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## SENATE BILL NO. 1324

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health)

(Patrons Prior to Substitute—Senators McDougle and Alexander)

Senate Amendments in [ ] - February 5, 2013

A BILL to amend and reenact §§ 2.2-2101 as it is currently effective and as it shall become effective, 22.1-7.1, 22.1-25, and 23-14 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 22.1-27.6, relating to creation of the Opportunity Educational Institution.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2101 as it is currently effective and as it shall become effective, 22.1-7.1, 22.1-25, and 23-14 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 22.1-27.6, as follows:

§ 2.2-2101. (Effective until July 1, 2013) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Opportunity Educational Institution Board, who shall be appointed as provided for in § 22.1-27.1; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as provided for in § 2.2-2685; to members of the State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-233; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; to members of the Open Education Curriculum Board, who shall be appointed as provided in § 2.2-2463; or to members of the Southwest Virginia Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735.

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Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

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81 members of the Open Education Curriculum Board, who shall be appointed as provided in § 2.2-2463;  
82 or to members of the Southwest Virginia Cultural Heritage Foundation, who shall be appointed as  
83 provided in § 2.2-2735.

84 **§ 22.1-7.1. Open school enrollment policy.**

85 A. Any local school board may establish and implement policies to provide for the open enrollment  
86 to any school, *not including a school previously in the school division that is currently under the*  
87 *supervision of the Opportunity Educational Institution*, of any student residing within the school division  
88 upon the request of a parent or guardian. In developing such policies, a local school board may include  
89 the following conditions and limitations:

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

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

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

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

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

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

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

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

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

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

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

115 **§ 22.1-25. How school divisions made.**

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

120 1. The school divisions as they exist on July 1, 1978, shall be and remain the school divisions of the  
121 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 any joint resolution expressing the sense of the General Assembly with respect thereto adopted at the session next following January 1 of the year in which the composition of such school division is to be changed.

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

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

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

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

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

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

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

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

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

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

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

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

#### CHAPTER 4.1.

#### OPPORTUNITY EDUCATIONAL INSTITUTION.

**§ 22.1-27.1. Opportunity Educational Institution and Board established; membership; terms; quorum; meetings; Executive Director; compensation.**

A. *Upon finding that it is desirable for the intellectual, cultural, and occupational development of the people of the Commonwealth and to ensure that an educational program of high quality is established and continually maintained for all students throughout the Commonwealth, the statewide Opportunity Educational Institution (the Institution) is hereby established to provide an appropriate education for children attending any public elementary or secondary school that has been transferred to the Institution pursuant to this chapter. The Institution shall be administered and supervised by the Opportunity Educational Institution Board (the Board), which is hereby established as a policy board in the executive branch of state government.*

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

185 *C. The Board shall consist of nine appointed members and ex officio members. Members shall be*  
186 *appointed as follows: two members of the House of Delegates, to be appointed by the Speaker of the*  
187 *House of Delegates in accordance with the principles of proportional representation contained in the*  
188 *Rules of the House of Delegates; two members of the Senate, to be appointed by the Senate Committee*  
189 *on Rules; one nonlegislative citizen member who shall have experience with the turnaround of failing*  
190 *schools, one nonlegislative citizen member who shall be a former teacher, former principal, or former*  
191 *superintendent, and three nonlegislative citizen members who shall be citizens at large, to be appointed*  
192 *by the Governor and subject to confirmation by the General Assembly. The Secretary of Education or*  
193 *his designee and the Executive Director of the Institution shall serve ex officio with nonvoting privileges.*  
194 *The chairman of the school board, or his designee, in any school division in which a school has been*  
195 *transferred to the Institution shall serve ex officio with nonvoting privileges. Nonlegislative citizen*  
196 *members of the Board shall be citizens of the Commonwealth. Legislative members and ex officio*  
197 *members of the Board shall serve terms coincident with their terms of office.*

198 *Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms.*  
199 *Vacancies shall be filled in the same manner as the original appointments. All members may be*  
200 *reappointed. After the initial staggering of terms, nonlegislative members shall be appointed for a term*  
201 *of four years.*

202 *No House member shall serve more than four consecutive two-year terms, no Senate member shall*  
203 *serve more than two consecutive four-year terms, and no nonlegislative citizen member appointed by the*  
204 *Governor shall serve more than two consecutive four-year terms. The remainder of any term to which a*  
205 *member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility*  
206 *for reappointment.*

207 *D. The Board shall elect a chairman and vice-chairman from among its membership. The Board*  
208 *shall elect a secretary, who shall keep an accurate record of the proceedings of the Board and of the*  
209 *executive committee if one is created by the Board, and such other officers as the Board deems*  
210 *appropriate. A majority of the members shall constitute a quorum. The meetings of the Board shall be*  
211 *held at the call of the chairman or whenever the majority of the members so request.*

212 *E. The Governor shall appoint an Executive Director. The Executive Director shall employ or retain*  
213 *such agents or employees subordinate to the Executive Director as may be necessary to fulfill the duties*  
214 *of the Institution conferred upon the Executive Director, subject to the Board's approval. The selection,*  
215 *qualification, duties, and compensation of personnel of the Board, other than the Executive Director,*  
216 *shall be as determined by the Executive Director. Personnel of the Board shall be eligible for*  
217 *membership in the Virginia Retirement System and participation in all of the health and related*  
218 *insurance and other benefits, including premium conversion and flexible benefits, available to state*  
219 *employees as provided by law.*

220 *The Executive Director shall also exercise the powers and duties conferred upon the Institution as*  
221 *may be delegated to him by the Board, including powers and duties involving the exercise of discretion.*  
222 *The Executive Director shall also exercise and perform such other powers and duties as may be*  
223 *delegated to him or as may be conferred or imposed upon him by law.*

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

230 *G. The Superintendent of Public Instruction shall designate two members of the staff of the*  
231 *Department of Education to assist the Board. One staff member shall be responsible for assisting on*  
232 *matters pertaining to instruction, federal and state special education requirements, and school*  
233 *accreditation. The second staff member shall be the Director of the Office of School Improvement.*

234 **§ 22.1-27.2. Supervision and retention of schools.**

235 *A. In January of the third year that a school is accredited with warning, the Board may require a*  
236 *school to disclose information and documentation pertaining to matters relevant to the operation of the*  
237 *school.*

238 *B. Supervision of any school that has been denied accreditation shall be transferred to the*  
239 *Opportunity Educational Institution.*

240 *Supervision of any school that has been accredited with warning for three consecutive years may be*  
241 *transferred to the Opportunity Educational Institution following a majority vote by the Board to transfer*  
242 *such school to the Institution.*

243 *C. The Board shall supervise and operate schools in the Opportunity Educational Institution in*  
244 *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.

D. Each school under the supervision of the Opportunity Educational Institution shall be eligible to return to the local school division upon achieving full accreditation.

E. At the end of each school year, but no later than August 1, 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.

F. 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 under the supervision of 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 that the supervision of a school is transferred to the Institution, any teacher who is employed in the school by the local school division of residence may be given consideration for employment in the same or a comparable position by the Institution or its designee. The Institution or its designee shall have ultimate authority to make hiring decisions.

B. Any person employed in a school under the supervision of 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.

#### **§ 22.1-27.5. Funding.**

A. Effective with the 2014-2015 school year, any student enrolled in a school under the supervision of the Institution shall have the per pupil funding of his school division of residence transferred to the Institution. The per pupil funding transferred shall consist of the total operational expenditures for the most recent fiscal year available, as reported by the resident division in the Annual School Report Financial Section (ASRFIN), divided by actual March 31 Average Daily Membership for the corresponding fiscal year.

B. Students enrolled in a school under the supervision of the Institution shall not be counted in the March 31 average daily membership or fall membership of their local school division of residence. Such students shall not be counted in the required local effort of the local school division of residence.

C. The per pupil funding transferred from the local school division of residence shall be provided for eligible students based on their March 31 average daily membership in the school under the supervision of the Institution. The Department of Education shall pay the state share per pupil funding directly to the Institution semimonthly. Payments will initiate based on projected Fall Membership for any school under the supervision of the Institution and shall be adjusted accordingly following submission of actual March 31 Average Daily Membership.

The Board shall certify on a monthly basis each school year the number of students enrolled in each school in the Institution. Based upon such monthly certification, the Board shall invoice the affected local school divisions of residence on a monthly basis in order for a one-month portion of the local share per pupil amount and applicable federal share per pupil amount to be transferred from the local school division of residence to the Institution. The local school division of residence shall transfer the certified monthly local and federal share per pupil payments to the Institution within 30 calendar days of the receipt of the monthly invoice from the Institution.

#### **§ 22.1-27.6. School buildings and facilities.**

A. The Institution shall have the right to use any school building and all facilities and property otherwise part of the school and recognized as part of the facilities or assets of the school prior to its placement in the Institution and shall have access to such additional facilities as are typically available to the school, its students, and its faculty and staff prior to its placement in the Institution. Such use shall be unrestricted, except that the Institution shall be responsible for and obligated to provide for routine maintenance and repair such that the facilities and property are maintained in as good an order as when the right of use was acquired by the Institution.

B. There shall be no requirement for the Institution to provide for the type of extensive repair to buildings or facilities that would be considered to be a capital expense. Such extensive repairs shall be provided by the governing authority of the locality or other public entity which is responsible for the facility.

306 *C. All locally owned property shall remain the real property of the locality and shall not be sold*  
307 *unless authorized by the Institution and the local school division.*

308 **§ 23-14. Certain educational institutions declared governmental instrumentalities; powers vested**  
309 **in majority of members of board.**

310 The College of William and Mary in Virginia, at Williamsburg; Richard Bland College of the  
311 College of William and Mary at Dinwiddie and Prince George; the rector and visitors of Christopher  
312 Newport University, at Newport News; Longwood University, at Farmville; the University of Mary  
313 Washington, at Fredericksburg; George Mason University, at Fairfax; the James Madison University, at  
314 Harrisonburg; Old Dominion University, at Norfolk; the State Board for Community Colleges, at  
315 Richmond; the Virginia Commonwealth University, at Richmond; the Radford University, at Radford;  
316 the Roanoke Higher Education Authority and Center; the rector and visitors of the University of  
317 Virginia, at Charlottesville; the University of Virginia's College at Wise; the Virginia Military Institute,  
318 at Lexington; the Virginia Polytechnic Institute and State University, at Blacksburg; the Virginia Schools  
319 for the Deaf and the Blind; the Virginia State University, at Petersburg; Norfolk State University, at  
320 Norfolk; the Woodrow Wilson Rehabilitation Center, at Fishersville; the Eastern Virginia Medical  
321 School; the Southern Virginia Higher Education Center; the Southwest Virginia Higher Education  
322 Center; the Institute for Advanced Learning and Research; ~~and~~ the New College Institute; *and the*  
323 *Opportunity Educational Institution* are hereby classified as educational institutions and are declared to  
324 be public bodies and constituted as governmental instrumentalities for the dissemination of education.  
325 The powers of every such institution derived directly or indirectly from this chapter shall be vested in  
326 and exercised by a majority of the members of its board, and a majority of such board shall be a  
327 quorum for the transaction of any business authorized by this chapter. Wherever the word "board" is  
328 used in this chapter, it shall be deemed to include the members of a governing body designated by  
329 another title.

330 **2. That the initial appointments of nonlegislative citizen members of the Opportunity Educational**  
331 **Institution Board shall be staggered as follows: two members for a term of four years, two**  
332 **members for a term of three years, and one member for a term of two years.**

333 **3. That the initial transfer of supervision of schools to the Institution shall occur after the**  
334 **2013-2014 school year.**

335 **[ 4. That the provisions of this act shall not become effective unless an appropriation of general**  
336 **funds effectuating the purposes of this act is included in a general appropriation act passed by the**  
337 **2013 Session of the General Assembly, which becomes law. ]**