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**SENATE BILL NO. 734**

Offered January 22, 2016

A *BILL to amend and reenact §§ 2.2-3109, 22.1-212.5, 22.1-212.6, 22.1-212.7, 22.1-212.8, 22.1-212.13, and 22.1-212.14 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.*

Patron—Obenshain

Referred to Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-3109, 22.1-212.5, 22.1-212.6, 22.1-212.7, 22.1-212.8, 22.1-212.13, and 22.1-212.14 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.~~

**§ 22.1-212.5. Objectives; definitions.**

A. In order to (i) stimulate the development of innovative programs within public education; (ii) provide opportunities for innovative instruction and assessment; (iii) provide parents and students with more options within their school divisions; (iv) provide teachers with a vehicle for establishing schools with alternative innovative instruction and school scheduling, management and structure; (v) encourage the use of performance-based educational programs; (vi) establish high standards for both teachers and administrators; and (vii) develop models for replication in other public schools, public charter schools may be established in Virginia as provided in this article.

B. As used in this article:

"At-risk pupil" means a student having a physical, emotional, intellectual, socioeconomic, or cultural risk factor, as defined in Board of Education criteria, which research indicates may negatively influence educational success.

"Public charter school" means a public, nonreligious, or non-home-based alternative school located within a public school division *that is administered and managed by a nonprofit education organization under the control of a governing board.* A public charter school may be created as a new public school or through the conversion of all or part of an existing public school; however, no public charter school shall be established through the conversion of a private school or a nonpublic home-based educational

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program. A charter school for at-risk pupils may be established as a residential school.

"Regional public charter school" means a public charter school operated by two or more school boards and chartered directly by the participating school boards.

**§ 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, nonprofit education organization under the control of a governing board that is 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.

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

A. Notwithstanding any provision of law to the contrary, to the extent that any provision of this article is inconsistent with any other state or local law, regulation, policy, or procedure, the provisions of this article control.

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

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

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

E. Governing boards of public charter schools are subject to and shall comply with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

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

G. No public charter school shall discriminate against any student on the basis of limited proficiency in English, and each public charter school shall provide students who have limited proficiency in

English with appropriate services designed to teach such students English and the general curriculum, consistent with federal civil rights laws.

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

I. Except as otherwise provided in this article, no public charter school shall be subject to the provisions of Title 22.1 or any state or local regulation, policy, or procedure relating to public elementary or secondary schools.

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

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.

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

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 governing board, 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 president or chairman of the local school board and the president or chairman of the public charter school's governing board. 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.

1. 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 consistent with the principles of the Standards of Quality, including identification of the targeted student population and the community that the public charter school hopes to serve.

3. The goals and educational objectives to be achieved by the public charter school, which educational objectives must meet or exceed the Standards of Learning.

4. Evidence that an adequate number of parents, teachers, pupils, or any combination thereof, support the formation of a public charter school.

5. 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.

6. 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.

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

8. Evidence that the plan for the public charter school is economically sound for both the public charter school and the school division or relevant school divisions, as the case may be; 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 public charter school, including any services provided by the school division or relevant school divisions, as the case may be, is to be conducted.

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

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

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

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

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

3. *The location or geographic area proposed for the public charter school.*

4. *The grades to be served each year for the full term of the charter contract.*

5. *Minimum, planned, and maximum enrollment per grade level per year for the term of the charter contract.*

6. *Evidence of need and community support for the proposed public charter school.*

7. *Background information on the proposed founding governing board members and, if identified, the*

proposed public charter school leadership and management team.

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

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

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

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

12. A description of co-curricular or extracurricular programs and how such programs will be funded and delivered.

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

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

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

16. A clear description of the roles and responsibilities for the governing board, the public charter school's leadership and management team, and any other entities shown in the organization chart.

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

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

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

20. Proposed governing bylaws.

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

22. The public charter school's plans for providing transportation, food service, and all other significant operational and ancillary services.

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

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

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

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

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

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

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

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

31. 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

305 school. Assignment in a public charter school shall be for one contract year. Upon request of the  
306 employee and the recommendation of the ~~management committee~~ *governing board* of the public charter  
307 school, reassignment to the public charter school shall occur on an annual basis.

308 C. At the completion of each contract year, professional, licensed education personnel who request  
309 assignment to a public noncharter school in the relevant school division or who are not recommended  
310 for reassignment in the public charter school, other than for the grounds cited in § 22.1-307, shall be  
311 guaranteed an involuntary transfer to a public noncharter school in the school division according to the  
312 employment policies of the school division.

313 D. Professional, licensed personnel of a public charter school ~~shall~~ *may* be granted the same  
314 employment benefits given to professional, licensed personnel in public noncharter schools in accordance  
315 with the policies of the relevant school board or boards.

316 E. ~~Nothing in this section shall be construed to restrict the authority of the local school board to~~  
317 ~~assign professional, licensed personnel to a public charter school or any other public school as provided~~  
318 ~~in §§ 22.1-293 and 22.1-295.~~

319 F. School boards may employ such health, mental health, social services, and other related personnel  
320 to serve in residential charter schools for at-risk pupils as set forth in the charter agreement between  
321 such school board and the charter school; however, nothing herein shall require a school board to fund  
322 the residential or other services provided by a residential charter school.

323 **§ 22.1-212.14. Funding of public charter schools; services provided; regulations.**

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

327 B. ~~Insofar as constitutionally valid, a local school board or, in the case of a regional public charter~~  
328 ~~school, the relevant school boards may establish by contract an agreement stating the conditions for~~  
329 ~~funding the public charter school, including funding for the educational program to be provided by a~~  
330 ~~residential charter school for at-risk students. In accordance with subsection D, the per pupil funding~~  
331 ~~provided to the charter school by the local school board or, in the case of a regional public charter~~  
332 ~~school, the relevant school boards, shall be negotiated in the charter agreement and shall be~~  
333 ~~commensurate with the average school-based costs of educating the students in the existing schools in~~  
334 ~~the division or divisions unless the cost of operating the charter school is less than that average~~  
335 ~~school-based cost. The relevant school division shall pay directly to the public charter school for each~~  
336 ~~student enrolled in the public charter school who resides in the school division an amount for that~~  
337 ~~student equal to 100 percent of the amount calculated pursuant to funding provided by the~~  
338 ~~Commonwealth and state sales and use tax for school divisions.~~

339 C. *Payments made pursuant to this section shall be made by school divisions in 12 substantially*  
340 *equal installments each year beginning on the first business day of July and every month thereafter.*  
341 *Amounts payable under this section shall be determined by the Department of Education. Amounts*  
342 *payable to a public charter school in its first year of operation shall be based on the projections of*  
343 *initial-year enrollment set forth in the charter contract. Such projections shall be reconciled with the*  
344 *actual enrollment at the end of the public charter school's first year of operation, and any necessary*  
345 *adjustments shall be made to payments during the public charter school's second year of operation.*

346 D. *In the event of the failure of a school division to make payments required by this section, the*  
347 *State Treasurer shall deduct from any state funds that become due to such school division an amount*  
348 *equal to the unpaid obligation. The State Treasurer shall pay such sum to the public charter school*  
349 *upon certification of the Department of Education.*

350 E. *A public charter school shall adhere to generally accepted accounting principles.*

351 F. *A public charter school shall annually engage an external auditor to perform an independent*  
352 *audit of the school's finances. A public charter school shall file a copy of each audit report and an*  
353 *accompanying management letter with the local school division.*

354 G. *Any moneys received by a public charter school from any source and remaining in the public*  
355 *charter school's accounts at the end of any budget year shall remain in the public charter school's*  
356 *accounts for use by the public charter school during subsequent budget years.*

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

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

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

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

372 G. L. The ~~management committee~~ *governing board* of a public charter school is authorized to accept  
373 gifts, donations, or grants of any kind made to the public charter school and to spend such funds in  
374 accordance with the conditions prescribed by the donor. However, no gift, donation, or grant shall be  
375 accepted by the ~~management committee~~ *governing board* of a public charter school if the conditions for  
376 such funds are contrary to law or the terms of the agreement between the local school board and the  
377 public charter school or, in the case of a regional public charter school, the relevant school boards and  
378 the regional public charter school.

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

381 N. *The Department of Education shall promulgate regulations to implement the provisions of this*  
382 *section.*