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**HOUSE BILL NO. 2096**

Offered January 9, 2013

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*A BILL to amend and reenact §§ 22.1-7.1 and 22.1-25 of the Code of Virginia and to amend the Code of Virginia by adding in Title 22.1 a chapter numbered 4.1, consisting of sections numbered 22.1-27.1 through 22.1-27.5, relating to creation of the Opportunity Educational Institution.*

Patrons—Habeeb and Head

Referred to Committee on Education

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 22.1-7.1 and 22.1-25 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 22.1 a chapter numbered 4.1, consisting of sections numbered 22.1-27.1 through 22.1-27.5, as follows:**

**§ 22.1-7.1. Open school enrollment policy.**

A. Any local school board may establish and implement policies to provide for the open enrollment to any school, *not including a school previously in the school division that has been transferred to the Opportunity Educational Institution*, of any student residing within the school division upon the request of a parent or guardian. In developing such policies, a local school board may include the following conditions and limitations:

1. An application process whereby a parent or guardian indicates a school preference for purposes of his child attending a school in the child's school division but outside of the attendance area in which the child resides;

2. A requirement that the parent or guardian provide transportation for the student attending a school other than his assigned school;

3. A requirement that a student may be disqualified from attending a school other than his assigned school if he has been subject to a specified disciplinary action;

4. A prohibition on the recruitment of a student from one school to another by a school division employee;

5. A limitation on participation in certain athletic activities for a student who chooses to attend a school other than his assigned school;

6. A random, unbiased selection process in the event open enrollment requests exceed the capacity of a school;

7. A provision that a student shall be permitted to remain at the receiving school until the student has completed the highest grade level in the school; and

8. A preference to a student (i) who resides in a location that has been subject to a change in school attendance area during the previous two years, (ii) who has a sibling attending the receiving school, or (iii) whose parent or guardian is an employee of the receiving school.

B. A copy of the school division's policies for open enrollment, if any, shall be posted on the division's website and shall be available to the public upon request.

C. Nothing in this section shall interfere with a local school board's authority to adopt a pupil placement plan pursuant to § 22.1-79.

D. For the purposes of this section, "open enrollment" means a policy adopted and implemented by a local school board to allow any student to enroll in any school within the school division of attendance regardless of the location of the student's residence.

**§ 22.1-25. How school divisions made.**

A. The Board of Education shall divide the Commonwealth into school divisions of such geographical area and school-age population as will promote the realization of the standards of quality required by of Article VIII, Section 2 of the Constitution of Virginia, subject to the following conditions:

1. The school divisions as they exist on July 1, 1978, shall be and remain the school divisions of the Commonwealth until further action of the Board of Education taken in accordance with the provisions of this section except that when a town becomes an independent city, the town shall also become a school division.

2. No school division shall be divided or consolidated without the consent of the school board thereof and the governing body of the county or city affected or, if a town comprises the school division, of the town council.

3. No change shall be made in the composition of any school division if such change conflicts with

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59 any joint resolution expressing the sense of the General Assembly with respect thereto adopted at the  
60 session next following January 1 of the year in which the composition of such school division is to be  
61 changed.

62 4. *There shall be a statewide school division called the Opportunity Educational Institution to carry*  
63 *out the purposes set forth in Chapter 4.1 (§ 22.1-27.1 et seq.).*

64 B. Notice of any change in the composition of a school division proposed by the Board of Education  
65 shall be given by the Superintendent of Public Instruction, on or before January 1 of the year in which  
66 the composition of such school division is to be changed, to the clerks of the school board and of the  
67 governing body involved and to each member of the General Assembly.

68 C. Subject to the conditions set forth in subsection A, the Board of Education shall consider the  
69 following criteria in determining appropriate school divisions:

70 1. The school-age population of the school division proposed to be divided or consolidated.

71 2. The potential of the proposed school division to facilitate the offering of a comprehensive program  
72 for kindergarten through grade 12 at the level of the established standards of quality.

73 3. The potential of the proposed school division to promote efficiency in the use of school facilities  
74 and school personnel and economy in operation.

75 4. Anticipated increase or decrease in the number of children of school age in the proposed school  
76 division.

77 5. Geographical area and topographical features as they relate to existing or available transportation  
78 facilities designed to render reasonable access by pupils to existing or contemplated school facilities.

79 6. The ability of each existing school division to meet the standards of quality with its own resources  
80 and facilities or in cooperation with another school division or divisions if arrangements for such  
81 cooperation have been made.

82 D. Consistent with its authority pursuant to Article VIII, Section 5 of the Constitution of Virginia to  
83 designate school divisions in the Commonwealth of such geographic size and school-age population as  
84 will best promote the realization of the standards of quality, the Board shall promulgate regulations  
85 consistent with the provisions of this section that provide for a process whereby school divisions may  
86 submit proposals for the consolidation of school divisions. Such regulations shall provide for, among  
87 other things, a public notice and hearing process to be conducted by the applicant school divisions.

88 School divisions submitting proposals for consolidation shall include such information and data as  
89 may be required by the Board, including (i) the criteria set forth in subsection C; (ii) evidence of the  
90 cost savings to be realized by such consolidation; (iii) a plan for the transfer of title to school board  
91 property to the resulting combined school board governing the consolidated division; (iv) procedures and  
92 a schedule for the proposed consolidation, including completion of current division superintendent and  
93 school board member terms; (v) a plan for proportional school board representation of the localities  
94 comprising the new school division, including details regarding the appointment or election processes  
95 currently ensuring such representation and other information as may be necessary to evidence  
96 compliance with federal and state laws governing voting rights; and (vi) evidence of local support for  
97 the proposed consolidation.

98 For five years following completion of such consolidation, the computation of the state and local  
99 share for an educational program meeting the standards of quality for school divisions resulting from  
100 consolidations approved pursuant to this subsection shall be the lower composite index of local  
101 ability-to-pay of the applicant school divisions, as provided in the appropriation act.

#### 102 CHAPTER 4.1.

### 103 OPPORTUNITY EDUCATIONAL INSTITUTION.

#### 104 § 22.1-27.1. *Opportunity Educational Institution established.*

105 A. *Finding that it is desirable for the intellectual, cultural, and occupational development of the*  
106 *people of the Commonwealth and to ensure that an educational program of high quality is established*  
107 *and continually maintained for all students throughout the Commonwealth, the statewide Opportunity*  
108 *Educational Institution, hereafter referred to as the "Institution," is hereby established to provide an*  
109 *appropriate education for children attending any public elementary or secondary school that has been*  
110 *transferred to the Institution pursuant to this chapter. The Institution shall be administered and*  
111 *supervised by the Opportunity Educational Institution Board, hereafter referred to as the "Board."*

112 B. *The Board, in administering and supervising the Institution, shall be vested with all of the powers*  
113 *and duties of a local school board that are set forth in the Constitution of Virginia and this Code.*

114 C. *The Board shall have a total membership of 11 members, consisting of four legislative members*  
115 *and seven nonlegislative citizen members. Members shall be appointed as follows: two members of the*  
116 *House of Delegates, to be appointed by the Speaker of the House of Delegates in accordance with the*  
117 *principles of proportional representation contained in the Rules of the House of Delegates; two members*  
118 *of the Senate, to be appointed by the Senate Committee on Rules; and seven nonlegislative citizen*  
119 *members to be appointed by the Governor and subject to confirmation by the General Assembly.*  
120 *Nonlegislative citizen members of the board shall be citizens of the Commonwealth. Legislative members*

of the Board shall serve terms coincident with their terms of office.

After the initial staggering of terms, nonlegislative members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. However, no House member shall serve more than four consecutive two-year terms, no Senate member shall serve more than two consecutive four-year terms, and no nonlegislative citizen member appointed by the Governor shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

D. The Governor shall appoint a chairman and vice-chairman from among the Board's membership. The Board shall elect a secretary, who shall keep an accurate record of the proceedings of the Board and of the executive committee if one is created by the Board, and such other officers as the Board deems appropriate. A majority of the members shall constitute a quorum.

E. The Governor shall appoint an Executive Director.

F. Legislative members of the Board shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses of the members shall be provided from such funds as may be appropriated to the Board in accordance with the general appropriation act.

G. The Superintendent of Public Instruction shall designate a member of the staff of the Department of Education to assist the Board on matters pertaining to instruction, federal and state special education requirements, and school accreditation.

#### **§ 22.1-27.2. Transfer and retention of schools.**

A. Any school that has been denied accreditation for the previous two school years shall be transferred to the Opportunity Educational Institution.

B. The Board shall supervise and operate schools in the Opportunity Educational Institution in whatever manner that it determines to be most likely to achieve full accreditation for each school in the Institution, including the utilization of charter schools and college partnership laboratory schools.

C. Each school transferred to the Opportunity Educational Institution shall be eligible to return to the local school division upon achieving full accreditation.

D. At the end of each school year, the Board shall make a report to the Governor and the General Assembly setting forth the status of each school in the Institution, the nature of its faculty and administration, the size of its student body, its organizational and management structure, and the levels of improvement in student academic performance.

E. No later than six months prior to the expiration of a school's fifth year in the Institution, the Board shall decide whether to retain the school in the Institution for a specified number of additional school years or transfer the school back to its previous local school division.

#### **§ 22.1-27.3. Student attendance.**

Students enrolled in any school transferred to the Institution shall continue to attend the school, but nothing in this section shall abridge the ability of a parent or guardian to apply for his child to attend another school in the school division of residence if that school division has established and implemented policies to provide for the open enrollment to any school of any student residing within the school division pursuant to § 22.1-7.1.

#### **§ 22.1-27.4. Staffing.**

A. The Institution may employ such staff members as it deems necessary. At the time of the transfer of a school to the Institution, any teacher who is employed in the transferred school by the local school division of residence may be given consideration for employment in the same or a comparable position by the Institution. The Institution shall have ultimate authority to make hiring decisions.

B. Any person employed in a school transferred to the Institution may, at the time of transfer, choose to remain in the employ of the local school division of residence, and the school division shall retain, reassign or dismiss such person consistent with the requirements of Article 2 (§ 22.1-293 et seq.) of Chapter 15.

C. Notwithstanding any provision of law to the contrary, any person employed by the Institution who was employed in a school at the time of its transfer shall be granted a leave of absence from the local school division of residence for the period of time that the school is under the jurisdiction of the Institution. This period of employment shall be considered service time by the local school division of residence, but the school division shall not be required to provide employee benefits during this period.

#### **§ 22.1-27.5. Funding.**

A. Each student enrolled in a school in the Institution shall have his state and local share of Standards of Quality per pupil funding transferred from the previous local school division of residence

182 to the Institution. The per pupil funding transferred shall consist of (i) the Standards of Quality per  
183 pupil amounts of the previous local school division of residence that are distributed on the basis of  
184 March 31 average daily membership, (ii) all federal funds as set forth in § 22.1-88 directly associated  
185 with any student enrolled in a school in the Institution and apportioned to the previous local school  
186 division of residence, and (iii) all funds sufficient for the reasonable special expenses directly related to  
187 the individual educational plan of any special education student, which may be assessed from the  
188 previous local school division of residence and transferred to the Institution. No other state funds or  
189 local share of funds from the local school division of residence shall be provided to the Institution.

190 The state share per pupil portion transferred shall be based on the previous local school division of  
191 residence's composite index and shall include the per child share of state sales tax funding in basic aid.  
192 The local share per pupil portion transferred shall be based on the previous local school division of  
193 residence's composite index.

194 B. Students enrolled in a school transferred to the Institution shall not be counted in the March 31  
195 average daily membership or fall membership of the previous local school division of residence. Such  
196 students shall not be counted in the required local effort of the local school division of residence  
197 required to meet actual need.

198 C. The state and local share Standards of Quality per pupil funding transferred from the previous  
199 local school division of residence shall be provided for eligible students based on their March 31  
200 average daily membership in the school transferred to the Institution. The Department of Education  
201 shall pay the state share per pupil funding directly to the Institution semimonthly. Such state share per  
202 pupil funding shall be based on the Standards of Quality per pupil funding enacted in the current  
203 appropriation act.

204 The Board shall certify on a monthly basis each school year the number of students enrolled in each  
205 school in the Institution. Based upon such monthly certification, the Board shall invoice the affected  
206 local school divisions of residence on a monthly basis in order for a one-month portion of the local  
207 share per pupil amount to be transferred from the local school division of residence to the Institution.  
208 The local school division of residence shall transfer the certified monthly local share per pupil payment  
209 to the Institution within 30 calendar days of the receipt of the monthly invoice from the Institution. Such  
210 monthly local share per pupil funding shall be based on the Standards of Quality per pupil funding  
211 enacted in the current appropriation act.

212 **2. That the initial appointments of nonlegislative citizen members of the Opportunity Educational**  
213 **Institution Board shall be staggered as follows: three members for a term of four years, two**  
214 **members for a term of three years, and two members for a term of two years.**