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2023 regular session

Committee Substitute

for

House Bill 3084

By Delegates Ellington, Statler, Toney, Clark, Mazzocchi, Longanacre and Foggin

[Originating in the Committee on Finance; February 24, 2023]

A BILL to amend and reenact §18-5-48 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5G-1, §18-5G-2, §18-5G-3, §18-5G-4, §18-5G-5, §18-5G-7, §18-5G-12 and §18-5G-15 of said code; and to amend and reenact §18-9A-15 of said code; all relating to revising provisions related to public charter schools; providing public charter school access to funding from School Safety Fund; modifying priorities for funds use; requiring rule on process for needs-based funding requests and requiring rules; expressing legislative intent on comparable levels of funding for public charter school students; authorizing state institution of higher education as applicant; prohibiting imposition of requirements on public charter schools choosing to incorporate post-secondary, industry and workforce program that are not required of noncharter public schools; authorizing public charter schools to include before and after school programs in their education program; excluding public charter school programs from regulation as child care facility; authorizing public charter school students to participate on the same basis as other public school students in extracurricular athletic and academic interscholastic activities sponsored by noncharter public school serving attendance area if not sponsored by charter school; emphasizing that charter school determines certification and licensure for teachers and instructional staff employed by it; clarifying public charter schools are exempt from state board policies unless otherwise specifically provided; excluding requirement that charter school employees be certified or licensed as condition of employment and providing that charter school may require employees be certified or licensed as condition of employment but is not required to; requiring professional charter school board to consult with nationally recognized organizations along with the state board; providing for administering required state assessments in virtual setting; requiring state board to establish framework and procedures for interaction between public charter schools, public noncharter schools and county boards to facilitate cooperation and ensure prompt transfer of records; providing for invoicing of certain funding when student transfers from and to certain entities after the beginning of the school year; allowing member of charter school governing board to be employee of education service provider if services are provided by state institution of higher education; providing conditions for charter school governing board to be administrative unit of state institution of higher education and authorizing contract; prohibiting sale or other transfer of public facility with clear title and no restrictive covenant after public charter school requests usage; authorizing professional charter school board to receive and expend gifts, grants and donations to carry out purposes of act, to apply for federal funds to implement programs, and to make start-up grants to public charter schools; and requiring for state board rule on method for providing increased enrollment funding for public charter schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-48. Safety and security measures for school facilities; Safe Schools Fund created.

(a) Each county board of education, public charter school, and multicounty vocational center shall annually assess the safety and security of each of the school facilities ~~within its boundaries~~ for which they are responsible. Safety and security measures of each facility shall be upgraded when necessary to ensure, to the best of the county board’s, public charter school governing board’s or multicounty vocational center administrative council’s ability, the safety of the students within each facility. Each county board of education, public charter school governing board, and multicounty vocational center administrative council shall report annually the safety and security measures it has put in place, including upgrades thereto, to the State Department of Education. Annually, the State Department of Education shall compile the information ~~from the county boards of education~~ received and report ~~the information~~ it to the Legislative Oversight Commission on Education Accountability.

(b) As used in this section, "safety and security measures" means action taken by a county board of education, a public charter school, or multicounty vocational center that improves the security of a school facility and the safety of the students within such facility, including, but not limited to, hiring a school resource officer, installing weapon detection systems, upgrading facility doors or windows.

(c) There is hereby created in the State Treasury a special revenue fund to be known as the Safe Schools Fund. The fund shall consist of all moneys received from legislative appropriations and other sources to further the purpose of this section: *Provided*, That annually, the West Virginia Department of Education shall request an appropriation based on the requests of the county boards of education, public charter school governing boards and multicounty vocational center administrative councils.  Subject to legislative appropriation, the funds appropriated annually to the School Safety Fund shall be distributed to the county boards of education, public charter schools, and multicounty vocational centers, ~~with the funding amount per school determined by dividing the total annual appropriation by the total number of public schools throughout the state~~ on the basis of need. Moneys distributed from this fund shall not be used to make permanently affixed improvements, alterations or additions to a physical facility that a county board of education, public charter school or multicounty vocational center does not own. If the West Virginia Department of Education distributes any moneys from this fund for the purpose of making safety improvements on or in a facility that is not owned, it shall require that the improvements be accomplished in such a manner that they may be removed with minimal effort. All moneys distributed from this fund shall be used to support the purpose and intent of this section and all moneys must be spent to support the school for which the funding was derived:*Provided, however,*That moneys distributed from this fund also may be used for the purposes of § 18-20-11 of this code, relating to video cameras in certain special education classrooms.*~~Provided further,~~*~~That for any distributions for the 2019-2020 year and continuing until such time that all districts have fully complied with the special education video camera requirements, county boards shall have the flexibility to spend the safe schools allocation at any school within the district requiring cameras in special education classrooms~~  Until such time as all school facilities are in full compliance with the special education video requirements, the West Virginia Department of Education shall first allocate the funding appropriated for the Safe Schools Fund ~~for the 2020-2021 year~~ based on the remaining need for video cameras in ~~each district~~ public school facilities. After all ~~districts~~ public school facilities have been provided sufficient funds to meet the special education video camera requirements, the ~~funding distribution shall return to the previously specified method based on the number of public schools~~ funds shall be distributed by the West Virginia Department of Education to meet the needs of school facilities to have safe school entry ways.  After safe school entry way needs have been met, the West Virginia Department of Education shall distribute funds based upon a determination of need. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state’s Consolidated Investment Fund and any and all interest shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article.

(d) The West Virginia Board of Education shall promulgate rules pursuant to § 29A-3B-1 *et seq.* of this code to establish a process by which county boards of education, public charter school governing boards and multicounty vocational center administrative councils may submit requests to obtain needs-based funding from the Safe Schools Fund. Such rules shall address:

(1) The manner, time line and process for the submission of a request;

(2) The criteria by which requests shall be evaluated and prioritized; and

(3) Any other matters deemed necessary to further the goals of this article.

ARTICLE 5G. PUBLIC CHARTER SCHOOLs.

§18-5G-1. Legislative purpose and intent; liberal interpretation; prohibiting conversion of private schools; prohibiting profit or monetary consideration by elected officials; limiting authorization of public charter schools; legislative auditor report.

(a) The purpose of this article is to establish a process for the creation, governance and oversight accountability of public charter schools with a renewed commitment to the mission, goals, and diversity of public education that benefits students, parents, teachers, and community members.

(b) Public charter schools are intended to empower new, innovative, and more flexible ways of educating all children within the public school system to:

(1) Improve student learning by creating more diverse public schools with high standards for student performance;

(2) Allow innovative educational methods, practices and programs that engage students in the learning process, thus resulting in higher student achievement;

(3) Enable schools to establish a distinctive school curriculum, a specialized academic or technical theme, or method of instruction;

(4) Provide expanded opportunities within the public schools for parents to choose among the school curricula, specialized academic or technical themes, and methods of instruction that best serve the interests or needs of their child;

(5) Provide students, parents, community members, and local entities with expanded opportunities for involvement in the public school system;

(6) Allow authorized public schools and programs within public schools exceptional levels of self-direction and flexibility in exchange for exceptional levels of results-driven accountability for student learning; and

(7) Encourage the replication of successful strategies for improving student learning.

(c) All public charter schools established under this article are public schools and are part of the state’s public education system.

(d) The provisions of this article shall be interpreted liberally to support the purpose and intent of this section and to advance a renewed commitment by the state to the mission, goals and diversity of public education.

(e) No provision of this article may be interpreted to allow the conversion of private schools into public charter schools.

(f) An elected official may not profit or receive any monetary consideration from a charter school: *Provided*, That this prohibition does not apply with respect to the continued employment of an elected official who was employed by a public school prior to its conversion to a public charter school.

(g) The total number of public charter schools authorized and in operation under an approved contract in this state shall be limited to 10 pilot public charter schools until July 1, 2023. The State Board shall report to the Legislative Oversight Commission on Education Accountability by November 1, 2022, and every 3 years thereafter, on the status of the state’s public charter schools. LOCEA shall report its findings and recommendations, if any, to the Legislature during its next Regular Session. Beginning July 1, 2023, and every 3 years thereafter, an additional 10 public charter schools may be authorized and in operation under an approved contract in this state. The Mountaineer Challenge Academy, if converted to a public charter school, shall not count towards the limitation established by this subsection.

(h) Two years after the first public charter school commences operations under the provisions of this article, the Legislative Auditor shall conduct an audit of the public charter school program and report the findings to the Legislative Oversight Commission on Education Accountability.

(i) It is the intent of the Legislature that public charter school students be considered as important as all other school students in the state and, to that end, comparable funding levels from existing and future sources should be maintained for public charter school students.

§18-5G-2. Definitions.

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) "Applicant" means any one or more in combination of parents, community members, teachers, school administrators, or institutions of higher education in this state who are interested in organizing a public charter school and:

(A) Have obtained 501(c)(3) tax-exempt status or have submitted an application for 501(c)(3) tax-exempt status, or be a state institution of higher education as defined in §18B-1-2 of this code; and

(B) Have developed and submitted an application to an authorizer to establish a public charter school;

(2) "Authorizer" means the entity empowered under this article to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to renew or not renew charter contracts. Authorizers include:

(A) A county school board when the charter school or application to form a charter school includes a primary recruitment area that is wholly within the county over which the board has jurisdiction;

(B) Two or more county school boards who must act together and function as a single authorizer in all respects under the law when the public charter school or application to form a public charter school includes a primary recruitment area that encompasses territory in the two or more counties over which the respective boards have jurisdiction: *Provided*, That if such two or more school boards functioning together as authorizer reject the application, then one or more of the individual county boards may approve the application, but in such instance the charter school site must be located in one of the counties where the application was approved.

(C) The West Virginia Professional Charter School Board created pursuant to §18-5G-15 of this code; or

(D) The West Virginia Board of Education in the following instances:

(i) The charter school or application to form a charter school or to renew a charter contract is in a county where the state board has intervened in the operation of the school system and limited the authority of the county board to act pursuant to §18-2E-5 of this code; and

(ii) The application to form a public charter school or to renew a charter contract is approved by the affected county board or boards and is forwarded it to the West Virginia Board of Education with a request that it perform to the authorizer function.

(3) "Charter application" means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) "Charter contract" or "contract" means a fixed-term, renewable contract between a public charter school’s governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) "Conversion public charter school" means a public charter school that existed as a noncharter public school before becoming a public charter school;

(6) "County board" means a board exercising management and control of a school district. A county board’s management and control of a public charter school is limited to only that granted under this article. In the case of a school district in which the state board has intervened and limited the authority of the county board to act pursuant to §18-2E-5 of this code, "county board" means the state board. In the case of a multicounty vocational or technical center, "county board" means the administrative council of the multicounty center;

(7) "Education service provider" means a public or private nonprofit or for-profit education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(8) A "full-time virtual public charter school" means a public charter school that offers educational services predominantly through an online program.

(9) "Governing board" means a public charter school governing board that meets the requirements §18-5G-3 and §18-5G-7 of this code and is party to the charter contract with the authorizer;

(10) "Noncharter public school" means a public school or multicounty vocational center other than a public charter school established pursuant to this article;

(11) "Parent" means a parent, guardian, or other person or entity having legal custody over a child;

(12) "Public charter school" means a public school or program within a public school that is authorized in accordance with the provisions of this article and meets the general criteria, governance structure and statutory compliance requirements described in §18-5G-3 of this code, and other provisions of this article;

(13) "Program conversion public charter school" means a program within an existing noncharter public school that is either preexisting and converted or newly created to become a separate and discreet program governed and operated in accordance with this article within the noncharter public school;

(14) "Start-up public charter school" means a public charter school that did not exist as a noncharter public school prior to becoming a public charter school.

(15) "State board" means the West Virginia Board of Education;

(16) "Student" means any person that is eligible for attendance in a public school in West Virginia; and

(17) "West Virginia Professional Charter School Board" means the board created pursuant to §18-5G-15 of this code.

§18-5G-3. Public charter school criteria, governance structure and statutory compliance requirements; applicable federal and state laws.

(a) Public charter schools authorized pursuant to this article shall meet the following general criteria:

(1) Are part of the state’s system of public schools and are subject to general supervision by the West Virginia Board of Education for meeting the student performance standards required of other public school students under §18-2E-5(d) and (e) of this code;

(2) Are subject to the oversight of the school’s authorizer for operating in accordance with its approved charter contract and for meeting the terms and performance standards established in the charter contract;

(3) Are not home school-based;

(4) Are not affiliated with or espouse any specific religious denomination, organization, sect, or belief and do not promote or engage in any religious practices in their educational program, admissions, employment policies, or operations;

(5) Are not affiliated with any organized group whose espoused beliefs attack or malign an entire class of people, typically for immutable characteristics, as identified through listings of such groups as may be made by the U. S. Department of Justice, the Federal Bureau of Investigation, or officials having similar jurisdiction in this state;

(6) Are public schools to which parents or legal guardians choose to send their child or children;

(7) Do not charge tuition and may only charge such fees as may be imposed by noncharter public schools in this state; and

(8) Have no requirements that would exclude any child from enrollment who would not be excluded at a noncharter public school.

(b) A public charter school authorized pursuant to this article shall be governed by a board that meets the requirements established in §18-5G-7 of this code and:

(1) Has autonomy over key decisions, including, but not limited to, decisions concerning finance, personnel, scheduling, curriculum, and instruction except as provided in this article;

(2) Has no power to levy taxes;

(3) Operates in pursuit of a specific set of educational objectives as defined in its charter contract;

(4) Provides a program of public education that:

(A) Includes one or more of the following: Prekindergarten and any grade or grades from kindergarten to grade 12 including any associated post-secondary embedded credit, dual credit, advanced placement, internship, and industry or workforce credential programs that the public charter school chooses to incorporate into its programs. If a public charter school chooses to incorporate post-secondary embedded credit, dual credit, and industry and workforce credential programs into its educational program, institutions of higher education may not impose any requirements on the public charter school that are not required of noncharter public schools;

(B) May include in its mission a specific focus on students with special needs, including, but not limited to, at-risk students, English language learners, students with severe disciplinary problems at a noncharter public school, or students involved with the juvenile justice system; ~~and~~

(C) May include a specific academic approach or theme including, but not limited to, approaches or themes such as STEM education, mastery-based education, early college, or fine and performing arts; and

(D) May include before school and/or after school programs as a part of the public charter school’s education program. No part of the education program of a public charter school is subject to regulation as a childcare facility;

(5) Provides programs and services to a student with a disability in accordance with the student’s individualized education program and all federal and state laws, regulations, rules and policies. A charter school shall deliver the services directly or contract with a county board or another provider to deliver the services as set forth in its charter contract;

(6) Is eligible to participate in state-sponsored or district-sponsored athletic and academic interscholastic leagues, competitions, awards, scholarships, and recognition programs for students, educators, administrators, and schools to the same extent as noncharter public schools. If a public charter school does not sponsor an extracurricular athletic and/or academic interscholastic activity for the students enrolled in the public charter school, the public charter school students may participate on the same basis as other public school students in those activities that are sponsored by the noncharter public school serving the attendance area in which the student resides;

 (7) Employs its own personnel as employees of the public charter school and is ultimately responsible for processing employee paychecks, managing its employees’ participation in the applicable retirement system, and managing its employees’ participation in insurance plans: *Provided,* That nothing in this subdivision prohibits the public charter school from contracting with another person or entity to perform services relating to managing its employees’ participation in the retirement system or insurance plan. A county board may not require any employee of its school system to be employed in a public charter school. A county board may not harass, threaten, discipline, discharge, retaliate, or in any manner discriminate against any school system employee involved directly or indirectly with an application to establish a public charter school as authorized under this section. All personnel in a public charter school who were previously employed by the county board shall continue to accrue seniority with the county board in the same manner that they would accrue seniority if employed in a noncharter public school in the county for purposes of employment in noncharter public schools; and

(8) Is responsible for establishing a staffing plan that includes the requisite qualifications and any associated certification and/or licensure that it determines necessary for teachers and other instructional staff to be employed at the public charter school and for verifying that these requirements are met.

(c) A public charter school authorized pursuant to this article is exempt from all statutes, state board policies and rules applicable to a noncharter public school or board of education except the following unless otherwise specifically provided in this article:

(1) All federal laws and authorities applicable to noncharter public schools in this state including, but not limited to, the same federal nutrition standards, the same civil rights, disability rights and health, life and safety requirements applicable to noncharter public schools in this state;

(2) The provisions of §29B-1-1 *et seq.* of this code relating to freedom of information and the provisions of §6-9A-1 *et seq.* of this code relating to open governmental proceedings;

(3) The same immunization requirements applicable to noncharter public schools;

(4) The same compulsory school attendance requirements applicable to noncharter public schools;

(5) The same minimum number of days or an equivalent amount of instructional time per year as required of noncharter public school students under §18-5-45 of this code;

(6) The same student assessment requirements applicable to noncharter public schools in this state, but only to the extent that will allow the state board to measure the performance of public charter school students pursuant to §18-2E-5(d) and (e) of this code. Any virtual public charter school may administer any required state assessment in a virtual setting utilizing remote proctoring that best meets the educational needs of the student. Nothing precludes a public charter school from establishing additional student assessment measures that go beyond state requirements;

(7) The Student Data Accessibility, Transparency and Accountability Act pursuant to §18-2-5h of this code;

(8) Use of the electronic education information system established by the West Virginia Department of Education for the purpose of reporting required information;

(9) Reporting information on student and school performance to parents, policy-makers, and the general public in the same manner as noncharter public schools utilizing the electronic format established by the West Virginia Department of Education. Nothing precludes a public charter school from utilizing additional measures for reporting information on student and school performance that go beyond state requirements;

(10) All applicable accounting and financial reporting requirements as prescribed for public schools, including adherence to generally accepted accounting principles. A public charter school shall annually engage an external auditor to perform an independent audit of the school’s finances. The public charter school shall submit the audit to its authorizer and to the state superintendent of schools within nine months of the end of the fiscal year for which the audit is performed;

(11) A criminal history check pursuant to §18A-3-10 of this code for any staff person that would be required if the person was employed in a noncharter public school, unless a criminal history check has already been completed for that staff person pursuant to that section. Governing board members and other public charter school personnel are subject to criminal history record checks and fingerprinting requirements applicable to noncharter public schools in this state. Contractors and service providers or their employees are prohibited from making direct, unaccompanied contact with students and from access to school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers or employees have not previously been convicted of a qualifying offense pursuant to §18-5-15c of this code: *Provided,* That nothing in this subdivision, including the reference to §18A-3-10 of this code, requires public charter school employees to be certified or licensed as a condition of employment in a public charter school. A public charter school may, but is not required to, establish certification or licensure as a condition of employment by the school;

(12) The same zoning rules for its facilities that apply to noncharter public schools in this state;

(13) The same building codes, regulations and fees for its facilities that apply to noncharter public schools in this state, including any inspections required for noncharter public schools under this chapter and the West Virginia State Fire Marshal for inspection and issuance of a certificate of occupancy for any facility used by the public charter school; and

(14) The same student transportation safety laws applicable to public schools when transportation is provided.

§18-5G-4. West Virginia Board of Education; powers and duties for implementation, general supervision and support of public charter schools.

(a) The state board along with the West Virginia Public Charter School Board established in §18-5G-15 of this code shall consult with nationally recognized charter school organizations and establish and maintain a catalogue of best practices for public charter schools applicable for all applicants, authorizers, governing board members, and administrators that are consistent with this article and nationally recognized principles and professional standards for quality public charter school authorizing and governance in all major areas of authorizing and governance responsibility in the following areas:

(1) Organizational capacity and infrastructure;

(2) Solicitation and evaluation of charter applications;

(3) A framework to guide the development of charter contracts;

(4) Performance contracting including a performance framework;

(5) Providing transparency and avoiding all conflicts of interest;

(6) Ongoing public charter school oversight and evaluation; and

(7) Charter approval and renewal decision-making;

(b) The state board is responsible for exercising, in accordance with this article, the following powers and duties with respect to the oversight and authorization of public charter schools:

(1) Provide forms to promote the quality and ease of use for authorizers to solicit applications for public charter schools, for applicants to complete applications, and for establishing quality charter contracts that include a framework for performance standards. The forms shall be available for use and solicitations made not later than the beginning of February, 2020. The forms shall include an application deadline of August 31st of the year prior to the beginning of operations for the proposed school year. No public charter school may begin operation prior to the beginning of the proposed school year following the previous year August application;

(2) Provide training programs for public charter school applicants, administrators and governing board members, as applicable, that include, but are not limited to:

(i) Pre-application training programs and forms to assist in the development of high quality public charter school applications;

(ii) The required components and the necessary information of the public charter school application and the charter contract as set forth in this article;

(iii) The public charter school board’s statutory role and responsibilities;

(iv) Public charter school employment policies and practices; and

(v) Authorizer responsibilities for public charter school contract oversight and performance evaluation;

(3) Receive and expend appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants or donations are given;

(4) Apply for any federal funds that may be available for the implementation of public charter school programs;

(5) Establish reporting requirements that enable the state board to monitor the performance and legal compliance of authorizers and public charter schools;

(6) Establish a framework and procedures for interactions between public charter schools, public noncharter schools and county boards of education to facilitate cooperation for shared services, training and information and to ensure the prompt transfer of student records, including IEP’s, so as to minimize the interruption of a student’s education when transferring between noncharter public schools and public charter schools; and

~~(6)~~(7) Submit to the Governor and the Legislature an annual report within 60 days of the end of each school year summarizing:

(A) The student performance of all operating public charter schools; and

(B) The authorization status of all public charter schools within the last school year, identifying all public charter schools as:

(i) Application pending;

(ii) Application denied and reasons for denial;

(iii) Application approved, but not yet operating;

(iv) Operating and years of operation;

(v) Renewed and years of operation;

(vi) Terminated;

(vii) Closed;

(viii) Never opened; and

(ix) Any successful innovations applied in authorized public charter schools which may be replicated in other schools. The report shall provide information about how noncharter public schools may implement these innovations.

(c) The state board shall be the authorizer of a public charter school when a county board or boards approve the application for a public charter school and requests the state board to perform the authorizer duties and responsibilities or when an application to form a public charter school or to renew a charter contract is submitted from an applicant within a county in which the state board has intervened and limited the power of the county board to act pursuant to §18-2E-5 of this code.

§18-5G-5. State board rule relating to funding for public charter school enrollment and other necessary provisions; local education agency status; authorizer oversight fee.

(a) The state board shall promulgate a rule pursuant to the provisions of §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that ~~90~~ 99 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations set forth in §18-9A-7 of this code regarding the allowance for student transportation and in §18-9A-9(1) of this code regarding the allowance for current expense for the purpose of making appropriate adjustments to those allowances to account for student transportation and current expense related funding a school district loses in situations where it pays money to a public charter school pursuant to this subsection without a corresponding decrease in the county’s transportation and current expense related expenditures;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school, and notwithstanding the terms in the definition of "net enrollment" in §18-9A-2 of this code, shall provide that the county school district paying for the student attending a public charter school have that student included in its net enrollment for the purposes of §18-9A-1 *et seq.* of this code;

(3) When a student in grades kindergarten through 12 transfers on a full-time basis after the beginning of the school year from a school district to a public charter school, or vice versa, or to another public charter school, hereinafter referred to as entities, the following apply:

(A) If the student is included in the second month net enrollment for the purposes of §18-9A-2 of this code, of the entity from which the student transferred, the entity to which the student transfers may invoice the entity from which the student transferred for the amount, determined on a pro rata basis, based on the amount required pursuant to subdivision (2) of this subsection for a student attending a public charter school;

(B) If the student is included in the second month net enrollment for the purposes of §18-9A-2 of this code, of the entity from which the student transferred and is eligible for aid to exceptional students, the entity to which the student transfers may invoice the entity from which the student transferred for the amount, determined on a pro rata basis, of the aid to exceptional students due for that student;

(C) If the student is included in the certified child count of exceptional students for the school year of the entity from which the student transferred, the entity to which the student transfers may invoice the entity from which the student transferred for the amount, determined on a pro rata basis, due for that student in the certified child count of exceptional students; and

(D) Invoices issued pursuant to paragraphs (A), (B) and (C) of this subdivision shall be paid by the entity from which the student transferred within 30 days of receipt of the invoice; and

~~(3)~~ (4) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code, if necessary, for ensuring the accountability of public charter schools for meeting the standards for student performance required of other public school students under §18-2E-5 of this code and the accountability of authorizers for ensuring that those standards are met in the schools authorized by it. If an authorizer fails to close a public charter school that does not meet the standards, the authorizer shall appear before the state board to justify its decision. The state board may uphold or overturn the authorizer’s decision and may revoke the authority of the authorizer to authorize public charter schools.

(c) Any public charter school authorized pursuant to this article shall be treated and act as its own local education agency for all purposes except as needed under the provisions of the Public School Support Plan for funding purposes.

(d) To cover authorizer costs for overseeing public charter schools, the state board shall establish a statewide formula for authorizer oversight funding, which shall apply uniformly to every authorizer in the state. Each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per pupil basic foundation allowance as provided pursuant to state board rule promulgated in accordance with this section, not to exceed one percent of each public charter school’s per-student funding in a single school year. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer’s public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time public charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

(e) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article: *Provided*, That nothing in this rule may conflict with this code. The rule also shall include a provision prohibiting a county board from discrimination against any district employee involved directly or indirectly with an application to establish a public charter school under this article.

(f) All state board rules required to be promulgated by this article shall be promulgated on or before July 1, 2021. The state board may file emergency rules if necessary to meet the July 1, 2021, deadline.

**§18-5G-7. Public Charter school governing board.**

(a) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members elected or selected in a manner specified in the charter application, including at least the following:

(1) Two parents of students attending the public charter school operating under the governing board; and

(2) Two members who reside in the community served by the public charter school.

(b) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school, unless the services are provided by a state institution of higher education;

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school;

(D) Collectively possess expertise in leadership, curriculum and instruction, law, and finance; and

(E) Be considered an officer of a school district under the provisions of §6-6-7 of this code and removal from office shall be in accordance with the provisions of that section.

(c) The public charter school governing board shall:

(1) Operate under the oversight of its authorizer in accordance with its charter contract;

(2) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(3) Enroll students in the public charter school pursuant to §18-5G-11 of this code;

(4) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board; and

(5) Provide programs and services to a student with a disability in accordance with the student’s individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(d) A public charter school authorized under this article may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(e) The public charter school governing board is responsible for the operation of its public charter school, including, but not limited to, ensuring compliance with the public charter school criteria, governance and statutory compliance set forth §18-5G-3 of this code, the preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school’s program.

(f) The public charter school governing board shall comply with the provisions of §29B-1-1 *et seq.* of this code relating to freedom of information and the provisions of §6-9A-1 *et seq.* of this code relating to open governmental proceedings.

(g) Notwithstanding anything else in this Code, when a state institution of higher education is an applicant and after its application is approved by an authorizer, the governing board of the public charter school may be an administrative unit of the state institution of higher education, and the governing board may enter into the charter contract on behalf of the state institution of higher education.

§18-5G-12. Access to public facilities.

(a) A public charter school may request usage of public facilities from the county board or other public entity in the county where the charter school is located or proposes to locate. A county board or other public entity shall make facilities available to the charter school that are either not used, in whole or in part, for classroom instruction at the time the charter school seeks to use or lease the public facility and may not initiate or execute the sale or otherwise transfer of the facility to another entity after the request for usage has been made by a public charter school: *Provided,* That the title is clear and there is no restrictive covenant.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs, and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

§18-5G-15. West Virginia Professional Charter School Board; members; appointments;

meetings.

(a) There is hereby created the West Virginia Professional Charter School Board which shall report directly to and be responsible to the state board, separate from the Department of Education, for carrying out its duties in accordance with this article. The mission of the board is to authorize high-quality public charter schools throughout the state that provide more options for students to attain a thorough and efficient education, particularly through schools designed to expand the opportunities for at-risk students. The Professional Charter School Board and public charter schools authorized in accordance with this article are subject to the general supervision of the state board solely for the purposes of accountability for meeting the standards for student performance required of other public school students under §18-2E-5 of this code.

(b) The Professional Charter School Board shall consist of five voting members, appointed by the Governor, with the advice and consent of the Senate.

(c) The chair of the House Committee on Education and the chair of the Senate Committee on Education shall serve as nonvoting ex officio members of the Professional Charter School Board.

(d) Each appointed member shall represent the public interest and must satisfy the following requirements:

(1) Be a citizen of the state;

(2) Possess experience and expertise in public or nonprofit governance, management and finance, public school leadership, assessment, curriculum or instruction, or public education law; and

(3) Have demonstrated an understanding of, and commitment to, charter schooling as a strategy for strengthening public education.

(e) No more than three of the appointed members of the Professional Charter School Board may be of the same political party. The members shall reside in geographically diverse areas of the state, with no more than two members residing in the same county. No person may be appointed who holds any other public office or public employment under the government of this state or any of its political subdivisions, or who is an appointee or employee of any charter school governing board or an immediate family member of an employee under the jurisdiction of the Professional Charter School Board or any charter school governing board. No person may be appointed who is engaged in or employed by a person or company whose primary function involves, the sale of services and activities to public charter schools or charter school governing boards.

(f) The initial appointments made pursuant to this section shall be for staggered one- and two-year terms. Three of the initial members appointed by the Governor shall serve two-year terms; and two of the initial members appointed by the Governor shall serve one-year terms. Thereafter, all appointments shall be for a term of two years. The initial appointments shall be made before August 1, 2021. The Professional Charter School Board shall meet as soon as practical after August 1, 2021, upon the call of the Governor, and shall organize for business by selecting a chairman and adopting bylaws. Subsequent meetings shall be called by the chairman.

(g) An appointed member of the Professional Charter School Board may be removed from office by the Governor for official misconduct, incompetence, neglect of duty, or gross immorality. A member may also be removed if the member’s personal incapacity renders the member incapable or unfit to discharge the duties of the office or if the member is absent from a number of meetings of the Professional Charter School Board as determined and specified by the commission in its bylaws. Whenever an appointed member vacancy on the Professional Charter School Board exists, the Governor shall appoint a qualified person for the remainder of the vacated term.

(h) Except in the case of gross negligence or reckless disregard of the safety and well-being of another person, the Professional Charter School Board and members of that board in their official capacity are immune from civil liability with respect to all activities related to a public charter school approved by the Public Charter School Board. The official actions of the members of the Professional Charter School Board who are serving in a nonvoting ex officio capacity by virtue of their designation as chair of the House Committee on Education or chair of the Senate Committee on Education are Professional Charter School Board member actions only, and may not be construed as official actions or positions of such member’s committee or legislative body.

(i) The Professional Charter School Board may appoint an executive director and may employ such additional staff as may be necessary. The executive director shall serve at the will and pleasure of the Professional Charter School Board. The executive director must demonstrate an understanding of and commitment to charter schooling as a strategy for strengthening public education and must possess an understanding of state and federal education law.

(j) The Professional Charter School Board shall meet as needed, but at least bi-annually. From funds appropriated or otherwise made available for such purpose, its members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of official duties upon submission of an itemized statement in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

(k) The Professional Charter School Board shall investigate official complaints submitted to it that allege serious impairments in the quality of education in a public charter school or virtual public charter school it has authorized pursuant to this article, or that allege such schools are in violation of the policies or laws applicable to them. The Professional Charter School Board also may at its own discretion conduct or cause to be conducted audits of the education and operation of public charter schools or virtual public charter schools it has authorized pursuant to this article that it determines necessary to achieve its mission of authorizing high-quality public charter schools. Upon a determination that serious impairments or violations exist, the Professional Charter School Board shall promptly notify in writing the public charter school governing board of the perceived serious impairments or violations and provide reasonable opportunity for the school to remedy the serious impairments or violations. The Professional Charter School Board shall take corrective actions or exercise sanctions in response to apparent serious impairments or violations. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified time frame.

(l) The Professional Charter School Board may receive and expend appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants or donations are given; may apply for any federal funds that may be available for the implementation of public charter school programs; and may make start-up grants to public charter schools from funds appropriated or otherwise available to it from federal, state, or other sources.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-15. Allowance for increased enrollment; extraordinary sustained increased enrollment impact supplement.

(a) To provide for the support of increased net enrollments in the counties and public charter schools in a school year over the net enrollments used in the computation of total state aid for that year, there shall be appropriated for that purpose from the General Revenue Fund an amount to be determined as follows:

(1) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code that establishes an objective method for projecting the increase in net enrollment for each school district, exclusive of the net enrollment of public charter schools physically locate in the district. The state superintendent shall use the method prescribed by the rule to project the increase in net enrollment for each school district.

(2) The state superintendent shall multiply the average total state aid per net pupil by the sum of the projected increases in net enrollment for all school districts and report this amount to the Governor for inclusion in his or her proposed budget to the Legislature. The Legislature shall appropriate to the West Virginia Department of Education the amount calculated by the state superintendent and proposed by the Governor.

(3) The state superintendent shall calculate each school district’s share of the appropriation by multiplying the increase in net enrollment for the school district by the average total state aid per net pupil and shall distribute each school district’s share to the school district on or before December 31, of each year.

Nothing in this subsection prohibits, however, the state superintendent, at the request of a school district, before the actual increase in net enrollment is available, from advancing a partial distribution to the school district of up to 60 percent of its estimated share based on its projected increased enrollment, subject to the following:

(A) If the amount of the advanced partial distribution to a school district is greater than the total amount to which a district is entitled to receive for the year, the district shall refund the difference to the Department of Education prior to June 30 of the fiscal year in which the excess distribution is made; and

(B) The Department of Education shall notify the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability whenever an advanced partial distribution is made.

(4) If the amount of the appropriation for increased enrollment is not sufficient to provide payment in full for the total of these allocations, each county allocation shall be reduced to an amount which is proportionate to the appropriation compared to the total of the allocations and the allocations as thus adjusted shall be distributed to the counties as provided in this section: *Provided*, That the Governor shall request a supplemental appropriation at the next legislative session for the reduced amount.

(b) To help offset the budgetary impact of extraordinary and sustained increases in net enrollment in a county, there shall be included in the basic state aid of any county whose most recent three-year average growth in second month net enrollment is two percent or more, an amount equal to one fourth of the state average per pupil state aid multiplied by the increase in the county’s second month net enrollment in the latest year.

(c) No provision of this section shall be construed to in any way affect the allocation of moneys for educational purposes to a county under other provisions of law.

(d) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code that establishes an objective method for calculating the increase in net enrollment for each public charter school based on the school’s net enrollment for the current year compared to the prior year. Increased enrollment funding calculated for a public charter school shall be paid directly to the school by the Department of Education no later than December 31st.