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SENATE BILL NO. 1324

Offered January 18, 2013

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

Patrons—McDougle and Alexander

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

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

§ 22.1-7.1. Open school enrollment policy.

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

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

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

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

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

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

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

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

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

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

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

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

§ 22.1-25. How school divisions made.

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

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

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

3. No change shall be made in the composition of any school division if such change conflicts with any joint resolution expressing the sense of the General Assembly with respect thereto adopted at the

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59 session next following January 1 of the year in which the composition of such school division is to be
60 changed.

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

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

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

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

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

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

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

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

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

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

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

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

101 CHAPTER 4.1.

102 OPPORTUNITY EDUCATIONAL INSTITUTION.

103 § 22.1-27.1. *Opportunity Educational Institution and Board established; membership; terms;*
104 *quorum; meetings; Executive Director; compensation.*

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

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

115 C. *The Board shall have a total membership of 11 members that shall consist of four legislative*
116 *members, five nonlegislative citizen members, and two ex officio members. Members shall be appointed*
117 *as follows: two members of the House of Delegates, to be appointed by the Speaker of the House of*
118 *Delegates in accordance with the principles of proportional representation contained in the Rules of the*
119 *House of Delegates; two members of the Senate, to be appointed by the Senate Committee on Rules; one*
120 *nonlegislative citizen member who shall have experience with the turnaround of failing schools, one*

nonlegislative citizen member who shall be a former teacher, former principal, or former superintendent, and three nonlegislative citizen members who shall be citizens at large, to be appointed by the Governor and subject to confirmation by the General Assembly. The Secretary of Education or his designee and the Executive Director of the Institution shall serve ex officio with nonvoting privileges. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth. Legislative members and ex officio members of the Board shall serve terms coincident with their terms of office.

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

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

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

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

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

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

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

§ 22.1-27.2. Transfer and retention of schools.

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

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

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

D. At the end of each school year, 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.

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

§ 22.1-27.3. Student attendance.

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

182 school division pursuant to § 22.1-7.1.

183 **§ 22.1-27.4. Staffing.**

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

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

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

197 **§ 22.1-27.5. Funding.**

198 A. Each student enrolled in a school in the Institution shall have his state and local share of
199 Standards of Quality per pupil funding transferred from the previous local school division of residence
200 to the Institution. The per pupil funding transferred shall consist of (i) the Standards of Quality per
201 pupil amounts of the previous local school division of residence that are distributed on the basis of
202 March 31 average daily membership, (ii) all federal funds as set forth in § 22.1-88 directly associated
203 with any student enrolled in a school in the Institution and apportioned to the previous local school
204 division of residence, and (iii) all funds sufficient for the reasonable special expenses directly related to
205 the individual educational plan of any special education student, which may be assessed from the
206 previous local school division of residence and transferred to the Institution. No other state funds or
207 local share of funds from the local school division of residence shall be provided to the Institution.

208 The state share per pupil portion of funds transferred shall be based on the previous local school
209 division of residence's composite index and shall include the per child share of state sales tax funding in
210 basic aid. The local share per pupil portion of funds transferred shall be based on the previous local
211 school division of residence's composite index.

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

216 C. The state and local share Standards of Quality per pupil funding transferred from the previous
217 local school division of residence shall be provided for eligible students based on their March 31
218 average daily membership in the school transferred to the Institution. The Department of Education
219 shall pay the state share per pupil funding directly to the Institution semimonthly. Such state share per
220 pupil funding shall be based on the Standards of Quality per pupil funding enacted in the current
221 appropriation act.

222 The Board shall certify on a monthly basis each school year the number of students enrolled in each
223 school in the Institution. Based upon such monthly certification, the Board shall invoice the affected
224 local school divisions of residence on a monthly basis in order for a one-month portion of the local
225 share per pupil amount to be transferred from the local school division of residence to the Institution.
226 The local school division of residence shall transfer the certified monthly local share per pupil payment
227 to the Institution within 30 calendar days of the receipt of the monthly invoice from the Institution. Such
228 monthly local share per pupil funding shall be based on the Standards of Quality per pupil funding
229 enacted in the current appropriation act.

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