9 transportation and current expense related funding a school district loses in situations where it

10 pays money to a public charter school pursuant to this subsection without a corresponding  
11 decrease in the county's transportation and current expense related expenditures;

12 (2) The rule shall designate which county school district is required to pay for a student  
13 attending a public charter school, and notwithstanding the terms in the definition of "net  
14 enrollment" in §18-9A-2 of this code, shall provide that the county school district paying for the  
15 student attending a public charter school have that student included in its net enrollment for the  
16 purposes of §18-9A-1 *et seq.* of this code; ~~and~~

17 (3) When a student in grades kindergarten through 12 transfers on a full-time basis after  
18 the beginning of the school year from a school district to a public charter school, or vice versa, or  
19 to another public charter school, hereinafter referred to as entities, the following apply:

20 (A) If the student is included in the second month net enrollment the purposes of §18-9A-  
21 2 of this code, of the entity from which the student transferred, the entity to which the student  
22 transfers may invoice the entity from which the student transferred for the amount, determined on  
23 a pro rata basis, based on the amount required pursuant to subdivision (2) of this subsection for  
24 a student attending a public charter school;

25 (B) If the student is included in the second month net enrollment for the purposes of §18-  
26 9A-2 of this code, of the entity from which the student transferred and is eligible for aid to  
27 exceptional students, the entity to which the student transfers may invoice the entity from which  
28 the student transferred for the amount, determined on a pro rata basis, of the aid to exceptional  
29 students due for that student;

30 (C) If the student is included in the certified child count of exceptional students for the  
31 school year of the entity from which the student transferred, the entity to which the student  
32 transfers may invoice the entity from which the student transferred for the amount, determined on  
33 a pro rata basis, due for that student in the certified child count of exceptional students; and

34 (D) Invoices issued pursuant to paragraphs (A), (B) and (C) of this subdivision shall be  
35 paid by the entity from which the student transferred within 30 days of receipt of the invoice; and

36           ~~(3)~~ (4) The rule shall require the Department of Education to follow federal requirements  
37 in ensuring that federal funding follows the student to a public charter school.

38           (b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this  
39 code, if necessary, for ensuring the accountability of public charter schools for meeting the  
40 standards for student performance required of other public school students under §18-2E-5 of  
41 this code and the accountability of authorizers for ensuring that those standards are met in the  
42 schools authorized by it. If an authorizer fails to close a public charter school that does not meet  
43 the standards, the authorizer shall appear before the state board to justify its decision. The state  
44 board may uphold or overturn the authorizer's decision and may revoke the authority of the  
45 authorizer to authorize public charter schools.

46           (c) Any public charter school authorized pursuant to this article shall be treated and act as  
47 its own local education agency for all purposes except as needed under the provisions of the  
48 Public School Support Plan for funding purposes.

49           (d) To cover authorizer costs for overseeing public charter schools, the state board shall  
50 establish a statewide formula for authorizer oversight funding, which shall apply uniformly to every  
51 authorizer in the state. Each public charter school shall remit to its respective authorizer an  
52 oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of  
53 the per pupil basic foundation allowance as provided pursuant to state board rule promulgated in  
54 accordance with this section, not to exceed one percent of each public charter school's per-  
55 student funding in a single school year. The state board may establish a sliding scale for  
56 authorizing funding, with the funding percentage decreasing after the authorizer has achieved a  
57 certain threshold, such as after a certain number of schools have been authorized or after a  
58 certain number of students are enrolled in the authorizer's public charter schools. The state board  
59 shall establish a cap on the total amount of funding that an authorizer may withhold from a full-  
60 time public charter school. The state board shall annually review the effectiveness of the state

61 formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit  
62 and strengthen the implementation of this act.

63 (e) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this  
64 code to clarify, if necessary, the requirements of this article and address any unforeseen issues  
65 that might arise relating to the implementation of the requirements of this article: *Provided*, That  
66 nothing in this rule may conflict with this code. The rule also shall include a provision prohibiting  
67 a county board from discrimination against any district employee involved directly or indirectly  
68 with an application to establish a public charter school under this article.

69 (f) All state board rules required to be promulgated by this article shall be promulgated on  
70 or before July 1, 2021. The state board may file emergency rules if necessary to meet the July 1,  
71 2021, deadline.

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

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

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

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

8 (b) Members of the governing board shall:

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

10 (B) Not be an employee of an education service provider that provides services to the  
11 public charter school, unless the services are provided by a state institution of higher education;

12 (C) File a full disclosure report to the authorizer identifying potential conflicts of interest,  
13 relationships with management organizations, and relationships with family members who are

14 employed by the public charter school or have other business dealings with the school, the  
15 management organization of the school, or any other public charter school;

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

18 (E) Be considered an officer of a school district under the provisions of §6-6-7 of this code  
19 and removal from office shall be in accordance with the provisions of that section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 and

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

52 (e) The public charter school governing board is responsible for the operation of its public  
53 charter school, including, but not limited to, ensuring compliance with the public charter school  
54 criteria, governance and statutory compliance set forth §18-5G-3 of this code, the preparation of  
55 an annual budget, contracting for services, school curriculum, personnel matters, and achieving  
56 the objectives and goals of the public charter school's program.

57 (f) The public charter school governing board shall comply with the provisions of §29B-1-  
58 1 *et seq.* of this code relating to freedom of information and the provisions of §6-9A-1 *et seq.* of  
59 this code relating to open governmental proceedings.

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

**§18-5G-12. Access to public facilities.**



1 (a) A public charter school may request usage of public facilities from the county board or  
2 other public entity in the county where the charter school is located or proposes to locate. A county  
3 board or other public entity shall make facilities available to the charter school that are either not  
4 used, in whole or in part, for classroom instruction at the time the charter school seeks to use or  
5 lease the public facility and may not initiate or execute the sale or otherwise transfer of the facility  
6 to another entity after the request for usage has been made by a public charter school.

7 (b) If a charter school seeks to lease the whole or part of a public facility, the cost of the  
8 lease must be at or under current market value.

9 (c) During the term of the lease, the charter school is solely responsible for the direct  
10 expenses related to the public facility lease, including utilities, insurance, maintenance, repairs,  
11 and remodeling. The county school board is responsible for any debt incurred or liens that are  
12 attached to the school building before the charter school leases the public facility.

**§18-5G-15. West Virginia Professional Charter School Board; members; appointments;  
meetings.**

1 (a) There is hereby created the West Virginia Professional Charter School Board which  
2 shall report directly to and be responsible to the state board, separate from the Department of  
3 Education, for carrying out its duties in accordance with this article. The mission of the board is to  
4 authorize high-quality public charter schools throughout the state that provide more options for  
5 students to attain a thorough and efficient education, particularly through schools designed to  
6 expand the opportunities for at-risk students. The Professional Charter School Board and public  
7 charter schools authorized in accordance with this article are subject to the general supervision  
8 of the state board solely for the purposes of accountability for meeting the standards for student  
9 performance required of other public school students under §18-2E-5 of this code.

10 (b) The Professional Charter School Board shall consist of five voting members, appointed  
11 by the Governor, with the advice and consent of the Senate.

12 (c) The chair of the House Committee on Education and the chair of the Senate Committee  
13 on Education shall serve as nonvoting ex officio members of the Professional Charter School  
14 Board.

15 (d) Each appointed member shall represent the public interest and must satisfy the  
16 following requirements:

17 (1) Be a citizen of the state;

18 (2) Possess experience and expertise in public or nonprofit governance, management and  
19 finance, public school leadership, assessment, curriculum or instruction, or public education law;  
20 and

21 (3) Have demonstrated an understanding of, and commitment to, charter schooling as a  
22 strategy for strengthening public education.

23 (e) No more than three of the appointed members of the Professional Charter School  
24 Board may be of the same political party. The members shall reside in geographically diverse  
25 areas of the state, with no more than two members residing in the same county. No person may  
26 be appointed who holds any other public office or public employment under the government of  
27 this state or any of its political subdivisions, or who is an appointee or employee of any charter  
28 school governing board or an immediate family member of an employee under the jurisdiction of  
29 the Professional Charter School Board or any charter school governing board. No person may be  
30 appointed who is engaged in or employed by a person or company whose primary function  
31 involves, the sale of services and activities to public charter schools or charter school governing  
32 boards.

33 (f) The initial appointments made pursuant to this section shall be for staggered one and  
34 two year terms. Three of the initial members appointed by the Governor shall serve two-year  
35 terms; and two of the initial members appointed by the Governor shall serve one-year terms.  
36 Thereafter, all appointments shall be for a term of two years. The initial appointments shall be  
37 made before August 1, 2021. The Professional Charter School Board shall meet as soon as

38 practical after August 1, 2021, upon the call of the Governor, and shall organize for business by  
39 selecting a chairman and adopting bylaws. Subsequent meetings shall be called by the chairman.

40 (g) An appointed member of the Professional Charter School Board may be removed from  
41 office by the Governor for official misconduct, incompetence, neglect of duty, or gross immorality.  
42 A member may also be removed if the member's personal incapacity renders the member  
43 incapable or unfit to discharge the duties of the office or if the member is absent from a number  
44 of meetings of the Professional Charter School Board as determined and specified by the  
45 commission in its bylaws. Whenever an appointed member vacancy on the Professional Charter  
46 School Board exists, the Governor shall appoint a qualified person for the remainder of the  
47 vacated term.

48 (h) Except in the case of gross negligence or reckless disregard of the safety and well-  
49 being of another person, the Professional Charter School Board and members of that board in  
50 their official capacity are immune from civil liability with respect to all activities related to a public  
51 charter school approved by the Public Charter School Board. The official actions of the members  
52 of the Professional Charter School Board who are serving in a nonvoting ex officio capacity by  
53 virtue of their designation as chair of the House Committee on Education or chair of the Senate  
54 Committee on Education are Professional Charter School Board member actions only, and may  
55 not be construed as official actions or positions of such member's committee or legislative body.

56 (i) The Professional Charter School Board may appoint an executive director and may  
57 employ such additional staff as may be necessary. The executive director shall serve at the will  
58 and pleasure of the Professional Charter School Board. The executive director must demonstrate  
59 an understanding of and commitment to charter schooling as a strategy for strengthening public  
60 education and must possess an understanding of state and federal education law.

61 (j) The Professional Charter School Board shall meet as needed, but at least bi-annually.  
62 From funds appropriated or otherwise made available for such purpose, its members shall be  
63 reimbursed for reasonable and necessary expenses actually incurred in the performance of

64 official duties upon submission of an itemized statement in a manner consistent with guidelines  
65 of the Travel Management Office of the Department of Administration.

66 (k) The Professional Charter School Board shall investigate official complaints submitted  
67 to it that allege serious impairments in the quality of education in a public charter school or virtual  
68 public charter school it has authorized pursuant to this article, or that allege such schools are in  
69 violation of the policies or laws applicable to them. The Professional Charter School Board also  
70 may at its own discretion conduct or cause to be conducted audits of the education and operation  
71 of public charter schools or virtual public charter schools it has authorized pursuant to this article  
72 that it determines necessary to achieve its mission of authorizing high-quality public charter  
73 schools. Upon a determination that serious impairments or violations exist, the Professional  
74 Charter School Board shall promptly notify in writing the public charter school governing board of  
75 the perceived serious impairments or violations and provide reasonable opportunity for the school  
76 to remedy the serious impairments or violations. The Professional Charter School Board shall  
77 take corrective actions or exercise sanctions in response to apparent serious impairments or  
78 violations. If warranted, the actions or sanctions may include requiring a charter school to develop  
79 and execute a corrective action plan within a specified time frame.

80 (l) The Professional Charter School Board may receive and expend appropriate gifts,  
81 grants, and donations of any kind from any public or private entity to carry out the purposes of  
82 this act, subject to all lawful terms and conditions under which the gifts, grants, or donations are  
83 given; may apply for any federal funds that may be available for the implementation of public  
84 charter school programs; and may make start-up grants to public charter schools from funds  
85 appropriated or otherwise available to it from federal, state, or other sources.

## **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

**§18-9A-15. Allowance for increased enrollment; extraordinary sustained increased enrollment impact supplement.**

1 (a) To provide for the support of increased net enrollments in the counties and public  
2 charter schools in a school year over the net enrollments used in the computation of total state  
3 aid for that year, there shall be appropriated for that purpose from the General Revenue Fund an  
4 amount to be determined as follows:

5 (1) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code that  
6 establishes an objective method for projecting the increase in net enrollment for each school  
7 district, exclusive of the net enrollment of public charter schools physically located in the district.  
8 The state superintendent shall use the method prescribed by the rule to project the increase in  
9 net enrollment for each school district.

10 (2) The state superintendent shall multiply the average total state aid per net pupil by the  
11 sum of the projected increases in net enrollment for all school districts and report this amount to  
12 the Governor for inclusion in his or her proposed budget to the Legislature. The Legislature shall  
13 appropriate to the West Virginia Department of Education the amount calculated by the state  
14 superintendent and proposed by the Governor.

15 (3) The state superintendent shall calculate each school district's share of the  
16 appropriation by multiplying the increase in net enrollment for the school district by the average  
17 total state aid per net pupil and shall distribute each school district's share to the school district  
18 on or before December 31, of each year.

19 Nothing in this subsection prohibits, however, the state superintendent, at the request of  
20 a school district, before the actual increase in net enrollment is available, from advancing a partial  
21 distribution to the school district of up to 60 percent of its estimated share based on its projected  
22 increased enrollment, subject to the following:

23 (A) If the amount of the advanced partial distribution to a school district is greater than the  
24 total amount to which a district is entitled to receive for the year, the district shall refund the  
25 difference to the Department of Education prior to June 30 of the fiscal year in which the excess  
26 distribution is made; and

27 (B) The Department of Education shall notify the Joint Committee on Government and  
28 Finance and the Legislative Oversight Commission on Education Accountability whenever an  
29 advanced partial distribution is made.

30 (4) If the amount of the appropriation for increased enrollment is not sufficient to provide  
31 payment in full for the total of these allocations, each county allocation shall be reduced to an  
32 amount which is proportionate to the appropriation compared to the total of the allocations and  
33 the allocations as thus adjusted shall be distributed to the counties as provided in this section:  
34 *Provided*, That the Governor shall request a supplemental appropriation at the next legislative  
35 session for the reduced amount.

36 (b) To help offset the budgetary impact of extraordinary and sustained increases in net  
37 enrollment in a county, there shall be included in the basic state aid of any county whose most  
38 recent three-year average growth in second month net enrollment is two percent or more, an  
39 amount equal to one fourth of the state average per pupil state aid multiplied by the increase in  
40 the county's second month net enrollment in the latest year.

41 (c) No provision of this section shall be construed to in any way affect the allocation of  
42 moneys for educational purposes to a county under other provisions of law.

43 (d) The state board shall promulgate a rule pursuant to §29A-3B-1 et seq. of this code that  
44 establishes an objective method for calculating the increase in net enrollment for each public  
45 charter school based on the school's net enrollment for the current year compared to the prior  
46 year. Increased enrollment funding calculated for a public charter school shall be paid directly to  
47 the school by the Department of Education no later than December 31st.