

22106049D

HOUSE BILL NO. 356**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Education
on February 7, 2022)

(Patron Prior to Substitute—Delegate Tata)

A *BILL to amend and reenact §§ 22.1-25 and 22.1-212.10 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 5 of Title 22.1 an article numbered 6.1, consisting of sections numbered 22.1-57.01 and 22.1-57.02, and by adding in Chapter 13 of Title 22.1 an article numbered 1.2:1, consisting of sections numbered 22.1-212.16:1 through 22.1-212.16:7, relating to public schools; regional charter school divisions.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-25 and 22.1-212.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 5 of Title 22.1 an article numbered 6.1, consisting of sections numbered 22.1-57.01 and 22.1-57.02, and by adding in Chapter 13 of Title 22.1 an article numbered 1.2:1, consisting of sections numbered 22.1-212.16:1 through 22.1-212.16:7, as follows:

§ 22.1-25. How school divisions made.

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

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

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

3. No change shall be made in the composition of any school division if such change conflicts with any joint resolution expressing the sense of the General Assembly with respect thereto adopted at the session next following January 1 of the year in which the composition of such school division is to be changed.

4. *The Board may establish regional charter school divisions that consist of at least two but not more than three local school divisions in any case in which (i) each such local school division is in close proximity and has an enrollment of more than 3,000 students and (ii) at least two such local school divisions have grades three through eight math and English reading Standards of Learning assessment performance in the bottom quartile of the Commonwealth. Regional charter school divisions shall exist in parallel with existing local school divisions, and the establishment of regional charter school divisions shall not be considered a consolidation or division of existing local school divisions.*

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

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

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

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

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

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

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

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

D. Consistent with the authority of the Board pursuant to Article VIII, Section 5 of the Constitution of Virginia to designate school divisions in the Commonwealth of such geographic size and school-age

60 population as will best promote the realization of the standards of quality, local school boards may
61 submit proposals for the consolidation of school divisions to the Board of Education. Prior to the
62 submission of a consolidation proposal, the submitting school board shall give notice to the public and
63 shall conduct one or more public hearings.

64 School divisions submitting proposals for consolidation shall include such information and data as
65 may be necessary to support their proposal, including (i) the criteria set forth in subsection C; (ii)
66 evidence of the cost savings to be realized by such consolidation; (iii) a plan for the transfer of title to
67 school board property to the resulting combined school board governing the consolidated division; (iv)
68 procedures and a schedule for the proposed consolidation, including completion of current division
69 superintendent and school board member terms; (v) a plan for proportional school board representation
70 of the localities comprising the new school division, including details regarding the appointment or
71 election processes currently ensuring such representation and other information as may be necessary to
72 evidence compliance with federal and state laws governing voting rights; and (vi) evidence of local
73 support for the proposed consolidation.

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

78 Article 6.1.

79 Selection of School Boards in Regional Charter School Divisions.

80 § 22.1-57.01. Application of article.

81 *The provisions of this article shall be applicable in each regional charter school division established*
82 *by the Board pursuant to subdivision A 4 of § 22.1-25.*

83 § 22.1-57.02. Appointment and term generally; vacancies.

84 *The school board of a regional charter school division shall consist of eight members to be*
85 *appointed by the State Board and up to three members to be appointed by the governing bodies of the*
86 *localities of the underlying local school divisions, one per each school division. Of the members*
87 *appointed by the governing bodies of the localities of the underlying local school divisions, one member*
88 *shall have an initial term of four years, one member shall have an initial term of three years, and one*
89 *member, if there are three such members, shall have an initial term of two years. After the initial term,*
90 *members shall serve a term of four years. Vacancies occurring other than by expiration of a term shall*
91 *be filled for the unexpired term. No member shall serve more than two consecutive terms; however, a*
92 *member appointed to serve an unexpired term is eligible to serve two consecutive four-year terms*
93 *immediately succeeding such unexpired term.*

94 § 22.1-212.10. Reconsideration and technical assistance; review by Board.

95 A. If a local school board denies a public charter school application, or revokes or fails to renew a
96 charter agreement, it shall provide to the applicant or grantee its reasons, in writing, for such decision,
97 and it shall post such reasons on its website. A public charter school applicant whose application was
98 denied, or a grantee whose charter was revoked or not renewed, shall be entitled to petition the local
99 school board for reconsideration. The petition for reconsideration shall be filed no later than 60 days
100 from the date the public charter school application is denied or the charter agreement is revoked or fails
101 to be renewed. Such reconsideration shall be decided within 60 days of the filing of the petition.

102 B. Each local school board shall establish a process for reviewing petitions of reconsideration, which
103 shall include an opportunity for public comment. The petition of reconsideration may include an
104 amended application based on the reasons given by the local school board for such decision.

105 C. Prior to seeking reconsideration, an applicant or grantee may seek technical assistance from the
106 Superintendent of Public Instruction to address the reasons for denial, revocation, or non-renewal.

107 D. Upon reconsideration, the decision of a local school board to grant or deny a public charter
108 school application or to revoke or fail to renew a charter agreement shall be final and not subject to
109 appeal. Following a local school board decision to deny a public charter school application or to revoke
110 or fail to renew a charter agreement, the local school board shall submit documentation to the Board as
111 to the rationale for the local school board's denial of the public charter school application or revocation
112 of or failure to renew the charter agreement.

113 E. ~~The~~ Except as provided in Article 1.2:1 (§ 22.1-212.16:1 et seq.), the Board has no authority to
114 grant or deny a public charter school application or to revoke or fail to renew a charter agreement but
115 may communicate any Board finding relating to the rationale for the local school board's denial of the
116 public charter school application or revocation of or failure to renew the charter agreement based on the
117 documentation submitted pursuant to subsection D in any school division in which at least half of the
118 schools receive funding pursuant to Title I, Part A of the Elementary and Secondary Education Act of
119 1965, P.L. 89-10, as amended.

120 F. Nothing in this section shall prohibit an applicant whose application has been denied or a grantee
121 whose charter has been revoked or not renewed from submitting a new application, pursuant to

§ 22.1-212.9.

Article 1.2:1.

Regional Charter School Divisions.

§ 22.1-212.16:1. Definitions.

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

"Public charter school" has the same meaning as provided in § 22.1-212.5.

"Regional charter school division" means a school division established by the Board of Education pursuant to subsection E of § 22.1-25.

§ 22.1-212.16:2. Regional charter school divisions; local school board; schools.

A. For any regional charter school division established by the Board, a school board shall be appointed in accordance with Article 6.1 (§ 22.1-57.01 et seq.) of Chapter 5. Such school board shall have the following powers and duties:

1. Soliciting and evaluating charter applications;
2. Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices and denying weak or inadequate charter applications;
3. Negotiating or executing sound charter contracts with each approved public charter school;
4. Monitoring, in accordance with charter contract terms, the performance and legal compliance of public charter schools; and
5. Determining whether each charter contract merits renewal, nonrenewal, or revocation.

B. Regional charter school divisions shall consist only of public charter schools established pursuant to this article.

§ 22.1-212.16:3. Applicability of other laws, regulations, policies, and procedures.

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

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

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

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

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

F. No public charter school shall discriminate against any student on the basis of limited proficiency in English, and each public charter school shall provide students who have limited proficiency in English with appropriate services designed to teach such students English and the general curriculum, consistent with federal civil rights laws.

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

H. Public charter schools are subject to the requirements of the Standards of Quality, including the Standards of Learning and the Standards of Accreditation, with the exception of the provisions of § 22.1-253.13:1; subsection A, subsections C through M, and subsection O of § 22.1-253.13:2; subsections A through E and subsection G of § 22.1-253.13:3; subsections D, E, and F of § 22.1-253.13:4; §§ 22.1-253.13:5 and 22.1-253.13:6; subsections C, D, and E of § 22.1-253.13:7; and § 22.1-253.13:8.

I. For the purpose of allowing flexibility to innovate in areas such as scheduling, personnel, funding, and educational programs to improve student outcomes and academic achievement, public charter schools are not subject to, and are exempt from, all other state statutes and regulations applicable to local school divisions and school boards. Except as provided otherwise by this article or a charter contract, charter schools are exempt from all local school division policies.

§ 22.1-212.16:4. Charter application and review.

A. Any person, group, or organization, including any institution of higher education, may submit an application to the Board of Education for the formation of a public charter school located in a regional charter school division. Such application shall meet the requirements of § 22.1-212.8.

B. Such applications shall be received and reviewed by the Board. The Board shall establish procedures for receiving, reviewing, and commenting upon applications. The Board shall post such procedures on its website and make a copy of such procedures available to all interested parties upon request. If the Board finds the public charter school application is incomplete, the board shall request

183 the necessary information from the charter applicant. The Board shall recommend approval or denial of
184 the application to the school board of the relevant regional school division. Such recommendation is not
185 binding on the school board. If the Board has not established a regional charter school division in the
186 location in which the public charter school will be located, the Board will hold a public hearing
187 regarding the establishment of a regional charter school division in such location, provided that the
188 conditions for the establishment of such school division set forth in subdivision A 4 of § 22.1-25 are
189 met.

190 C. The school board shall establish procedures for receiving, reviewing, and commenting upon
191 applications. The school board shall post such procedures on its website and make a copy of such
192 procedures available to all interested parties upon request.

193 D. To provide appropriate opportunity for input from parents, teachers, citizens, and other interested
194 parties and to obtain information to assist the school board in its decisions to grant or deny a public
195 charter school application, the school board shall establish a procedure for public notice and to receive
196 comment on public charter school applications. The school board shall give at least 14 days' notice of
197 its intent to receive public comment on an application.

198 E. If the school board denies a public charter school application or revokes or fails to renew a
199 charter agreement, it shall provide to the applicant or grantee its reasons, in writing, for such decision,
200 and it shall post such reasons on its website. A public charter school applicant whose application was
201 denied, or a grantee whose charter was revoked or not renewed, shall be entitled to petition the Board
202 for reconsideration. The petition for reconsideration shall be filed no later than 60 days from the date
203 the public charter school application is denied, revoked, or not renewed. Such reconsideration shall be
204 decided within 60 days of the filing of the petition.

205 E. Prior to seeking reconsideration, an applicant or grantee may seek technical assistance from the
206 Superintendent of Public Instruction to address the reasons for denial, revocation, or nonrenewal.

207 F. Upon reconsideration, the decision of the school board to grant or deny a public charter school
208 application or to revoke or fail to renew a charter agreement shall be final and not subject to appeal.

209 G. The Board shall promulgate regulations establishing requirements for (i) charter applicants and
210 governing board members including an appropriate background check and an oath of office; ethical and
211 conflict of interest standards; and standards and procedures for removal for cause and (ii) charter
212 contracts including provisions governing wind-up or closure of schools; requiring return of all net
213 assets of a closed school to be returned to the school board of the regional charter school division; and
214 authorizing the school board to remove all charter governing board members for convenience and to
215 wind up public charter school operations.

216 H. The school board of a regional charter school division shall not be legally responsible for the
217 debts or liabilities of a charter school operating within the regional charter school division.

218 **§ 22.1-212.16:5. Public charter school term; renewals and revocations.**

219 A. A charter may be approved or renewed for a period not to exceed five school years. A renewal
220 application shall first be submitted to the Board. The Board shall recommend approval or denial of the
221 renewal application to the school board of the relevant regional charter school division. The Board's
222 recommendation is not binding on the school board.

223 B. A public charter school renewal application submitted to the Board and the school board shall
224 contain:

225 1. A report on the progress of the public charter school in achieving the goals, objectives, and
226 program and performance standards for students and such other conditions and terms as the Board may
227 require upon granting initial approval of the charter application; and

228 2. A financial statement, on forms prescribed by the school board, that discloses the costs of
229 administration, instruction, and other spending categories for the public charter school and that has
230 been concisely and clearly written to enable the school board and the public to compare such costs to
231 those of other schools or comparable organizations.

232 C. The school board may revoke a charter if the public charter school:

233 1. Violates the conditions, standards, or procedures established in the public charter school
234 application;

235 2. Fails to meet or make reasonable progress toward achievement of the content standards or
236 student performance standards identified in the charter application;

237 3. Fails to meet generally accepted standards of fiscal management; or

238 4. Violates any provision of law from which the public charter school was not specifically exempted.

239 D. Nothing in this section shall be construed to restrict the authority of the school board to decline
240 to renew a charter agreement.

241 **§ 22.1-212.16:6. Contracts for public charter schools.**

242 A. Within 90 days of approval of a charter application, the school board and the management
243 committee of the approved public charter school shall execute a charter contract that clearly sets forth
244 (i) the academic and operational performance expectations and measures by which the public charter

school will be judged and (ii) the administrative relationship between the school board and public charter school, including each party's rights and duties. Such 90-day period may be extended by a period not to exceed 30 days by mutual agreement of the parties. Such performance expectations and measures shall include applicable federal and state accountability requirements and may be refined or amended by mutual agreement after the public charter school has collected baseline achievement data for its enrolled students.

B. The academic and operational performance expectations and measures in the charter contract shall be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures, and metrics that will guide the school board's evaluations of each public charter school. The performance framework shall include indicators, measures, and metrics for:

1. Student academic proficiency;
2. Student academic growth;
3. Achievement gaps in both proficiency and growth between the major student subgroups based on gender, race, poverty status, special education status, English language learner status, and gifted status;
4. Attendance;
5. Recurrent annual enrollment;
6. Postsecondary education readiness of high school students;
7. Financial performance and sustainability; and
8. The performance and stewardship of the management committee, including compliance with all applicable laws, regulations, and terms of the charter contract.

C. The performance framework shall allow the inclusion of additional rigorous, valid, and reliable indicators proposed by a public charter school to augment external evaluations of its performance, provided that the school board approves the quality and rigor of such indicators and such indicators are consistent with the purposes of this article.

D. The performance framework shall require the disaggregation of all student performance data by major student subgroups based on gender, race, poverty status, special education status, English language learner status, and gifted status.

E. Annual performance targets shall be set by each public charter school and the school board and shall be designed to help each school meet applicable federal, state, and school board expectations.

F. The charter contract shall be signed by the chairman of the school board and the president or chairman of the public charter school's management committee. Within 10 days of executing a charter contract, the school board shall submit to the Board written notification of the charter contract execution, including a copy of the executed charter contract and any attachments.

G. No public charter school shall commence operations without a charter contract executed in accordance with this section and approved in an open meeting of the school board.

H. If the charter application proposes a program to increase the educational opportunities for at-risk students, including those proposals for residential charter schools for at-risk students, the Board shall approve an Individual School Accreditation Plan for the evaluation of the performance of the school as authorized by the Standards of Accreditation pursuant to 8VAC20-131-420 D of the Virginia Administrative Code.

I. Any material revision of the terms of the contract may be made only with the approval of the school board and the management committee of the public charter school.

§ 22.1-212.16:7. Funding.

A. For any public charter school located in a regional charter school division, any student who enrolls shall have the state share of Standards of Quality per pupil funding of the local school division in which the student resides transferred to such school. The total per pupil funding transferred shall consist of the per pupil amounts on the basis of March 31 average daily membership and the per pupil share of state sales tax funding in basic aid. The Department of Education shall pay such amount directly to the public charter school semimonthly. Such state share of per pupil funding shall be based on the Standards of Quality per pupil funding and per pupil share of state sales tax funding enacted in the current appropriation act.

The Department of Education shall transfer to the public charter school all federal funds described in § 22.1-88 directly associated with any pupil served by the school, including funds for the individualized education program of any special education student enrolled in the public charter school.

B. The management committee of a public charter school is authorized to accept gifts, donations, or grants of any kind made to the public charter school and to spend such funds in accordance with the conditions prescribed by the donor. However, no gift, donation, or grant shall be accepted by the management committee of a public charter school if the conditions for such funds are contrary to law or the terms of the agreement between the school board and the public charter school.

C. Contingent upon an appropriation, a public charter school located in a regional charter school division may receive state funding to replace, in whole or in part, the local share of the Standards of

306 *Quality per pupil funding of the underlying school division in which the public charter school is*
307 *physically located. For the purposes of federal funding, each charter school shall serve as its own local*
308 *education agency.*

309 **2. That the Board of Education shall use the 2018-2019 Standards of Learning performance data**
310 **to carry out the provisions of this bill until July 1, 2023, and, effective July 1, 2023, the Board of**
311 **Education shall re-benchmark eligibility to become a regional charter school division based on the**
312 **two most recent years of Standards of Learning performance data.**