

## **I – Foundation Funding Increase to Reduce Charter School Funding Gap**

**Note:** This proposed amendment increases the percentage of funding from the total basic foundation allowance that goes to charter schools in order to partially address the overall funding gap between charter schools and non-charter public schools that arises from property taxes and other local resources that inure to the benefit of non-charter public schools and that are not made available directly to charter schools.

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

(a) The state board shall promulgate a rule pursuant to the provisions of §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that ~~99~~ **130** percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations set forth in §18-9A-7 of this code regarding the allowance for student transportation and in §18-9A-9(1) of this code regarding the allowance for current expense for the purpose of making appropriate adjustments to those allowances to account for student transportation and current expense related funding a school district loses in situations where it pays money to a public charter school pursuant to this subsection without a corresponding decrease in the county's transportation and current expense related expenditures, **but only if the charter school does not provide any transportation options to its students;**

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

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

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

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

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

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

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

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

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

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

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

(f) All state board rules required to be promulgated by this article shall be promulgated on or before July 1, ~~2025~~2024. The state board may file emergency rules if necessary to meet the July 1, ~~2025~~2024, deadline.

## **II – Amendment to Fund Charter Stimulus Fund**

**Note:** This proposed amendment makes corrections to the charter school stimulus fund in order to ensure the availability of stimulus funds to eligible charter schools and to preclude the establishment of undue restrictions on the use of such funding.

### **§18-5G-17. Charter Schools Stimulus Fund.**

(a) There is hereby created in the State Treasury a special revenue fund designated and known as the Charter Schools Stimulus Fund. The fund is established for the purpose of providing financial support to charter school applicants, **pilot charter schools**, and charter schools that may not otherwise have the resources for start-up costs, **which costs may include but are not limited to such as** costs associated with renovating or remodeling existing buildings and structures and costs for the purchase of school buses. The fund consists of money appropriated by the Legislature, **funding from the West Virginia Department of Education**, grants, gifts, devises, and donations from any public or private source. All interest and other returns derived from the deposit and investment of money in the Charter Schools Stimulus Fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided in this section. The West Virginia Professional Charter School Board shall administer the fund.

(b) On or before June 1, ~~2025~~2023, the state board shall promulgate legislative rules pursuant to §29A-3B-1 *et seq.* of this code to implement the provisions of this section **relating to the application and award process, which process shall be conducted on an annual basis and completed prior to July 1<sup>st</sup> each year, and which rules shall not impose additional restrictions on any recipient charter school with respect to the use of such startup funds. Any rules previously promulgated by the state board in relation to the Charter School Stimulus Fund shall be void.** If necessary to meet the June 1, ~~2025~~2023, deadline, the state board shall promulgate an emergency rule. The rules shall include application requirements, requirements for the West Virginia Professional Charter School Board to notify potential applicants, and a requirement for the applicant to attest to or demonstrate that it **either:**

(1) **Is a pilot charter school as defined in §18-5G-1(f), or**

(2) Would not otherwise have the financial capacity without money from the Charter Schools Stimulus Fund to:

(A) Successfully apply to an authorizer; or

(B) Start a public charter school; and

(2C) Is not working with or financed by any organization that has started or financed other charter schools to the degree that facilitating and starting charter schools is a significant portion of the organization's purpose.

(c) ~~Subject to the availability of funding, the~~ The West Virginia Professional Charter School Board shall distribute money from the Charter Schools Stimulus Fund to qualifying charter school applicants and charter schools in the following manner:

(1) Each qualifying charter school applicant or charter school shall be awarded an initial grant of up to \$300,000 during or before the first two years of the charter school's operation **or at any time for pilot charter schools**. If an applicant for a charter school receives an initial grant pursuant to this paragraph and fails to begin operating a charter school within the next 30 months, the applicant shall reimburse the West Virginia Professional Charter School Board for the initial grant plus interest calculated at a prorated rate of 10 percent a year: *Provided*, That the West Virginia Professional Charter School Board may lengthen this 30-month time period in extenuating circumstances; and

(2) Applicants for charter schools and charter schools that received initial grants pursuant to subdivision (1) of this subsection may apply to the West Virginia Professional Charter School Board for an additional grant of up to \$100,000, **which may be disbursed to the charter school in the school year following the year of the initial grant**. If an applicant for a charter school receives an additional grant pursuant to this paragraph and fails to begin operating a charter school within the next 30 months, the applicant shall reimburse the West Virginia Professional Charter School Board for the additional grant plus interest calculated at a prorated rate of 10 percent a year: *Provided*, That the West Virginia Professional Charter School Board may lengthen this 30-month time period in extenuating circumstances. A reimbursement required by this subdivision is in addition to any reimbursement required by subdivision (1) of this subsection.

**(d) The Charter School Stimulus Fund may be funded annually through the general appropriation process in an amount not less than the amount required to fund all eligible charter schools, as defined herein. In the event that either no such appropriation is made or an insufficient appropriation is made to fund all eligible charter schools resulting in a fund deficiency, the state board shall direct funding to the Charter Stimulus Fund out of the general operating budget of the West Virginia Department of Education. The West Virginia Professional Charter School Board shall notify the State Superintendent of Schools of the amount of any anticipated deficiency prior to July 1 of each year by issuing an invoice to the West Virginia Department of Education in the amount of any deficiency, which invoice shall be paid in full not later than forty-five (45) days.**

### **III – Charter Schools Facilities Funding**

**Note:** This proposed statute amends one code section and proposes a new code section in order to: (i) provide funding to public charter schools for facilities, (ii) provide guidance with regard to regulations relating to any funds appropriated to charter schools for facilities, and (iii) provide guidance with respect to charter school exemptions from WVDE trainings and the conditions under which WVDE trainings can be required by a charter school authorizer.

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

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

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

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

(3) Are not home school-based;

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

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

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

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

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

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

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

(2) Has no power to levy taxes;

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

(4) Provides a program of public education that:

(A) Includes one or more of the following: Prekindergarten and any grade or grades from kindergarten to grade 12 including any associated post-secondary embedded credit, dual credit, advanced placement, internship, and industry or workforce credential programs that the public charter school chooses to incorporate into its programs. If a public charter school chooses to incorporate post-secondary embedded credit, dual credit, and industry and workforce credential

programs into its educational program, institutions of higher education may not impose any requirements on the public charter school that are not required of noncharter public schools;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) A criminal history check pursuant to §18A-3-10 of this code for any staff person that would be required if the person was employed in a noncharter public school, unless a criminal history check has already been completed for that staff person pursuant to that section. Governing board members and other public charter school personnel are subject to criminal history record checks

and fingerprinting requirements applicable to noncharter public schools in this state. Contractors and service providers or their employees are prohibited from making direct, unaccompanied contact with students and from access to school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers or employees have not previously been convicted of a qualifying offense pursuant to §18-5-15c of this code: *Provided*, That nothing in this subdivision, including the reference to §18A-3-10 of this code, requires public charter school employees to be certified or licensed as a condition of employment in a public charter school. A public charter school may, but is not required to, establish certification or licensure as a condition of employment by the school;

(12) The same zoning rules for its facilities that apply to ~~other noncharter public schools~~ in this state **and to the extent that such rules differ for noncharter public schools and other schools such as private schools then the less restrictive rules shall apply;**

(13) The same building codes, regulations and fees for its facilities that apply to ~~noncharter public schools~~ in this state, including any inspections required for ~~noncharter public schools~~ under this chapter and the West Virginia State Fire Marshal for inspection and issuance of a certificate of occupancy for any facility used by the public charter school, **and to the extent that such codes, regulations, and fees differ for noncharter public schools and other schools such as private schools then the less restrictive rules shall apply;** and

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

**(d) Any training by the state board or any department thereof other than the Professional Charter School Board in relation to any matter whatsoever relating to or applicable to any charter school shall be optional for the charter school in the absence of an identified deficiency with respect to subject matter of the training by the charter school's authorizer, in which case such trainings may be made mandatory by the authorizer for a period of not more than two years. Any training by the state board or any department thereof other than the Professional Charter School Board in relation to any matter whatsoever relating to or applicable to any charter school shall be made available either on-site at the charter school or via both synchronous online and asynchronous online delivery methods and Charter schools and charter school authorizers shall be given advance notice of not less than thirty (30) days prior to any such training.**

#### **§18-5G-18. Charter School Facilities Funding.**

**(a) The state board shall promulgate a rule pursuant to the provisions of §29A-3B-1 et seq. of this code setting forth requirements for public charter school facilities funding. The rule shall include a requirement that \$2,500 per pupil be directed to each charter school from the School Building Authority general budget and directed to the public charter school facilities fund, which shall be administered by the West Virginia Public Charter School Board. The funds shall be provided by the School Building Authority in a timely manner to permit disbursements by the Professional Charter School Board to each charter school throughout the academic year based on the following schedule:**



- (1) \$1,000 per pupil shall be disbursed on or about July 1 at the beginning of the applicable academic year;
  - (2) \$500 per pupil shall be disbursed on or about October 1 of the applicable academic year;
  - (3) \$500 per pupil shall be disbursed on or about January 1 of the applicable academic year;
  - (4) \$500 per pupil shall be disbursed on or about April 1 of the applicable academic year;
- (b) Each public charter school shall use these funds for facilities expenses, broadly defined, which shall include, but is not necessarily limited to:
- (1) The rental, purchase or financing of any academic facilities such as classrooms, playgrounds or athletic facilities, administrative spaces, transportation services space, or the storage of any property used in the advancement of the charter school's purpose; or
  - (2) Salaries and benefits or contracted services for facilities support personnel, broadly defined, which may include facilities personnel, custodial services, IT personnel, and transportation services;
  - (3) Utilities and maintenance for any academic or support facility;
- (c) In order to ensure funds are used for the purpose as stated hereunder, each authorizer of a charter school shall require each charter school it authorizes as part of its charter contract to maintain records demonstrating that its total annual facilities expenses equaled or exceeded the per pupil charter school facilities funding authorized and issued hereunder for the lesser of:
- (i) five years from the end of the fiscal year in which the annual facilities expenses were funded hereunder; or
  - (ii) until such time as the external auditor of the public charter school, which is required pursuant to §18-5G-3(c)(10), issues an opinion either separately or in conjunction with the annual financial statement audit confirming that the total amount of facilities expenses for the charter school in the year under audit met or exceeded the per pupil charter school facilities funding authorized and issued to the charter school hereunder;
- (d) The amount of the per pupil funding described herein shall be adjusted upward annually as of July 1 of each year to account for annual inflation, if any;

#### **IV – State Education Agency and Training**

##### **§18-5G-19. Charter School State Education Agency and Trainings by State Board**

The State Education Agency for public charter schools shall be the Professional Charter School Board beginning as of July 1, 2026 and the state education agency for non-charter public schools shall remain the West Virginia Department of Education. It is the intention of the legislature that funding in general from Federal sources and oversight of the same shall be administered by the Professional Charter School Board. The state board, any division thereof, and the state auditors office shall cooperate in good faith to transition authority over federal funds for charter schools to the West Virginia Professional Charter School Board in a manner that does not prejudice federal funding.

**§29A-3B-2. Rules to be promulgated in accordance with this article.**

In addition to other rule-making requirements imposed by law and except to the extent specifically exempted by the provisions of this chapter or other applicable law, every rule and regulation (including any amendment of or rule to repeal any other rule) shall be promulgated by the board in accordance with this article and shall be and remain effective only to the extent that it has been or is promulgated in accordance with this article. **The process for the adoption of any rule or regulation respecting the rights of public charter schools shall be administered by the board in coordination with the West Virginia Professional Charter School Board and its board chair and not the state superintendent or the West Virginia Department of Education.**