

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 453

By Senators Nelson and Hunt

[Introduced January 24, 2023; referred
to the Committee on School Choice; and then to the
Committee on Pensions]

1 A BILL to amend and reenact §18-5G-6 and §18-5G-10 of the Code of West Virginia, 1931, as
 2 amended, all relating to public charter schools; providing for successor liability and
 3 delinquent retirement contributions; and including retirement contribution payments as
 4 payroll obligation in distribution of assets.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-6. Authorizer powers and duties.

1 (a) Each authorizing authority is responsible for exercising in accordance with this article
 2 the following powers and duties with respect to the oversight and authorization of public charter
 3 schools:

4 (1) Demonstrate public accountability and transparency in all matters concerning its
 5 charter-authorizing practices, decisions, and expenditures;

6 (2) Establish and maintain policies and practices consistent with the principles and
 7 professional standards for authorizers of public charter schools, including standards relating to:

8 (A) Organizational capacity and infrastructure;

9 (B) Evaluating applications;

10 (C) Ongoing public charter school oversight and evaluation; and

11 (D) Charter approval, renewal, and revocation decision-making.

12 (3) Solicit applications and guide the development of high-quality public charter school
 13 applications;

14 (4) Approve new charter applications that meet the requirements of this article and on the
 15 basis of their application satisfying all requirements of §18-5G-8 of this code, that demonstrate the
 16 ability to operate the school in an educationally and fiscally sound manner, and that are likely to
 17 improve student achievement through the program detailed in the charter application;

18 (5) Decline to approve charter applications that fail to meet the requirements of §18-5G-8
 19 of this code;

20 (6) Negotiate and execute in good faith a charter contract with each public charter school it
21 authorizes;

22 (7) Monitor the performance and compliance of public charter schools according to the
23 terms of the charter contract; and

24 (8) Determine whether each charter contract it authorizes merits renewal or revocation.

25 (b) After an applicant submits a written application to establish a public charter school, the
26 authorizer shall:

27 (1) Complete a thorough review process;

28 (2) Conduct an in-person interview with the applicant;

29 (3) Provide an opportunity in a public forum for local residents to provide input and learn
30 about the charter application;

31 (4) Provide a detailed analysis of the application to the applicant or applicants;

32 (5) Allow an applicant a reasonable time to provide additional materials and amendments
33 to its application to address any identified deficiencies; and

34 (6) Approve or deny a charter application based on established objective criteria or request
35 additional information.

36 (c) In deciding to approve a charter application, the authorizer shall:

37 (1) Approve charter applications only to applicants that possess competence in all
38 elements of the application requirements identified in this section and §18-5G-8 of this code;

39 (2) Base decisions on documented evidence collected through the application review
40 process; and

41 (3) Follow charter-granting policies and practices that are transparent, based on merit, and
42 avoid conflicts of interest.

43 (d) No later than 90 days following the filing of the charter application, the authorizer shall
44 approve or deny the charter application. The authorizer shall provide its decision in writing,
45 including an explanation stating the reasons for approval or denial of its decision during an open

46 meeting. Any failure to act on a charter application within the time specified shall be deemed an
47 approval by the authorizer.

48 (e) An authorizer's charter application approval shall be submitted to the West Virginia
49 Department of Education.

50 (f) An authorizer shall conduct or require oversight activities that enable it to fulfill its
51 responsibilities under this article, including conducting appropriate inquiries and investigations, so
52 long as those activities are consistent with the intent of this article, adhere to the terms of the
53 charter contract and do not unduly inhibit the autonomy granted to charter schools. In the event
54 that a public charter school's performance or legal compliance appears unsatisfactory, the
55 authorizer shall promptly notify in writing the public charter school governing board of perceived
56 problems and provide reasonable opportunity for the school to remedy the problems.

57 (g) An authorizer shall take appropriate corrective actions or exercise sanctions in
58 response to apparent deficiencies in a charter school's performance or legal compliance. If
59 warranted, the actions or sanctions may include requiring a charter school to develop and execute
60 a corrective action plan within a specified time frame;

61 (h) An authorizer shall require each charter school it oversees to submit an annual report to
62 assist the authorizer in gathering complete information about each school, consistent with the
63 statutory requirements of this act and the charter contract.

64 (i) To cover authorizer costs for overseeing public charter schools, each public charter
65 school shall remit to its respective authorizer an oversight fee drawn from and calculated as a
66 uniform percentage of the per student operational funding allocated to each public charter school
67 as established by the state board by rule pursuant to §18-5G-5 of this code.

68 (j) An authorizer may receive and expend appropriate gifts, grants and donations of any
69 kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms
70 and conditions under which the gifts, grants or donations are given, and may apply for any federal
71 funds that may be available for the implementation of public charter school programs;

72 (k) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to
73 an authorizer or to any of its members or employees for any acts or omissions of the public charter
74 school. ~~Neither~~ Except to the extent the provisions of §5-10D-11 or §5-10D-13 of this code may be
75 applicable relating to successor liability for, and collection of, delinquent retirement contributions,
76 neither the county board of education nor the State of West Virginia shall be liable for the debts or
77 financial obligations of a public charter school or any person or entity that operates a public charter
78 school.

79 (l) Regulation of public charter schools by the state board and a county board shall be
80 limited to those powers and duties of authorizers prescribed in this article and general supervision
81 consistent with the spirit and intent of this article.

**§18-5G-10. Charter contract renewal; performance report by authorizer and renewal
guidance; renewal application; renewal term; nonrenewal; closure and dissolution.**

1 (a) No later than June 30 of a public charter school's fourth year of operation under each
2 five-year term of a charter contract, the authorizer shall issue a performance report on the public
3 charter school. The performance report shall summarize the public charter school's performance
4 record to date, based on the data collected under the statutory requirements of this act and the
5 charter contract, and shall provide notice of any weaknesses or concerns perceived by the
6 authorizer concerning the school that may jeopardize its position in seeking renewal if not timely
7 rectified. The school and the authorizer shall mutually agree to a reasonable time period for the
8 public charter school to respond to the performance report and submit any corrections for the
9 report.

10 (b) No later than June 30 of the school year before a public charter school's final year of
11 operation under terms of a charter contract, the authorizer shall issue contract renewal application
12 guidance to the school. The renewal application guidance required by this subsection shall include
13 or refer explicitly to the criteria and standards that will guide the authorizer's renewal decisions as
14 it pertains to the named public charter school. These criteria and standards shall be based on the

15 statutory requirements of this act and the charter contract. The renewal application guidance shall,
16 at a minimum, require and provide an opportunity for the public charter school to:

17 (1) Present additional evidence, beyond the data contained in the performance report,
18 supporting its case for charter renewal;

19 (2) Describe improvements undertaken or planned for the school; and

20 (3) Detail the school's plans for the next charter term.

21 (c) No later than September 30 of a public charter school's final authorized year of
22 operation under a term of a charter contract, the governing board of the public charter school
23 seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal
24 application guidance offered by the authorizer under subsection (b) of this section. The authorizer
25 shall rule in a public meeting and by resolution on the renewal application no later than 45 days
26 after the filing of the renewal application. In making charter renewal decisions, the authorizer shall:

27 (1) Ground its decisions on a thorough analysis of evidence of the school's performance
28 over the term of the charter contract in accordance with the terms set forth in the charter contract,
29 annual performance reports and any required financial audits;

30 (2) Ensure that data used in making renewal decisions are available to the public charter
31 school and the public;

32 (3) Provide a public report summarizing the evidence basis for each decision; and

33 (4) Include one of the following rulings:

34 (A) Renew the charter contract for another term of up to five years based on the school's
35 performance data and demonstrated capacities of the public charter school; or

36 (B) Decline to renew the charter contract. The authorizer shall clearly state in a resolution
37 the reasons for the nonrenewal. The governing board of the school shall be granted 30 days to
38 respond in writing to the decision and public report before that decision becomes final. The
39 governing board shall be allowed to provide the authorizer with such arguments and supporting
40 information as it sees fit and also shall be granted an opportunity for a recorded public hearing, at

41 the request of the governing board. The governing board may be represented by counsel at the
42 hearing and may call witnesses to testify. The authorizer shall consider the governing board's
43 response, testimony, and documentation, as well as the recorded public hearing, prior to rendering
44 a final decision on the renewal of the charter contract. The authorizer shall render its final
45 determination within 10 days of the close of the 30-day period. Any nonrenewal of a charter
46 contract may be appealed to the state board pursuant to §18-5G-13 of this code.

47 (d) The failure of the authorizer to act on a renewal application within the designated
48 timeframes shall be deemed an approval of the renewal application.

49 (e) Within 10 days of taking final action to renew or not renew a charter under this section,
50 the authorizer shall report the action taken and reasons for the decision to the school's governing
51 board and the state board or affected county board, as applicable. A copy of the report shall be
52 submitted at the same time to the state superintendent.

53 (f) A charter contract may be not renewed if the authorizer determines that the health and
54 safety of students attending the public charter school is threatened or at such time following the
55 process set forth in this section if the public charter school has:

56 (A) Failed to substantially comply with the provisions of this article:

57 (B) Committed a material violation of any of the terms, conditions, standards or procedures
58 required under this chapter or the charter contract;

59 (C) Failed to substantially meet the performance expectations set forth in the charter
60 contract;

61 (D) Failed to substantially meet generally accepted standards of fiscal management; or

62 (E) Violated any provision of law from which the school was not exempted.

63 (g) If an authorizer revokes or does not renew a charter contract, the authorizer shall close
64 the school: *Provided*, That when the charter is revoked or not renewed for a school that began as a
65 conversion public charter school or program conversion public charter school, the county board of
66 the district in which the school is located may return it to noncharter public school status.

67 (h) A charter contract may be revoked at any time if the authorizer determines that the
68 health and safety of students attending the public charter school is threatened, an administrator
69 employed by or member of the governing board over the charter school is convicted of fraud or
70 misappropriation of funds, there is a failure to meet generally accepted standards of financial
71 management, there is a material breach of the charter contract, there is a substantial violation of
72 any provision of law from which the public charter school is not exempted, or there are dire and
73 chronic academic deficiencies.

74 (i) In the event of a public charter school closure for any reason, the authorizer shall
75 oversee and work with the closing school to ensure a smooth and orderly closure and transition for
76 students and parents, as guided by the closure protocol established by the state board including,
77 but not limited to, the following:

78 (1) Overseeing and working with the closing public charter school to ensure timely
79 notification to parents, orderly transition of students and student records to new schools and
80 proper disposition of school funds, property and assets in accordance with the requirements of this
81 chapter; and

82 (2) Distributing the assets of the public charter school first to satisfy outstanding payroll
83 obligations for employees of the public charter school (including any required payments to
84 retirement systems on behalf of such employees) and then to creditors of the public charter
85 school. Any remaining funds shall be paid to the county board. If the assets of the public charter
86 school are insufficient to pay all parties to whom the public charter school owes compensation, the
87 prioritization of distribution of assets may be determined by decree of a court of law.

88 (j) If a public charter school is subject to closure or transition, following exhaustion of any
89 appeal allowed under §18-5G-13 of this code, an authorizer may remove at will at any time any or
90 all of the members of the board of directors of the public charter school in connection with ensuring
91 a smooth and orderly closure or transition. If the authorizer removes members of the board of
92 directors such that the board of directors can no longer function, the authorizer shall be

- 93 empowered to take any further necessary and proper acts connected with closure or transition of
- 94 the public charter school in the name and interest of the public charter school.

NOTE: The purpose of this bill is to ensure the retirement contributions, and delinquency charges if applicable, of charter school employees are paid upon school closure or by a successor.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.