

ENGROSSED  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 14**

(By Senators Sypolt, Walters, Blair,  
Cole (Mr. President) and Takubo)

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[Originating in the Committee on Education;  
reported February 18, 2015.]

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A BILL to amend and reenact §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §6C-2-2 of said code; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-9A-2 and §18-9A-12 of said code; to amend and reenact §18-20-5 of said code; to amend said code by adding thereto a new article, designated §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8, §18-33-9, §18-33-10, §18-33-11, §18-33-12, §18-33-13, §18-33-14, §18-33-15, §18-33-16, §18-33-17 and §18-33-18; and to amend and reenact §29-12-5a of said code, all relating to public charter schools;

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setting forth legislative purpose and intent; defining terms; requiring state superintendent to report on the charter school program; setting forth provisions pertaining to eligibility and enrollment; prohibiting discrimination; allowing a county board to authorize the creation of a start-up public charter school or the conversion of a noncharter public school to a public charter school; capping the number of public charter schools authorized; setting forth the duties of the authorizer; requiring an authorizer to develop and maintain policies and practices consistent with nationally recognized principles and professional standards for authorizing public charter schools; requiring certain authorizers to submit to the state superintendent an annual report summarizing certain information; prohibiting an employee, trustee, agent or representative of an authorizer from simultaneously serving as an employee, trustee, agent, representative, vendor or contractor of a public charter school operating under that authorizer; prohibiting a public charter school from being required to purchase services from its authorizer; requiring West Virginia Board of Education to perform certain duties relating to training, appeals, requests for proposals and the two per calendar

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year cap; limiting West Virginia Board of Education authority on appeal to only upholding the decision or remanding the issue with a recommendation; allowing West Virginia Board of Education to charge up to a certain amount for performing its duties; requiring West Virginia Board of Education to issue and broadly publicize requests for proposals; setting forth such information the requests for proposals shall contain, including a determination on whether to participate in the public employees grievance procedures; setting forth provisions pertaining to application for approval as a public charter school; setting forth provisions pertaining to the application review process; setting forth provisions pertaining to application approval and denial; setting forth provisions pertaining to appeal of application denial; requiring the execution of a charter contract; requiring the performance provisions of a charter contract be based on a performance framework developed by West Virginia Board of Education that sets forth the academic and operational performance indicators that will guide the authorizer's evaluations of each public charter school; requiring performance targets be set by a public charter school in conjunction with its authorizer;

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setting forth authorizer responsibilities relating to oversight; providing for an initial charter term of five years and a renewal term of five to ten years; setting forth authorizer responsibilities relating to renewal; requiring submission of renewal application; setting forth provisions pertaining to the renewal decision by the authorizer; setting forth provisions pertaining to charter revocation and nonrenewal, including provisions allowing for appeal; providing for public charter school closure and dissolution; establishing priority in the application of laws, rules, regulations and authorities; allowing a charter contract to include one or more schools; allowing a single governing board to be issued one or more charter contracts; providing that the school district in which the public charter school is located remains the local education agency; providing that the school district retains responsibility for special education; declaring that the county board remains accountable for the performance of the public charter school; setting forth powers of public charter schools; prohibiting public charter schools from certain activities relating to discrimination, religious practices, charging tuition and delegating or assigning responsibilities set forth in a charter contract;

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limiting fees that may be charged; setting forth provisions pertaining to the applicability of other laws, rules and regulations to public charter schools; prohibiting county boards from certain actions relating to public charter schools; declaring that personnel hired by the charter school are employed by the charter school; requiring a public charter school to comply with applicable federal laws and regulations regarding the qualifications of teachers and other instructional staff; providing that all public charter school classroom teachers are subject to the same licensing requirements applicable to classroom teachers in noncharter public schools; providing that all personnel in a public charter school continue to accrue seniority in the same manner that they would accrue seniority if employed in a noncharter public school for purposes of employment in noncharter public schools; setting forth provisions pertaining to accounting, financial reporting and auditing; setting forth provisions pertaining to funding for public charter schools; allowing a public charter school to contract with a local school district or other entity for transportation services; requiring any entity providing transportation services to comply with all transportation and safety and

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administrative regulations applicable to noncharter public schools; setting forth provisions pertaining to public charter school facilities and property; clarifying that county boards not required to seek funds for certain facility-related purposes; setting forth provisions pertaining to building inspections, codes, regulations and fees; setting forth provisions pertaining to the transfer of credits; setting forth provisions pertaining to extracurricular and interscholastic activities; requiring that public charter school employees participate in the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, whichever is applicable; requiring that all public charter school employees participate in insurance plans established by the Public Employees Insurance Agency; providing for teacher approval of converting existing noncharter public school to public school prior to application; and setting forth provisions related to Board of Risk and Insurance Management coverage of certain public charter schools.

*Be it enacted by the Legislature of West Virginia:*

That §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §6C-2-2 of said code be amended and reenacted; that §18-7A-3 of said code be

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amended and reenacted; that §18-7B-2 of said code be amended and reenacted; that §18-9A-2 and §18-9A-12 of said code be amended and reenacted; that §18-20-5 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8, §18-33-9, §18-33-10, §18-33-11, §18-33-12, §18-33-13, §18-33-14, §18-33-15, §18-33-16, §18-33-17 and §18-33-18; and that §29-12-5a of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY  
OF THE GOVERNOR, SECRETARY OF STATE AND  
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;  
MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES  
INSURANCE ACT.**

**§5-16-2. Definitions.**

1           The following words and phrases as used in this article,  
2 unless a different meaning is clearly indicated by the context, have  
3 the following meanings:

4           (1) “Agency” means the Public Employees Insurance  
5 Agency created by this article.

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1 (2) “Director” means the Director of the Public Employees  
2 Insurance Agency created by this article.

3 (3) “Employee” means any person, including an elected  
4 officer, who works regularly full time in the service of the state of  
5 West Virginia and, for the purpose of this article only, the term  
6 “employee” also means any person, including an elected officer,  
7 who works regularly full time in the service of a county board of  
8 education; a public charter school established pursuant to article  
9 thirty-three, chapter eighteen of this code; a county, city or town in  
10 the state; any separate corporation or instrumentality established by  
11 one or more counties, cities or towns, as permitted by law; any  
12 corporation or instrumentality supported in most part by counties,  
13 cities or towns; any public corporation charged by law with the  
14 performance of a governmental function and whose jurisdiction is  
15 coextensive with one or more counties, cities or towns; any  
16 comprehensive community mental health center or ~~comprehensive~~  
17 ~~mental retardation~~ intellectually and developmentally disabled  
18 facility established, operated or licensed by the Secretary of Health  
19 and Human Resources pursuant to section one, article two-a,  
20 chapter twenty-seven of this code and which is supported in part by  
21 state, county or municipal funds; any person who works regularly  
22 full time in the service of the Higher Education Policy Commission,



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1 the West Virginia Council for Community and Technical College  
2 Education or a governing board, as defined in section two, article  
3 one, chapter eighteen-b of this code; any person who works  
4 regularly full time in the service of a combined city-county health  
5 department created pursuant to article two, chapter sixteen of this  
6 code; any person designated as a 21st Century Learner Fellow  
7 pursuant to section eleven, article three, chapter eighteen-a of this  
8 code; and any person who works as a long-term substitute as  
9 defined in section one, article one, chapter eighteen-a of this code  
10 in the service of a county board of education: *Provided*, That a  
11 long-term substitute who is continuously employed for at least one  
12 hundred thirty-three instructional days during an instructional term,  
13 and until the end of that instructional term, is eligible for the  
14 benefits provided in this article until September 1 following that  
15 instructional term: *Provided, however*, That a long-term substitute  
16 employed fewer than one hundred thirty-three instructional days  
17 during an instructional term is eligible for the benefits provided in  
18 this article only during such time as he or she is actually employed  
19 as a long-term substitute. On and after January 1, 1994, and upon  
20 election by a county board of education to allow elected board  
21 members to participate in the Public Employees Insurance Program  
22 pursuant to this article, any person elected to a county board of

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1 education shall be considered to be an “employee” during the term  
2 of office of the elected member. Upon election by the State Board  
3 of Education to allow appointed board members to participate in the  
4 Public Employees Insurance Program pursuant to this article, any  
5 person appointed to the State Board of Education is considered an  
6 “employee” during the term of office of the appointed member:  
7 *Provided further*, That the elected member of a county board of  
8 education and the appointed member of the State Board of  
9 Education shall pay the entire cost of the premium if he or she  
10 elects to be covered under this article. Any matters of doubt as to  
11 who is an employee within the meaning of this article shall be  
12 decided by the director.

13           On or after July 1, 1997, a person shall be considered an  
14 “employee” if that person meets the following criteria:

15           (i) Participates in a job-sharing arrangement as defined in  
16 section one, article one, chapter eighteen-a of this code;

17           (ii) Has been designated, in writing, by all other participants  
18 in that job-sharing arrangement as the “employee” for purposes of  
19 this section; and

20           (iii) Works at least one third of the time required for a full-  
21 time employee.

22           (4) “Employer” means the state of West Virginia, its boards,

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1 agencies, commissions, departments, institutions or spending units;  
2 a county board of education; a public charter school established  
3 pursuant to article thirty-three, chapter eighteen of this code; a  
4 county, city or town in the state; any separate corporation or  
5 instrumentality established by one or more counties, cities or towns,  
6 as permitted by law; any corporation or instrumentality supported  
7 in most part by counties, cities or towns; any public corporation  
8 charged by law with the performance of a governmental function  
9 and whose jurisdiction is coextensive with one or more counties,  
10 cities or towns; any comprehensive community mental health center  
11 or comprehensive mental retardation facility established, operated  
12 or licensed by the Secretary of Health and Human Resources  
13 pursuant to section one, article two-a, chapter twenty-seven of this  
14 code and which is supported in part by state, county or municipal  
15 funds; a combined city-county health department created pursuant  
16 to article two, chapter sixteen of this code; and a corporation  
17 meeting the description set forth in section three, article twelve,  
18 chapter eighteen-b of this code that is employing a 21st Century  
19 Learner Fellow pursuant to section eleven, article three, chapter  
20 eighteen of this code but the corporation is not considered an  
21 employer with respect to any employee other than a 21st Century  
22 Learner Fellow. Any matters of doubt as to who is an “employer”

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1 within the meaning of this article shall be decided by the director.

2 The term “employer” does not include within its meaning the

3 National Guard.

4 (5) “Finance board” means the Public Employees Insurance

5 Agency finance board created by this article.

6 (6) “Person” means any individual, company, association,

7 organization, corporation or other legal entity, including, but not

8 limited to, hospital, medical or dental service corporations; health

9 maintenance organizations or similar organization providing

10 prepaid health benefits; or individuals entitled to benefits under the

11 provisions of this article.

12 (7) “Plan”, unless the context indicates otherwise, means the

13 medical indemnity plan, the managed care plan option or the group

14 life insurance plan offered by the agency.

15 (8) “Retired employee” means an employee of the state who

16 retired after April 29, 1971, and an employee of the Higher

17 Education Policy Commission, the Council for Community and

18 Technical College Education, a state institution of higher education

19 or a county board of education who retires on or after April 21,

20 1972, and all additional eligible employees who retire on or after

21 the effective date of this article, meet the minimum eligibility

22 requirements for their respective state retirement system and whose

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1 last employer immediately prior to retirement under the state  
2 retirement system is a participating employer in the state retirement  
3 system and in the Public Employees Insurance Agency: *Provided,*  
4 That for the purposes of this article, the employees who are not  
5 covered by a state retirement system, but who are covered by a  
6 state-approved or state-contracted retirement program or a system  
7 approved by the director, shall, in the case of education employees,  
8 meet the minimum eligibility requirements of the state Teachers  
9 Retirement System and in all other cases, meet the minimum  
10 eligibility requirements of the Public Employees Retirement System  
11 and may participate in the Public Employees Insurance Agency as  
12 retired employees upon terms as the director sets by rule as  
13 authorized in this article. Employers with employees who are, or  
14 who are eligible to become, retired employees under this article  
15 shall be mandatory participants in the Retiree Health Benefit Trust  
16 Fund created pursuant to article sixteen-d of this chapter. Nonstate  
17 employers may opt out of the West Virginia other post-employment  
18 benefits plan of the Retiree Health Benefit Trust Fund and elect to  
19 not provide benefits under the Public Employees Insurance Agency  
20 to retirees of the nonstate employer, but may do so only upon the  
21 written certification, under oath, of an authorized officer of the  
22 employer that the employer has no employees who are, or who are

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1 eligible to become, retired employees and that the employer will  
2 defend and hold harmless the Public Employees Insurance Agency  
3 from any claim by one of the employer's past, present or future  
4 employees for eligibility to participate in the Public Employees  
5 Insurance Agency as a retired employee. As a matter of law, the  
6 Public Employees Insurance Agency shall not be liable in any  
7 respect to provide plan benefits to a retired employee of a nonstate  
8 employer which has opted out of the West Virginia other post-  
9 employment benefits plan of the Retiree Health Benefit Trust Fund  
10 pursuant to this section.

11 **§5-16-22. Permissive participation; exemptions.**

12         The provisions of this article are not mandatory upon any  
13 employee or employer who is not an employee of or is not the State  
14 of West Virginia, its boards, agencies, commissions, departments,  
15 institutions or spending units, ~~or~~ a county board of education or a  
16 public charter school authorized pursuant to article thirty-three,  
17 chapter eighteen of this code and nothing contained in this article  
18 may be construed so as to compel any employee or employer to  
19 enroll in or subscribe to any insurance plan authorized by the  
20 provisions of this article.

21         Those employees enrolled in the insurance program  
22 authorized under the provisions of article two-b, chapter twenty-

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1 one-a of this code may not be required to enroll in or subscribe to  
2 an insurance plan or plans authorized by the provisions of this  
3 article, and the employees of any department which has an existing  
4 insurance program for its employees to which the government of  
5 the United States contributes any part or all of the premium or cost  
6 of the premium may be exempted from the provisions of this article.  
7 Any employee or employer exempted under the provisions of this  
8 paragraph may enroll in any insurance program authorized by the  
9 provisions of this article at any time, to the same extent as any other  
10 qualified employee or employer, but employee or employer may not  
11 remain enrolled in both programs. The provisions of articles  
12 fourteen, fifteen and sixteen, chapter thirty-three of this code,  
13 relating to group life insurance, accident and sickness insurance,  
14 and group accident and sickness insurance, are not applicable to the  
15 provisions of this article whenever the provisions of articles  
16 fourteen, fifteen and sixteen, chapter thirty-three of this code are in  
17 conflict with or contrary to any provision set forth in this article or  
18 to any plan or plans established by the Public Employees Insurance  
19 Agency.

20           Employers, other than the state of West Virginia, its boards,  
21 agencies, commissions, departments, institutions, spending units, ~~or~~  
22 a county board of education or a public charter school authorized

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1 pursuant to article thirty-three, chapter eighteen of this code are  
2 exempt from participating in the insurance program provided for by  
3 the provisions of this article unless participation by the employer  
4 has been approved by a majority vote of the employer's governing  
5 body. It is the duty of the clerk or secretary of the governing body  
6 of an employer who by majority vote becomes a participant in the  
7 insurance program to notify the director not later than ten days after  
8 the vote.

9       Any employer, whether the employer participates in the  
10 Public Employees Insurance Agency insurance program as a group  
11 or not, which has retired employees, their dependents or surviving  
12 dependents of deceased retired employees who participate in the  
13 Public Employees Insurance Agency insurance program as  
14 authorized by this article shall pay to the agency the same  
15 contribution toward the cost of coverage for its retired employees,  
16 their dependents or surviving dependents of deceased retired  
17 employees as the state of West Virginia, its boards, agencies,  
18 commissions, departments, institutions, spending units, ~~or~~ a county  
19 board of education or a public charter school authorized pursuant  
20 to article thirty-three, chapter eighteen of this code pay for their  
21 retired employees, their dependents and surviving dependents of  
22 deceased retired employees, as determined by the finance board:



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1 *Provided*, That after June 30, 1996, an employer not mandated to  
2 participate in the plan is only required to pay a contribution toward  
3 the cost of coverage for its retired employees, their dependents or  
4 the surviving dependents of deceased retired employees who elect  
5 coverage when the retired employee participated in the plan as an  
6 active employee of the employer for at least five years: *Provided*,  
7 *however*, That those retired employees of an employer not  
8 participating in the plan who retire on or after July 1, 2010, who  
9 have participated in the plan as active employees of the employer  
10 for less than five years are responsible for the entire premium cost  
11 for coverage and the Public Employees Insurance Agency shall bill  
12 for and collect the entire premium from the retired employees,  
13 unless the employer elects to pay the employer share of the  
14 premium. Each employer is hereby authorized and required to  
15 budget for and make such payments as are required by this section.

16 **CHAPTER 6C. PUBLIC EMPLOYEES.**

17 **ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES**

18 **GRIEVANCE PROCEDURE.**

19 **§6C-2-2. Definitions.**

20 For the purpose of this article and article three of this  
21 chapter:

22 (a) "Board" means the West Virginia Public Employees

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1 Grievance Board created in article three of this chapter.

2 (b) "Chief administrator" means, in the appropriate context,  
3 the commissioner, chancellor, director, president, secretary or head  
4 of any state department, board, commission, agency, state  
5 institution of higher education, commission or council, the state  
6 superintendent, the county superintendent, the executive director of  
7 a regional educational service agency or the director of a  
8 multicounty vocational center who is vested with the authority to  
9 resolve a grievance. If a public charter school authorized pursuant  
10 to article thirty-three, chapter eighteen of this code includes in its  
11 approved charter application a determination that this article applies  
12 to the charter school and its employees, "chief administrator" also  
13 means the principal of the public charter school. A "chief  
14 administrator" includes a designee, with the authority delegated by  
15 the chief administrator, appointed to handle any aspect of the  
16 grievance procedure as established by this article.

17 (c) "Days" means working days exclusive of Saturday,  
18 Sunday, official holidays and any day in which the employee's  
19 workplace is legally closed under the authority of the chief  
20 administrator due to weather or other cause provided for by statute,  
21 rule, policy or practice.

22 (d) "Discrimination" means any differences in the treatment

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1 of similarly situated employees, unless the differences are related  
2 to the actual job responsibilities of the employees or are agreed to  
3 in writing by the employees.

4 (e) (1) "Employee" means any person hired for permanent  
5 employment by an employer for a probationary, full- or part-time  
6 position.

7 (2) A substitute education employee is considered an  
8 "employee" only on matters related to days worked or when there  
9 is a violation, misapplication or misinterpretation of a statute,  
10 policy, rule or written agreement relating to the substitute.

11 (3) "Employee" does not mean a member of the West  
12 Virginia State Police employed pursuant to article two, chapter  
13 fifteen of this code, but does include civilian employees hired by  
14 the superintendent of the State Police. "Employee" does not mean  
15 an employee of a constitutional officer unless he or she is covered  
16 under the civil service system, an employee of the Legislature or a  
17 patient or inmate employed by a state institution.

18 (4) If a public charter school authorized pursuant to article  
19 thirty-three, chapter eighteen of this code includes in its approved  
20 charter application a determination that this article applies to the  
21 charter school and its employees, "employee" also means a person  
22 employed by the public charter school.

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1 (f) "Employee organization" means an employee advocacy  
2 organization with employee members that has filed with the board  
3 the name, address, chief officer and membership criteria of the  
4 organization.

5 (g) "Employer" means a state agency, department, board,  
6 commission, college, university, institution, State Board of  
7 Education, Department of Education, county board of education,  
8 regional educational service agency or multicounty vocational  
9 center, or agent thereof, using the services of an employee as  
10 defined in this section. If a public charter school authorized  
11 pursuant to article thirty-three, chapter eighteen of this code  
12 includes in its approved charter application a determination that this  
13 article applies to the charter school and its employees, "employer"  
14 also includes the public charter school.

15 (h) "Favoritism" means unfair treatment of an employee as  
16 demonstrated by preferential, exceptional or advantageous  
17 treatment of a similarly situated employee unless the treatment is  
18 related to the actual job responsibilities of the employee or is agreed  
19 to in writing by the employee.

20 (i) (1) "Grievance" means a claim by an employee alleging  
21 a violation, a misapplication or a misinterpretation of the statutes,  
22 policies, rules or written agreements applicable to the employee

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1 including:

2 (i) Any violation, misapplication or misinterpretation  
3 regarding compensation, hours, terms and conditions of  
4 employment, employment status or discrimination;

5 (ii) Any discriminatory or otherwise aggrieved application  
6 of unwritten policies or practices of his or her employer;

7 (iii) Any specifically identified incident of harassment;

8 (iv) Any specifically identified incident of favoritism; or

9 (v) Any action, policy or practice constituting a substantial  
10 detriment to or interference with the effective job performance of  
11 the employee or the health and safety of the employee.

12 (2) "Grievance" does not mean any pension matter or other  
13 issue relating to public employees insurance in accordance with  
14 article sixteen, chapter five of this code, retirement or any other  
15 matter in which the authority to act is not vested with the employer.

16 (j) "Grievance proceeding", "proceeding" or the plural  
17 means a conference, level one hearing, mediation, private  
18 mediation, private arbitration or level three hearing, or any  
19 combination, unless the context clearly indicates otherwise.

20 (k) "Grievant" means an employee or group of similarly  
21 situated employees filing a grievance.

22 (l) "Harassment" means repeated or continual disturbance,

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1 irritation or annoyance of an employee that is contrary to the  
2 behavior expected by law, policy and profession.

3 (m) "Party", or the plural, means the grievant, intervenor,  
4 employer and the Director of the Division of Personnel or his or her  
5 designee, for state government employee grievances. The Division  
6 of Personnel shall not be a party to grievances involving higher  
7 education employees.

8 (n) "Representative" means any employee organization,  
9 fellow employee, attorney or other person designated by the  
10 grievant or intervenor as his or her representative and may not  
11 include a supervisor who evaluates the grievant.

12 (o) "Reprisal" means the retaliation of an employer toward  
13 a grievant, witness, representative or any other participant in the  
14 grievance procedure either for an alleged injury itself or any lawful  
15 attempt to redress it.

16 **CHAPTER 18. EDUCATION.**

17 **ARTICLE 7A. STATE TEACHERS RETIREMENT**  
18 **SYSTEM.**

19 **§18-7A-3. Definitions.**

20 As used in this article, unless the context clearly requires a  
21 different meaning:

22 (1) "Accumulated contributions" means all deposits and all

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1 deductions from the gross salary of a contributor plus regular  
2 interest.

3 (2) "Accumulated net benefit" means the aggregate amount  
4 of all benefits paid to or on behalf of a retired member.

5 (3) "Actuarially equivalent" or "of equal actuarial value"  
6 means a benefit of equal value computed upon the basis of the  
7 mortality table and interest rates as set and adopted by the  
8 retirement board in accordance with the provisions of this article:  
9 *Provided*, That when used in the context of compliance with the  
10 federal maximum benefit requirements of section 415 of the  
11 Internal Revenue Code, "actuarially equivalent" shall be computed  
12 using the mortality tables and interest rates required to comply with  
13 those requirements.

14 (4) "Annuities" means the annual retirement payments for  
15 life granted beneficiaries in accordance with this article.

16 (5) "Average final salary" means the average of the five  
17 highest fiscal year salaries earned as a member within the last  
18 fifteen fiscal years of total service credit, including military service  
19 as provided in this article, or if total service is less than fifteen  
20 years, the average annual salary for the period on which  
21 contributions were made: *Provided*, That salaries for determining  
22 benefits during any determination period may not exceed the

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1 maximum compensation allowed as adjusted for cost of living in  
2 accordance with section seven, article ten-d, chapter five of this  
3 code and section 401 (a) (17) of the Internal Revenue Code.

4 (6) "Beneficiary" means the recipient of annuity payments  
5 made under the retirement system.

6 (7) "Contributor" means a member of the retirement system  
7 who has an account in the teachers accumulation fund.

8 (8) "Deposit" means a voluntary payment to his or her  
9 account by a member.

10 (9) "Employer" means the agency of and within the state  
11 which has employed or employs a member.

12 (10) "Employer error" means an omission,  
13 misrepresentation or violation of relevant provisions of the West  
14 Virginia Code or of the West Virginia Code of State Regulations or  
15 the relevant provisions of both the West Virginia Code and of the  
16 West Virginia Code of State Regulations by the participating public  
17 employer that has resulted in an underpayment or overpayment of  
18 contributions required. A deliberate act contrary to the provisions  
19 of this section by a participating public employer does not  
20 constitute employer error.

21 (11) "Employment term" means employment for at least ten  
22 months, a month being defined as twenty employment days.



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1           (12) "Gross salary" means the fixed annual or periodic cash  
2 wages paid by a participating public employer to a member for  
3 performing duties for the participating public employer for which  
4 the member was hired. Gross salary shall be allocated and reported  
5 in the fiscal year in which the work was done. Gross salary also  
6 includes retroactive payments made to a member to correct a  
7 clerical error, or made pursuant to a court order or final order of an  
8 administrative agency charged with enforcing federal or state law  
9 pertaining to the member's rights to employment or wages, with all  
10 retroactive salary payments to be allocated to and considered paid  
11 in the periods in which the work was or would have been done.  
12 Gross salary does not include lump sum payments for bonuses,  
13 early retirement incentives, severance pay or any other fringe  
14 benefit of any kind including, but not limited to, transportation  
15 allowances, automobiles or automobile allowances, or lump sum  
16 payments for unused, accrued leave of any type or character.

17           (13) "Internal Revenue Code" means the Internal Revenue  
18 Code of 1986, as it has been amended.

19           (14) "Member" means any person who has accumulated  
20 contributions standing to his or her credit in the state Teachers  
21 Retirement System. A member shall remain a member until the  
22 benefits to which he or she is entitled under this article are paid or

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1 forfeited, or until cessation of membership pursuant to section  
2 thirteen of this article.

3 (15) "Members of the administrative staff of the public  
4 schools" means deans of instruction, deans of men, deans of  
5 women, and financial and administrative secretaries.

6 (16) "Members of the extension staff of the public schools"  
7 means every agricultural agent, boys' and girls' club agent and every  
8 member of the agricultural extension staff whose work is not  
9 primarily stenographic, clerical or secretarial.

10 (17) "New entrant" means a teacher who is not a present  
11 teacher.

12 (18) "Nonteaching member" means any person, except a  
13 teacher member, who is regularly employed for full-time service by:  
14 (A) Any county board of education; (B) the State Board of  
15 Education; (C) the Higher Education Policy Commission; (D) the  
16 West Virginia Council for Community and Technical College  
17 Education; or (E) a governing board, as defined in section two,  
18 article one, chapter eighteen-b of this code; or (F) a public charter  
19 school established pursuant to article thirty-three of this chapter:  
20 *Provided*, That any person whose employment with the Higher  
21 Education Policy Commission, the West Virginia Council for  
22 Community and Technical College Education or a governing board

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1 commences on or after July 1, 1991, is not considered a  
2 nonteaching member.

3 (19) "Plan year" means the twelve-month period  
4 commencing on July 1 and ending the following June 30 of any  
5 designated year.

6 (20) "Present member" means a present teacher or  
7 nonteacher who is a member of the retirement system.

8 (21) "Present teacher" means any person who was a teacher  
9 within the thirty-five years beginning July 1, 1934, and whose  
10 membership in the retirement system is currently active.

11 (22) "Prior service" means all service as a teacher  
12 completed prior to July 1, 1941, and all service of a present member  
13 who was employed as a teacher and did not contribute to a  
14 retirement account because he or she was legally ineligible for  
15 membership during the service.

16 (23) "Public schools" means all publicly supported schools,  
17 including colleges and universities in this state.

18 (24) "Refund beneficiary" means the estate of a deceased  
19 contributor or a person he or she has nominated as beneficiary of  
20 his or her contributions by written designation duly executed and  
21 filed with the retirement board.

22 (25) "Regular interest" means interest at four percent

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1 compounded annually, or a higher earnable rate if set forth in the  
2 formula established in legislative rules, series seven of the  
3 Consolidated Public Retirement Board, 162 CSR 7.

4 (26) "Regularly employed for full-time service" means  
5 employment in a regular position or job throughout the employment  
6 term regardless of the number of hours worked or the method of  
7 pay.

8 (27) "Required beginning date" means April 1 of the  
9 calendar year following the later of: (A) The calendar year in which  
10 the member attains age seventy and one-half years; or (B) the  
11 calendar year in which the member retires or ceases covered  
12 employment under the system after having attained the age of  
13 seventy and one-half years.

14 (28) "Retirant" means any member who commences an  
15 annuity payable by the retirement system.

16 (29) "Retirement board" means the Consolidated Public  
17 Retirement Board created pursuant to article ten-d, chapter five of  
18 this code.

19 (30) "Retirement system" means the state Teachers  
20 Retirement System established by this article.

21 (31) "Teacher member" means the following persons, if  
22 regularly employed for full-time service: (A) Any person employed

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1 for instructional service in the public schools of West Virginia; (B)  
2 principals; (C) public school librarians; (D) superintendents of  
3 schools and assistant county superintendents of schools; (E) any  
4 county school attendance director holding a West Virginia teacher's  
5 certificate; (F) members of the research, extension, administrative  
6 or library staffs of the public schools; (G) the State Superintendent  
7 of Schools, heads and assistant heads of the divisions under his or  
8 her supervision, or any other employee under the state  
9 superintendent performing services of an educational nature; (H)  
10 employees of the State Board of Education who are performing  
11 services of an educational nature; (I) any person employed in a  
12 nonteaching capacity by the State Board of Education, any county  
13 board of education, the State Department of Education or the State  
14 Teachers Retirement Board, if that person was formerly employed  
15 as a teacher in the public schools; (J) all classroom teachers,  
16 principals and educational administrators in schools under the  
17 supervision of the Division of Corrections, the Division of Health  
18 or the Division of Human Services; (K) an employee of the State  
19 Board of School Finance, if that person was formerly employed as  
20 a teacher in the public schools; ~~and~~ (L) any person designated as a  
21 21st Century Learner Fellow pursuant to section eleven, article  
22 three, chapter eighteen-a of this code who elects to remain a

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1 member of the State Teachers Retirement System provided in this  
2 article; and (M) any person employed by a public charter school  
3 established pursuant to article thirty-three of this chapter.

4 (32) "Total service" means all service as a teacher or  
5 nonteacher while a member of the retirement system since last  
6 becoming a member and, in addition thereto, credit for prior  
7 service, if any.

8 Age in excess of seventy years shall be considered to be  
9 seventy years.

10 **ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION**  
11 **RETIREMENT SYSTEM.**

12 **§18-7B-2. Definitions.**

13 As used in this article, unless the context clearly requires a  
14 different meaning:

15 (1) "Annual addition" means, for purposes of the limitations  
16 under section 415 (c) of the Internal Revenue Code, the sum  
17 credited to a member's account for any limitation year of: (A)  
18 Employer contributions; (B) employee contributions; and (C)  
19 forfeitures. Repayment of cashouts or contributions as described in  
20 section 415 (k) (3) of the Internal Revenue Code, rollover  
21 contributions and picked-up employee contributions to a defined  
22 benefit plan shall not be treated as annual additions, consistent with

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1 the requirements of Treasury Regulation §1.415(c)-1;

2 (2) “Annuity account” or “annuity” means an account  
3 established for each member to record the deposit of member  
4 contributions and employer contributions and interest, dividends or  
5 other accumulations credited on behalf of the member;

6 (3) “Compensation” means the full compensation actually  
7 received by members for service whether or not a part of the  
8 compensation is received from other funds, federal or otherwise,  
9 than those provided by the state or its subdivisions: *Provided*, That  
10 annual compensation for determining contributions during any  
11 determination period may not exceed the maximum compensation  
12 allowed as adjusted for cost of living in accordance with section  
13 seven, article ten-d, chapter five of this code and section 401 (a)  
14 (17) of the Internal Revenue Code: *Provided, however*, That solely  
15 for purposes of applying the limitations of section 415 of the  
16 Internal Revenue Code to any annual addition, “compensation” has  
17 the meaning given it in subsection (d), section thirteen of this  
18 article;

19 (4) “Consolidated board” or “board” means the  
20 Consolidated Public Retirement Board created and established  
21 pursuant to article ten-d, chapter five of this code;

22 (5) “Defined contribution system” or “system” means the

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1 Teachers' Defined Contribution Retirement System created and  
2 established by this article;

3 (6) "Employer" means the agency of and within the state of  
4 West Virginia which has employed or employs a member;

5 (7) "Employer contribution" means an amount deposited  
6 into the member's individual annuity account on a periodic basis  
7 coinciding with the employee's regular pay period by an employer  
8 from its own funds;

9 (8) "Employment term" means employment for at least ten  
10 months in any plan year with a month being defined as twenty  
11 employment days;

12 (9) "Existing employer" means any employer who  
13 employed or employs a member of the system;

14 (10) "Existing retirement system" means the state Teachers  
15 Retirement System established in article seven-a of this chapter;

16 (11) "Internal Revenue Code" means the Internal Revenue  
17 Code of 1986, as it has been amended;

18 (12) "Member" or "employee" means the following  
19 persons, if regularly employed for full-time service: (A) Any person  
20 employed for instructional service in the public schools of West  
21 Virginia; (B) principals; (C) public school librarians; (D)  
22 superintendents of schools and assistant county superintendents of



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1 schools; (E) any county school attendance director holding a West  
2 Virginia teacher's certificate; (F) members of the research,  
3 extension, administrative or library staffs of the public schools; (G)  
4 the State Superintendent of Schools, heads and assistant heads of  
5 the divisions under his or her supervision or any other employee  
6 under the state superintendent performing services of an educational  
7 nature; (H) employees of the State Board of Education who are  
8 performing services of an educational nature; (I) any person  
9 employed in a nonteaching capacity by the State Board of  
10 Education, any county board of education or the State Department  
11 of Education, if that person was formerly employed as a teacher in  
12 the public schools; (J) all classroom teachers, principals and  
13 educational administrators in schools under the supervision of the  
14 Division of Corrections and the Department of Health and Human  
15 Resources; (K) any person who is regularly employed for full-time  
16 service by any county board of education or the State Board of  
17 Education; (L) the administrative staff of the public schools  
18 including deans of instruction, deans of men and deans of women,  
19 and financial and administrative secretaries; ~~and~~ (M) any person  
20 designated as a 21st Century Learner Fellow pursuant to section  
21 eleven, article three, chapter eighteen-a of this code who elects to  
22 remain a member of the Teachers' Defined Contribution Retirement

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1 System established by this article; and (N) any person employed by  
2 a public charter school established pursuant to article thirty-three of  
3 this chapter;

4 (13) “Member contribution” means an amount reduced from  
5 the employee’s regular pay periods, and deposited into the  
6 member’s individual annuity account within the Teachers' Defined  
7 Contribution Retirement System;

8 (14) “Permanent, total disability” means a mental or  
9 physical incapacity requiring absence from employment service for  
10 at least six months: *Provided*, That the incapacity is shown by an  
11 examination by a physician or physicians selected by the board:  
12 *Provided, however*, That for employees hired on or after July 1,  
13 2005, “permanent, total disability” means an inability to engage in  
14 substantial gainful activity by reason of any medically determinable  
15 physical or mental impairment that can be expected to result in  
16 death, or has lasted or can be expected to last for a continuous  
17 period of not less than twelve months and the incapacity is so  
18 severe that the member is likely to be permanently unable to  
19 perform the duties of the position the member occupied  
20 immediately prior to his or her disabling injury or illness;

21 (15) “Plan year” means the twelve-month period  
22 commencing on July 1 of any designated year and ending on the

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1 following June 30;

2 (16) “Public schools” means all publicly supported schools,  
3 including normal schools, colleges and universities in this state;

4 (17) “Regularly employed for full-time service” means  
5 employment in a regular position or job throughout the employment  
6 term regardless of the number of hours worked or the method of  
7 pay;

8 (18) “Required beginning date” means April 1 of the  
9 calendar year following the later of: (A) The calendar year in which  
10 the member attains age seventy and one-half years; or (B) the  
11 calendar year in which the member retires or otherwise ceases  
12 employment with a participating employer after having attained the  
13 age of seventy and one-half years;

14 (19) “Retirement” means a member’s withdrawal from the  
15 active employment of a participating employer and completion of  
16 all conditions precedent to retirement;

17 (20) “Year of employment service” means employment for  
18 at least ten months, with a month being defined as twenty  
19 employment days: *Provided*, That no more than one year of service  
20 may be accumulated in any twelve-month period.

21 **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

22 **§18-9A-2. Definitions.**

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1 For the purpose of this article:

2 (a) “State board” means the West Virginia Board of  
3 Education.

4 (b) “County board” or “board” means a county board of  
5 education.

6 (c) “Professional salaries” means the state legally mandated  
7 salaries of the professional educators as provided in article four,  
8 chapter eighteen-a of this code.

9 (d) “Professional educator” shall be synonymous with and  
10 shall have the same meaning as “teacher” as defined in section one,  
11 article one of this chapter and includes technology integration  
12 specialists.

13 (e) “Professional instructional personnel” means a  
14 professional educator whose regular duty is as that of a classroom  
15 teacher, librarian, attendance director or school psychologist. A  
16 professional educator having both instructional and administrative  
17 or other duties shall be included as professional instructional  
18 personnel for that ratio of the school day for which he or she is  
19 assigned and serves on a regular full-time basis in appropriate  
20 instruction, library, attendance or psychologist duties.

21 (f) “Professional student support personnel” means a  
22 “teacher” as defined in section one, article one of this chapter who

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1 is assigned and serves on a regular full-time basis as a counselor or  
2 as a school nurse with a bachelor’s degree and who is licensed by  
3 the West Virginia Board of Examiners for Registered Professional  
4 Nurses. For all purposes except for the determination of the  
5 allowance for professional educators pursuant to section four of this  
6 article, professional student support personnel are professional  
7 educators.

8 (g) “Service personnel salaries” means the state legally  
9 mandated salaries for service personnel as provided in section  
10 eight-a, article four, chapter eighteen-a of this code.

11 (h) “Service personnel” means all personnel as provided in  
12 section eight, article four, chapter eighteen-a of this code. For the  
13 purpose of computations under this article of ratios of service  
14 personnel to net enrollment, a service employee shall be counted as  
15 that number found by dividing his or her number of employment  
16 days in a fiscal year by two hundred: *Provided*, That the  
17 computation for any service person employed for three and one-half  
18 hours or less per day as provided in section eight-a, article four,  
19 chapter eighteen-a of this code shall be calculated as one-half an  
20 employment day.

21 (i) “Net enrollment” means the number of pupils enrolled  
22 in special education programs, kindergarten programs and grades

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1 one to twelve, inclusive, of the public schools of the county, subject  
2 to the following:

3 (1) Net enrollment further shall include:

4 (†) (A) Adults enrolled in regular secondary vocational  
5 programs existing as of the effective date of this section, subject to  
6 the following:

7 (A) (i) Net enrollment includes no more than one thousand  
8 of those adults counted on the basis of full-time equivalency and  
9 apportioned annually to each county in proportion to the adults  
10 participating in regular secondary vocational programs in the prior  
11 year counted on the basis of full-time equivalency; and

12 (B) (ii) Net enrollment does not include any adult charged  
13 tuition or special fees beyond that required of the regular secondary  
14 vocational student; and

15 (‡) (B) Students enrolled in early childhood education  
16 programs as provided in section forty-four, article five of this  
17 chapter, counted on the basis of full-time equivalency;

18 (‡) (2) No pupil shall be counted more than once by reason  
19 of transfer within the county or from another county within the state  
20 and no pupil shall be counted who attends school in this state from  
21 another state;

22 (‡) (3) The enrollment shall be modified to the equivalent

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1 of the instructional term and in accordance with the eligibility  
2 requirements and rules established by the state board; ~~and~~

3       (5) (4) For the purposes of determining the county's basic  
4 foundation program only, for any county whose net enrollment as  
5 determined under all other provisions of this definition is less than  
6 one thousand four hundred, the net enrollment of the county shall  
7 be increased by an amount to be determined in accordance with the  
8 following:

9       (A) Divide the state's lowest county student population  
10 density by the county's actual student population density;

11       (B) Multiply the amount derived from the calculation in  
12 subparagraph (A) of this paragraph by the difference between one  
13 thousand four hundred and the county's actual net enrollment;

14       (C) If the increase in net enrollment as determined under  
15 this paragraph plus the county's net enrollment as determined under  
16 all other provisions of this section is greater than one thousand four  
17 hundred, the increase in net enrollment shall be reduced so that the  
18 total does not exceed one thousand four hundred; and

19       (D) During the 2008-2009 interim period and every three  
20 interim periods thereafter, the Legislative Oversight Commission on  
21 Education Accountability shall review this paragraph to determine  
22 whether or not these provisions properly address the needs of

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1 counties with low enrollment and a sparse population density; and  
2 (5) Net enrollment shall include students enrolled in a  
3 public charter school established pursuant to article thirty-three of  
4 this chapter.

5 (j) “Sparse-density county” means a county whose ratio of  
6 net enrollment, excluding any increase in the net enrollment of  
7 counties, pursuant to paragraph (5), subdivision (i) of this section,  
8 of the definition of “net enrollment”, to the square miles of the  
9 county is less than five.

10 (k) “Low-density county” means a county whose ratio of  
11 net enrollment, excluding any increase in the net enrollment of  
12 counties, pursuant to paragraph (5), subdivision (i) of this section,  
13 of the definition of “net enrollment”, to the square miles of the  
14 county is equal to or greater than five but less than ten.

15 (l) “Medium-density county” means a county whose ratio  
16 of net enrollment, excluding any increase in the net enrollment of  
17 counties, pursuant to paragraph (5), subdivision (i) of this section,  
18 of the definition of “net enrollment”, to the square miles of the  
19 county is equal to or greater than ten but less than twenty.

20 (m) “High-density county” means a county whose ratio of  
21 net enrollment, excluding any increase in the net enrollment of  
22 counties, pursuant to paragraph (5), subdivision (i) of this section,



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1 of the definition of “net enrollment”, to the square miles of the  
2 county is equal to or greater than twenty.

3 (n) “Levies for general current expense purposes” means  
4 ninety percent of the levy rate for county boards of education  
5 calculated or set by the Legislature pursuant to section six-f, article  
6 eight, chapter eleven of this code.

7 (o) “Technology integration specialist” means a  
8 professional educator who has expertise in the technology field and  
9 is assigned as a resource teacher to provide information and  
10 guidance to classroom teachers on the integration of technology  
11 into the curriculum.

12 (p) “State aid eligible personnel” means all professional  
13 educators and service personnel employed by a county board in  
14 positions that are eligible to be funded under this article and whose  
15 salaries are not funded by a specific funding source such as a  
16 federal or state grant, donation, contribution or other specific  
17 funding source not listed.

18 **§18-9A-12. County basic foundation; total basic state aid**  
19 **allowance.**

20 (a) The basic foundation program for each county for the  
21 fiscal year shall be the sum of the amounts computed in accordance  
22 with the provisions of sections four, five, six, seven, eight, nine and

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1 ten of this article. On the first working day of July in each year, the  
2 state board shall determine the basic foundation program for each  
3 county for that fiscal year. Data used in the computations relating  
4 to net and adjusted enrollment, and the number of professional  
5 educators, shall be for the second month of the prior school term.  
6 Transportation expenditures used in these computations shall be for  
7 the most recent year in which data are available. The allocated state  
8 aid share of the county's basic foundation program shall be the  
9 difference between the cost of its basic foundation program and the  
10 county's local share as determined in section eleven of this article  
11 except as provided in subsection (b) of this section.

12 (b) The allocated state aid share shall be adjusted in the  
13 following circumstances in the following manner: *Provided*, That  
14 prior to such adjustment, the State Tax Commissioner shall provide  
15 the state board, by January 15 of each year, a certified listing of  
16 those counties in which such adjustment shall be made pursuant to  
17 this subsection, together with the amount of revenue which will not  
18 be available to each county board in the ensuing fiscal year as a  
19 result of the circumstance:

20 (1) In those instances where the local share as computed  
21 under section eleven of this article is not reflective of local funds  
22 available because the county is under a final court order, or a final

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1 decision of a board of assessment appeals under section twenty-  
2 four-b, article three, chapter eleven of this code, to refund or credit  
3 property taxes paid in prior years, the allocated state aid share shall  
4 be the county's basic foundation program, minus the local share as  
5 computed under section eleven of this article, plus the amount of  
6 property tax the county is unable to collect or must refund due to  
7 the final court order or final decision of a board of assessment  
8 appeals: *Provided*, That said adjustment shall not be made or shall  
9 only be made proportionately when the Legislature fails to fund or  
10 funds only in part the public school basic foundation support plan  
11 state share at a level sufficient to cover the reduction in state share:  
12 *Provided, however*, That nothing herein provided shall be construed  
13 to require or mandate any level of funding by the Legislature.

14 (2) In those instances where the local share as computed  
15 under section eleven of this article is not reflective of local funds  
16 available because the county is collecting tax based upon an  
17 assessed value which is less than that determined by the Tax  
18 Commissioner in the most recent published survey of property  
19 valuations in the state due to an error in the published survey, which  
20 error is certified to by the Tax Commissioner, the allocated state aid  
21 share shall be the county's basic foundation program, minus the  
22 local share as computed under section eleven of this article, plus the

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1 amount of property tax the county is unable to collect based on  
2 differences in the assessed valuation between those in the most  
3 recent published survey of valuation and the corrected assessed  
4 value actually levied upon by the county: *Provided*, That said  
5 adjustment shall not be made or shall only be made proportionately  
6 when the Legislature fails to fund or funds only in part the public  
7 school basic foundation support plan state share at a level sufficient  
8 to cover the reduction in state share: *Provided, however*, That  
9 nothing herein provided shall be construed to require or mandate  
10 any level of funding by the Legislature.

11 (3) In instances where a county is unable to collect property  
12 taxes from a taxpayer during the pendency of any court proceeding,  
13 the allocated state aid share shall be the county's basic foundation  
14 program minus the local share as computed under section eleven of  
15 this article, plus the amount the county is unable to collect as a  
16 result of the pending court proceedings as certified by the Tax  
17 Commissioner: *Provided*, That the county is required to reimburse  
18 the amount of allocated state aid share attributable to the amount of  
19 property tax it later receives upon completion of court proceedings,  
20 which shall be paid into the General Revenue Fund of the state:  
21 *Provided, however*, That said adjustment shall not be made or shall  
22 only be made proportionately when the Legislature fails to fund or

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1 funds only in part the public school basic foundation support plan  
2 state share at a level sufficient to cover the reduction in state share:  
3 *Provided further*, That nothing herein provided shall be construed  
4 to require or mandate any level of funding by the Legislature.

5 (4) In instances where a public charter school is authorized  
6 and has or will begin operations in a county school district pursuant  
7 to article thirty-three of this chapter, the total program allowance  
8 for the district shall be reduced by the county's per pupil total basic  
9 foundation allowance multiplied by the second month net  
10 enrollment of the public charter school authorized to operate in the  
11 county.

12 (c) The allocated state aid share shall be adjusted in any  
13 county receiving payments or contributions in lieu of property  
14 taxes. In instances where a county receives payments or  
15 contributions in lieu of property taxes, the allocated state aid share  
16 shall be the county's basic foundation program minus the local share  
17 as computed under section eleven of this article, plus any amounts  
18 added pursuant to subsection (b) of this section minus the payments  
19 or contributions in lieu of property taxes which are distributed by  
20 the sheriff to the county board of education. In determining the  
21 amount of such contribution or payment in lieu of taxes, each  
22 county commission shall provide to the State Tax Commissioner,

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1 by January 1 of each year, the total amount of such payments or  
2 contributions paid to the county and the proportion of the total  
3 amount that has been or will be distributed to the county board of  
4 education. The State Tax Commissioner then shall provide the state  
5 board, by January 15 of each year, a certified listing of those  
6 counties in which an adjustment pursuant to this section shall be  
7 made, together with the amount of revenue which will be available  
8 to each county board in the ensuing fiscal year as a result of  
9 contribution or payment in lieu of taxes.

10 (d) Total basic state aid to the county shall be the computed  
11 state share of basic foundation support. After such computation is  
12 completed, the state board shall immediately certify to each county  
13 board the amount of state aid allocated to the county for that fiscal  
14 year, subject to any qualifying provisions of this article.

15 **ARTICLE 20. EDUCATION OF EXCEPTIONAL**  
16 **CHILDREN.**

17 **§18-20-5. Powers and duties of state superintendent.**

18 (a) The State Superintendent of Schools shall organize,  
19 promote, administer and be responsible for:

20 (1) Stimulating and assisting county boards of education in  
21 establishing, organizing and maintaining special schools, classes,  
22 regular class programs, home-teaching and visiting-teacher

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1 services.

2 (2) Cooperating with all other public and private agencies  
3 engaged in relieving, caring for, curing, educating and rehabilitating  
4 exceptional children, and in helping coordinate the services of such  
5 agencies.

6 (3) (A) Preparing the necessary rules, policies, formula for  
7 distribution of available appropriated funds, reporting forms and  
8 procedures necessary to define minimum standards in providing  
9 suitable facilities for education of exceptional children and ensuring  
10 the employment, certification and approval of qualified teachers and  
11 therapists subject to approval by the state board of Education:  
12 *Provided*, That no state rule, policy or standard under this article or  
13 any county board rule, policy or standard governing special  
14 education may exceed the requirements of federal law or regulation.

15 (B) The state superintendent shall annually review the rules,  
16 policies and standards of the state and federal law for serving the  
17 needs of exceptional children enrolled in the public schools and  
18 shall report to the Legislative Oversight Commission on Education  
19 Accountability by December 1 ~~or as soon thereafter as requested by~~  
20 ~~the commission, 2008, and in each year thereafter,~~ of each year the  
21 findings of the review along with an accounting of the services  
22 provided and the costs thereof for exceptional children enrolled in

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1 the public schools of this state during the latest available school  
2 year. An appropriation shall be made to the Department of  
3 Education to be distributed to county boards and public charter  
4 schools authorized pursuant to article thirty-three of this article to  
5 support children with high acuity needs that exceed the capacity of  
6 county or the public charter school to provide with funds available.  
7 Each county board and public charter school shall apply to the state  
8 superintendent for receipt of this funding in a manner set forth by  
9 the state superintendent that assesses and takes into account varying  
10 acuity levels of the exceptional students. Any remaining funds at  
11 the end of a fiscal year from the appropriation shall be carried over  
12 to the next fiscal year. When possible, federal funds shall be  
13 distributed to county boards and public charter schools for this  
14 purpose before any of the state appropriation is distributed. The  
15 state board shall promulgate a rule in accordance with the  
16 provisions of article three-b, chapter twenty-nine-a of this code that  
17 implements the provisions of this subdivision relating to  
18 distributing the funds to the county boards and public charter  
19 schools. The rule at least shall include a definition for “children  
20 with high acuity needs”.

21 (4) Receiving from county boards ~~of education~~  
22 applications, annual reports and claims for reimbursement from



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1 such moneys as are appropriated by the Legislature, auditing such  
2 claims and preparing vouchers to reimburse said counties the  
3 amounts reimbursable to them.

4 (5) Assuring that all exceptional children in the state,  
5 including children in mental health facilities, residential institutions,  
6 private schools and correctional facilities as provided in section  
7 thirteen-f, article two of this chapter receive an education in  
8 accordance with state and federal laws: *Provided*, That the state  
9 superintendent shall also assure that adults in correctional facilities  
10 and regional jails receive an education to the extent funds are  
11 provided therefor.

12 (6) Performing other duties and assuming other  
13 responsibilities in connection with this program as needed.

14 ~~(7) Receive the county plan for integrated classroom~~  
15 ~~submitted by the county boards of education and submit a state~~  
16 ~~plan, approved by the State Board of Education, to the Legislative~~  
17 ~~Oversight commission on education accountability no later than~~  
18 ~~December 1, 1995.~~

19 (b) Nothing contained in this section shall be construed to  
20 prevent any county board of education from establishing and  
21 maintaining special schools, classes, regular class programs,  
22 home-teaching or visiting-teacher services out of funds available

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1 from local revenue.

2 **ARTICLE 33. WEST VIRGINIANA PUBLIC CHARTER**  
3 **SCHOOLS ACT OF 2015.**

4 **§18-33-1. Legislative purpose and intent.**

5 The West Virginia Legislature hereby establishes public  
6 charter schools to benefit students, parents, teachers and community  
7 members by creating new, innovative and more flexible ways of  
8 educating all children within the public school system and by  
9 advancing a renewed commitment to the mission, goals and  
10 diversity of public education. The purposes of the charter school  
11 initiative are to:

12 (a) Improve student learning by creating more quality  
13 public schools with high standards for student performance;

14 (b) Encourage the use of different, high quality models of  
15 teaching, governing, scheduling or other aspects of public schooling  
16 that meet a variety of student needs;

17 (c) Close achievement gaps between high-performing and  
18 low-performing groups of public school students;

19 (d) Allow schools freedom and flexibility in exchange for  
20 exceptional levels of results-driven accountability;

21 (e) Increase high-quality educational opportunities within  
22 the public education system for all students, especially those at risk

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1 of academic failure; and

2 (f) Provide students, parents, community members and local  
3 entities with expanded opportunities for involvement in the public  
4 education system.

5 **§18-33-2. Definitions.**

6 As used in this chapter, unless the context otherwise  
7 indicates, the following terms have the following meanings:

8 (a) “Applicant” means teachers, parents, school  
9 administrators, community residents, public organizations, private  
10 nonprofit organizations, a noncharter public school, a noncharter  
11 public school program or a combination thereof that seek approval  
12 from a charter school authorizer to establish a public charter school;

13 (b) “Charter application” means a proposal from an  
14 applicant to an authorizer to enter into a charter contract whereby  
15 the proposed school obtains public charter school status;

16 (c) “Authorizer” means an entity empowered under this  
17 article to review applications, decide whether to approve or reject  
18 applications, enter into charter contracts with applicants, oversee  
19 and monitor public charter schools and decide whether to renew,  
20 not renew or revoke charter contracts;

21 (d) “Charter contract” means a performance-based contract  
22 for a fixed term between a public charter school and an authorizer

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1 that describes performance expectations, defines operational  
2 responsibilities and outlines the autonomy and accountability for  
3 each party to the contract;

4 (e) “Conversion public charter school” means a public  
5 charter school that existed as a noncharter public school before  
6 becoming a public charter school;

7 (f) “Education service provider” means an education  
8 management organization, charter management organization, school  
9 design provider or any other partner entity with whom a public  
10 charter school intends to contract for education services and  
11 resources, including education design, implementation or  
12 management;

13 (g) “Governing board” means the independent board of a  
14 public charter school that is party to the charter contract with the  
15 authorizer and whose members have been elected or selected  
16 pursuant to the school’s application;

17 (h) “County board” means a board exercising management  
18 and control of a school district other than a public charter school  
19 formed under this article. A county board’s management and  
20 control of a public charter school is limited to only that granted  
21 under this article as the authorizer;

22 (i) “Noncharter public school” means a public school other

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1 than a school formed pursuant to this article;

2 (j) “Public charter school” means a public school formed  
3 pursuant to this article that:

4 (1) Is part of the state’s system of public education; is  
5 nonhome school based and not affiliated with or espousing any  
6 specific religious denomination, organization, sect or belief or the  
7 promotion or engaging in any religious practices in terms of its  
8 educational program. Nor shall a public charter school, as defined  
9 in this article, be affiliated with any organized group whose  
10 espoused beliefs attack or malign an entire class of people, typically  
11 for immutable characteristics, as identified through listings of such  
12 groups as may be made by the U. S. Department of Justice, the  
13 Federal Bureau of Investigation, or officials having similar  
14 jurisdiction in this state;

15 (2) Has autonomy over key decisions, including, but not  
16 limited to, decisions concerning finance, personnel, scheduling,  
17 curriculum and instruction;

18 (3) Is governed by a board that is independent of a county  
19 board except for the county board’s responsibilities under this  
20 article as the public charter school’s authorizer;

21 (4) Is established and operated under the terms of a legally  
22 binding charter contract between the governing board and its

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1 authorizer in accordance with this article;

2 (5) Is a public school to which parents choose to send their  
3 children;

4 (6) Ensures student participation in required state  
5 assessments of student performance, as required of other public  
6 school students under section five, article two-e of this chapter;

7 (7) Designs its educational program to meet or exceed the  
8 student performance standards set forth in section five, article two-e  
9 of this chapter;

10 (8) Provides instructional time that is at least equal to the  
11 number of days or their equivalent required by section forty-five,  
12 article five of this chapter;

13 (9) Adheres to all generally accepted accounting principles;

14 (10) Requires a criminal history check pursuant to section  
15 ten, article three, chapter eighteen-a of this code for any staff person  
16 that would be required to be licensed if employed in a noncharter  
17 public school unless a criminal history check has already been  
18 completed for that staff person pursuant to that section;

19 (11) Prohibits contractors or service providers or their  
20 employees from making direct, unaccompanied contact with  
21 students or access school grounds unaccompanied when students  
22 are present if it cannot be verified that the contractors, service

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1 providers or employees have not previously been convicted of a  
2 qualifying offense pursuant to section fifteen-c, article five of this  
3 chapter;

4 (12) Complies with the provisions of article one, chapter  
5 twenty-nine-b of this code relating to freedom of information and  
6 the provisions of article nine-a, chapter six relating to open  
7 governmental proceedings;

8 (13) Ensures students meet the compulsory school  
9 attendance requirements of section forty-four, chapter five of this  
10 chapter and section one-a, article eight of this chapter, as  
11 applicable;

12 (14) Provides a program of public education that:

13 (A) Includes one or more of the following: Prekindergarten  
14 and any grade or grades from kindergarten to grade 12;

15 (B) May include a focus on students with special needs,  
16 such as at-risk pupils, English language learners or students  
17 involved with the juvenile justice system; and

18 (C) May include a specific academic approach or theme;

19 (15) Provides programs and services to a student with a  
20 disability in accordance with the student's individualized education  
21 program and all federal and state laws, rules and regulations. A  
22 charter school shall deliver the services directly or contract with

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1 another provider to deliver the services;

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

4 (17) Operates under the oversight of the authorizer from  
5 which its charter contract is granted and in accordance with its  
6 approved charter contract; and

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

10 **§18-33-3. Reports.**

11 One year after public charter schools have been in  
12 operation, and each year thereafter, the state superintendent shall  
13 issue to the Governor, the Legislature and the general public a  
14 report on the state's public charter school program, drawing from  
15 the annual reports submitted by authorizers pursuant to section five  
16 of this article as well as any additional relevant data compiled by  
17 the state superintendent up to the school year ending in the  
18 preceding calendar year. The report must include an assessment of  
19 the public charter school program's successes, challenges and areas  
20 for improvement in meeting the purposes of this chapter and any  
21 suggested changes in state law or policy necessary to strengthen the  
22 public charter school program.



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1 **§18-33-4. Public charter school eligibility; enrollment.**

2 (a) *Eligibility.* -- Any student residing in the state is eligible  
3 to apply to a public charter school.

4 (b) *Enrollment.* -- A public charter school shall enroll  
5 students in accordance with this subsection.

6 (1) Public charter school organizers shall include all  
7 segments of the populations served by the existing noncharter  
8 public schools in their area in their recruitment efforts.

9 (2) Unless the number of students exceeds the enrollment  
10 capacity of a program, class, grade level or building, a public  
11 charter school shall:

12 (A) Automatically enroll all students residing in the  
13 attendance area in which the school is located except for any  
14 students that opt out of enrollment; and

15 (B) Enroll all other students who wish to attend the school.

16 (3) Enrollment decisions shall be made in a  
17 nondiscriminatory way and shall not be based on intellectual ability,  
18 measures of achievement of aptitude, athletic ability, disability,  
19 creed, race, gender, national origin, religion or ancestry.

20 (4) Except as otherwise provided in this subsection, if  
21 capacity is insufficient to enroll all students who wish to attend the  
22 school, the public charter school shall select students from among

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1 the list of applicants by a random selection lottery. A list  
2 maintained to fill potential vacancies may be carried over to the  
3 succeeding year. Any student residing within the attendance area  
4 shall automatically be included in the list of applicants unless the  
5 student opts out of being included.

6 (5) Any noncharter public school converting partially or  
7 entirely to a public charter school shall adopt and maintain a policy  
8 that gives enrollment preference to pupils who reside within the  
9 former attendance area of that noncharter public school and that  
10 requires automatic enrollment of pupils who were previously  
11 enrolled in the noncharter public school except for any students that  
12 opt out of enrollment in the school.

13 (6) A public charter school shall give enrollment preference  
14 to pupils enrolled in the public charter school the previous school  
15 year and to siblings of pupils already enrolled in the public charter  
16 school.

17 (7) A public charter school may establish enrollment  
18 preferences that enable the school to give enrollment preference to  
19 at-risk students and students not succeeding in noncharter public  
20 schools.

21 (8) A public charter school may give enrollment preference  
22 to children of a public charter school's governing board members

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1 and full-time employees, as long as they constitute no more than ten  
2 percent of the school's total student population.

3 (c) *Discrimination prohibited.* -- A public charter school  
4 may not discriminate on the basis of race, ethnicity, national origin,  
5 religion, gender, sexual orientation, income level, disabling  
6 condition, proficiency in the English language or academic or  
7 athletic ability, except that nothing in this subsection may be  
8 construed to limit the formation of a public charter school that is  
9 dedicated to focusing education services on at-risk pupils, students  
10 with disabilities and students who pose such severe disciplinary  
11 problems that they warrant a specific education program.

12 **§18-33-5. Authorizers.**

13 (a) *Eligible authorizer.* -- A county board may authorize the  
14 creation of a start-up public charter school or the conversion of a  
15 noncharter public school to a public charter school within the  
16 boundaries of the school district governed by that county board  
17 pursuant to this article. This authority for a county board to  
18 authorize a charter school pursuant to this subsection is applicable  
19 even if the county school system is under state board intervention  
20 pursuant to section five, article two-e of this chapter.

21 (b) *Cap.* -- No more than two public charter schools shall be  
22 authorized per calendar year for the first five years public charter

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1 schools are in operation. During the first five calendar years public  
2 charter schools are in operation:

3 (1) Year one is the first calendar year in which a public  
4 charter school is authorized;

5 (2) As soon as feasible after an authorizer authorizes a  
6 public charter school, the authorizer shall notify the state board;

7 (3) After two public charter schools have been authorized  
8 during any calendar year, the state board shall notify as soon as  
9 feasible all authorizers that no more public charter schools may be  
10 authorized for the remainder of that calendar year;

11 (4) In determining which schools are authorized under the  
12 cap, priority shall be given to the first two schools that are  
13 authorized, as determined by the date of authorization, and any  
14 other authorization during that calendar year is null and void; and

15 (5) If as a result of multiple schools being authorized on the  
16 same date the cap is exceeded, the state board shall determine  
17 which of the multiple schools authorized on the same date are to  
18 remain authorized and the other authorizations on the same date are  
19 null and void.

20 (c) *Duties.* -- An authorizer shall:

21 (1) Evaluate applications from organizers of proposed  
22 public charter schools;

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1           (2) Approve or deny applications pursuant to section eight  
2 of this article;

3           (3) Create a framework to guide the development of charter  
4 contracts;

5           (4) Negotiate and execute sound charter contracts with each  
6 approved public charter school;

7           (5) Monitor the performance and compliance of public  
8 charter schools:

9           (6) Determine whether each charter contract merits renewal  
10 or revocation; and

11          (7) Establish and follow charter granting policies and  
12 practices that are transparent, based on merit and avoid all conflicts  
13 of interest.

14          (d) *Principles and professional standards.* -- An authorizer  
15 shall develop and maintain policies and practices consistent with  
16 nationally recognized principles and professional standards for  
17 authorizing public charter schools, including standards relating to:

18           (1) Organizational capacity and infrastructure;

19           (2) Evaluating applications;

20           (3) Performance contracting;

21           (4) Ongoing public charter school oversight and evaluation;

22 and

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1 (5) Charter approval, renewal, and revocation  
2 decisionmaking.

3 (e) *Reporting and evaluation.* -- An authorizer, that has  
4 authorized at least one public charter school that is currently in  
5 operation, shall submit to the state superintendent for presentation  
6 to the state board an annual report within sixty days of the end of  
7 each school fiscal year summarizing:

8 (1) The authorizer's strategic vision for chartering and  
9 progress toward achieving that vision;

10 (2) The performance of all operating public charter schools  
11 overseen by the authorizer, according to the performance measures  
12 and expectations specified in the charter contracts;

13 (3) The status of the authorizer's public charter school  
14 portfolio of approved charter applications, identifying all public  
15 charter schools within that portfolio as:

16 (A) Approved, but not yet open;

17 (B) Operating;

18 (C) Renewed;

19 (D) Transferred;

20 (E) Terminated;

21 (F) Closed; or

22 (G) Never opened; and

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1 (4) The authorizing duties and functions provided by the  
2 authorizer during the previous academic year.

3 (f) *Conflicts of interest.* -- An employee, trustee, agent or  
4 representative of an authorizer may not simultaneously serve as an  
5 employee, trustee, agent, representative, vendor or contractor of a  
6 public charter school operating under that authorizer.

7 (g) *Services purchased from authorizer.* -- A public charter  
8 school may not be required to purchase services from its authorizer  
9 as a condition of charter approval or of executing a charter contract,  
10 nor may any such condition be implied. However, a public charter  
11 school may, at its discretion, choose to purchase services from its  
12 authorizer. In such event, the public charter school and authorizer  
13 shall execute an annual service contract, separate from the charter  
14 contract, stating the parties' mutual agreement concerning any  
15 services to be provided by the authorizer and any service fees to be  
16 charged to the public charter school.

17 **§18-33-6. Appeals, training and other duties of the West**  
18 **Virginia Board of Education.**

19 (a) *Duties.* -- The state board shall, pursuant to this article:

20 (1) Establish training programs for charter school  
21 applicants, administrators, and governing board members;

22 (2) Hear appeals from applicants for authorization and from

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1 public charter school governing boards relating to renewal and  
2 revocation: *Provided*, That the state board only may uphold the  
3 decision or remand the issue to the authorizer with a  
4 recommendation and may not in any case reverse a decision of an  
5 authorizer;

6 (3) Issue and broadly publicize requests for proposals  
7 pursuant to section seven of this article to invite, solicit, encourage  
8 and guide the development of high-quality public charter school  
9 applications; and

10 (4) Pursuant to subsection (b), section five of this article, for  
11 the first five calendar years public charter schools are in operation:

12 (A) After the two per calendar year cap is exceeded,  
13 notifying authorizers that no more public charter schools may be  
14 authorized for the remainder of that calendar year; and

15 (B) Determining which schools are authorized when  
16 authorization of multiple schools on the same date results in the two  
17 per calendar year cap being exceeded.

18 (b) *Funding*. -- The state board may charge up to one  
19 percent of the funding received pursuant to subsection (b), section  
20 fourteen of this article in order to perform its duties under this  
21 article.

22 (c) *Training*. -- The state board shall consult with nationally



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1 recognized charter school organizations in establishing training  
2 programs for charter school applicants, administrators and  
3 governing board members. The training for administrators and  
4 governing board members shall include at least twelve training  
5 sessions annually. Administrators and governing board members  
6 may miss no more than one training session annually without a  
7 valid excuse, as determined by the authorizer. No charter may be  
8 granted until the applicant, administrators and governing board  
9 members have received the initial training offered by the state  
10 board.

11 **§18-33-7. Request for proposals.**

12 (a) *Issuance.* -- To invite, solicit, encourage and guide the  
13 development of high-quality public charter school applications, the  
14 state board shall issue and broadly publicize requests for proposals  
15 by June 30, 2016, and by June 30 of each year thereafter. The  
16 content and dissemination of the requests for proposals shall be  
17 consistent with the purposes and requirements of this article.

18 (b) *Content.* -- The state board's request for proposals shall  
19 contain information set forth in this subsection.

20 (1) A request for proposals shall present the state board's  
21 strategic vision for and interest in chartering.

22 (2) The state board may give priority to proposals that

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1 expand opportunities for children who are not realizing their full  
2 potential, who may be disaffected or disengaged in their current  
3 education situations and who may be at risk of failure academically,  
4 socially, economically or personally. The state board may  
5 encourage proposals that include a specific academic approach or  
6 theme to address the diverse educational needs of communities in  
7 the state. A request for proposals shall include a clear statement of  
8 any priority or preference the state board wishes to grant to  
9 particular types of applications. Notwithstanding the state board's  
10 statement of any priority or preference, an authorizer shall consider  
11 each application submitted to it based on the merits of that  
12 particular application.

13           (3) A request for proposals shall include or otherwise direct  
14 applicants to the performance framework that the state board has  
15 developed for public charter school oversight and evaluation in  
16 accordance with section ten of this article.

17           (4) A request for proposals shall include the criteria and  
18 standards that will guide the authorizer's decision to approve or  
19 deny an application.

20           (5) A request for proposals shall state clear, appropriately  
21 detailed questions as well as guidelines concerning the format and  
22 content essential for applicants to demonstrate the capacities

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1 necessary to establish and operate a successful public charter  
2 school.

3 (6) A request for proposals shall require applications to  
4 provide or describe thoroughly, at a minimum, all of the following  
5 essential elements of the proposed public charter school plan:

6 (A) The proposed public charter school’s vision, including:

7 (i) An executive summary; and

8 (ii) The mission and vision of the proposed public charter  
9 school, including identification of the targeted student population  
10 and the community the school hopes to serve; and

11 (B) The proposed public charter school’s governance plan,  
12 which shall include:

13 (i) A governing board which shall include the following  
14 nine members: Three parents of children attending the public  
15 charter school; two faculty; one service person; a representative of  
16 business; a person knowledgeable of finance; and the principal of  
17 the school who shall be an ex officio voting member;

18 (ii) Background information on proposed governing board  
19 members, except the principal member, and any assurances or  
20 certifications required by the authorizer;

21 (iii) The election of the principal by the governing board;

22 (iv) Proposed governing bylaws which at least include good

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1 governing practices and provisions for the removal of board  
2 members;

3 (v) An organization chart that clearly presents the school's  
4 organizational structure, including lines of authority and reporting  
5 between the governing board, principal, staff and any related bodies  
6 such as advisory bodies or parent and teacher councils;

7 (vi) A clear description of the roles and responsibilities for  
8 the governing board, the principal and management team and any  
9 other entities shown on the organization chart; and

10 (vii) Identification of the proposed founding governing  
11 board members other than the principal member;

12 (C) The proposed public charter school's plan of  
13 organization, including:

14 (i) The location or geographic area of the school;

15 (ii) The grades to be served each year for the full term of the  
16 charter;

17 (iii) Minimum, planned and maximum enrollment per grade  
18 per year for the term of the charter;

19 (iv) The school's proposed calendar and sample daily  
20 schedule;

21 (v) Plans and timelines for student recruitment and  
22 enrollment, including lottery procedures;

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- 1           (vi) Explanations of any partnerships or contractual  
2 relationships central to the school’s operations or mission;
- 3           (vii) The school’s proposals for providing transportation,  
4 food service and other significant operational or ancillary services;
- 5           (viii) A facilities plan, including backup or contingency  
6 plans if appropriate; and
- 7           (ix) A detailed school start-up plan, identifying tasks,  
8 timelines and responsible individuals; and
- 9           (D) The proposed public charter school’s finances,  
10 including:
- 11           (i) A description of the school’s financial plan and policies,  
12 including financial controls and audit requirements;
- 13           (ii) Start-up and three-year budgets with clearly stated  
14 assumptions;
- 15           (iii) Start-up and first-year cash-flow projections with  
16 clearly stated assumptions;
- 17           (iv) Evidence of anticipated fund-raising contributions, if  
18 claimed in the application; and
- 19           (v) A description of the insurance coverage the school  
20 proposes to obtain, including a determination as to whether the  
21 public charter school will elect to obtain insurance coverage from  
22 the Board of Risk and Insurance Management pursuant to section

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1 five-a, article twelve, chapter twenty-nine of this code;

2 (E) The proposed public charter school's student policy,  
3 including:

4 (i) The school's plans for identifying and successfully  
5 serving students with the wide range of learning needs and styles  
6 typically found in noncharter public schools of the sending area,  
7 including special education and English language learners;

8 (ii) The school's plans for compliance with all applicable  
9 federal and state laws, rules and regulations; and

10 (iii) The school's student discipline plans and policies,  
11 including those for special education students;

12 (F) The proposed public charter school's academic program,  
13 including:

14 (i) A description of the academic program the proposed  
15 charter school will use;

16 (ii) A description of the school's instructional design,  
17 including the type of learning environment, such as classroom-  
18 based or independent study, class size and structure, curriculum  
19 overview, teaching methods and research basis;

20 (iii) The school's plan for using internal and external  
21 assessments to measure and report student progress on the measures  
22 and metrics of the performance framework developed by the

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1 authorizer in accordance with section ten of this article; and

2 (iv) A description of co-curricular or extracurricular  
3 programs and how they will be funded and delivered;

4 (G) The proposed public charter school's staff policy,  
5 including:

6 (i) A staffing chart for the school's first year and a staffing  
7 plan for the term of the charter;

8 (ii) Plans for recruiting and developing school leadership  
9 and staff;

10 (iii) The school's leadership, teacher and service personnel  
11 employment policies, including performance evaluation plans and  
12 method or methods of selection, subject to subparagraph (iii),  
13 paragraph (B) of this subdivision;

14 (iv) A determination as to whether article two, chapter six-c  
15 of this code, relating to the public employees grievance procedure,  
16 applies to the charter school and its employees; and

17 (v) Opportunities and expectations for parent involvement;  
18 and

19 (H) The proposed public charter school's school closure  
20 protocol, including:

21 (i) Timely notification to parents;

22 (ii) Orderly transition of students and student records to new

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1 schools;

2 (iii) Proper disposition of school funds, property, and assets  
3 in accordance with section twelve of this article; and

4 (iv) Tasks, timelines and responsible parties, including  
5 delineating the respective duties of the school and the authorizer.

6 (7) With respect to the conversion of an existing noncharter  
7 public school to public charter school status, in addition to the other  
8 requirements of this article, the request for proposals shall require  
9 applicants to demonstrate support for the proposed conversion to a  
10 public charter school by:

11 (A) Submitting certification that sixty percent of the  
12 teachers voted to apply for conversion to a public charter school;  
13 and

14 (B) Submitting a petition signed by the parents, guardians  
15 or custodians of sixty percent of the students enrolled in the school.

16 **§18-33-8. Charter applications.**

17 (a) *Application.* -- An applicant for approval as a public  
18 charter school must submit an application that satisfies the  
19 requirements of the state board's request for proposals required by  
20 section seven of this article. An applicant may submit a proposal  
21 for a particular public charter school to no more than one authorizer  
22 at a time. The purposes of the application are to present the



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1 proposed public charter school’s academic and operational vision  
2 and plans, demonstrate the applicant’s capacities to execute the  
3 proposed vision and plans to increase student achievement and  
4 provide the authorizer a clear basis for assessing the applicant’s  
5 plans and capacities.

6 (b) *Application review process.* -- In reviewing and  
7 evaluating applications, authorizers shall employ procedures,  
8 practices, criteria and standards consistent with nationally  
9 recognized principles and standards for authorizing high-quality  
10 public charter schools.

11 (1) The application review process shall include a thorough  
12 evaluation of each application, an in-person interview with the  
13 applicant, a thirty-day comment period and a public hearing.

14 (2) In deciding whether to approve applications, authorizers  
15 shall:

16 (A) Grant charters only to applicants that have  
17 demonstrated competence in each element of the state board’s  
18 published approval criteria and are likely to open and operate a  
19 public charter school that will increase student achievement;

20 (B) Base decisions on documented evidence collected  
21 through the application review process; and

22 (C) Follow charter-granting policies and practices that are

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1 transparent, based on merit and avoid conflicts of interest or any  
2 appearance of a conflict of interest.

3 (c) *Approval; denial.* -- No later than ninety days after the  
4 filing of an application, an authorizer shall decide to approve or  
5 deny the application. The authorizer shall make and announce all  
6 charter approval or denial decisions in a meeting open to the public.

7 (1) An approval decision may include, if appropriate,  
8 reasonable conditions that the applicant must meet before a charter  
9 contract may be executed.

10 (2) If the authorizer denies an application, the authorizer  
11 shall clearly state, for public record, its reasons for denial at the  
12 time of rendering the decision to deny. An applicant may  
13 subsequently reapply to that authorizer or appeal to the state board.

14 (3) Within ten days of taking action to approve or deny an  
15 application, the authorizer shall report to the state superintendent  
16 the action it has taken. The authorizer shall provide a copy of the  
17 report to the applicant at the same time that the report is submitted  
18 to the state superintendent.

19 (4) The state superintendent shall register the charters  
20 approved by all chartering authorities in chronological order by date  
21 of approval.

22 (5) An approved application may not serve as a school's

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1 charter contract nor may it be incorporated by reference into the  
2 charter contract.

3 (6) A decision on an application shall be conveyed in  
4 writing to the applicant. A decision may grant approval or  
5 conditional approval, request resubmission or reject the application  
6 and must include written reasons for the decisions.

7 (7) Any appeal of a denial of an application shall be made  
8 to the state board within sixty days of the time the denial is received  
9 in writing by the applicant. Within sixty days, the state board only  
10 may uphold the decision or remand the issue to the authorizer with  
11 a recommendation. The state board may not reverse a decision of  
12 the authorizer. The state board shall report to the state  
13 superintendent any recommendation it has made on appeal within  
14 ten days. If the issue is remanded and the application is again  
15 denied by the authorizer, the applicant may continue to appeal  
16 within the sixty days, but the state board only may uphold the  
17 decision or remand any further appeal to the authorizer with a  
18 recommendation and may not reverse the authorizer's decision.

19 **§18-33-9. Charter contracts.**

20 (a) When an application is approved, a charter contract shall  
21 be executed in accordance with this section.

22 (b) After approval of an application and no later than ninety

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1 days after charter application approval, the authorizer and the  
2 governing board shall execute a charter contract that sets forth:

3 (1) The term of the charter contract;

4 (2) Performance provisions describing the academic and  
5 operational performance expectations and measures by which the  
6 public charter school will be judged;

7 (3) Administrative provisions articulating the administrative  
8 relationship between the authorizer and the public charter school,  
9 including each party's rights and duties;

10 (4) The process the authorizer will use to provide ongoing  
11 oversight, including a process to conduct annual site visits;

12 (5) The process the authorizer will use to notify the charter  
13 school of any deficiencies and the process by which the charter  
14 school may submit an improvement plan;

15 (6) The agreed-upon process for amending the approved  
16 charter contract;

17 (7) The process agreed to by the authorizer and the charter  
18 school that identifies how disputes will be handled and resolved;  
19 and

20 (8) Any conditions set by the authorizer and agreed to by  
21 the charter school to commence operations of the school.

22 (c) The performance provisions set forth in a charter

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1 contract under subsection (b) of this section shall include applicable  
2 federal accountability requirements and state accreditation  
3 requirements that will allow the state board to issue the public  
4 charter school a level of accreditation pursuant to subdivision (2),  
5 subsection (l), section five, article two-e of this chapter.

6 (d) The performance provisions set forth in a charter  
7 contract under subsection (b) of this section may be refined or  
8 amended by mutual agreement of the parties to the charter contract  
9 after the public charter school is operating and has collected  
10 baseline achievement data for its enrolled students.

11 (e) A charter contract shall be signed by a designated  
12 representative of the authorizer and of the public charter school's  
13 governing board.

14 (f) A public charter school may not commence operations  
15 without a charter contract executed in accordance with this section  
16 and approved in a meeting open to the public.

17 **§18-33-10. Public charter school performance framework.**

18 (a) *Performance framework.* -- The performance provisions  
19 of a charter contract shall be based on a performance framework  
20 developed by the state board that sets forth the academic and  
21 operational performance indicators that will guide the authorizer's  
22 evaluations of each public charter school.

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1 (b) *Data elements.* -- The performance framework  
2 developed under subsection (a) of this section shall include, at a  
3 minimum, indicators for:

- 4 (1) Student academic proficiency;
- 5 (2) Student achievement goals;
- 6 (3) Achievement gaps in both proficiency and growth  
7 between major student subgroups;
- 8 (4) Attendance;
- 9 (5) Recurrent enrollment from year to year;
- 10 (6) With respect to high school, postsecondary readiness;
- 11 (7) Financial performance and sustainability;
- 12 (8) Governing board performance and stewardship; and
- 13 (9) Parent and community engagement.

14 (c) *Annual performance targets.* -- Annual performance  
15 targets shall be set by a public charter school in conjunction with its  
16 authorizer and shall be designed to help each school meet  
17 applicable federal and state requirements and authorizer  
18 expectations.

19 (d) *Data disaggregation.* -- The performance framework  
20 developed under subsection (a) of this section shall require the  
21 disaggregation of all student performance data by major student  
22 subgroups.

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1 **§18-33-11. Oversight.**

2           (a) *Data collection; monitoring.* -- For each public charter  
3 school it oversees, the authorizer is responsible for collecting,  
4 analyzing and reporting all data from state assessments in  
5 accordance with the performance framework required by section ten  
6 of this article. An authorizer shall monitor the performance and  
7 legal compliance of the public charter schools it oversees, including  
8 collecting and analyzing all data to support ongoing evaluation  
9 according to the charter contract.

10           (b) *Notification of unsatisfactory performance or*  
11 *compliance.* -- In the event that a public charter school's  
12 performance or legal compliance appears unsatisfactory, the  
13 authorizer shall promptly notify in writing the public charter school  
14 of perceived problems and provide reasonable opportunity for the  
15 school to remedy the problems.

16 **§18-33-12. Charter term renewal.**

17           (a) *Initial charter term.* -- An initial charter shall be granted  
18 for a term of five operating years. The charter term commences on  
19 the public charter school's first day of operation. An approved  
20 public charter school may delay its opening for one school year in  
21 order to plan and prepare for the school's opening. If the public  
22 charter school requires an opening delay of more than one school

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1 year, the public charter school shall request an extension from its  
2 authorizer. The authorizer may grant or deny the extension  
3 depending on the particular public charter school's circumstances.

4 (b) *Charter renewal term.* -- A charter may be renewed for  
5 successive terms of five years, although an authorizer may grant a  
6 renewal for a term not to exceed ten years based on the school's  
7 performance data, demonstrated capacities and particular  
8 circumstance of each public charter school.

9 (c) *Authorizer renewal responsibilities.* -- No later than June  
10 30 of a public charter school's fourth year of operation under each  
11 five-year term of a charter contract, the authorizer shall issue a  
12 public charter school performance report. If the charter of the  
13 public charter school is expiring, the authorizer shall offer charter  
14 renewal application guidance to the school.

15 (1) The performance report required in this subsection shall  
16 summarize the public charter school's performance record to date,  
17 based on the data collected under the performance framework in  
18 section ten of this article and the charter contract, and shall provide  
19 notice of any weaknesses or concerns perceived by the authorizer  
20 concerning the school that may jeopardize its position in seeking  
21 renewal if not timely rectified. The school and the authorizer shall  
22 mutually agree to a reasonable time period for the charter school to



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1 respond to the performance report and submit any corrections for  
2 the report.

3           (2) The renewal application guidance required by this  
4 subsection shall include or refer explicitly to the criteria and  
5 standards that will guide the authorizer’s renewal decisions, which  
6 shall be based on the performance framework set forth in section  
7 ten of this article, as set forth in the charter contract and consistent  
8 with this article. The renewal application guidance shall, at a  
9 minimum, require and provide an opportunity for the public charter  
10 school to:

11           (A) Present additional evidence, beyond the data contained  
12 in the performance report, supporting its case for charter renewal;

13           (B) Describe improvements undertaken or planned for the  
14 school; and

15           (C) Detail the school’s plans for the next charter term.

16           (d) *Renewal application.* -- No later than September 30 of  
17 a public charter school’s fifth year of operation under a term of a  
18 charter contract or September 30 of a public charter school’s final  
19 authorized year of operation under a term of a charter contract, the  
20 governing board of a public charter school seeking renewal shall  
21 submit a renewal application to the authorizer pursuant to any  
22 renewal application guidance offered by the authorizer under

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1 subsection (c) of this section.

2           (e) *Renewal decision.* -- An authorizer shall rule in a public  
3 meeting and by resolution on a renewal application no later than  
4 forty-five days after the filing of the renewal application. In  
5 making charter renewal decisions, every authorizer shall:

6           (1) Ground its decisions on a thorough analysis of evidence  
7 of the school's performance over the term of the charter contract in  
8 accordance with the terms and measures established in the  
9 performance framework set forth in the charter contract;

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

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

14           (4) In instances where the authorizer declines to renew the  
15 charter, allow the school twenty days to respond in writing to the  
16 decision and public report before that decision becomes final. The  
17 school shall be allowed to provide the authorizer with such  
18 arguments and supporting information as it sees fit, and the  
19 authorizer shall consider all such timely submitted material prior to  
20 rendering it final determination. The authorizer shall render its  
21 final determination within ten days of receiving the schools written  
22 response, arguments, and supporting information.

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1 (f) *Charter revocation and nonrenewal.* --

2 (1) A decision by an authorizer to revoke or not to renew  
3 the charter of a public charter school must be made in accordance  
4 with this subsection.

5 (2) A charter may be revoked at any time or not renewed if  
6 the authorizer determines that the public charter school failed to  
7 comply with the provisions of this article or:

8 (A) Committed a material violation of any of the terms,  
9 conditions, standards or procedures required under this chapter or  
10 the charter contract;

11 (B) Failed to meet the performance expectations set forth in  
12 the charter contract;

13 (C) Failed to meet generally accepted standards of fiscal  
14 management; or

15 (D) Violated any provision of law from which the school  
16 was not exempted.

17 (3) If an authorizer revokes or does not renew a charter, the  
18 authorizer shall clearly state, in a resolution of its governing entity  
19 in a public meeting, the reasons for the revocation or nonrenewal.

20 (4) The charter school authorizer may place a charter school  
21 on probationary status to allow the implementation of a remedial  
22 action plan. The failure of a charter school to comply with the

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1 terms and conditions of a remedial action plan may result in  
2 revocation of the school's charter.

3 (5) If an authorizer revokes or does not renew a charter, the  
4 county board of the district in which the school is located shall  
5 determine whether the school converts to noncharter public school  
6 status or the school is to be closed.

7 (6) If the county board elects to close a public charter  
8 school, the board shall clearly state, in a resolution in a public  
9 meeting, the reasons for the closure.

10 (g) *Notification to state superintendent.* -- Within ten days  
11 of taking action to renew, not renew or revoke a charter under this  
12 section and within ten days of taking action to close a public charter  
13 school, the authorizer or county board, as applicable, shall report to  
14 the state superintendent the action taken and shall provide a copy of  
15 the report to the public charter school at the same time that the  
16 report is submitted to the state superintendent. The report shall  
17 include a copy of the governing entity of the authorizer's or the  
18 county board's resolution setting forth the action taken and reasons  
19 for the decision.

20 (h) *Appeal of nonrenewal or revocation.* -- Any appeal of  
21 a nonrenewal or revocation of a charter shall be made to the state  
22 board within sixty days of the authorizer stating its reasons by

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1 resolution in a public meeting the reasons for the revocation or  
2 nonrenewal. Within sixty days, the state board only may uphold the  
3 decision or remand the issue to the authorizer with a  
4 recommendation. The state board may not reverse a decision of the  
5 authorizer. The state board shall report to the state superintendent  
6 any recommendation it has made on appeal within ten days. If the  
7 issue is remanded and the decision is again to not renew or to  
8 revoke the charter, the applicant may continue to appeal within the  
9 sixty days, but the state board only may uphold the decision or  
10 remand any further appeal to the authorizer with a recommendation  
11 and may not reverse the authorizer's decision.

12 (i) *School closure and dissolution.* --

13 (1) In the event of a public charter school closure for any  
14 reason, the authorizer shall oversee and work with the closing  
15 school to ensure a smooth and orderly closure and transition for  
16 students and parents, as guided by the closure protocol required to  
17 be included in the application pursuant to section seven of this  
18 article.

19 (2) If a public charter school closes for any reason:

20 (A) The authorizer shall oversee and work with the closing  
21 public charter school to ensure timely notification to parents,  
22 orderly transition of students and student records to new schools

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1 and proper disposition of school funds, property and assets in  
2 accordance with the requirements of this chapter; and

3 (B) The assets of the public charter school shall be  
4 distributed first to satisfy outstanding payroll obligations for  
5 employees of the public charter school and then to creditors of the  
6 public charter school. Any remaining funds shall be paid to the  
7 county board. If the assets of the public charter school are  
8 insufficient to pay all parties to whom the public charter school  
9 owes compensation, the prioritization of distribution of assets may  
10 be determined by decree of a court of law.

11 **§18-33-13. Operations.**

12 (a) *Legal status.* -- Notwithstanding any provision of law to  
13 the contrary, to the extent that any provision of this article is  
14 inconsistent with any other state or local law, rule or regulation, the  
15 provisions of this article govern and are controlling.

16 (1) A public charter school is subject to all federal laws and  
17 authorities, and anything in this article that is in conflict with  
18 federal laws and authorities is null and void.

19 (2) A charter contract may include one or more schools, to  
20 the extent approved by the authorizer and consistent with applicable  
21 law. Each public charter school that is part of a charter contract  
22 must be separate and distinct from any others.

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1           (3) A single governing board may be issued one or more  
2 charter contracts. Each public charter school operating under its  
3 own contract is a discrete legal entity, separate and distinct from  
4 any others.

5           (b) *Local educational agency status.* --

6           (1) The school district in which the public charter school is  
7 located remains the local educational agency and the public charter  
8 school is a school within that local educational agency except that  
9 the public charter school is treated as a local educational agency for  
10 purposes of applying for competitive federal grants;

11          (2) The school district retains responsibility for special  
12 education and serves students in public charter schools in a manner  
13 consistent with local educational agency obligations under  
14 applicable federal, state and local law and the charter contract; and

15          (3) The county board remains accountable for the  
16 performance of the public charter school pursuant to subsection  
17 (m), section five, article two-e of this chapter.

18          (c) *Powers of public charter schools.* -- A public charter  
19 school has all the powers necessary for carrying out the terms of its  
20 charter contract, including the powers to:

21          (1) Receive and disburse funds and gifts for educational  
22 purposes;

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1           (2) Contract or cooperate with noncharter public schools for  
2 service for students with special needs, English language learner  
3 students and other specialized populations, as well as for mutually  
4 agreed administrative services;

5           (3) Secure appropriate insurance and enter into contracts  
6 and leases, free from the prevailing wage laws set forth in article  
7 five-a, chapter twenty-one of this code;

8           (4) Contract with an education service provider for  
9 education services and resources related to the management and  
10 operation of the public charter school, as long as the public charter  
11 school's governing board retains authority over the oversight and  
12 management of the public charter school;

13          (5) Incur debt in reasonable anticipation of the receipt of  
14 public or private funds, except that an authorizer is not responsible  
15 for any debt incurred by the public charter school;

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

18          (7) Solicit and accept any gifts or grants for public charter  
19 school purposes subject to applicable laws and the terms of its  
20 charter contract;

21          (8) Acquire real property for use as its facility or facilities  
22 from public or private sources; and



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1 (9) Sue and be sued in its own name.

2 (d) *General requirements.* -- A public charter school is  
3 subject to the general requirements set out in this subsection.

4 (1) A public charter school may not discriminate against  
5 any person on the basis of race, color, sex, sexual orientation,  
6 physical or mental disability, religion, age, ancestry or national  
7 origin or on any other basis that would be unlawful if done by a  
8 noncharter public school.

9 (2) A public charter school may not engage in any religious  
10 practices in its educational program, admissions or employment  
11 policies or operations.

12 (3) A public charter school may not charge tuition and may  
13 only charge such fees as may be imposed by other noncharter  
14 public schools in the state.

15 (4) The powers, obligations and responsibilities set forth in  
16 a charter contract may not be delegated or assigned by either party.

17 (e) *Applicability of other laws, rules and regulations.* -- The  
18 applicability of other laws, rules and regulations to public charter  
19 schools is as set out in this subsection.

20 (1) Public charter schools are subject to the same civil  
21 rights, health, life and safety, and financial requirements applicable  
22 to other noncharter public schools in the state, except as otherwise

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1 specifically provided in this chapter.

2           (2) Public charter schools are subject to the same student  
3 assessment and accreditation requirements applicable to other  
4 noncharter public schools in the state, but only to the extent that  
5 will allow the state board to issue the public charter school a level  
6 of accreditation pursuant to subdivision (2), subsection (1), section  
7 five of this chapter. Nothing in this article precludes a public  
8 charter school from establishing additional student assessment  
9 measures that go beyond state requirements if the school's  
10 authorizer approves the measures.

11           (3) Governing boards are subject to and must comply with  
12 the state's open meeting law pursuant to article nine-a, chapter six  
13 of this code.

14           (4) Except as provided in this article and its charter contract,  
15 a public charter school is exempt from all statutes and rules  
16 applicable to a noncharter public school or a local school district.

17           (5) Employees, governing body members and other public  
18 charter school personnel are subject to criminal history record  
19 checks and fingerprinting requirements applicable to other  
20 noncharter public schools.

21           (6) No county board shall require any employee of the local  
22 school district to be employed in a charter school or any student

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1 enrolled in the school district to attend a charter school. No county  
2 board shall harass, threaten, discipline, discharge, retaliate or in any  
3 manner discriminate against any district employee involved directly  
4 or indirectly with an application to establish a charter school as  
5 authorized under this section.

6 (7) A county board shall not discriminate against a charter  
7 school in publicizing the district's educational options through  
8 advertising, direct mail, availability of mailing lists or other  
9 informational activities.

10 (8) Public charter schools are subject to the same federal  
11 nutrition standards applicable to other noncharter public schools.

12 (f) *Teachers and other school personnel.* -- This subsection  
13 governs school personnel employment in a public charter school.

14 (1) Personnel hired by a public charter school are employed  
15 by the charter school. The charter school is ultimately responsible  
16 for processing employee paychecks, managing its employees'  
17 participation in the applicable retirement system and managing its  
18 employees' participation in insurance plans established by the  
19 Public Employees Insurance Agency: *Provided*, That nothing in this  
20 subdivision prohibits the public charter school from contracting  
21 with another person or entity to perform services relating to  
22 managing its employees' participation in the retirement system or

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1 insurance plan.

2 (2) A public charter school must comply with applicable  
3 federal laws and regulations regarding the qualification of teachers  
4 and other instructional staff.

5 (3) All classroom teachers in a public charter school are  
6 subject to the same licensing requirements applicable to classroom  
7 teachers in a noncharter public school.

8 (4) All personnel in a public charter school continue to  
9 accrue seniority in the same manner that they would accrue  
10 seniority if employed in a noncharter public school for purposes of  
11 employment in noncharter public schools.

12 (g) *Accounting requirements.* -- A public charter school  
13 shall comply with all applicable accounting and financial reporting  
14 requirements as prescribed for regular public schools, including  
15 adherence to generally accepted accounting principles. A public  
16 charter school shall annually engage an external auditor to perform  
17 an independent audit of the school's finances. The public charter  
18 school shall submit the audit to its authorizer and to the state  
19 superintendent within nine months of the end of the fiscal year for  
20 which the audit is performed.

21 **§18-33-14. Funding.**

22 (a) *Enrollment count.* -- Each charter school shall report to

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1 its county board the number of students enrolled in its school based  
2 on second month enrollment. Each county board shall report to the  
3 West Virginia Department of Education the enrollment of all public  
4 charter schools in the county based on second month enrollment.

5 (b) *Revenue provisions.* -- On or before October 1 of each  
6 year, each public charter school shall submit its budget request to  
7 the state board. The request shall not exceed the statewide per pupil  
8 total program allowance as computed under article nine-a of this  
9 chapter multiplied by the second month net enrollment of the public  
10 charter school: *Provided,* That for the funding for the first year of  
11 operation, the limit on the appropriation request shall be based on  
12 the projected second month net enrollment of the public charter  
13 school, with the funding for the public charter school and the  
14 authorizing county board to be subsequently adjusted, if necessary,  
15 in the first year of operation, based on the actual second month net  
16 enrollment. The state board shall include in its appropriation  
17 request to the Governor a request for an appropriation for public  
18 charter schools equal to the total amount requested by all charter  
19 schools. The Governor shall request an appropriation in the amount  
20 requested by the state board at the next legislative session. The  
21 state board shall distribute the funding appropriated for the public  
22 charter schools to the county boards in which each charter school

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1 is located. Each county board shall distribute the funding received  
2 to each public charter school in a timely manner.

3 (c) *Special Education Funding.* -- The following provisions  
4 govern special education funding:

5 (1) The county board shall pay directly to the public charter  
6 school any federal or state aid attributable to a student with a  
7 disability attending the public charter school in proportion to the  
8 level of services for the student with a disability that the public  
9 charter school provides directly or indirectly; and

10 (2) Public charter schools have the same access as county  
11 boards to funding for students with high acuity needs pursuant to  
12 section five, article twenty of this chapter.

13 (d) *Federal Funds.* -- Except as otherwise provided in this  
14 article, the state shall send applicable federal funds to public charter  
15 schools attended by eligible students. Public charter schools with  
16 students eligible for funds under Title I of the federal Elementary  
17 and Secondary Education Act of 1965, 20 U. S. C., section 6301, *et*  
18 *seq.*, must receive and use these funds in accordance with federal  
19 and state law. During the first year of operation, a public charter  
20 school must receive Title I funds on the basis of an estimated  
21 enrollment of eligible students, as agreed with its authorizer.

22 (e) *Gifts and Grants.* -- A public charter school may receive

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1 gifts and grants from private sources in any manner that is available  
2 to a local school district. Nothing in this article may be construed  
3 to prohibit any person or organization from providing funding or  
4 other assistance for the establishment or operation of a public  
5 charter school. The governing board of a public charter school may  
6 accept gifts, donations or grants of any kind made to the school and  
7 expend or use such gifts, donations or grants in accordance with the  
8 conditions prescribed by the donor except that a gift, donation or  
9 grant may not be accepted if subject to a condition that is contrary  
10 to any provision of law or term of the charter contract.

11 (f) *Disclosure of funding sources.* -- Each public charter  
12 school annually shall submit to the state board its sources of  
13 funding along with its budget request required to be submitted to  
14 the state board pursuant to subsection (b) of this section. The state  
15 board shall make the public charter school's funding sources  
16 available publicly.

17 **§18-33-15. Transportation.**

18 (a) A charter school may contract with a local school district  
19 or other entity for transportation services.

20 (b) A charter school or any entity providing transportation  
21 for a charter school shall comply with all transportation and safety  
22 laws and administrative regulations applicable to public schools.

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1 §18-33-16. **Facilities.**

2 (a) *Facilities; property.* -- A public charter school may  
3 acquire facilities and property in accordance with this subsection.

4 (1) A public charter school has a right of first refusal to  
5 purchase or lease at or below fair market value a closed noncharter  
6 public school facility or property or unused portions of a noncharter  
7 public school facility or property located in a school district from  
8 which it draws its students if the school district decides to sell or  
9 lease the noncharter public school facility or property. The school  
10 district may not require purchase or lease payments that exceed the  
11 fair market value of the property.

12 (2) A public charter school may negotiate and contract with  
13 a school district, the governing board of a state institution of higher  
14 education or any other public or for-profit or nonprofit private  
15 entity for the use of a school building.

16 (3) Library, community service, museum, performing arts,  
17 theater, cinema, church, community college, college and university  
18 facilities may provide space to public charter schools within their  
19 facilities under their preexisting zoning and land-use designations.

20 (4) A public charter school may purchase or lease at or  
21 below fair market value part or all of any surplus or unused state-  
22 owned facility or property located in the state. The state agency in



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1 control of the facility may not require purchase or lease payments  
2 that exceed the fair market value of the property.

3 (5) The same zoning rules that apply to other noncharter  
4 public schools apply to public charter schools.

5 (b) Nothing in this section requires the county board to seek  
6 funds from any source, including the School Building Authority, for  
7 conversion of any existing district school facility or for constructing  
8 a district school or facility for use by the public charter school.

9 (c) *Inspection; building code.* -- The West Virginia State  
10 Fire Marshal is the agency that has jurisdiction over inspection of  
11 any facility used by the public charter school and issuance of a  
12 certificate of occupancy for the facility. A facility used by a public  
13 charter school is subject to the same building codes, regulations and  
14 fees that apply to other noncharter public schools including  
15 inspections by the West Virginia Department of Education, Office  
16 of School Facilities as required by subsection (c), section sixteen,  
17 article nine-d of this chapter.

18 **§18-33-17. Miscellaneous.**

19 (a) *Transfer of credits.* -- If a student who was previously  
20 enrolled in a public charter school enrolls in another noncharter  
21 public school in this state, the school to which the student transfers  
22 shall accept credits earned by the student in courses or instructional

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1 programs at the public charter school in a uniform and consistent  
2 manner and according to the same criteria that are used to accept  
3 academic credits from other noncharter public schools.

4 (b) *Access to extracurricular and interscholastic activities.*

5 -- A public charter school is eligible for state-sponsored or school  
6 district sponsored interscholastic leagues, competitions, awards,  
7 scholarships and recognition programs for students, educators,  
8 administrators and schools to the same extent as noncharter public  
9 schools. A public charter school student is eligible to participate in  
10 extracurricular activities not offered by the student's public charter  
11 school at the noncharter public school within the attendance  
12 boundaries of which the student's custodial parent or legal guardian  
13 resides or the noncharter public school from which the student  
14 withdrew for the purpose of attending a public charter school. A  
15 public charter school student is eligible for extracurricular activities  
16 at a noncharter public school subject to eligibility standards applied  
17 to full-time students of the noncharter public school. A school  
18 district or noncharter public school may not impose additional  
19 requirements on a public charter school student to participate in  
20 extracurricular activities that are not imposed on full-time students  
21 of the noncharter public school. Public charter school students shall  
22 pay the same fees as other students to participate in extracurricular

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1 or co-curricular activities. For each public charter school student  
2 who participates in an extracurricular or co-curricular activity at a  
3 noncharter public school, the public charter school must pay a  
4 reasonable share of the noncharter public school's costs for the  
5 activity, as determined through negotiations between the schools  
6 involved.

7 (c) *Retirement.* -- All public charter school employees shall  
8 participate in the Teachers Retirement System or the Teachers'  
9 Defined Contribution Retirement System, whichever is applicable  
10 in accordance with articles seven-a, seven-b and seven-d of this  
11 chapter.

12 (d) *Insurance.* -- All public charter school employees shall  
13 participate in insurance plans established by the Public Employees  
14 Insurance Agency pursuant to article sixteen, chapter five of this  
15 code.

16 **§18-33-18. Teacher approval of converting existing noncharter**  
17 **public school to public charter school status.**

18 (a) A teacher shall be eligible to vote in accordance with the  
19 provisions of this section if the teacher is regularly employed at the  
20 school.

21 (b) A secret ballot vote at a special meeting of all teachers  
22 regularly employed at the school shall be conducted to determine

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1 the level of employee commitment to apply to convert to a public  
2 charter school.

3 (c) A panel consisting of the elected officers of the faculty  
4 senate of the school and three parent members appointed by the  
5 local school improvement council shall call the meeting required in  
6 subsection (b) of this section, conduct the votes and certify the  
7 results. The panel shall provide notice of the special meeting to all  
8 employees eligible to vote at least two weeks prior to the meeting  
9 and shall provide an absentee ballot to each employee eligible to  
10 vote who cannot attend the meeting to vote.

11 (d) At least sixty percent of the teachers who are eligible to  
12 vote in accordance with this section must vote to apply for  
13 conversion to a public charter school before the level of teacher  
14 commitment at the school is sufficient for the school to apply for  
15 conversion to a public charter school.

16 **CHAPTER 29. MISCELLANEOUS BOARDS AND**  
17 **OFFICERS.**

18 **ARTICLE 12. STATE INSURANCE.**

19 **§29-12-5a. Liability insurance for county boards of education,**  
20 **their employees and members, the county**  
21 **superintendent of schools, public charter schools**  
22 **electing to obtain coverage, and for employees and**

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1           **officers of the state Department of Corrections.**

2           (a) In accordance with the provisions of this article, the state  
3 Board of Risk and Insurance Management shall provide appropriate  
4 professional or other liability insurance for all county boards of  
5 education, teachers, supervisory and administrative staff members,  
6 service personnel, county superintendents of schools, and school  
7 board members and for all employees and officers of the state  
8 Department of Corrections: *Provided*, That the ~~board~~ Board of  
9 Risk and Insurance Management is not required to provide  
10 insurance for every property, activity or responsibility of county  
11 boards of education, teachers, supervisory and administrative staff  
12 members, service personnel, county superintendents of schools and  
13 school board members and for all employees and officers of the  
14 state Department of Corrections.

15           (b) Insurance provided by the ~~board~~ Board of Risk and  
16 Insurance Management pursuant to the provisions of subsection (a)  
17 of this section shall cover claims, demands, actions, suits or  
18 judgments by reason of alleged negligence or other acts resulting in  
19 bodily injury or property damage to any person within or without  
20 any school building or correctional institution if, at the time of the  
21 alleged injury, the teacher, supervisor, administrator, service  
22 personnel employee, county superintendent, school board member,

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1 or employee or officer of the Department of Corrections was acting  
2 in the discharge of his or her duties, within the scope of his or her  
3 office, position or employment, under the direction of the county  
4 board of education, or Commissioner of Corrections or in an official  
5 capacity as a county superintendent or as a school board member or  
6 as Commissioner of Corrections.

7 (c) Insurance coverage provided by the ~~board~~ Board of Risk  
8 and Insurance Management pursuant to subsection (a) of this  
9 section shall be in an amount to be determined by the state Board  
10 of Risk and Insurance Management, but in no event less than \$1  
11 million for each occurrence. In addition, each county board of  
12 education shall purchase, through the ~~board~~ Board of Risk and  
13 Insurance Management, excess coverage of at least \$5 million for  
14 each occurrence. The cost of this excess coverage will be paid by  
15 the respective county boards of education. Any insurance  
16 purchased under this section shall be obtained from a company  
17 licensed to do business in this state.

18 (d) The insurance policy provided by the ~~board~~ Board of  
19 Risk and Insurance Management pursuant to subsection (a) of this  
20 section shall include comprehensive coverage, personal injury  
21 coverage, malpractice coverage, corporal punishment coverage,  
22 legal liability coverage as well as a provision for the payment of the

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1 cost of attorney's fees in connection with any claim, demand, action,  
2 suit or judgment arising from such alleged negligence or other act  
3 resulting in bodily injury under the conditions specified in this  
4 section.

5 (e) The county superintendent and other school personnel  
6 shall be defended by the county board of education or an insurer in  
7 the case of suit, unless the act or omission shall not have been  
8 within the course or scope of employment or official responsibility  
9 or was motivated by malicious or criminal intent.

10 (f) The provisions of this section only apply to public  
11 charter schools authorized pursuant to article thirty-three, chapter  
12 eighteen of this code that have included in their approved charter  
13 application a determination to obtain insurance coverage from the  
14 Board of Risk and Insurance Management pursuant to this section.  
15 If a public charter school elects to obtain coverage pursuant to this  
16 section:

17 (1) Any provision in this section applicable to a county  
18 board of education also applies to a charter school governing board;

19 (2) Any provision in this section applicable to a school  
20 board member also applies to a member of a charter school  
21 governing board; and

22 (3) Any provision of this section applicable to teachers,

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- 1 supervisory and administrative staff members and service personnel
- 2 employed by a county board of education also applies to teachers,
- 3 supervisory or administrative staff members and service personnel
- 4 employed by a public charter school.