

HOUSE BILL NO. 344

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education

on February 9, 2022)

(Patron Prior to Substitute--Delegate Davis)

A BILL to amend the Code of Virginia by adding in Chapter 13 of Title 22.1 an article numbered 1.6, consisting of sections numbered 22.1-212.33 through 22.1-212.46, relating to division innovation schools; establishment.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 13 of Title 22.1 an article numbered 1.6, consisting of sections numbered 22.1-212.33 through 22.1-212.46, as follows:

Article 1.6.

Division Innovation Schools.

§ 22.1-212.33. Objectives; definitions.

A. In order to (i) increase student and educator exposure to the skills and workplaces of the future to better connect academic preparation to real-world realities, (ii) provide access to state-of-the-art teaching tools, laboratories, materials, and faculty, (iii) ensure that the latest evidence and insights from research and practice are shaping pedagogy and the approach to education, (iv) offer hands-on learning and work opportunities that make learning come alive through application, (v) align learning and career pathways toward the skills and jobs most in demand in the region, (vi) train prekindergarten through grade 12 teachers and staff with best practices and evidence to ensure that they benefit from the latest innovations in teaching and learning, and (vii) ensure that every student is prepared for life, division innovation schools may be established in the Commonwealth as provided in this article.

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

25 "At-risk pupil" means a student having a physical, emotional, intellectual, socioeconomic, or
26 cultural risk factor, as defined in Board criteria, that research indicates may negatively influence
27 educational success.

28 "Division innovation school" means a public, nonreligious, or non-home-based alternative school
29 located within a local school division. A division innovation school may be created as a new public school
30 or through the conversion of all or part of an existing public school; however, no division innovation
31 school shall be established through the conversion of a private school or a nonpublic home-based
32 educational program. A division innovation school for at-risk pupils may be established as a residential
33 school.

34 **§ 22.1-212.34. Division Innovation School Fund established.**

35 A. There is hereby created in the state treasury a special nonreverting fund to be known as the
36 Division Innovation School Fund, hereafter referred to as "the Fund." The Fund shall be established on
37 the books of the Comptroller. Any gifts, grants, bequests, or donations from public or private sources shall
38 be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain
39 in the Fund and be credited to the Fund. Any moneys remaining in the Fund, including interest thereon,
40 at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in
41 the Fund shall be used solely for the purpose of awarding grants to establish or support innovative projects
42 or curriculum in division innovation schools in the Commonwealth. Expenditures and disbursements from
43 the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request
44 signed by the chairman of the Division Innovation School Fund Board established pursuant to subsection
45 B.

46 B. The Board shall establish and appoint members, with staggered terms, to the Division
47 Innovation School Fund Board (the Fund Board). The Fund Board shall consist of stakeholders including
48 parents, business representatives, former presidents of institutions of higher education, principals,
49 superintendents, national experts in school design, and such other members as the Board deems
50 appropriate.

51 C. The Fund Board shall establish criteria for making distributions from the Fund on a competitive
52 basis to division innovation schools that request moneys from the Fund and may issue such guidelines
53 governing the Fund as it deems necessary and appropriate, provided that the Fund Board prioritizes
54 applicants that serve a high percentage of at-risk pupils.

55 D. The Fund Board shall employ a Division Innovation School Administrator who shall assist the
56 Fund Board in administering the Fund, reviewing grant applications, and performing such other duties as
57 may be assigned.

58 **§ 22.1-212.35. Establishment and operation of division innovation schools; requirements.**

59 A. Enrollment in a division innovation school shall be open to any child who is deemed to reside
60 within the relevant school division, as set forth in § 22.1-3, through a lottery process on a space-available
61 basis, except that in the case of the conversion of all or part of an existing public school, students who
62 attend the school or reside in the attendance area for the school and the siblings of such students shall be
63 given the opportunity to enroll in advance of the lottery process. A waiting list shall be established if
64 adequate space is not available to accommodate all students whose parents have requested to be entered
65 in the lottery process. Such waiting list shall also be prioritized through a lottery process and parents shall
66 be informed of their student's position on the list.

67 B. A division innovation school shall be administered and managed by a governing board
68 consisting of at least seven but no more than 11 members and composed of a teacher in the school, an
69 administrator in the school, a parent of a student enrolled in the school, community sponsors, management
70 team members, and such other members as may be set out in the division innovation school contract.

71 C. Pursuant to the school's contract, the division innovation school shall be responsible for its own
72 operations, including such budget preparation, contracts for services, and personnel matters as are
73 specified in the contract. A division innovation school may negotiate and contract with a school division,
74 the governing board of a public institution of higher education, or any third party for the use of a school
75 building and grounds, the operation and maintenance thereof, and the provision of any service, activity,
76 or undertaking that the division innovation school is required to perform in order to carry out the
77 educational program described in its contract.

78 D. As negotiated by contract, the local school board may allow a division innovation school to use
79 vacant or unused properties or real estate owned by the school board. In no event shall a division
80 innovation school be required to pay rent for space that is deemed available, as negotiated by contract, in
81 school division facilities. All other costs for the operation and maintenance of the facilities used by the
82 division innovation school shall be subject to negotiation between the division innovation school and the
83 school division.

84 E. No division innovation school shall charge tuition.

85 **§ 22.1-212.36. Applicability of other laws, regulations, policies, and procedures.**

86 A. Division innovation schools are subject to all federal laws and authorities as set forth in this
87 article and the contract with the local school board.

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

90 C. Except as otherwise provided in subsection D and pursuant to the school's contract, division
91 innovation schools are subject to the student assessment and accountability requirements applicable to
92 other public schools in the Commonwealth and shall be counted in the determination of the relevant school
93 division's accreditation rating, but nothing in this article precludes a division innovation school from
94 establishing additional student assessment measures that go beyond state requirements if the school's
95 authorizer approves such measures.

96 D. Pursuant to the school's contract, the division innovation school may (i) operate free from
97 specified school division policies and state regulations and (ii) be granted flexibility in school scheduling,
98 including any such flexibility available to public schools pursuant to § 22.1-79.1 or any other state statute
99 or regulation, and as a public school, shall be subject to the requirements of the Standards of Quality,
100 including the Standards of Learning and the Standards of Accreditation, with the exception of the
101 provisions of § 22.1-253.13:1; subsection A, subsections C through M, and subsection O of § 22.1-
102 253.13:2; subsections A through E and subsection G of § 22.1-253.13:3; subsections D, E, and F of §
103 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 §
104 22.1-253.13:8.

105 E. Governing boards of division innovation schools are subject to and shall comply with the
106 Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

107 F. No division innovation school shall discriminate against any individual on the basis of disability,
108 race, creed, color, sex, sexual orientation, gender identity, national origin, religion, ancestry, or need for
109 special education services or any other unlawful basis, and each division innovation school shall be subject
110 to any court-ordered desegregation plan in effect for the school division.

111 G. No division innovation school shall discriminate against any student on the basis of limited
112 proficiency in English, and each division innovation school shall provide students who have limited
113 proficiency in English with appropriate services designed to teach such students English and the general
114 curriculum, consistent with federal civil rights laws.

115 H. No division innovation school shall engage in any sectarian practices in its educational program,
116 admissions or employment policies, or operations.

117 **§ 22.1-212.37. Contracts for division innovation schools.**

118 A. Within 90 days of approval of an application, the local school board and the governing board
119 of the approved division innovation school shall execute a contract that clearly sets forth (i) the academic
120 and operational performance expectations and measures by which the division innovation school will be
121 judged and (ii) the administrative relationship between the local school board and division innovation
122 school, including each party's rights and duties. Such 90-day period may be extended by a period not to
123 exceed 30 days by mutual agreement of the parties. Such performance expectations and measures shall
124 include applicable federal and state accountability requirements and may be refined or amended by mutual
125 agreement after the division innovation school has collected baseline achievement data for its enrolled
126 students.

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

131 1. Student academic proficiency;

- 132 2. Student academic growth;
- 133 3. Achievement gaps in both proficiency and growth between the major student subgroups based
- 134 on gender, race, poverty status, special education status, English language learner status, and gifted status;
- 135 4. Attendance;
- 136 5. Recurrent annual enrollment;
- 137 6. Postsecondary education readiness of high school students;
- 138 7. Financial performance and sustainability; and
- 139 8. The performance and stewardship of the governing board, including compliance with all
- 140 applicable laws, regulations, and terms of the contract.
- 141 C. The performance framework shall allow the inclusion of additional rigorous, valid, and reliable
- 142 indicators proposed by a division innovation school to augment external evaluations of its performance,
- 143 provided that the local school board approves the quality and rigor of such indicators and such indicators
- 144 are consistent with the purposes of this article.
- 145 D. The performance framework shall require the disaggregation of all student performance data
- 146 by major student subgroups based on gender, race, poverty status, special education status, English
- 147 language learner status, and gifted status.
- 148 E. Annual performance targets shall be set by each division innovation school and the local school
- 149 board and shall be designed to help each school meet applicable federal, state, and local school board
- 150 expectations.
- 151 F. The contract shall be signed by the chairman of the local school board and the president or
- 152 chairman of the division innovation school's governing board. Within 10 days of executing a contract, the
- 153 local school board shall submit to the Board written notification of the contract execution, including a
- 154 copy of the executed contract and any attachments.
- 155 G. No division innovation school shall commence operations without a contract executed in
- 156 accordance with this section and approved in an open meeting of the local school board.
- 157 H. If the application proposes a program to increase the educational opportunities for at-risk
- 158 students, including those proposals for residential division innovation schools for at-risk students, the local

159 school board or relevant school boards, as the case may be, on behalf of the division innovation school,
160 shall also request that the Board approve an Individual School Accreditation Plan for the evaluation of the
161 performance of the school as authorized by the Standards of Accreditation pursuant to 8VAC20-131-420
162 D of the Virginia Administrative Code.

163 I. Any material revision of the terms of the contract may be made only with the approval of the
164 local school board or relevant school boards and the governing board of the division innovation school.

165 **§ 22.1-212.38. Application.**

166 A. Any management team consisting of at least three members and including at least one
167 experienced school administrator, at least one experienced teacher, and any community member within
168 the local school division may, either alone or in partnership with institutions of higher education or
169 businesses, submit an application to the local school board for the formation of a division innovation
170 school.

171 B. The division innovation school application shall be a proposed contract and shall include:

172 1. An executive summary.

173 2. A mission statement of the division innovation school that is consistent with the principles of
174 the Standards of Quality, including identification of the targeted academic program of study.

175 3. The location or geographic area proposed for the division innovation school.

176 4. The grades to be served each year for the full term of the contract.

177 5. Minimum, planned, and maximum enrollment per grade level per year for the term of the
178 contract.

179 6. Evidence of need and community support for the proposed division innovation school.

180 7. Background information on the proposed founding governing board members and, if identified,
181 the proposed division innovation school management and leadership team.

182 8. The division innovation school's proposed calendar and a sample daily schedule.

183 9. A description of the academic program that is aligned with the Standards of Learning.

184 10. A description of (i) the division innovation school's instructional design, including the type of
185 learning environment, such as classroom-based or independent study, class size and structure, curriculum

186 overview, and teaching methods, and (ii) how such instructional design is unique and distinct from all
187 others presently being offered in all other schools at the same grade level in the local school division.

188 11. The division innovation school's plans for identifying and successfully serving students with
189 disabilities, students who are English language learners, students who lag behind academically, and gifted
190 students, including compliance with applicable laws and regulations.

191 12. A description of cocurricular or extracurricular programs and how such programs will be
192 funded and delivered.

193 13. Plans and timelines for student recruitment and enrollment, including lottery procedures.

194 14. The division innovation school's student discipline policies, including discipline policies for
195 special education students.

196 15. An organization chart that clearly presents the division innovation school's organizational
197 structure, including lines of authority and reporting between the governing board; staff; any related bodies,
198 such as advisory bodies or parent and teacher councils; and any external organizations that will play a role
199 in managing the division innovation school.

200 16. A clear description of the roles and responsibilities for the governing board, the division
201 innovation school's leadership and management team, and any other entities shown in the organization
202 chart.

203 17. A staffing chart for the division innovation school's first year and a staffing plan for the term
204 of the contract.

205 18. Plans for recruiting and developing the division innovation school's leadership and staff.

206 19. The division innovation school's leadership and teacher employment policies.

207 20. Proposed governing bylaws.

208 21. Explanations of any partnerships or contractual relationships central to the division innovation
209 school's operations or mission.

210 22. The division innovation school's plans for providing transportation, food service, and all other
211 significant operational and ancillary services.

212 23. A statement of opportunities and expectations for parent involvement.

213 24. A detailed division innovation school start-up plan that identifies tasks, timelines, and
214 responsible individuals.

215 25. A description of the division innovation school's financial plan and policies, including financial
216 controls and audit requirements.

217 26. A description of the insurance coverage that the division innovation school will obtain.

218 27. Start-up and five-year budgets with clearly stated assumptions.

219 28. Start-up and first-year cash-flow projections with clearly stated assumptions.

220 29. A description of the duties of the division innovation school's foundation, as required pursuant
221 to subsection F of § 22.1-212.44.

222 30. Evidence of anticipated fundraising contributions, if claimed in the application.

223 30. A sound facilities plan, including backup or contingency plans, if appropriate.

224 31. Assurances that the division innovation school (i) is nonreligious in its programs, admission
225 policies, employment practices, and all other operations and (ii) does not charge tuition.

226 32. Disclosure of any ownership or financial interest in the division innovation school by the
227 applicant and the governing board, administrators, and other personnel of the proposed division innovation
228 school and a requirement that the successful applicant and the governing board, administrators, and other
229 personnel of the division innovation school shall have a continuing duty to disclose such interests during
230 the term of any contract.

231 C. The applicant shall include in the proposed contract the results of any Board review of the
232 division innovation school application that may have been conducted as provided in subsection C of §
233 22.1-212.39.

234 **§ 22.1-212.39. Review of division innovation school applications.**

235 A. Each local school board shall establish procedures for receiving, reviewing, and ruling upon
236 division innovation school applications, post such procedures on their websites, and make a copy of such
237 procedures available to all interested parties upon request. If any such board finds the division innovation
238 school application is incomplete, the board shall request the necessary information from the applicant.

239 B. Each local school board that receives a complete division innovation school application shall:

240 1. Submit any questions on the application to the applicant no later than 30 days after the date of
241 receipt of the application. Any such applicant shall respond in writing to such questions no later than 15
242 days after the date of receipt of such questions, but such period may be extended by mutual agreement of
243 the parties; and

244 2. Submit to the applicant a written ruling upon such application no later than 90 days after the
245 date of receipt of the application, but such period may be extended by mutual agreement of the parties.

246 C. To provide appropriate opportunity for input from parents, teachers, citizens, and other
247 interested parties and to obtain information to assist local school boards in their decisions to grant or deny
248 a division innovation school application, local school boards shall establish a procedure for public notice
249 and to receive comment on division innovation school applications. A local school board shall give at
250 least 14 days' notice of its intent to receive public comment on an application.

251 **§ 22.1-212.40. Reconsideration and technical assistance.**

252 A. If a local school board denies a division innovation school application, or revokes or fails to
253 renew a contract, it shall provide to the applicant or grantee its reasons, in writing, for such decision, and
254 it shall post such reasons on its website. A division innovation school applicant whose application was
255 denied, or a grantee whose contract was revoked or not renewed, shall be entitled to petition the local
256 school board for reconsideration. The petition for reconsideration shall be filed no later than 60 days from
257 the date the division innovation school application is denied or the contract is revoked or fails to be
258 renewed. Such reconsideration shall be decided within 60 days of the filing of the petition.

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

262 C. Prior to seeking reconsideration, an applicant or grantee may seek technical assistance from the
263 Superintendent to address the reasons for denial, revocation, or nonrenewal.

264 D. Upon reconsideration, the decision of a local school board to grant or deny a division innovation
265 school application or to revoke or fail to renew a contract shall be final and not subject to appeal, but the

266 local school board shall again provide to the applicant or grantee its reasons, in writing, for such decision,
267 and it shall post such reasons on its website.

268 E. Nothing in this section shall prohibit an applicant whose application has been denied or a grantee
269 whose contract has been revoked or not renewed from submitting a new application, pursuant to § 22.1-
270 212.39.

271 **§ 22.1-212.41. Division innovation school restrictions.**

272 A. Local school boards may establish division innovation schools within the school division.
273 Priority shall be given to division innovation school applications designed to increase the educational
274 opportunities of at-risk students, and local school boards shall seek to ensure that at least one-half of the
275 division innovation schools per division shall be designed for at-risk students; however, the one-half
276 requirement shall not apply in cases in which an existing public school is converted into a division
277 innovation school that serves the same community as the existing public school, nor shall such division
278 innovation school conversions be counted in the determination of school division compliance with the
279 one-half requirement.

280 B. Local school boards shall report the grant or denial of division innovation school applications
281 or the renewal of division innovation school contracts to the Board and shall specify the maximum number
282 of division innovation schools that may be authorized, if any; the number of applications granted or denied
283 and the number of contracts renewed; and whether a division innovation school is designed to increase
284 the educational opportunities of at-risk students.

285 C. Nothing in this article shall be construed to prevent a school that is the only school in the
286 division from applying to become a division innovation school.

287 **§ 22.1-212.42. Division innovation school term; renewals and revocations.**

288 A. A contract may be approved or renewed for a period not to exceed five school years. A division
289 innovation school renewal application submitted to the local school board shall contain:

290 1. A report on the progress of the division innovation school in achieving the goals, objectives,
291 program and performance standards for students and such other conditions and terms as the school board
292 or boards may require upon granting initial approval of the application.

293 2. A financial statement, on forms prescribed by the Board, that discloses the costs of
294 administration, instruction, and other spending categories for the division innovation school and that has
295 been concisely and clearly written to enable the school board or boards and the public to compare such
296 costs to those of other schools or comparable organizations.

297 B. Local school boards may revoke a contract if the division innovation school:

298 1. Violates the conditions, standards, or procedures established in the division innovation school
299 application;

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

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

303 4. Violates any provision of law from which the division innovation school was not specifically
304 exempted.

305 C. Nothing in this section shall be construed to restrict the authority of local school boards to
306 decline to renew a contract.

307 **§ 22.1-212.43. Employment of professional, licensed personnel.**

308 A. At the discretion of the local school board, division innovation school personnel may be
309 employees of the local school board, or boards, granting the contract. Any personnel not employed by the
310 local school board shall remain subject to the provisions of §§ 22.1-296.1, 22.1-296.2, and 22.1-296.4.

311 B. Professional, licensed education personnel may volunteer for assignment to a division
312 innovation school. Assignment in a division innovation school shall be for one contract year. Upon request
313 of the employee and the recommendation of the governing board of the division innovation school,
314 reassignment to the division innovation school may occur on an annual basis.

315 C. School boards may employ such health, mental health, social services, and other related
316 personnel to serve in residential division innovation schools for at-risk pupils as set forth in the contract
317 between such school board and the division innovation school; however, nothing herein shall require a
318 school board to fund the residential or other services provided by a residential division innovation school.

319 **§ 22.1-212.44. Funding of division innovation schools; services provided.**

320 A. For the purposes of this article, students enrolled in a division innovation school shall be
321 included in the average daily membership of the relevant school division and shall be reported in fall
322 membership for purposes of calculating the state and local shares required to fund the Standards of
323 Quality.

324 B. Insofar as constitutionally valid, a local school board may establish by contract an agreement
325 stating the conditions for funding the division innovation school, including funding for the educational
326 program to be provided by a residential division innovation school for at-risk students. In accordance with
327 subsection D, the per pupil funding provided to the division innovation school by the local school board
328 shall be commensurate with the average school-based costs of educating the students in the existing
329 schools in the division or divisions unless the cost of operating the division innovation school is less than
330 that average school-based cost.

331 C. Services provided the division innovation school by the local school board may include food
332 services; custodial and maintenance services; curriculum, media, and library services; warehousing and
333 merchandising; and such other services not prohibited by the provisions of this article or state and federal
334 laws.

335 D. Any educational and related fees collected from students enrolled at a division innovation
336 school shall be credited to the account of such division innovation school established by the relevant local
337 school board.

338 E. Notwithstanding any other provision of law, the proportionate share of state and federal
339 resources allocated for students with disabilities and school personnel assigned to special education
340 programs shall be directed to division innovation schools enrolling such students. The proportionate share
341 of moneys allocated under other federal or state categorical aid programs shall be directed to division
342 innovation schools serving students eligible for such aid.

343 F. The governing board shall establish a foundation as a nonstock, nonprofit corporation for the
344 purposes of soliciting or accepting gifts or donations, applying for or accepting grants, or otherwise raising
345 funds of any kind for the division innovation school.

346 G. The governing board of a division innovation school is authorized to accept gifts, donations, or
347 grants of any kind made to the division innovation school and to spend such funds in accordance with the
348 conditions prescribed by the donor. However, no gift, donation, or grant shall be accepted by the governing
349 board of a division innovation school or its foundation if the conditions for such funds are contrary to law
350 or the terms of the contract between the local school board and the division innovation school.

351 H. The Department shall provide technical assistance to local school boards relating to receipt,
352 review, and ruling upon applications for division innovation schools.

353 **§ 22.1-212.45. Report of division innovation schools.**

354 The Board shall report the number of division innovation schools established in the
355 Commonwealth, as well as the number of contracts denied, in its annual report to the Governor and the
356 General Assembly pursuant to § 22.1-18.

357 **§ 22.1-212.46. Immunity.**

358 Division innovation schools shall be immune from liability to the same extent as all other public
359 schools in the Commonwealth, and the employees and volunteers in a division innovation school are
360 immune from liability to the same extent as the employees and volunteers in any other public school.

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