

SENATE BILL NO. 125

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health  
on February 3, 2022)

(Patron Prior to Substitute--Senator Obenshain)

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.

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

31           4. The Board shall establish regional charter school divisions only in regions in which each  
32 underlying school division has an enrollment of more than 3,000 students and two or more school divisions  
33 have grades three through eight math and English reading Standards of Learning performance in the  
34 bottom quartile of the Commonwealth. A regional school division shall consist of at least two but not  
35 more than three underlying school divisions. Regional charter school divisions shall exist in parallel with  
36 such existing school divisions, and the establishment of such divisions shall not be considered a  
37 consolidation or division of such existing school divisions.

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

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

- 44           1. The school-age population of the school division proposed to be divided or consolidated.
- 45           2. The potential of the proposed school division to facilitate the offering of a comprehensive  
46 program for kindergarten through grade 12 at the level of the established standards of quality.
- 47           3. The potential of the proposed school division to promote efficiency in the use of school facilities  
48 and school personnel and economy in operation.
- 49           4. Anticipated increase or decrease in the number of children of school age in the proposed school  
50 division.
- 51           5. Geographical area and topographical features as they relate to existing or available  
52 transportation facilities designed to render reasonable access by pupils to existing or contemplated school  
53 facilities.

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

57 D. Consistent with the authority of the Board pursuant to Article VIII, Section 5 of the Constitution  
58 of Virginia to designate school divisions in the Commonwealth of such geographic size and school-age  
59 population as will best promote the realization of the standards of quality, local school boards may submit  
60 proposals for the consolidation of school divisions to the Board of Education. Prior to the submission of  
61 a consolidation proposal, the submitting school board shall give notice to the public and shall conduct one  
62 or more public hearings.

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

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

77 Article 6.1.

78 Selection of School Boards in Regional Charter School Divisions.

79 § 22.1-57.01. Application of article.

80           The provisions of this article shall be applicable in each regional charter school division  
81 established by the Board pursuant to subsection E of § 22.1-25.

82           **§ 22.1-57.02. Appointment and term generally; vacancies.**

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

93           **§ 22.1-212.10. Reconsideration and technical assistance; review by Board.**

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

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

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

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

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

119 F. Nothing in this section shall prohibit an applicant whose application has been denied or a grantee  
 120 whose charter has been revoked or not renewed from submitting a new application, pursuant to § 22.1-  
 121 212.9.

122 Article 1.2:1.

123 Regional Charter School Divisions.

124 **§ 22.1-212.16:1. Definitions.**

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

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

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

129 **§ 22.1-212.16:2. Regional charter school divisions; local school board; schools.**

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

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

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

142 **§ 22.1-212.16:3. Applicability of other laws, regulations, policies, and procedures.**

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

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

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

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

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

157 F. No public charter school shall discriminate against any student on the basis of limited  
158 proficiency in English, and each public charter school shall provide students who have limited proficiency

159 in English with appropriate services designed to teach such students English and the general curriculum,  
160 consistent with federal civil rights laws.

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

163 H. Public charter schools are subject to the requirements of the Standards of Quality, including the  
164 Standards of Learning and the Standards of Accreditation, with the exception of the provisions of § 22.1-  
165 253.13:1; subsection A, subsections C through M, and subsection O of § 22.1-253.13:2; subsections A  
166 through E and subsection G of § 22.1-253.13:3; subsections D, E, and F of § 22.1-253.13:4; §§ 22.1-  
167 253.13:5 and 22.1-253.13:6; subsections C, D, and E of § 22.1-253.13:7; and § 22.1-253.13:8.

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

173 **§ 22.1-212.16:4. Charter application and review.**

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

177 B. Such applications shall be received and reviewed by the Board. The Board shall establish  
178 procedures for receiving, reviewing, and commenting upon applications. The Board shall post such  
179 procedures on its website and make a copy of such procedures available to all interested parties upon  
180 request. If the Board finds the public charter school application is incomplete, the board shall request the  
181 necessary information from the charter applicant. The Board shall recommend approval or denial of the  
182 application to the school board of the relevant regional school division. Such recommendation is not  
183 binding on the school board. If the Board has not established a regional charter school division in the  
184 location in which the public charter school will be located, the Board will hold a public hearing regarding

185 the establishment of a regional charter school division in such location, provided that the conditions for  
186 the establishment of such school division set forth in subdivision A 4 of § 22.1-25 are met.

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

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

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

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

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

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



211 board to remove all charter governing board members for convenience and to wind up public charter  
212 school operations.

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

215 **§ 22.1-212.16:5. Public charter school term; renewals and revocations.**

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

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

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

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

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

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

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

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

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

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

239 **§ 22.1-212.16:6. Contracts for public charter schools.**

240 A. Within 90 days of approval of a charter application, the school board and the management  
241 committee of the approved public charter school shall execute a charter contract that clearly sets forth (i)  
242 the academic and operational performance expectations and measures by which the public charter school  
243 will be judged and (ii) the administrative relationship between the school board and public charter school,  
244 including each party's rights and duties. Such 90-day period may be extended by a period not to exceed  
245 30 days by mutual agreement of the parties. Such performance expectations and measures shall include  
246 applicable federal and state accountability requirements and may be refined or amended by mutual  
247 agreement after the public charter school has collected baseline achievement data for its enrolled students.

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

252 1. Student academic proficiency;

253 2. Student academic growth;

254 3. Achievement gaps in both proficiency and growth between the major student subgroups based  
255 on gender, race, poverty status, special education status, English language learner status, and gifted status;

256 4. Attendance;

257 5. Recurrent annual enrollment;

258 6. Postsecondary education readiness of high school students;

259 7. Financial performance and sustainability; and

260 8. The performance and stewardship of the management committee, including compliance with all  
261 applicable laws, regulations, and terms of the charter contract.

262 C. The performance framework shall allow the inclusion of additional rigorous, valid, and reliable  
263 indicators proposed by a public charter school to augment external evaluations of its performance.

264 provided that the school board approves the quality and rigor of such indicators and such indicators are  
265 consistent with the purposes of this article.

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

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

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

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

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

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

284 **§ 22.1-212.16:7. Funding.**

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

291 of Quality per pupil funding and per pupil share of state sales tax funding enacted in the current  
292 appropriation act.

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

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

301 C. Contingent upon an appropriation, a public charter school located in a regional charter school  
302 division may receive state funding to replace, in whole or in part, the local share of the Standards of  
303 Quality per pupil funding of the underlying school division in which the public charter school is physically  
304 located. For the purposes of federal funding, each charter school shall serve as its own local education  
305 agency.

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

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