

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

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for

House Bill 2167

By Delegates Ellington, Statler, Willis, and W.
Clark

[Reported March 4, 2025; referred
to the Committee on Education]

1 A BILL to amend and reenact §18-5G-3, §18-5G-4, and §18-5G-7 of the Code of West Virginia,
2 1931, as amended, relating to providing for technical cleanup of certain provisions of the
3 public charter school code provisions; providing that public charter schools may not charge
4 full-time tuition and may only charge such tuition or fees as may be imposed by noncharter
5 public schools in this state, such as for part-time Hope Scholarship enrollment or for
6 participation in student activities; providing that a closing public school shall be eligible for
7 a fast-track charter school conversion for its upcoming school year; providing a tracking
8 process for when a parent or guardian withdraws a student from a public charter school;
9 and providing that public charter school teachers shall be permitted to proctor state
10 assessments in the event they are not certified or licensed.

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) 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;

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

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

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

(7) Do not charge full-time tuition and may only charge such tuition or fees as may be imposed by noncharter public schools in this state, such as for part-time Hope Scholarship enrollment or for participation in student activities.

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

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

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

(2) Has no power to levy taxes;

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

(4) Provides a program of public education that:

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

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

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

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

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

(7) Employs its own personnel as employees of the public charter school and is ultimately responsible for processing employee paychecks, managing its employees' participation in the applicable retirement system, and managing its employees' participation in insurance plans: *Provided*, That nothing in this subdivision prohibits the public charter school from contracting with another person or entity to employ personnel or to perform services relating to managing its employees' participation in the retirement system or insurance plan. A county board may not require any employee of its school system to be employed in a public charter school. A county board may not harass, threaten, discipline, discharge, retaliate, or in any manner discriminate against any school system employee involved directly or indirectly with an application to establish a public charter school as authorized under this section. All personnel in a public charter school who were previously employed by the county board shall continue to accrue seniority with the county board in the same manner that they would accrue seniority if employed in a noncharter public school in the county for purposes of employment in noncharter public schools; and

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

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

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

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

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

(4) The same compulsory school attendance requirements applicable to noncharter public schools.

(A) When a parent or guardian withdraws a student from a public charter school and enrolls the child in a public school district of that county, the school district of the student's county of residence becomes responsible to track the student for all purposes.

(B) When a parent or guardian withdraws a student from a public charter school and enrolls the child in another public charter school, home school, private school, learning pod, microschool, or out-of-state school, the receiving school or district becomes responsible to track the student for all purposes: *Provided:* That the public charter school from which the student is withdrawing provides the attendance director of the student's county of residence notification of withdrawal from the charter school by phone, electronically, or in writing. The written notification shall include, but is not limited to, the student's name, WVEIS identification number, parent/guardian contact information, and the anticipated or actual withdrawal date.

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

(6) The same student assessment requirements applicable to noncharter public schools in this state, but only to the extent that will allow the state board to measure the performance of public charter school students pursuant to §18-2E-5(d) and (e) of this code. Nothing precludes a public charter school from establishing additional student assessment measures that go beyond state requirements. Public charter school teachers who are not certified or licensed in the State shall be permitted to proctor state assessments: *Provided*, That the charter school maintains a list of all staff who have successfully completed the annual training to serve as a proctor.

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

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

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

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

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

history record checks and fingerprinting requirements applicable to noncharter public schools in this state. Contractors and service providers or their employees are prohibited from making direct, unaccompanied contact with students and from access to school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers or employees have not previously been convicted of a qualifying offense pursuant to §18-5-15c of this code;

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

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

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

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

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

(1) Organizational capacity and infrastructure;

(2) Solicitation and evaluation of charter applications;

(3) A framework to guide the development of charter contracts;

(4) Performance contracting including a performance framework;

(5) Providing transparency and avoiding all conflicts of interest;

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

(7) Charter approval and renewal decision-making;

(b) The state board 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) Provide forms to promote the quality and ease of use for authorizers to solicit applications for public charter schools, for applicants to complete applications, and for establishing quality charter contracts that include a framework for performance standards. The forms shall be available for use and solicitations made not later than the beginning of February, 2020. The forms shall include an application deadline of August 31st of the year prior to the beginning of operations for the proposed school year, or April 30 of the proposed school year in the case of a conversion public charter school or a program conversion public charter school. No public charter school may begin operation prior to the beginning of the proposed school year ~~following the previous year August application~~;

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

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

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

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

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

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

(3) 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;

(4) Apply for any federal funds that may be available for the implementation of public charter school programs;

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

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

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

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

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

(i) Application pending;

(ii) Application denied and reasons for denial;

(iii) Application approved, but not yet operating;

(iv) Operating and years of operation;

(v) Renewed and years of operation;

(vi) Terminated;

(vii) Closed;

(viii) Never opened; and

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

schools may implement these innovations.

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

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

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

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

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

(b) Members of the governing board shall:

~~(A)~~ (1) Not be an employee of the public charter school administered by the governing board;

~~(B)~~ (2) Not be an employee of an education service provider that provides services to the public charter school;

~~(C)~~ (3) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school;

~~(D)~~ (4) Collectively possess expertise in leadership, curriculum and instruction, law, and finance; and

19 ~~(E)~~ (5) Be considered an officer of a school district under the provisions of §6-6-7 of this
20 code and removal from office shall be in accordance with the provisions of that section or by a vote
21 of the governing board.

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

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

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

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

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

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

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

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

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

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

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

38 (5) Provide programs and services to a student with a disability in accordance with the
39 student's individualized education program and all federal and state laws, rules, and regulations. A
40 public charter school shall deliver the services directly or contract with another provider to deliver
41 the services.

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

43 (1) Negotiate and contract with its authorizer or any third party for the use, operation, and
44 maintenance of a building and grounds, liability insurance, and the provision of any service,

activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

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

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

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

and

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

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

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

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

NOTE: The purpose of this bill is to provide for technical cleanup of certain provisions of the public charter school code provisions.

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