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HOUSE BILL NO. 380

Offered January 14, 2004

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A BILL to amend and reenact §§ 2.2-3109, 22.1-87, and 22.1-212.5 through 22.1-212.13, 22.1-293, and 22.1-295 of the Code of Virginia, relating to the Charter School Excellence and Accountability Act.

Patrons—Lingamfelter, Albo, Bell, Black, Cline, Cole, Reese, Weatherholtz and Wright

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3109, 22.1-87, and 22.1-212.5 through 22.1-212.13, 22.1-293, and 22.1-295 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3109. Prohibited contracts by other officers and employees of local governmental agencies.

A. No other officer or employee of any governmental agency of local government shall have a personal interest in a contract with the agency of which he is an officer or employee other than his own contract of employment.

B. No officer or employee of any governmental agency of local government shall have a personal interest in a contract with any other governmental agency that is a component of the government of his county, city or town unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as defined in § 2.2-4301 or is awarded as a result of a procedure embodying competitive principles as authorized by subdivisions 10 or 11 of § 2.2-4343 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of his immediate family and the employee is not in a position to influence those activities;

2. An officer's or employee's personal interest in a contract of employment with any other governmental agency that is a component part of the government of his county, city or town;

3. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public;

4. Members of local governing bodies who are subject to § 2.2-3107; ~~or~~

5. Members of local school boards who are subject to § 2.2-3108; *or*

6. *Any personal interest of members of the governing body, administrators, and other personnel serving in a public charter school, in constructing or leasing public charter school facilities or services.*

§ 22.1-87. Judicial review.

Any (i) ~~parent, custodian, or legal guardian~~ of a pupil attending the public schools in a school division who is aggrieved by an action of the school board; (ii) *person who has submitted an application for a public charter school and who is aggrieved by a school board's grant or denial of a charter application or approval or disapproval of revisions to a charter agreement; and (iii) any governing body of a public charter school aggrieved by a school board's revocation or denial of renewal of a charter or approval or disapproval of material revisions to a charter agreement* may, within ~~thirty~~ 30 days after such action, ~~grant, denial, nonrenewal, revocation, approval, or disapproval~~ petition the circuit court having jurisdiction in the school division to review the action of the school board. Such review shall proceed upon the petition, the minutes of the meeting at which the school board's action was taken, the orders, if any, of the school board, an attested copy of the transcript, if any, of any hearing before the school board, and any other evidence found relevant to the issues on appeal by the court. The action ~~of, grant, denial, nonrenewal, revocation, approval, or disapproval~~ by the school board shall be sustained unless the school board exceeded its authority, acted arbitrarily or capriciously, or abused its discretion.

§ 22.1-212.5. Objectives; definitions.

A. In order to (i) stimulate the development of innovative programs within public education; (ii) provide opportunities for innovative instruction and assessment; (iii) provide parents and students with more options within their school divisions; (iv) provide teachers with a vehicle for establishing schools with alternative innovative instruction and school scheduling, management and structure; (v) encourage the use of performance-based educational programs; (vi) *establish and maintain* high standards for both teachers and administrators; and (vii) develop models for replication in other public schools, public

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59 charter schools may be established in Virginia as provided in this article.

60 B. As used in this article:

61 "At-risk pupil" means a student having a physical, emotional, intellectual, socioeconomic, or cultural
62 risk factor, as defined in Board of Education criteria, which research indicates may negatively influence
63 educational success.

64 "Public charter school" means a public, nonsectarian, nonreligious, or non-home-based alternative
65 school located within a public school division. A public charter school may be created as a new public
66 school or through the conversion of all or part of an existing public school; however, no public charter
67 school shall be established through the conversion of a private school or a nonpublic home-based
68 educational program. A charter school for at-risk pupils may be established as a residential school.

69 "Regional public charter school" means a public charter school operated by two or more school
70 boards and chartered directly by the participating school boards.

71 § 22.1-212.6. Establishment and operation of public charter schools; requirements.

72 A. A public charter school shall be subject to all federal and state laws and regulations and
73 constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender,
74 national origin, religion, ancestry, or need for special education services and shall be subject to any
75 court-ordered desegregation plan in effect for the school division or, in the case of a regional public
76 charter school, any court-ordered desegregation plan in effect for relevant school divisions.

77 Enrollment shall be open to any child who is deemed to reside within the relevant school division or,
78 in the case of a regional public charter school, within any of the relevant school divisions, as set forth in
79 § 22.1-3, through a lottery process on a space-available basis. A waiting list shall be established if
80 adequate space is not available to accommodate all students whose parents have requested to be entered
81 in the lottery process. Such waiting list shall also be prioritized through a lottery process and parents
82 shall be informed of their student's position on the list.

83 B. A public charter school shall be administered and managed by a management committee,
84 composed of parents of students enrolled in the school, teachers and administrators working in the
85 school, and representatives of any community sponsors, in a manner agreed to by the public charter
86 school applicant and the local school board. Pursuant to a charter contract and as specified in
87 § 22.1-212.7, a public charter school may operate free from specified school division policies and state
88 regulations, and, as public schools, shall be subject to the requirements of the Standards of Quality,
89 including the Standards of Learning and the Standards of Accreditation.

90 C. Pursuant to a charter agreement, a public charter school shall be responsible for its own
91 operations, including, but not limited to, such budget preparation, contracts for services, and personnel
92 matters as are specified in the charter agreement. A public charter school may negotiate and contract
93 with a school division, the governing body of a ~~public institution~~ *institutions* of higher education, or any
94 third party for the use *or construction* of a school building and grounds, the operation and maintenance
95 thereof, and the provision of any service, activity, or undertaking which the public charter school is
96 required to perform in order to carry out the educational program described in its charter. Any services
97 for which a public charter school contracts with a school division shall not exceed the division's costs to
98 provide such services.

99 D. In no event shall a public charter school be required to pay rent for space which is deemed
100 available, as negotiated by contract, in school division facilities. All other costs for the operation and
101 maintenance of the facilities used by the public charter school shall be subject to negotiation between
102 the public charter school and the school division or, in the case of a regional public charter school,
103 between the regional public charter school and the relevant school divisions.

104 E. A public charter school shall not charge tuition.

105 § 22.1-212.7. Contracts for public charter schools; release from certain policies and regulations.

106 An approved charter application shall constitute an agreement, and its terms shall be the terms of a
107 contract between the public charter school and the local school board or, in the case of a regional public
108 charter school, between the regional public charter school and the relevant school boards. The contract
109 between the public charter school and the local school board or relevant school boards shall reflect all
110 agreements regarding the release of the public charter school from school division policies. Such
111 contract between the public charter school and the local school board or relevant school boards shall
112 reflect all requests for release of the public charter school from state regulations, consistent with the
113 requirements of subsection B of § 22.1-212.6. The local school board or relevant school boards, on
114 behalf of the public charter school, shall request such releases from the Board of Education.

115 If the charter application proposes a program to increase the educational opportunities for at-risk
116 students, including those proposals for residential charter schools for at-risk students, the local school
117 board or relevant school boards, as the case may be, on behalf of the public charter school, shall also
118 request that the Board of Education approve an Individual School Accreditation Plan for the evaluation
119 of the performance of the school as authorized by the Standards of Accreditation pursuant to 8 VAC
120 20-131-280 C of the Virginia Administrative Code.

Any material revision of the terms of the contract may be made only with the approval of the local school board or relevant school boards and the management committee of the public charter school. *Approvals or disapprovals of such material revisions shall be subject to judicial review as provided in § 22.1-87.*

§ 22.1-212.8. Charter application.

A. Any person, group, or organization, including any institution of higher education, may submit an application for the formation of a public charter school.

B. The public charter school application shall be a proposed agreement and shall include:

1. The mission statement of the public charter school that must be consistent with the principles of the Standards of Quality.

2. The goals and educational objectives to be achieved by the public charter school, which educational objectives must meet or exceed the Standards of Learning.

3. Evidence that an adequate number of parents, teachers, pupils, *residents of the school division*, or any combination thereof, support the formation of a public charter school.

4. A statement of the need for a public charter school in a school division or relevant school divisions in the case of a regional public charter school, or in a geographic area within a school division or relevant school divisions, as the case may be.

5. A description of the public charter school's educational program, pupil performance standards, and curriculum, which must meet or exceed any applicable Standards of Quality; any assessments to be used to measure pupil progress towards achievement of the school's pupil performance standards, in addition to the Standards of Learning assessments prescribed by § 22.1-253.13:3; the timeline for achievement of such standards; and the procedures for taking corrective action in the event that pupil performance at the public charter school falls below such standards.

6. A description of the lottery process to be used to determine enrollment. A lottery process shall also be developed for the establishment of a waiting list for such students for whom space is unavailable and, if appropriate, a tailored admission policy that meets the specific mission or focus of the public charter school and is consistent with all federal and state laws and regulations and constitutional provisions prohibiting discrimination that are applicable to public schools and with any court-ordered desegregation plan in effect for the school division or, in the case of a regional public charter school, in effect for any of the relevant school divisions.

7. Evidence that the plan for the public charter school is economically sound for both the public charter school and the school division or relevant school divisions, as the case may be; a proposed budget for the term of the charter; and a description of the manner in which an annual audit of the financial and administrative operations of the public charter school, including any services provided by the school division or relevant school divisions, as the case may be, is to be conducted.

8. A plan for the displacement of pupils, teachers, and other employees who will not attend or be employed in the public charter school, in instances of the conversion of an existing public school to a public charter school, and for the placement of public charter school pupils, teachers, and employees upon termination or revocation of the charter.

9. A description of the management and operation of the public charter school, including the nature and extent of parental, professional educator, and community involvement in the management and operation of the public charter school.

10. An explanation of the relationship that will exist between the proposed public charter school and its employees, including evidence that the terms and conditions of employment have been addressed with affected employees.

11. An agreement between the parties regarding their respective legal liability and applicable insurance coverage.

12. A description of how the public charter school plans to meet the transportation needs of its pupils.

13. Assurances that the public charter school (i) is nonsectarian in its programs, admission policies, employment practices, and all other operations and (ii) does not charge tuition.

14. In the case of a residential charter school for at-risk students, a description of (i) the residential program, facilities, and staffing; (ii) any parental education and after-care initiatives; (iii) the funding sources for the residential and other services provided; and (iv) any counseling or other social services to be provided and their coordination with any current state or local initiatives.

C. The charter applicant may include in the proposed agreement the results of the Board of Education review of the public charter school application, as provided in subsection D of § 22.1-212.9.

§ 22.1-212.9. Review of public charter school applications.

A. Public charter school applications shall be received and reviewed by local school boards or, in the case of a regional public charter school, by all of the relevant school boards.

Each local school board shall establish procedures for receiving, reviewing, and ruling upon

182 applications and shall make a copy of any such procedures available to all interested parties upon
 183 request. If any such board finds the public charter school application is incomplete, the board shall
 184 request the necessary information from the charter applicant.

185 B. To provide appropriate opportunity for input from parents, teachers, and other interested parties
 186 and to obtain information to assist local school boards in their decisions to grant a public charter school
 187 application, local school boards may establish a procedure for public notice, comment, or hearings on
 188 public charter school applications.

189 C. [Repealed.]

190 D. *The public charter school applicant may submit its proposed charter agreement to the Board of*
 191 *Education for review and comment. The Board shall establish a review committee to examine such*
 192 *applications for feasibility, curriculum, financial soundness, and other criteria as the Board may*
 193 *establish and to submit recommendations to the Board regarding such applications. Based upon such*
 194 *recommendations, the Board shall assign and report passing or failing grades to each application*
 195 *criteria and shall provide the charter applicant with a written explanation of its grade report. The*
 196 *charter applicant may include a copy of such report in the proposed charter agreement, as provided in*
 197 *§ 22.1-212.8.*

198 § 22.1-212.10. Judicial review

199 The ~~decision of a local school board~~ *board's approval or disapproval of material revisions to a*
 200 *charter agreement pursuant to § 22.1-212.7 or decision to grant or deny a public charter school*
 201 *application or to revoke or fail to renew a charter agreement shall be final and not subject to*
 202 *appeal.*
 203 ~~subject to judicial review pursuant to § 22.1-87.~~

204 § 22.1-212.11. Public charter school restrictions.

205 ~~Local~~ *In establishing public charter schools within the division, local school boards may establish*
 206 *public charter schools within the school division and shall be authorized to limit the number of schools*
 207 *so established; however, the total number of public charter schools, including those designed to increase*
 208 *educational opportunities for at-risk pupils but not including any regional public charter schools, shall*
 209 *not exceed ten percent of the school division's total number of schools or two public charter schools,*
 210 *whichever is greater. Priority shall be given* ~~shall give~~ *priority to public charter school applications*
 211 *designed to increase the educational opportunities of at-risk students; and at least one-half of the public*
 212 *charter schools per division shall be for at-risk students.*

213 B. Local school boards shall report the grant or denial of public charter school applications to the
 214 Board ~~and shall specify the maximum number of charters that may be authorized, if any;~~ the number of
 215 charters granted or denied; and whether a public charter school is designed to increase the educational
 216 opportunities of at-risk students.

217 C. Nothing in this article shall be construed to prevent a school that is the only school in the
 218 division from applying to become a public charter school.

219 § 22.1-212.12. Public charter school term; renewals and revocations.

220 A. A charter may be approved or renewed for a period not to exceed ~~three~~ *seven* school years. A
 221 public charter school renewal application submitted to the local school board or, in the case of a
 222 regional public charter school, to the relevant school boards shall contain:

223 1. A report on the progress of the public charter school in achieving the goals, objectives, program
 224 and performance standards for students, and such other conditions and terms as the school board or
 225 boards may require upon granting initial approval of the charter application.

226 2. A financial statement, on forms prescribed by the Board, that discloses the costs of administration,
 227 instruction, and other spending categories for the public charter school and that has been concisely and
 228 clearly written to enable the school board or boards and the public to compare such costs to those of
 229 other schools or comparable organizations.

230 B. Local school boards may revoke a charter if the public charter school:

231 1. Violates the conditions, standards, or procedures established in the public charter school
 232 application;

233 2. Fails to meet or make reasonable progress toward achievement of the content standards or student
 234 performance standards identified in the charter application;

235 3. Fails to meet generally accepted standards of fiscal management; or

236 4. Violates any provision of law from which the public charter school was not specifically exempted.

237 A charter may be revoked if the local school board determines, in its discretion, that it is not in the
 238 public interest or for the welfare of the students within the school division to continue the operation of
 239 the school or, in the case of a regional public charter school, to continue its participation in the
 240 operation of the school.

241 C. Nothing in this section shall be construed to restrict the authority of local school boards to decline
 242 to renew a charter agreement.

243 § 22.1-212.13. Employment of personnel.

244 A. Public charter school personnel shall be employees of the local school board or boards granting

the charter.

B. Professional, licensed education personnel may volunteer for assignment to a public charter school. Assignment in a public charter school shall be for one contract year. Upon request of the employee and the recommendation of the management committee of the public charter school, reassignment to the public charter school shall occur on an annual basis.

However, the school board may also employ and place otherwise qualified personnel who may be unlicensed as teachers and administrators within a public charter school.

C. At the completion of each contract year, professional, licensed education personnel who request assignment to a public noncharter school in the relevant school division or who are not recommended for reassignment in the public charter school, other than for the grounds cited in § 22.1-307, shall be guaranteed an involuntary transfer to a public noncharter school in the school division according to the employment policies of the school division.

D. Professional, licensed personnel of a public charter school shall be granted the same employment benefits given to professional, licensed personnel in public noncharter schools in accordance with the policies of the relevant school board or boards.

E. Nothing in this section shall be construed to restrict the authority of the local school board to assign professional, licensed personnel to a public charter school or any other public school as provided in §§ 22.1-293 and 22.1-295.

F. School boards may employ such health, mental health, social services, and other related personnel to serve in residential charter schools for at-risk pupils as set forth in the charter agreement between such school board and the charter school; however, nothing herein shall require a school board to fund the residential or other services provided by a residential charter school.

§ 22.1-293. School boards authorized to employ principals and assistant principals; powers and duties.

A. A school board, upon recommendation of the division superintendent, may employ principals and assistant principals. ~~Persons~~ *Except as may be hired for placement in a public charter school pursuant to § 22.1-212.13, persons* employed in these positions shall hold licenses as prescribed by the Board of Education.

B. A principal shall provide instructional leadership in, shall be responsible for the administration of and shall supervise the operation and management of the school or schools and property to which he has been assigned, in accordance with the rules and regulations of the school board and under the supervision of the division superintendent.

C. A principal may submit recommendations to the division superintendent for the appointment, assignment, promotion, transfer and dismissal of all personnel assigned to his supervision. Beginning September 1, 2000, (i) principals must have received training, provided pursuant to § 22.1-253.13:5, in the evaluation and documentation of employee performance, which evaluation and documentation shall include, but shall not be limited to, employee skills and knowledge and student academic progress, prior to submitting such recommendations; and (ii) assistant principals and other administrative personnel participating in the evaluation and documentation of employee performance must also have received such training in the evaluation and documentation of employee performance.

D. A principal shall perform such other duties as may be assigned by the division superintendent pursuant to the rules and regulations of the school board.

§ 22.1-295. Employment of teachers.

A. The teachers in the public schools of a school division shall be employed and placed in appropriate schools by the school board upon recommendation of the division superintendent. ~~In~~ *Except as may be hired for placement in a public charter school pursuant to § 22.1-212.13, in* placing teachers, school boards shall fill positions with licensed instructional personnel qualified in the relevant subject areas.

B. School boards shall adopt employment policies and practices designed to promote the employment and retention of the highest quality instructional personnel and to effectively serve the educational needs of students. Such policies shall include, but need not be limited to, incentives for excellence in teaching, including financial support for teachers attending professional development seminars or those seeking and obtaining national certification. School boards shall develop a procedure for use by division superintendents and principals in evaluating instructional personnel that is appropriate to the tasks performed and addresses, among other things, student academic progress and the skills and knowledge of instructional personnel, including, but not limited to, instructional methodology, classroom management, and subject matter knowledge.