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SENATE BILL NO. 217

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 10, 2012)

(Patron Prior to Substitute—Senator Barker)

A BILL to amend and reenact § 22.1-3 of the Code of Virginia, relating to determining residency of public school students.

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-3 of the Code of Virginia is amended and reenacted as follows:

§ 22.1-3. Persons to whom public schools shall be free.

A. The public schools in each school division shall be free to each person of school age who resides within the school division. Every person of school age shall be deemed to reside in a school division:

1. When the person is living with a natural parent, or a parent by legal adoption;

2. When the person is living with an individual who is defined as a parent in § 22.1-1, not solely for school purposes, pursuant to a Special Power of Attorney executed under Title 10, United States Code, § 1044b, by the custodial parent while such custodial parent is deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces;

3. When the parents of such person are dead and the person is living with a person in loco parentis who actually resides within the school division;

4. When the parents of such person are unable to care for the person and the person is living, not solely for school purposes, with another person who resides in the school division and is either (i) the court-appointed guardian, or has legal custody, of the person or; (ii) acting in loco parentis pursuant to placement of the person for adoption by a person or entity authorized to do so under § 63.2-1200; or (iii) an adult relative providing temporary kinship care as that term is defined in § 63.2-100. Local school divisions may require one or both parents and the relative providing kinship care to submit signed affidavits (a) explaining why the parents are unable to care for the person, (b) detailing the kinship care arrangement, and (c) agreeing that the kinship care provider or the parent will notify the school within 30 days of when the kinship care arrangement ends, as well as a power of attorney authorizing the adult relative to make educational decisions regarding the child. A school division may also require the parent or adult relative to obtain written verification from the department of social services where the parent or parents live, or from both that department and the department of social services where the kinship provider lives, that the kinship arrangement serves a legitimate purpose other than school enrollment. With written consent from the parent or adult relative, for the purposes of expediting enrollment, a school division may obtain such written verification directly from the local department or departments of social services. The verification process shall be consistent with confidentiality provisions of Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 and Chapter 14 (§ 22.1-287 et seq.). If the kinship care arrangement lasts more than one year, a school division may require continued verification from one or both departments of social services as to why the parents are unable to care for the person and that the kinship care arrangement serves a legitimate purpose other than school enrollment. A local school division may enroll a child living with a relative in a kinship care arrangement that has not been verified by a local department of social services;

5. When the person is living in the school division not solely for school purposes, as an emancipated minor; or

6. When the person living in the school division is a homeless child or youth, as set forth in this subdivision, who lacks a fixed, regular, and adequate nighttime residence. Such persons shall include (i) children and youths, including unaccompanied youths who are not in the physical custody of their parents, who (a) are sharing the housing of other persons due to loss of housing, economic hardship, or other causes; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations or in emergency, congregate, temporary, or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement; (b) are living in an institution that provides a temporary residence for the mentally ill or individuals intended to be institutionalized; (c) have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or (d) are living in parked cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and (ii) migratory children, as defined in the Elementary and Secondary Education Act of 1965, as amended, who are deemed homeless as they are living in circumstances set forth in clause (i) of this subdivision.

For purposes of clause (i) of subdivision 6, "temporary shelter" means (i) any home, single or multi-unit dwelling or housing unit in which persons who are without housing or a fixed address receive temporary housing or shelter or (ii) any facility specifically designed or approved for the purpose of

60 providing temporary housing or shelter to persons who are without permanent housing or a fixed
61 address.

62 If a person resides within housing, temporary shelter, or primary nighttime residence as described in
63 subdivision 6 that is situated in more than one school division, the person shall be deemed to reside in
64 and shall be entitled to attend a public school within either school division. However, if a person resides
65 in housing, temporary shelter, or primary nighttime residence as described in subdivision 6 that is
66 located in one school division, but the property on which such housing, temporary shelter, or primary
67 nighttime residence is located lies within more than one school division, such person shall be deemed to
68 reside only in the single school division in which the housing, temporary shelter, or primary nighttime
69 residence is located. Notwithstanding any such residency determination, any person residing in housing,
70 a temporary shelter, or primary nighttime residence as described in subdivision 6 that is located in one
71 school division, but the property on which such housing, temporary shelter, or primary nighttime
72 residence is located lies within more than one school division, shall be deemed to reside in either school
73 division, if such person or any sibling of such person residing in the same housing or temporary shelter
74 attends, prior to July 1, 1999, or, in the case of a primary nighttime residence as described in
75 subdivision 6, prior to July 1, 2000, a school within either school division in which the property on
76 which the housing, temporary shelter, or primary nighttime residence is located.

77 School divisions shall comply with the requirements of the federal McKinney-Vento Homeless
78 Education Assistance Improvements Act of 2001, as amended (42 U.S.C. § 11431 et seq.), to ensure that
79 homeless children and youths shall receive the educational services comparable to those offered to other
80 public school students.

81 School divisions serving the students identified in subdivision 6 shall coordinate the identification
82 and provision of services to such students with relevant local social services agencies and other agencies
83 and programs providing services to such students, and with other school divisions as may be necessary
84 to resolve interdivisional issues.

85 B. In the interest of providing educational continuity to the children of military personnel, no child
86 of a person on active military duty attending a school free of charge in accordance with this section
87 shall be charged tuition by that school division upon such child's relocation to military housing located
88 in another school division in the Commonwealth, pursuant to orders received by such child's parent to
89 relocate to base housing and forfeit his military housing allowance. Such children shall be allowed to
90 continue attending school in the school division they attended immediately prior to the relocation and
91 shall not be charged tuition for attending such school. Such children shall be counted in the average
92 daily membership of the school division in which they are enrolled. Further, the school division in
93 which such children are enrolled subsequent to their relocation to base housing shall not be responsible
94 for providing for their transportation to and from school.

95 **2. That the provisions of this act shall expire on June 30, 2015.**