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SENATE BILL NO. 440

AMENDMENT IN THE NATURE OF A SUBSTITUTE

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

(Patron Prior to Substitute—Senator Obenshain)

A *BILL to amend and reenact §§ 22.1-212.6, 22.1-212.7, 22.1-212.10, 22.1-212.12, 22.1-212.13, and 22.1-212.14 of the Code of Virginia, relating to public charter schools.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-212.6, 22.1-212.7, 22.1-212.10, 22.1-212.12, 22.1-212.13, and 22.1-212.14 of the Code of Virginia are amended and reenacted as follows:

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

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

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

E. A public charter school shall not charge tuition.

§ 22.1-212.7. Contracts for public charter schools; release from certain policies and regulations.

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

60 If the charter application proposes a program to increase the educational opportunities for at-risk
61 students, including those proposals for residential charter schools for at-risk students, the local school
62 board or relevant school boards, as the case may be, on behalf of the public charter school, shall also
63 request that the Board of Education approve an Individual School Accreditation Plan for the evaluation
64 of the performance of the school as authorized by the Standards of Accreditation pursuant to 8 VAC
65 20-131-280 C of the Virginia Administrative Code.

66 Any material revision of the terms of the contract may be made only with the approval of the local
67 school board or relevant school boards and the management committee of the public charter school.

68 § 22.1-212.10. Reconsideration and technical assistance; decision of local board final.

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

76 B. Each local school board shall establish a process for reviewing petitions of reconsideration, which
77 shall include an opportunity for public comment. The petition of reconsideration may include an
78 amended application based on the reasons given by the local school board for such decision.

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

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

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

89 E. Nothing in this section shall prohibit an applicant whose application has been denied or a grantee
90 whose charter has been revoked or not renewed from submitting a new application, pursuant to
91 § 22.1-212.9.

92 § 22.1-212.12. Public charter school term; renewals and revocations.

93 A. A charter may be approved or renewed for a period not to exceed five school years. A public
94 charter school renewal application submitted to the local school board or, in the case of a regional
95 public charter school, to the relevant school boards shall contain:

96 1. A report on the progress of the public charter school in achieving the goals, objectives, program
97 and performance standards for students, and such other conditions and terms as the school board or
98 boards may require upon granting initial approval of the charter application.

99 2. A financial statement, on forms prescribed by the Board, that discloses the costs of administration,
100 instruction, and other spending categories for the public charter school and that has been concisely and
101 clearly written to enable the school board or boards and the public to compare such costs to those of
102 other schools or comparable organizations.

103 B. Local school boards may revoke a charter if the public charter school:

104 1. Violates the conditions, standards, or procedures established in the public charter school
105 application;

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

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

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

110 A charter may be revoked if the local school board determines, in its discretion, that it is not in the
111 public interest or for the welfare of the students within the school division to continue the operation of
112 the school or, in the case of a regional public charter school, to continue its participation in the
113 operation of the school.

114 C. Nothing in this section shall be construed to restrict the authority of local school boards to decline
115 to renew a charter agreement.

116 § 22.1-212.13. Employment of professional, licensed personnel.

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

120 B. Professional, licensed education personnel may volunteer for assignment to a public charter
121 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.

§ 22.1-212.14. Funding of public charter schools; services provided.

A. For the purposes of this article, students enrolled in a public charter school shall be included in the average daily membership of the relevant school division and shall be reported in fall membership for purposes of calculating the state and local shares required to fund the Standards of Quality.

B. Insofar as constitutionally valid, a local school board or, in the case of a regional public charter school, the relevant school boards may establish by contract an agreement stating the conditions for funding the public charter school, including funding for the educational program to be provided by a residential charter school for at-risk students. *In accordance with subsection D, the per pupil funding provided to the charter school by the local school board or, in the case of a regional public charter school, the relevant school boards, shall be negotiated in the charter agreement and shall be commensurate with the average school-based costs of educating the students in the existing schools in the division or divisions unless the cost of operating the charter school is less than that average school-based cost.*

C. Services provided the public charter school by the local school board or the relevant school boards, in the case of regional public charter schools, may include food services; custodial and maintenance services; curriculum, media, and library services; warehousing and merchandising; and such other services not prohibited by the provisions of this article or state and federal laws.

D. Funding and service agreements between local school boards and public charter schools shall not provide a financial incentive or constitute a financial disincentive to the establishment of a public charter school, including any regional public charter school.

E. Any educational and related fees collected from students enrolled at a public charter school shall be credited to the account of such public charter school established by the relevant local school board.

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

G. The management committee of a public charter school is authorized to accept gifts, donations, or grants of any kind made to the public 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 management committee of a public charter school if the conditions for such funds are contrary to law or the terms of the agreement between the local school board and the public charter school or, in the case of a regional public charter school, the relevant school boards and the regional public charter school.

H. The Department of Education shall provide technical assistance to local school boards relating to receipt, review, and ruling upon applications for public charter schools.