GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 242
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Short Title: Various Charter School Law Changes. (Public)

Sponsors:

Referred to:

March 17, 2015

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

SECTION 1.1. G.S. 115C-218.5 reads as rewritten:
"§ 115C-218.5. Final approval of applications for charter schools.
(a) The State Board may grant final approval of an application if it finds the following:
(1) The application meets the requirements set out in this Article and such other requirements as may be adopted by the State Board of Education.
(2) The applicant has the ability to operate the school and would be likely to operate the school in an educationally and economically sound manner.
(3) Granting the application would achieve one or more of the purposes set out in G.S. 115C-218.

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

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

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

(d) The State Board of Education may grant the initial charter for a period not to exceed 10 years. The State Board of Education shall renew the charter upon the request of the chartering entity for subsequent periods of 10 years, unless one of the following applies:
(1) The charter school has not provided financially sound audits for the prior three years.
(2) The charter school's student academic outcomes for the past three years have not been comparable to the academic outcomes of students in the local school administrative unit in which the charter school is located.
The charter school is not, at the time of the request for renewal of the charter, substantially in compliance with State law, federal law, the school’s own bylaws, or the provisions set forth in its charter granted by the State Board of Education.

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

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

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

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

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

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

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

§ 115C-218.6. Review and renewal of charters.

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

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

1. The charter school has not provided financially sound audits for the immediately preceding three years.
2. The charter school’s student academic outcomes for the immediately preceding three years have not been comparable to the academic outcomes of students in the local school administrative unit in which the charter school is located.
3. The charter school is not, at the time of the request for renewal of the charter, substantially in compliance with State law, federal law, the school’s own bylaws, or the provisions set forth in its charter granted by the State Board.
bylaws, or the provisions set forth in its charter granted by the State Board of Education.

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

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

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

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

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

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

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

1. The requested increase in enrollment growth is within a reasonable margin of the threshold necessary to support the requested material revision.
2. The charter school has secured financing for its proposed capital expansion conditioned on its obtaining the requested material revision of enrollment growth.

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

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


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

1. Increase its enrollment during the charter school's second year of operation and annually thereafter by up to twenty percent (20%) of the school's previous year's enrollment.
2. Increase its enrollment during the charter school's second year of operation and annually thereafter in accordance with planned growth as authorized in its charter.
Expand to offer one grade higher or lower than the charter school currently offers if the charter school has (i) operated for at least three years, (ii) has not been identified as continually low-performing as provided in G.S. 115C-218.94, and (iii) has been in financial compliance as required by the State Board."

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

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

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

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

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

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

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

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

In the event a child with disabilities leaves the charter school and enrolls in a public school during the first 60 school days in the school year, the charter school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with disabilities enrolls in a charter school during the first 60 school days in the school year, the State Board shall allocate to the charter school the pro rata amount of additional funds for children with disabilities."
(b) Funds allocated by the State Board of Education may be used to enter into operational
and financing leases for real property or mobile classroom units for use as school facilities for
charter schools and may be used for payments on loans made to charter schools for facilities,
equipment, or operations. However, State funds shall not be used to obtain any other interest in
real property or mobile classroom units. No indebtedness of any kind incurred or created by the
charter school shall constitute an indebtedness of the State or its political subdivisions, and no
indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power
of the State or its political subdivisions. Every contract or lease into which a charter school enters
shall include the previous sentence. The school also may own land and buildings it obtains
through non-State sources.

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

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

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

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

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

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

§ 115C-218.94. Identification of low-performing and continually low-performing charter
schools.

(a) Identification of Low-Performing Charter Schools. – The State Board of Education
shall identify low-performing charter schools on an annual basis. Low-performing charter schools
are those that receive a school performance grade of D or F and a school growth score of "met
expected growth" or "not met expected growth" as defined by G.S. 115C-83.15.

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

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

"§ 115C-218.95. Causes for nonrenewal or termination; disputes.
(a) The State Board of Education may terminate, not renew, or seek applicants to assume
the charter through a competitive bid process established by the State Board upon any of the
following grounds:

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

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

(1) If a charter school is inadequate in the first five years of the charter, the charter
school shall develop a strategic plan to meet specific goals for student
performance that are consistent with State Board criteria and the mission
approved in the charter school. The strategic plan shall be reviewed and
approved by the State Board. The State Board is authorized to terminate or not
renew a charter for failure to demonstrate improvement under the strategic plan.

(2) If a charter school is inadequate and has had a charter for more than five years,
the State Board is authorized to terminate, not renew, or seek applicants to
assume the charter through a competitive bid process established by the State
Board. The State Board shall develop rules on the assumption of a charter by a
new entity that include all aspects of the operations of the charter school,
including the status of the employees. Public assets would transfer to the new
entity and not revert to the local school administrative unit in which the charter
school is located pursuant to G.S. 115C-218.100(b).

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

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

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

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

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

(1) The application meets the requirements set out in this Article.

(2) All members of the board of directors of the charter school have signed a written statement acknowledging and accepting the estimate provided under subsection (b5) of this section and the provisions of G.S. 135-8(i).

(3) The charter school has not been identified as inadequate—continually low-performing by the State Board of Education as provided in G.S. 115C-218.95(b). G.S. 115C-218.94.

(4) The charter school's most recent audited financial statements and independent audit report demonstrate that it is financially sound and can meet the financial obligations of participation in the Retirement System."

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

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

"SECTION 6.5. Upon recommendations by the Office of Charter Schools and the Charter Schools Advisory Board, the State Board of Education shall adopt a process and rules for fast-track replication of high-quality charter schools currently operating in the State. The State Board of Education shall not require a planning year for applicants selected through the fast-track replication process. In addition to the requirements for charter applicants set forth in Part 6A of Article 16 of Chapter 115C of the General Statutes, the fast-track replication process adopted by the State Board of Education shall, at a minimum, require a board of directors of a charter school to demonstrate one of the following in order to qualify for fast-track replication:
A charter school in this State governed by the board of directors has student academic outcomes that are comparable to the academic outcomes of students in the local school administrative unit in which the charter school is located and can provide three years of financially sound audits.

The board of directors agrees to contract with an education management organization or charter management organization that can demonstrate that it can replicate high-quality charter schools in the State that have proven student academic success and financial soundness.

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

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

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