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SESSION 2015

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HOUSE BILL 242  
Committee Substitute Favorable 3/24/15  
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PROPOSED SENATE COMMITTEE SUBSTITUTE H242-PCS40652-RQ-30

Short Title: Various Charter School Law Changes.

(Public)

Sponsors:

Referred to:

March 17, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE VARIOUS CHANGES TO THE CHARTER SCHOOL LAWS.  
3 The General Assembly of North Carolina enacts:

4 SECTION 1.1. G.S. 115C-218.5 reads as rewritten:

5 "§ 115C-218.5. Final approval of applications for charter schools.

- 6 (a) The State Board may grant final approval of an application if it finds the following:  
7 (1) The application meets the requirements set out in this Article and such other  
8 requirements as may be adopted by the State Board of Education.  
9 (2) The applicant has the ability to operate the school and would be likely to  
10 operate the school in an educationally and economically sound manner.  
11 (3) Granting the application would achieve one or more of the purposes set out in  
12 G.S. 115C-218.

13 In reviewing applications for the establishment of charter schools within a local school  
14 administrative unit, the State Board is encouraged to give preference to applications that  
15 demonstrate the capability to provide comprehensive learning experiences to students identified by  
16 the applicants as at risk of academic failure.

17 (b) The State Board shall make final decisions on the approval or denial of applications by  
18 August 15 of a calendar year on all applications it receives prior to a date established by the Office  
19 of Charter Schools for receipt of applications in that application cycle. The State Board may make  
20 the final decision for approval contingent upon the successful completion of a planning period  
21 prior to enrollment of students.

22 (c) The State Board of Education may authorize a school before the applicant has secured  
23 its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary  
24 for it to raise working capital. The State Board shall not allocate any funds to the school until the  
25 school has obtained space.

26 (d) The State Board of Education may grant the initial charter for a period not to exceed 10  
27 years. ~~The State Board of Education shall renew the charter upon the request of the chartering~~  
28 ~~entity for subsequent periods of 10 years, unless one of the following applies:~~

- 29 (1) ~~The charter school has not provided financially sound audits for the prior three~~  
30 ~~years.~~  
31 (2) ~~The charter school's student academic outcomes for the past three years have~~  
32 ~~not been comparable to the academic outcomes of students in the local school~~  
33 ~~administrative unit in which the charter school is located.~~



\* H 2 4 2 - P C S 4 0 6 5 2 - R Q - 3 0 \*

- 1           (3)    ~~The charter school is not, at the time of the request for renewal of the charter,~~  
2                   ~~substantially in compliance with State law, federal law, the school's own~~  
3                   ~~bylaws, or the provisions set forth in its charter granted by the State Board of~~  
4                   ~~Education.~~

5           ~~The State Board of Education shall review the operations of each charter school at least once~~  
6           ~~every five years to ensure that the school is meeting the expected academic, financial, and~~  
7           ~~governance standards.~~

8           ~~(e)    A material revision of the provisions of a charter application shall be made only upon~~  
9           ~~the approval of the State Board of Education.~~

10          ~~Except as provided in subsection (f) of this section, enrollment growth shall be considered a~~  
11          ~~material revision of the charter application, and the State Board may approve such additional~~  
12          ~~enrollment growth of greater than twenty percent (20%) only if the State Board finds all of the~~  
13          ~~following:~~

- 14           (1)    ~~The actual enrollment of the charter school is within ten percent (10%) of its~~  
15                   ~~maximum authorized enrollment.~~  
16           (2)    ~~The charter school has commitments for ninety percent (90%) of the requested~~  
17                   ~~maximum growth.~~  
18           (3)    ~~The charter school is not currently identified as low performing.~~  
19           (4)    ~~The charter school meets generally accepted standards of fiscal management.~~  
20           (5)    ~~The charter school is, at the time of the request for the enrollment increase,~~  
21                   ~~substantially in compliance with State law, federal law, the charter school's own~~  
22                   ~~bylaws, and the provisions set forth in its charter granted by the State Board.~~

23          ~~(f)    It shall not be considered a material revision of a charter application and shall not~~  
24          ~~require prior approval of the State Board for a charter school to do any of the following:~~

- 25           (1)    ~~Increase its enrollment during the charter school's second year of operation and~~  
26                   ~~annually thereafter by up to twenty percent (20%) of the school's previous~~  
27                   ~~year's enrollment.~~  
28           (2)    ~~Increase its enrollment during the charter school's second year of operation and~~  
29                   ~~annually thereafter in accordance with planned growth as authorized in its~~  
30                   ~~charter.~~  
31           (3)    ~~Expand to offer one grade higher or lower than the charter school currently~~  
32                   ~~offers if the charter school has (i) operated for at least three years, (ii) has not~~  
33                   ~~been identified as having inadequate performance as provided in~~  
34                   ~~G.S.115C-218.95(b), and (iii) has been in financial compliance as required by~~  
35                   ~~the State Board of Education."~~

36          **SECTION 1.2.** Article 14A of Chapter 115C of the General Statutes is amended by  
37          adding a new section to read:

38          "**§ 115C-218.6. Review and renewal of charters.**

39           (a)    The State Board of Education shall review the operations of each charter school at least  
40           once prior to the expiration of its charter to ensure that the school is meeting the expected  
41           academic, financial, and governance standards.

42           (b)    The State Board of Education shall renew a charter upon the request of the chartering  
43           entity for subsequent periods of 10 years, unless one of the following applies:

- 44           (1)    The charter school has not provided financially sound audits for the  
45                   immediately preceding three years.  
46           (2)    The charter school's student academic outcomes for the immediately preceding  
47                   three years have not been comparable to the academic outcomes of students in  
48                   the local school administrative unit in which the charter school is located.  
49           (3)    The charter school is not, at the time of the request for renewal of the charter,  
50                   substantially in compliance with State law, federal law, the school's own

1 bylaws, or the provisions set forth in its charter granted by the State Board of  
2 Education.

3 If one of the conditions set forth in subdivisions (1) through (3) of this subsection applies, then  
4 the State Board may renew the charter for a period of less than 10 years or not renew the charter."

5 **SECTION 1.3.** Article 14A of Chapter 115C of the General Statutes is amended by  
6 adding a new section to read:

7 **"§ 115C-218.7. Material revisions of charters.**

8 (a) A material revision of the provisions of a charter shall be made only upon the approval  
9 of the State Board of Education.

10 (b) Enrollment growth of greater than twenty percent (20%) shall be considered a material  
11 revision of the charter. The State Board may approve such additional enrollment growth of greater  
12 than twenty percent (20%) only if it finds all of the following:

13 (1) The actual enrollment of the charter school is within ten percent (10%) of its  
14 maximum authorized enrollment.

15 (2) The charter school has commitments for ninety percent (90%) of the requested  
16 maximum growth.

17 (3) The charter school is not currently identified as low-performing.

18 (4) The charter school meets generally accepted standards of fiscal management.

19 (5) The charter school is, at the time of the request for the enrollment increase,  
20 substantially in compliance with State law, federal law, the charter school's own  
21 bylaws, and the provisions set forth in its charter granted by the State Board.

22 (c) For the purposes of calculating actual enrollment and maximum authorized enrollment  
23 under subdivision (1) of subsection (b) of this section, if a charter school is pursuing a material  
24 revision of enrollment growth based on a proposed capital expansion of the charter school, but  
25 fails to meet the requirements of subdivision (1) of subsection (b) of this section, the State Board  
26 shall have the discretion to investigate and determine whether subdivision (1) of subsection (b) of  
27 this section may be waived to grant the school's material revision request to allow the capital  
28 expansion to move forward. In making such a determination, the charter school shall provide the  
29 State Board with documentation to show evidence that demonstrates sufficiently in the State  
30 Board's discretion all of the following:

31 (1) The requested increase in enrollment growth is within a reasonable margin of  
32 the threshold necessary to support the requested material revision.

33 (2) The charter school has secured financing for its proposed capital expansion  
34 conditioned on its obtaining the requested material revision of enrollment  
35 growth.

36 (d) If a charter school presents evidence of a proposed capital expansion as part of a  
37 request for a material revision of enrollment growth under this section that is granted by the State  
38 Board, and the charter school is not able to realize that capital expansion within two years of the  
39 grant of the material revision, the charter shall reflect the maximum authorized enrollment  
40 immediately preceding that material revision."

41 **SECTION 1.4.** Article 14A of Chapter 115C of the General Statutes is amended by  
42 adding a new section to read:

43 **"§ 115C-218.8. Nonmaterial revisions of charters.**

44 It shall not be considered a material revision of a charter and shall not require prior approval of  
45 the State Board for a charter school to do any of the following:

46 (1) Increase its enrollment during the charter school's second year of operation and  
47 annually thereafter by up to twenty percent (20%) of the school's previous  
48 year's enrollment.

49 (2) Increase its enrollment during the charter school's second year of operation and  
50 annually thereafter in accordance with planned growth as authorized in its  
51 charter.

1           (3) Expand to offer one grade higher or lower than the charter school currently  
 2           offers if the charter school has (i) operated for at least three years, (ii) has not  
 3           been identified as continually low-performing as provided in G.S. 115C-218.94,  
 4           and (iii) has been in financial compliance as required by the State Board."

5           **SECTION 1.5.** G.S. 115C-218.45(f) reads as rewritten:

6           "(f) The charter school may give enrollment priority to any of the following:

- 7           (1) Siblings of currently enrolled students who were admitted to the charter school  
 8           in a previous year. For the purposes of this section, the term "siblings" includes  
 9           any of the following who reside in the same household: half siblings,  
 10           stepsiblings, and children residing in a family foster home.
- 11           (2) Siblings of students who have completed the highest grade level offered by that  
 12           school and who were enrolled in at least four grade levels offered by the charter  
 13           school or, if less than four grades are offered, in the maximum number of  
 14           grades offered by the charter school.
- 15           (3) Limited to no more than fifteen percent (15%) of the school's total enrollment,  
 16           unless granted a waiver by the State Board of Education, the following:  
 17           a. Children of the school's full-time employees.  
 18           b. Children of the charter school's board of directors.
- 19           (4) A student who was enrolled in the charter school within the two previous  
 20           school years but left the school (i) to participate in an academic study abroad  
 21           program or a competitive admission residential program or (ii) because of the  
 22           vocational opportunities of the student's parent.
- 23           (5) A student who was enrolled in another charter school in the State in the  
 24           previous school year that does not offer the student's next grade level.
- 25           (6) A student who was enrolled in another charter school in the State in the  
 26           previous school year that does not offer the student's next grade level and both  
 27           of the charter schools have an enrollment articulation agreement to accept  
 28           students or are governed by the same board of directors."

29           **SECTION 1.6.** G.S. 115C-218.105 reads as rewritten:

30           "**§ 115C-218.105. State and local funds for a charter school.**

31           (a) The State Board of Education shall allocate to each charter school:

- 32           (1) An amount equal to the average per pupil allocation for average daily  
 33           membership from the local school administrative unit allotments in which the  
 34           charter school is located for each child attending the charter school except for  
 35           the allocation for children with disabilities and for the allocation for children  
 36           with limited English proficiency;
- 37           (2) An additional amount for each child attending the charter school who is a child  
 38           with disabilities; and
- 39           (3) An additional amount for children with limited English proficiency attending  
 40           the charter school, based on a formula adopted by the State Board.

41           In accordance with ~~G.S. 115C-218.5(d)~~, G.S. 115C-218.7 and G.S. 115C-218.8, the State  
 42           Board shall allow for annual adjustments to the amount allocated to a charter school based on its  
 43           enrollment growth in school years subsequent to the initial year of operation.

44           In the event a child with disabilities leaves the charter school and enrolls in a public school  
 45           during the first 60 school days in the school year, the charter school shall return a pro rata amount  
 46           of funds allocated for that child to the State Board, and the State Board shall reallocate those funds  
 47           to the local school administrative unit in which the public school is located. In the event a child  
 48           with disabilities enrolls in a charter school during the first 60 school days in the school year, the  
 49           State Board shall allocate to the charter school the pro rata amount of additional funds for children  
 50           with disabilities.

1 (b) Funds allocated by the State Board of Education may be used to enter into operational  
2 and financing leases for real property or mobile classroom units for use as school facilities for  
3 charter schools and may be used for payments on loans made to charter schools for facilities,  
4 equipment, or operations. However, State funds shall not be used to obtain any other interest in  
5 real property or mobile classroom units. No indebtedness of any kind incurred or created by the  
6 charter school shall constitute an indebtedness of the State or its political subdivisions, and no  
7 indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power  
8 of the State or its political subdivisions. Every contract or lease into which a charter school enters  
9 shall include the previous sentence. The school also may own land and buildings it obtains  
10 through non-State sources.

11 (c) If a student attends a charter school, the local school administrative unit in which the  
12 child resides shall transfer to the charter school an amount equal to the per pupil share of the local  
13 current expense fund of the local school administrative unit for the fiscal year. The per pupil share  
14 of the local current expense fund shall be transferred to the charter school within 30 days of the  
15 receipt of monies into the local current expense fund. The local school administrative unit and  
16 charter school may use the process for mediation of differences between the State Board and a  
17 charter school provided in G.S. 115C-218.95(d) to resolve differences on calculation and  
18 transference of the per pupil share of the local current expense fund. The amount transferred under  
19 this subsection that consists of revenue derived from supplemental taxes shall be transferred only  
20 to a charter school located in the tax district for which these taxes are levied and in which the  
21 student resides.

22 (d) The local school administrative unit shall also provide each charter school to which it  
23 transfers a per pupil share of its local current expense fund with all of the following information  
24 within the 30-day time period provided in subsection (c) of this section:

- 25 (1) The total amount of monies the local school administrative unit has in each of  
26 the funds listed in G.S. 115C-426(c).
- 27 (2) The student membership numbers used to calculate the per pupil share of the  
28 local current expense fund.
- 29 (3) How the per pupil share of the local current expense fund was calculated.
- 30 (4) Any additional records requested by a charter school from the local school  
31 administrative unit in order for the charter school to audit and verify the  
32 calculation and transfer of the per pupil share of the local current expense fund.

33 In addition, the local school administrative unit shall provide to the State Board of Education  
34 all of the information required by this subsection for each charter school to which it transfers a per  
35 pupil share of its local current expense fund. This information shall be provided to the State Board  
36 of Education by November 1 of each year. The State Board shall adopt a policy to govern the  
37 collection of this information. The State Board shall issue a letter of noncompliance to a local  
38 school administrative unit that does not provide the State Board with the information required by  
39 this subsection.

40 (e) Prior to commencing an action under subsection (c) of this section, the complaining  
41 party shall give the other party 15 days' written notice of the alleged violation. The court shall  
42 award the prevailing party reasonable attorneys' fees and costs incurred in an action under  
43 subsection (c) of this section. The court shall order any delinquent funds, costs, fees, and interest  
44 to be paid in equal monthly installments and shall establish a time for payment in full that shall be  
45 no later than one year from the entry of any judgment."

46 **SECTION 1.7.(a)** Article 14A of Chapter 115C of the General Statutes is amended by  
47 adding a new section to read:

48 **"§ 115C-218.94. Identification of low-performing and continually low-performing charter**  
49 **schools.**

50 (a) Identification of Low-Performing Charter Schools. – The State Board of Education  
51 shall identify low-performing charter schools on an annual basis. Low-performing charter schools

1 are those that receive a school performance grade of D or F and a school growth score of "met  
2 expected growth" or "not met expected growth" as defined by G.S. 115C-83.15.

3 (b) Identification of Continually Low-Performing Charter Schools. – The State Board of  
4 Education shall identify continually low-performing charter schools on an annual basis. A  
5 continually low-performing charter school is a charter school that has been designated by the State  
6 Board as low-performing for at least two of three consecutive years."

7 **SECTION 1.7.(b)** G.S. 115C-218.95 reads as rewritten:

8 **"§ 115C-218.95. Causes for nonrenewal or termination; disputes.**

9 (a) The State Board of Education may terminate, not renew, or seek applicants to assume  
10 the charter through a competitive bid process established by the State Board upon any of the  
11 following grounds:

- 12 (1) Failure to meet the requirements for student performance contained in the  
13 charter;
- 14 (2) Failure to meet generally accepted standards of fiscal management;
- 15 (3) Violations of law;
- 16 (4) Material violation of any of the conditions, standards, or procedures set forth in  
17 the charter;
- 18 (5) Two-thirds of the faculty and instructional support personnel at the school  
19 request that the charter be terminated or not renewed; or
- 20 (6) Other good cause identified.

21 ~~(b) The State Board shall adopt criteria for adequate performance by a charter school and~~  
22 ~~shall identify charter schools with inadequate performance. The criteria shall include a~~  
23 ~~requirement that a charter school which demonstrates no growth in student performance and has~~  
24 ~~annual performance composites below sixty percent (60%) in any two years in a three-year period~~  
25 ~~is inadequate.~~

- 26 ~~(1) If a charter school is inadequate in the first five years of the charter, the charter~~  
27 ~~school shall develop a strategic plan to meet specific goals for student~~  
28 ~~performance that are consistent with State Board criteria and the mission~~  
29 ~~approved in the charter school. The strategic plan shall be reviewed and~~  
30 ~~approved by the State Board. The State Board is authorized to terminate or not~~  
31 ~~renew a charter for failure to demonstrate improvement under the strategic plan.~~
- 32 ~~(2) If a charter school is inadequate and has had a charter for more than five years,~~  
33 ~~the State Board is authorized to terminate, not renew, or seek applicants to~~  
34 ~~assume the charter through a competitive bid process established by the State~~  
35 ~~Board. The State Board shall develop rules on the assumption of a charter by a~~  
36 ~~new entity that include all aspects of the operations of the charter school,~~  
37 ~~including the status of the employees. Public assets would transfer to the new~~  
38 ~~entity and not revert to the local school administrative unit in which the charter~~  
39 ~~school is located pursuant to G.S. 115C-218.100(b).~~

40 (b1) If a charter school is continually low-performing, the State Board is authorized to  
41 terminate, not renew, or seek applicants to assume the charter through a competitive bid process  
42 established by the State Board. However, the State Board shall not terminate or not renew the  
43 charter of a continually low-performing charter school solely for its continually low-performing  
44 status if the charter school has met growth in each of the immediately preceding three school years  
45 or if the charter school has implemented a strategic improvement plan approved by the State  
46 Board and is making measurable progress toward student performance goals. The State Board  
47 shall develop rules on the assumption of a charter by a new entity that includes all aspects of the  
48 operations of the charter school, including the status of the employees. Public assets shall transfer  
49 to the new entity and shall not revert to the local school administrative unit in which the charter  
50 school is located pursuant to G.S. 115C-218.100(b).

1 (c) The State Board of Education shall develop and implement a process to address  
2 contractual and other grievances between a charter school and the local board of education during  
3 the time of its charter.

4 (d) The State Board and the charter school are encouraged to make a good-faith attempt to  
5 resolve the differences that may arise between them. They may agree to jointly select a mediator.  
6 The mediator shall act as a neutral facilitator of disclosures of factual information, statements of  
7 positions and contentions, and efforts to negotiate an agreement settling the differences. The  
8 mediator shall, at the request of either the State Board or a charter school, commence a mediation  
9 immediately or within a reasonable period of time. The mediation shall be held in accordance with  
10 rules and standards of conduct adopted under Chapter 7A of the General Statutes governing  
11 mediated settlement conferences but modified as appropriate and suitable to the resolution of the  
12 particular issues in disagreement.

13 Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation  
14 proceedings shall be conducted in private. Evidence of statements made and conduct occurring in  
15 a mediation are not subject to discovery and are inadmissible in any court action. However, no  
16 evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a  
17 mediation. The mediator shall not be compelled to testify or produce evidence concerning  
18 statements made and conduct occurring in a mediation in any civil proceeding for any purpose,  
19 except disciplinary hearings before the State Bar or any agency established to enforce standards of  
20 conduct for mediators. The mediator may determine that an impasse exists and discontinue the  
21 mediation at any time. The mediator shall not make any recommendations or public statement of  
22 findings or conclusions. The State Board and the charter school shall share equally the mediator's  
23 compensation and expenses. The mediator's compensation shall be determined according to rules  
24 adopted under Chapter 7A of the General Statutes."

25 **SECTION 1.7.(c)** G.S. 135-5.3(b7) reads as rewritten:

26 "(b7) The Board of Trustees may grant final approval of the application if it finds the  
27 following:

- 28 (1) The application meets the requirements set out in this Article.
- 29 (2) All members of the board of directors of the charter school have signed a  
30 written statement acknowledging and accepting the estimate provided under  
31 subsection (b5) of this section and the provisions of G.S. 135-8(i).
- 32 (3) The charter school has not been identified as ~~inadequate~~ continually  
33 low-performing by the State Board of Education as provided in ~~G.S.~~  
34 ~~115C-218.95(b)~~ G.S. 115C-218.94.
- 35 (4) The charter school's most recent audited financial statements and independent  
36 audit report demonstrate that it is financially sound and can meet the financial  
37 obligations of participation in the Retirement System."

38 **SECTION 1.7.(d)** A charter school identified as inadequate that developed and is  
39 following a strategic plan required by G.S. 115C-218.95(b)(1), as repealed by this section, shall  
40 not be required to continue the strategic plan during the 2016-2017 school year and thereafter if  
41 that charter school has not been identified as low-performing under G.S. 115C-218.94.

42 **SECTION 2.** Section 6.5 of S.L. 2014-101 reads as rewritten:

43 **"SECTION 6.5.** Upon recommendations by the Office of Charter Schools and the Charter  
44 Schools Advisory Board, the State Board of Education shall adopt a process and rules for  
45 fast-track replication of high-quality charter schools currently operating in the State. The State  
46 Board of Education shall not require a planning year for applicants selected through the fast-track  
47 replication process. In addition to the requirements for charter applicants set forth in Part 6A of  
48 Article 16 of Chapter 115C of the General Statutes, the fast-track replication process adopted by  
49 the State Board of Education shall, at a minimum, require a board of directors of a charter school  
50 to demonstrate one of the following in order to qualify for fast-track replication:

- 1 (1) A charter school in this State governed by the board of directors has student  
2 academic outcomes that are comparable to the academic outcomes of students  
3 in the local school administrative unit in which the charter school is located and  
4 can provide three years of financially sound audits.
- 5 (2) The board of directors agrees to contract with an education management  
6 organization or charter management organization that can demonstrate that it  
7 can replicate high-quality charter schools in the State that have proven student  
8 academic success and financial soundness.

9 The State Board of Education shall ensure that the rules for a fast-track replication process provide  
10 that decisions by the State Board of Education on whether to grant a charter through the  
11 replication process are completed in less than ~~150 days~~90 days from the application submission  
12 date. The State Board shall provide a decision no later than October 15 of the year immediately  
13 preceding the year of the proposed school opening. The State Board of Education shall adopt rules  
14 and procedures required by this section ~~by December 15, 2014,~~within 90 days of the effective date  
15 of this act, and report to the Joint Legislative Education Oversight Committee ~~by February 15,~~  
16 ~~2015,~~within 120 days of the effective date of this act."

17 **SECTION 3.** It is the intent of the General Assembly to study and revise the standards  
18 for identifying low-performing charter schools.

19 **SECTION 4.** Section 2 of this act is effective when it becomes law and applies  
20 beginning with applications submitted for fast-track replication of schools opening in the  
21 2017-2018 school year. The remainder of this act is effective when it becomes law and applies  
22 beginning with the 2016-2017 school year.