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SENATE BILL NO. 734

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 11, 2016)

(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact §§ 2.2-3109, 22.1-212.6, 22.1-212.7, 22.1-212.8, 22.1-212.10, 22.1-212.11, and 22.1-212.13 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-212.6:1, relating to public charter schools.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3109, 22.1-212.6, 22.1-212.7, 22.1-212.8, and 22.1-212.13 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 22.1-212.6:1 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, including a hospital authority as defined in § 2.2-3109.1, 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, including a hospital authority as defined in § 2.2-3109.1, 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 set forth in § 2.2-4302.1 or 2.2-4302.2 or is awarded as a result of a procedure embodying competitive principles as authorized by subdivision A 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 for goods or services, or 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 (i) the employment or the employment activities of the member of his immediate family and (ii) the employee is not in a position to influence those activities or the award of the contract for goods or services;

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;

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

6. Any ownership or financial interest of members of the governing body, administrators, and other personnel serving in a public charter school in renovating, lending, granting, or leasing public charter school facilities, as the case may be, provided such interest has been disclosed in the public charter school application as required by § 22.1-212.8.

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

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

Enrollment in a public charter school shall be open to any child who is deemed to reside within the relevant school division or, in the case of a regional public charter school, within any of the relevant school divisions, as set forth in § 22.1-3, through a lottery process on a space-available basis, except that in the case of the conversion of an existing public school, students who attend the school and the siblings of such students shall be given the opportunity to enroll in advance of the lottery process. A waiting list shall be established if adequate space is not available to accommodate all students whose parents have requested to be entered in the lottery process. Such waiting list shall also be prioritized through a lottery process and parents shall be informed of their student's position on the list.

B. A public charter school shall be administered and managed by a management committee, composed of parents of students enrolled in the school, teachers and administrators working in the school, and representatives of any community sponsors, in a manner agreed to by the public charter school applicant and the local school board. Pursuant to a charter contract and as specified in § 22.1-212.7, a public charter school may operate free from specified school division policies and

60 state regulations, and, as public schools, shall be subject to the requirements of the Standards of Quality,
61 including the Standards of Learning and the Standards of Accreditation.

62 C. Pursuant to a charter agreement, a public charter school shall be responsible for its own
63 operations, including, but not limited to, such budget preparation, contracts for services, and personnel
64 matters as are specified in the charter agreement. A public charter school may negotiate and contract
65 with a school division, the governing body of a public institution of higher education, or any third party
66 for the use of a school building and grounds, the operation and maintenance thereof, and the provision
67 of any service, activity, or undertaking which the public charter school is required to perform in order to
68 carry out the educational program described in its charter. Any services for which a public charter
69 school contracts with a school division shall not exceed the division's costs to provide such services.

70 D. As negotiated by contract, the local school board or the relevant school boards, in the case of
71 regional public charter schools, may allow a public charter school to use vacant or unused properties or
72 real estate owned by the school board. In no event shall a public charter school be required to pay rent
73 for space which is deemed available, as negotiated by contract, in school division facilities. All other
74 costs for the operation and maintenance of the facilities used by the public charter school shall be
75 subject to negotiation between the public charter school and the school division or, in the case of a
76 regional public charter school, between the regional public charter school and the relevant school
77 divisions.

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

79 **§ 22.1-212.6:1. Applicability of other laws, regulations, policies, and procedures.**

80 A. *Public charter schools are subject to all federal laws and authorities as set forth in this article*
81 *and the charter contract with the local school board.*

82 B. *Public charter schools are subject to the same civil rights, health, and safety requirements*
83 *applicable to other public schools in the Commonwealth, except as otherwise provided in this article.*

84 C. *Public charter schools are subject to the student assessment and accountability requirements*
85 *applicable to other public schools in the Commonwealth, but nothing in this article precludes a public*
86 *charter school from establishing additional student assessment measures that go beyond state*
87 *requirements if the school's authorizer approves such measures.*

88 D. *Management committees of public charter schools are subject to and shall comply with the*
89 *Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

90 E. *No public charter school shall discriminate against any individual on the basis of disability, race,*
91 *creed, color, gender, national origin, religion, ancestry, or need for special education services or any*
92 *other unlawful basis and shall be subject to any court-ordered desegregation plan in effect for the*
93 *school division.*

94 F. *No public charter school shall discriminate against any student on the basis of limited proficiency*
95 *in English, and each public charter school shall provide students who have limited proficiency in*
96 *English with appropriate services designed to teach such students English and the general curriculum,*
97 *consistent with federal civil rights laws.*

98 G. *No public charter school shall engage in any sectarian practices in its educational program,*
99 *admissions or employment policies, or operations.*

100 **§ 22.1-212.7. Contracts for public charter schools.**

101 An approved charter application shall constitute an agreement, and its terms shall be the terms of a
102 contract between the public charter school and the local school board or, in the case of a regional public
103 charter school, between the regional public charter school and the relevant school boards. The contract
104 between the public charter school and the local school board or relevant school boards shall reflect all
105 agreements regarding the release of the public charter school from school division policies. Such
106 contract between the public charter school and the local school board or relevant school boards shall
107 reflect all requests for release of the public charter school from state regulations, consistent with the
108 requirements of subsection B of § 22.1-212.6. The local school board or relevant school boards, on
109 behalf of the public charter school, shall request such releases from the Board of Education. In addition
110 to any such releases granted by the Board, all purchases made by a public charter school shall be
111 exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq.), unless otherwise negotiated by
112 contract.

113 A. *Within 90 days of approval of a charter application, the local school board and the management*
114 *committee of the approved public charter school shall execute a charter contract that clearly sets forth*
115 *(i) the academic and operational performance expectations and measures by which the public charter*
116 *school will be judged and (ii) the administrative relationship between the local school board and public*
117 *charter school, including each party's rights and duties. Such performance expectations and measures*
118 *shall include applicable federal and state accountability requirements and may be refined or amended*
119 *by mutual agreement after the public charter school has collected baseline achievement data for its*
120 *enrolled students.*

121 B. *The academic and operational performance expectations and measures in the charter contract*

shall be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures, and metrics that will guide the local school board's evaluations of each public charter school. The performance framework shall include indicators, measures, and metrics for:

1. Student academic proficiency;
2. Student academic growth;
3. Achievement gaps in both proficiency and growth between the major student subgroups based on gender, race, poverty status, special education status, English language learner status, and gifted status;
4. Attendance;
5. Recurrent annual enrollment;
6. Postsecondary education readiness of high school students;
7. Financial performance and sustainability; and
8. The performance and stewardship of the management committee, including compliance with all applicable laws, regulations, and terms of the charter contract.

C. The performance framework shall allow the inclusion of additional rigorous, valid, and reliable indicators proposed by a public charter school to augment external evaluations of its performance, provided that the local school board approves the quality and rigor of such indicators and such indicators are consistent with the purposes of this article.

D. The performance framework shall require the disaggregation of all student performance data by major student subgroups based on gender, race, poverty status, special education status, English language learner status, and gifted status.

E. Annual performance targets shall be set by each public charter school and the local school board and shall be designed to help each school meet applicable federal, state, and local school board expectations.

F. The charter contract shall be signed by the chairman of the local school board and the president or chairman of the public charter school's management committee. Within 10 days of executing a charter contract, the local school board shall submit to the Board written notification of the charter contract execution, including a copy of the executed charter contract and any attachments.

G. No public charter school shall commence operations without a charter contract executed in accordance with this section and approved in an open meeting of the local school board.

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

I. 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.

§ 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. An executive summary.
2. A mission statement of the public charter school that must be is consistent with the principles of the Standards of Quality, including identification of the targeted academic program of study.

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, 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, including a provision that in the case of the conversion of an existing public school, students who attend the school and the

183 siblings of such students shall be given the opportunity to enroll in advance of the lottery process. A
184 lottery process shall also be developed for the establishment of a waiting list for such students for whom
185 space is unavailable and, if appropriate, a tailored admission policy that meets the specific mission or
186 focus of the public charter school and is consistent with all federal and state laws and regulations and
187 constitutional provisions prohibiting discrimination that are applicable to public schools and with any
188 court-ordered desegregation plan in effect for the school division or, in the case of a regional public
189 charter school, in effect for any of the relevant school divisions.

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

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

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

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

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

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

209 13. 4. The location or geographic area proposed for the public charter school.

210 5. The grades to be served each year for the full term of the charter contract.

211 6. Minimum, planned, and maximum enrollment per grade level per year for the term of the charter
212 contract.

213 7. Evidence of need and community support for the proposed public charter school.

214 8. Background information on the proposed founding management committee members and, if
215 identified, the proposed public charter school leadership and management team.

216 9. The public charter school's proposed calendar and a sample daily schedule.

217 10. A description of the academic program that is aligned with the Standards of Learning.

218 11. A description of the public charter school's instructional design, including the type of learning
219 environment, such as classroom-based or independent study; class size and structure; curriculum
220 overview; and teaching methods.

221 12. The public charter school's plans for identifying and successfully serving students with
222 disabilities, students who are English language learners, students who lag behind academically, and
223 gifted students, including compliance with applicable laws and regulations.

224 13. A description of cocurricular or extracurricular programs and how such programs will be funded
225 and delivered.

226 14. Plans and timelines for student recruitment and enrollment, including lottery procedures.

227 15. The public charter school's student discipline policies, including discipline policies for special
228 education students.

229 16. An organization chart that clearly presents the public charter school's organizational structure,
230 including lines of authority and reporting between the management committee; staff; any related bodies,
231 such as advisory bodies or parent and teacher councils; and any external organizations that will play a
232 role in managing the public charter school.

233 17. A clear description of the roles and responsibilities for the management committee, the public
234 charter school's leadership and management team, and any other entities shown in the organization
235 chart.

236 18. A staffing chart for the public charter school's first year and a staffing plan for the term of the
237 charter contract.

238 19. Plans for recruiting and developing the public charter school's leadership and staff.

239 20. The public charter school's leadership and teacher employment policies, including performance
240 evaluation plans, if personnel are to be employees of the public charter school.

241 21. Proposed governing bylaws.

242 22. Explanations of any partnerships or contractual relationships central to the public charter
243 school's operations or mission.

244 23. The public charter school's plans for providing transportation, food service, and all other

significant operational and ancillary services.

24. A statement of opportunities and expectations for parent involvement.

25. A detailed public charter school start-up plan that identifies tasks, timelines, and responsible individuals.

26. A description of the public charter school's financial plan and policies, including financial controls and audit requirements.

27. A description of the insurance coverage that the public charter school will obtain.

28. Start-up and five-year budgets with clearly stated assumptions.

29. Start-up and first-year cash-flow projections with clearly stated assumptions.

30. Evidence of anticipated fundraising contributions, if claimed in the application.

31. A sound facilities plan, including backup or contingency plans, if appropriate.

32. Assurances that the public charter school (i) is nonreligious 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.

15. ~~Expired.~~

16. Disclosure of any ownership or financial interest in the public charter school, by the charter applicant and the governing body, administrators, and other personnel of the proposed public charter school, and a requirement that the successful applicant and the governing body, administrators, and other personnel of the public charter school shall have a continuing duty to disclose such interests during the term of any charter.

C. ~~Expired.~~

D. The charter applicant shall include in the proposed agreement the results of any Board of Education review of the public charter school application that may have been conducted as provided in subsection C of § 22.1-212.9.

§ 22.1-212.13. Employment of professional, licensed personnel.

A. At the discretion of the local school board, charter school personnel may be employees of the local school board, or boards, granting the charter. Any personnel not employed by the local school board shall remain subject to the provisions of §§ 22.1-296.1, 22.1-296.2, and 22.1-296.4.

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.

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.

2. That §§ 22.1-212.10 and 22.1-212.11 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-212.10. Reconsideration and technical assistance; review by Board.

A. If a local school board denies a public charter school application, or revokes or fails to renew a charter agreement, it shall provide to the applicant or grantee its reasons, in writing, for such decision, and it shall post such reasons on its website. A public charter school applicant whose application was denied, or a grantee whose charter was revoked or not renewed, shall be entitled to petition the local school board for reconsideration. The petition for reconsideration shall be filed no later than 60 days from the date the public charter school application is denied, revoked, or not renewed. Such reconsideration shall be decided within 60 days of the filing of the petition.

B. Each local school board shall establish a process for reviewing petitions of reconsideration, which

shall include an opportunity for public comment. The petition of reconsideration may include an amended application based on the reasons given by the local school board for such decision.

C. Prior to seeking reconsideration, an applicant or grantee may seek technical assistance from the Superintendent of Public Instruction to address the reasons for denial, revocation, or non-renewal.

D. Upon reconsideration, the decision of a local school board to grant ~~or deny~~ a public charter school application ~~or to~~, revoke, or fail to renew a charter agreement shall be final and not subject to appeal. Following a local school board decision to ~~deny~~ a public charter school application ~~or to~~ revoke or fail to renew a charter agreement, the local school board shall submit documentation to the Board of Education as to the rationale for the local school board's ~~denial~~ ~~or~~ revocation of the charter school application.

The Board of Education shall have no authority to grant ~~or deny~~ a public charter school application ~~or to~~ revoke ~~or fail to~~ renew a charter agreement.

E. *If a local school board denies a public charter school application, the Board may review such application and may grant such application upon finding that (i) the application meets the standards of a nationally recognized organization that primarily represents authorizers of charter schools, (ii) the local community supports such application, and (iii) the denial of such application by the local school board is not supported by the greater weight of the evidence provided in support of such application.*

F. Nothing in this section shall prohibit an applicant whose application has been denied or a grantee whose charter has been revoked or not renewed from submitting a new application, pursuant to § 22.1-212.9.

§ 22.1-212.11. Public charter school restrictions.

A. Local school boards and the Board may establish public charter schools within the school division pursuant to § 22.1-212.10. Priority shall be given to public charter school applications designed to increase the educational opportunities of at-risk students, and at least one-half of the public charter schools per division shall be designed for at-risk students; however, the one-half requirement shall not apply in cases in which an existing public school is converted into a public charter school that serves the same community as the existing public school, nor shall such public charter school conversions be counted in the determination of school division compliance with the one-half requirement.

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

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

D. *Nothing in this article shall be construed to prohibit the establishment of a public charter school that is designed to increase the educational opportunities of students with specific disabilities.*

3. That the Board of Education shall grant no more than five charter school applications per year and no more than one charter school application per school division per year.

4. That the provisions of the second and third enactments of this act shall become effective on January 1, 2017, if a majority of those voting on the question in House Bill 3, Senate Bill 588, or Senate Joint Resolution 93 vote in the affirmative.