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HOUSE BILL NO. 2535

Offered January 23, 1995

A BILL to amend §§ 22.1-87, as it is currently effective and as it may become effective, 22.1-253.13:3, 22.1-293, 22.1-297, and 22.1-299 of the Code of Virginia, and to amend the Code of Virginia by adding in Chapter 13 of Title 22.1 an article numbered 1.2, consisting of sections numbered 22.1-212.5 through 22.1-212.14, relating to the establishment of charter schools.

Patrons—Katzen, Dudley, Kidd, Marshall, May, McDonnell, Nixon, O'Brien, Ruff, Wardrup and Way

Referred to Committee on Education

Whereas, it is the responsibility of the Commonwealth to provide all children with schools that reflect high expectations; and

Whereas, educators and parents have a right and a responsibility to participate in the decision-making that will improve public education for the children of the Commonwealth; and

Whereas, there are educators, citizens, and parents who are willing to offer innovative educational programs, techniques, and environments but who lack the opportunity or mechanism through which to channel their efforts; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-87, as it is currently effective and as it may become effective, 22.1-253.13:3, 22.1-293, 22.1-297, and 22.1-299 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 13 of Title 22.1 an article numbered 1.2, consisting of sections numbered 22.1-212.5 through 22.1-212.14, as follows:

§ 22.1-87. Judicial review.

A. Any 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 may, within thirty days after such action, 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 the school board shall be sustained unless the school board exceeded its authority, acted arbitrarily or capriciously, or abused its discretion.

B. Any person who has submitted an application for a charter school and who is aggrieved by the school board's denial of a charter application, or the governing body of a charter school aggrieved by the school board's revocation or denial of renewal of a charter, may, within thirty days of the school board's action, petition the circuit court having jurisdiction in the school division to review the action of such school board. The action of the school board shall be sustained unless the school board exceeded its authority, acted arbitrarily or capriciously, or abused its discretion.

§ 22.1-87. (Delayed effective date) Judicial review.

A. Any 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 may, within thirty days after such action, petition the family 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 the school board shall be sustained unless the school board exceeded its authority, acted arbitrarily or capriciously, or abused its discretion.

B. Any person who has submitted an application for a charter school and who is aggrieved by the school board's denial of a charter application, or the governing body of a charter school aggrieved by the school board's revocation or denial of renewal of a charter, may, within thirty days of the school board's action, petition the circuit court having jurisdiction in the school division to review the action of such school board. The action of the school board shall be sustained unless the school board exceeded its authority, acted arbitrarily or capriciously, or abused its discretion.

Article 1.2.

Establishment of Charter Schools.

§ 22.1-212.5. Purpose; charter schools authorized and defined.

A. To increase and improve learning opportunities for all pupils by allowing the creation of schools with rigorous standards for pupil performance; to encourage diverse approaches to learning and education and the use of different and innovative teaching methods; to create new professional

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60 opportunities for teachers, including the opportunity to be responsible for the learning program at the
61 school site; to provide parents and pupils expanded choices in the type of educational opportunities
62 within the public school system; to encourage parental and community involvement with public schools;
63 and to allow school divisions to provide for a decentralized system of school governance as they deem
64 appropriate, the establishment of charter schools shall be authorized pursuant to this article.

65 B. As used in this article, "charter school" means a public, nonsectarian, nonreligious school located
66 within a public school division and established by contract with the local school board, as provided in
67 this article. A charter school may be created as a new school or through the conversion of all or any
68 portion of an existing public school, and shall be deemed to be a public school within the division in
69 which it is located.

70 § 22.1-212.6. Establishment of charter schools; requirements.

71 A. A charter school shall be a public school, subject to federal and state laws and constitutional
72 provisions prohibiting discrimination, and shall be subject to any court-ordered desegregation plan in
73 effect for the school division.

74 A charter school shall be administered and governed by a governing body in a manner agreed to by
75 the charter school applicant and the local school board.

76 B. Unless otherwise provided in the charter agreement pursuant to § 22.1-212.7, a charter school
77 shall operate free from state regulations, including the Standards of Accreditation; however, regulations
78 identified by the Board of Education as necessary to protect the health and safety of charter school
79 students and personnel shall not be waived. The charter school shall be subject to school division
80 policies as provided in the charter agreement.

81 Nothing in this subsection shall be construed to release any charter school from compliance with the
82 Standards of Quality and the Standards of Learning.

83 C. A charter school shall be responsible for its own operations, including, but not limited to, budget
84 preparation, contracts for services, and personnel matters. A charter school may negotiate and contract
85 with a school division, the governing body of a public institution of higher education, or any third party
86 for the use of a school building and grounds, the operation and maintenance thereof, and the provision
87 of any service, activity, or undertaking which the charter school is required to perform in order to carry
88 out the educational programs described in its charter. Any charge for such services shall not exceed the
89 school division's cost to provide such services.

90 D. In no event shall a charter school be required to pay rent for space which is deemed available,
91 as negotiated by contract, in school division facilities. All other costs for the operation and maintenance
92 of the facilities used by the charter school shall be subject to negotiation between the charter school
93 and the school division.

94 § 22.1-212.7. Contracts for charter schools.

95 A. An approved charter application shall constitute an agreement, and the terms thereof shall be the
96 terms of a contract between the charter school and the local school board. The contract between the
97 charter school and the local school board shall reflect all agreements regarding the release of the
98 charter school from school division policies. Such contract shall not exempt the charter school from any
99 state regulations that are not waived pursuant to subsection B of § 22.1-212.6; however, the contract
100 may impose requirements that are subject to the waiver granted in subsection B of § 22.1-212.6.

101 B. Any material revision of the terms of the contract may be made only with the approval of the
102 local school board and the governing body of the charter school.

103 § 22.1-212.8. Charter application.

104 A. Any person or entity may submit an application for the formation of a charter school as a new
105 public school or through the conversion of all or part of an existing public school; however, no person,
106 group, or organization may submit an application to convert an existing private school or a nonpublic
107 home-based educational program into a charter school or to create a charter school which is a
108 nonpublic home-based educational program.

109 B. An approved charter application shall constitute an agreement, and its terms shall be the terms of
110 a contract between the charter school and the local school board. A charter school application shall be
111 a proposed agreement and shall include:

112 1. The mission statement of the charter school;

113 2. The goals, objectives and pupil performance standards to be achieved by the charter school;

114 3. Evidence that parents, teachers, pupils, or any combination thereof support the formation of a
115 charter school;

116 4. A statement of the need for a charter school in a school division or in a geographic area within a
117 school division;

118 5. A description of the charter school's educational program, pupil performance standards, and
119 curriculum, which must meet or exceed any content standards adopted by the school division in which
120 the charter school is located and must be designed to enable each pupil to achieve such standards;

121 6. A description of the charter school's plan for evaluating pupil performance, the types of

assessments to be used to measure pupil progress towards achievement of the school's pupil performance standards, the timeline for achievement of such standards, and the procedures for taking corrective action in the event that pupil performance at the charter school falls below such standards;

7. Evidence that the plan for the charter school is economically sound for both the charter school and the school division, 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 charter school, including any services provided by the school division, is to be conducted;

8. In the case of an application for the conversion of all or part of an existing school into a charter school, a description of the alternative arrangements for pupils, teachers, and other employees who will not attend or be employed in the charter school;

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

10. A description of proposed personnel qualifications and hiring, termination, grievance procedures and an explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment have been addressed with affected employees and their recognized representative, if any;

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

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

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

14. A description of an equitable selection process to be used if the charter school's capacity is insufficient to enroll all pupils who submit a timely application and, if appropriate, a tailored admission policy that meets the specific mission or focus of the charter school and is consistent with all federal and state laws and constitutional provisions prohibiting discrimination that are applicable to public schools and with any court-ordered desegregation plan in effect for the school.

§ 22.1-212.9. Charter application process.

A. The local school board in the division in which the charter is to be located shall receive and review all applications for charter schools. The local school board may establish a schedule for receiving applications and shall make a copy of any such schedule available to all interested parties upon request. If such board finds the charter school application is incomplete, the board shall request the necessary information from the charter applicant. The local school board shall rule on the charter school application within sixty days of receipt of the completed application.

B. The local school board shall notify the charter applicant in writing of the reasons for a charter denial. The applicant may submit a revised application for reconsideration by the local school board in accordance with the process established pursuant to subsection A of this section.

C. Upon request by an applicant whose charter application has been denied, the local school board shall, after reasonable notice, hold a public hearing on such charter application. If the decision of the local school board, after such public hearing, is to deny the application, the applicant may appeal such denial pursuant to subsection B of § 22.1-87.

§ 22.1-212.10. Charter school term; renewal of charter; revocation.

A. A charter may be approved for an initial period not to exceed five school years.

B. A charter may be renewed for any specified number of years. A charter school renewal application submitted to the local school board shall contain:

1. A report on the progress of the charter school in achieving the goals, objectives, program and performance standards for pupils, and such other conditions and terms as the school board may require as set forth in the charter agreement; and

2. A financial statement that discloses the costs of administration, instruction, and other spending categories for the charter school to enable the public to compare such costs to those of other schools.

C. A local school board may revoke or deny renewal of a charter if the charter school:

1. Materially violates the conditions, standards, or procedures established in the charter school application;

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

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

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

Such revocation or denial of renewal shall take effect at the end of the school year to facilitate the placement of pupils and teachers in another public school.

D. The local school board shall notify the governing body of the charter school in writing of the

reasons for the revocation or nonrenewal of the charter. Upon request by such governing body, the local school board shall, after reasonable notice, hold a public hearing on such revocation or nonrenewal. If the decision of the local school board, after such public hearing, is to revoke or deny renewal, the applicant may appeal such revocation or nonrenewal pursuant to subsection B of § 22.1-87.

§ 22.1-212.11. Employment of personnel; benefits.

A. Charter school personnel shall be employees of the local school board granting the charter; however, authority to establish terms of employment, including hiring, termination, and grievance procedures, shall be delegated by the local school board to the governing body of the charter school pursuant to the charter agreement. Notwithstanding the provisions of §§ 22.1-293 and 22.1-299, administrative and instructional personnel in a charter school need not be licensed by the Board of Education,

B. A local school board shall give preference to the reemployment of any licensed instructional or administrative personnel of a charter school if (i) a suitable position is available; (ii) such school board employed the particular licensed employee immediately prior to his service in the charter school; and (iii) the employee seeks such reemployment within five years of leaving his employment at a noncharter school in the particular school division. Upon reemployment, such licensed instructional or administrative personnel shall resume the employment status previously achieved with the local school board.

C. Unless otherwise specified in the charter, licensed personnel assigned to a charter school shall be granted membership in the Virginia Retirement System and shall make appropriate contributions as required. All charter school personnel shall be eligible for membership in any other state or local benefits program for public school employees.

§ 22.1-212.12. Admission to charter school.

A. A charter school shall enroll all eligible pupils who submit a timely application, consistent with the charter school's admissions policy as described in the charter agreement. If the charter school lacks the capacity to enroll all such pupils, the charter school shall select pupils pursuant to the equitable selection process set forth in the charter agreement. Pursuant to the charter agreement, a charter school may enroll pupils who are not residents of the school division in which the charter school is located; however, preference shall be given to those pupils who reside in the school division in which the charter school is located.

B. If the charter school was established through the conversion of all or part of an existing public school, preference shall be given to the enrollment of those pupils living in the school attendance zone as configured at the time the charter school was established. Any pupil residing in such attendance zone shall be permitted to attend another public school in the division upon the request of the pupil's parent, guardian, or other person having legal custody of the pupil.

C. The charter school admission policy shall be nondiscriminatory, as provided in subsection A of § 22.1-212.6. The charter school may, however, limit admission to pupils within a specific age group or grade level or in a manner consistent with its mission or focus as described in the charter agreement.

§ 22.1-212.13. Funding of charter schools; services provided.

A. For the purposes of this chapter, pupils enrolled in a charter school shall be counted in the average daily membership of the school division in which the charter school is located, as defined in the annual appropriation act.

B. The amount of state and local funding provided a charter school shall be 100 percent of the respective per-pupil state and local shares required to fund the Standards of Quality, as set forth in the appropriation act. The local school board may retain up to five percent of such per-pupil funds for administrative costs, as negotiated in the charter agreement.

C. Services provided to the charter school by the local school board, as negotiated in the charter agreement, may include, but need not be limited to, food services; custodial and maintenance services; curriculum, media, and library services; warehousing and merchandising; special education and related services; and transportation. Any charge for such services shall not exceed the school division's costs to provide such services.

D. Notwithstanding any other provision of law, the proportionate share of state and federal resources allocated for pupils with disabilities and school personnel assigned to special education programs shall be directed to charter schools enrolling such pupils. The proportionate share of moneys allocated under other federal or state categorical aid programs shall be directed to charter schools serving pupils eligible for such aid.

E. The governing body of a charter school is authorized to accept gifts, donations, or grants of any kind made to the charter school and to spend such funds in accordance with the conditions prescribed by the donor. However, no gift, donation, or grant shall be accepted by the governing body of a charter school if the conditions for such funds are contrary to law or to the terms of the agreement between the local school board and the charter school.

§ 22.1-212.14. Grants for charter schools.

From such funds as may be appropriated for this purpose, the Superintendent of Public Instruction shall award grants for the establishment of charter schools.

§ 22.1-253.13:3. Standard 3. Accreditation, other standards and evaluation.

A. The General Assembly recognizes the need for the Board of Education to prescribe requirements to ensure that student progress is measured and that school boards and school personnel are accountable.

B. The Board of Education shall promulgate regulations establishing standards for accreditation pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.) which shall include, but not be limited to, student outcome measures, requirements and guidelines for instructional programs, administrative and instructional staffing levels and positions, pupil personnel services, special education program standards, auxiliary education programs such as library and media services, course and credit requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia. In revising the standards for accreditation, the Board shall seek to set pupil-teacher ratios for educable mentally retarded (EMR) pupils that do not exceed the pupil-teacher ratios for self-contained classes for pupils with specific learning disabilities. The Board shall review annually the accreditation status of all schools in the Commonwealth. *Charter schools established pursuant to Article 1.2 of Chapter 13 of this title shall not be subject to the standards of accreditation or any action for the enforcement of such standards of accreditation pursuant to § 22.1-253.13:8.*

C. The Board shall also establish requirements for ~~certification~~ licensure of teachers, principals, supervisors and other professional staff and determine eligibility for appointment as a local division superintendent.

D. The Superintendent of Public Instruction shall develop and the Board of Education shall approve criteria for determining and recognizing educational performance in the Commonwealth's public school divisions and schools. Such criteria, when approved, shall become an integral part of the accreditation process and shall include student outcome measurements. One year following the approval by the Board of such criteria, the Superintendent of Public Instruction shall annually identify to the Board those school divisions and schools that exceed or do not meet the approved criteria. The Superintendent of Public Instruction shall assist local school boards in the implementation of action plans for increasing educational performance in those school divisions and schools that are identified as not meeting the approved criteria. The Superintendent of Public Instruction shall monitor the implementation of and report to the Board of Education on the effectiveness of the corrective actions taken to improve the educational performance in such school divisions and schools.

E. In order to assess the educational progress of students, the Board of Education shall also (i) develop appropriate assessments which may include criterion-referenced tests and alternative assessment instruments which may be used by classroom teachers; (ii) prescribe and provide measures, which may include nationally normed tests, to be designated as the Virginia State Assessment Program, which shall be used to identify students who score in the bottom quartile at selected grade levels; and (iii) prescribe and provide literacy tests in reading, writing and mathematics which shall be administered to students in grade six and to students who have not successfully passed them in grades seven and eight.

F. Each local school board shall maintain schools which meet the standards of accreditation as prescribed by the Board of Education. The accreditation status of all schools in each local school division shall be reviewed annually in public session. Within the time specified by the Board of Education, each school board shall submit corrective action plans for any schools within its school division that have been designated as not meeting the criteria for determining effectiveness as approved by the Board. G. Each local school board shall also provide teachers and principals with (i) periodic in-service training in preparing tests and other assessment measures and (ii) methods for assessing the progress of individual students, including Standards of Learning assessment materials or other criterion-referenced tests which match locally developed objectives.

H. In order to assess the educational progress of students as individuals and as groups, each local school board shall require the administration of appropriate assessments, which may include criterion-referenced tests, teacher-made tests and alternative assessment instruments and shall include the Virginia State Assessment Program, the Virginia Literacy Testing Program, and the National Assessment of Educational Progress state-by-state assessment. Each school board shall analyze and report annually, in compliance with any criteria which may be established by the Board of Education, the results from the Virginia State Assessment Program and the Virginia State Literacy Testing Program to the public.

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

A. A school board, upon recommendation of the division superintendent, may employ principals and assistant principals. ~~Persons~~ *With the exception of persons employed in charter schools pursuant to § 22.1-212.11, 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

306 and shall supervise the operation and management of the school or schools and property to which he has
307 been assigned in accordance with the rules and regulations of the school board and under the
308 supervision of the division superintendent.

309 C. A principal may submit recommendations to the division superintendent for the appointment,
310 assignment, promotion, transfer and dismissal of all personnel assigned to his supervision.

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

313 § 22.1-297. Assignment of teachers, principals and assistant principals by superintendent.

314 A division superintendent shall have authority to assign to their respective positions in the school
315 wherein they have been placed by the school board all teachers, principals and assistant principals, *with*
316 *the exception of those teachers, principals, and assistant principals serving in charter schools*
317 *established pursuant to Article 1.2 of Chapter 13 of this title.* If the school board adopts a resolution
318 authorizing the division superintendent to reassign such teachers, principals and assistant principals, the
319 division superintendent may reassign any such teacher, principal or assistant principal for that school
320 year to any school within such division, provided no change or reassignment during a school year shall
321 affect the salary of such teacher, principal or assistant principal for that school year.

322 § 22.1-299. License required of teachers.

323 ~~No~~ *With the exception of teachers employed in charter schools pursuant to § 22.1-212.11, no* teacher
324 shall be regularly employed by a school board or paid from public funds unless such teacher holds a
325 license or provisional license issued by the Board of Education. In accordance with regulations
326 prescribed by the Board, a person not meeting the requirements for a license or provisional license may
327 be employed and paid from public funds by a school board temporarily as a substitute teacher to meet
328 an emergency.