

GENERAL ASSEMBLY OF NORTH CAROLINA  
1997 SESSION

S.L. 1997-430  
SENATE BILL 297

AN ACT TO AMEND THE LAWS GOVERNING CHARTER SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-238.29B reads as rewritten:

**"§ 115C-238.29B. Eligible applicants; contents of applications; submission of applications for approval.**

(a) Any person, group of persons, or nonprofit corporation seeking to establish a charter school ~~within a local school administrative unit~~ may apply to establish a charter school ~~on behalf of a private nonprofit corporation.~~ school. If the applicant seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion.

(b) The application shall contain at least the following information:

- (1) A description of a program that implements one or more of the purposes in G.S. 115C-238.29A.
- (2) A description of student achievement goals for the school's educational program and the method of demonstrating that students have attained the skills and knowledge specified for those student achievement goals.
- (3) The governance structure of the school including the names of the proposed initial members of the board of directors of the nonprofit, tax-exempt corporation and the process to be followed by the school to ensure parental involvement.
- (3a) The local school administrative unit in which the school will be located.
- (4) Admission policies and procedures.
- (5) A proposed budget for the school and evidence that the financial plan for the school is economically sound.
- (6) Requirements and procedures for program and financial audits.
- (7) A description of how the school will comply with G.S. 115C-238.29F.
- (8) Types and amounts of insurance coverage, including bonding insurance for the principal officers of the school, to be obtained by the charter school.
- (9) The term of the ~~contract.~~ charter.

- (10) The qualifications required for individuals employed by the school.
- (11) The procedures by which students can be excluded from the charter school and returned to a public school. Notwithstanding any law to the contrary, any local board may refuse to admit any student who is suspended or expelled from a charter school due to actions that would lead to suspension or expulsion from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.
- (12) The number of students to be served, which number shall be at least 65, and the minimum number of teachers to be employed at the school, which number shall be at least three. However, the charter school may serve fewer than 65 students or employ fewer than three teachers if the application contains a compelling reason, such as the school would serve a geographically remote and small student population.
- (13) Information regarding the facilities to be used by the school and the manner in which administrative services of the school are to be provided.
- (14) ~~A description of whether the school will operate independently of the local board of education or whether it agrees to be subject to some supervision and control of its administrative operations by the local board of education. In the event the charter school elects to operate independently of the local board of education, the application must specify which employee benefits will be offered to its employees and how the benefits will be funded.~~

(c) An applicant shall submit the application to a chartering entity for preliminary approval. A chartering entity may be:

- (1) The local board of education of the local school administrative unit in which the charter school will be located;
- (2) The board of trustees of a constituent institution of The University of North Carolina, so long as the constituent institution is involved in the planning, operation, or evaluation of the charter school; or
- (3) The State Board of Education.

Regardless of which chartering entity receives the application for preliminary approval, the State Board of Education shall have final approval of the charter school.

Notwithstanding the provisions of this subsection, if the State Board of Education finds that an applicant (i) submitted an application to a local board of education and received final approval from the State Board of Education, but (ii) is unable to find a suitable location within that local school administrative unit to operate, the State Board of Education may authorize the charter school to operate within an adjacent local school administrative unit for one year only. The charter school cannot operate for more than one year unless it reapplies, in accordance with subdivision (1), (2), or (3) of this subsection, and receives final approval from the State Board of Education.

(c1) Unless an applicant submits its application under subsection (c) of this section to the local board of education of the local school administrative unit in which the charter school will be located, the applicant shall submit a copy of its application to

that local board within seven days of its submission under subsection (c) of this section. The local board may offer any information or comment concerning the application it considers appropriate to the chartering entity. The local board shall deliver this information to the chartering entity no later than January 1 of the next calendar year. The applicant shall not be required to obtain or deliver this information to the chartering entity on behalf of the local board. The State Board shall consider any information or comment it receives from a local board and shall consider the impact on the local school administrative unit's ability to provide a sound basic education to its students when determining whether to grant preliminary and final approval of the charter school."

Section 2. Part 6A of Article 16 of Chapter 115C of the General Statutes is amended by adding the following new section to read:

**"§ 115C-238.29K. Criminal history checks.**

(a) As used in this section:

- (1) 'Criminal history' means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.
- (2) 'School personnel' means any:
  - a. Member of the board of directors of a charter school,

- b. Employee of a charter school, or
- c. Independent contractor or employee of an independent contractor of a charter school if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local, or other funds, who has significant access to students or who has responsibility for the fiscal management of a charter school.

(b) The State Board of Education shall adopt a policy on whether and under what circumstances school personnel shall be required to be checked for a criminal history. The policy shall not require school personnel to be checked for a criminal history check before preliminary approval is granted under G.S. 115C-238.29B. The Board shall apply its policy uniformly in requiring school personnel to be checked for a criminal history. The Board may grant conditional approval of an application while the Board is checking a person's criminal history and making a decision based on the results of the check.

The State Board shall not require members of boards of directors of charter schools or employees of charter schools to pay for the criminal history check authorized under this section.

(c) The Board of Education shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the State Board, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The State Board shall consider refusal to consent when deciding whether to grant final approval of an application under G.S. 115C-238.29D and when making an employment recommendation. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Justice shall provide to the State Board of Education the criminal history from the State and National Repositories of Criminal Histories of any school personnel for which the Board requires a criminal history check.

The State Board shall not require members of boards of directors of charter schools or employees of charter schools to pay for the fingerprints authorized under this section.

(d) The State Board shall review the criminal history it receives on an individual. The State Board shall determine whether the results of the review indicate that the individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel and shall use the information when deciding whether to grant final approval of an application for a charter school under G.S. 115C-238.29D and for making an employment recommendation to the board of directors of a charter school. The State Board shall make written findings with regard to how it used the information

when deciding whether to grant final approval under G.S. 115C-238.29D and when making an employment recommendation.

(e) The State Board shall notify in writing the board of directors of the charter school of the determination by the State Board as to whether the school personnel is qualified to operate or be employed by a charter school based on the school personnel's criminal history. At the same time, the State Board shall provide to the charter school's board of directors the written findings the Board makes in subsection (d) of this section and its employment recommendation. If the State Board recommends dismissal or nonemployment of any person, the board of directors of the charter school shall dismiss or refuse to employ that person. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the State Board shall not release nor disclose any portion of the school personnel's criminal history to the charter school's board of directors or employees. The State Board also shall notify the school personnel of the procedure for completing or challenging the accuracy of the criminal history and the personnel's right to contest the State Board's determination in court.

(f) All the information received by the State Board of Education or the charter school in accordance with subsection (e) of this section through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the State Board of Education or the board of directors of the charter school. The State Board of Education or the board of directors of the charter school may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of the State Board of Education or the board of directors of the charter school, or their employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

Section 3. G.S. 115C-238.29D(d) reads as rewritten:

"(d) The State Board of Education may grant ~~a~~ the initial charter for a period not to exceed five years and may renew the charter upon the request of the chartering entity for subsequent periods not to exceed five years each. A material revision of the provisions of a charter application shall be made only upon the approval of the State Board of Education. Beginning with the charter school's second year of operation and annually thereafter, the State Board shall allow a charter school to increase its enrollment by ten percent (10%) of the school's previous year's enrollment or as is otherwise provided in the charter. This enrollment growth shall not be considered a material revision of the charter application and shall not require the prior approval of the State Board."

Section 4. G.S. 115C-238.29E reads as rewritten:

**"§ 115C-238.29E. Charter school operation.**

(a) A charter school that is approved by the State shall be a public school within the local school administrative unit in which it is located. It shall be accountable to the local board of education if it applied for and received preliminary approval from that local board for purposes of ensuring compliance with applicable laws and the provisions of its charter. ~~charter.~~ All other charter schools shall be accountable to the State Board for ensuring compliance with applicable laws and the provisions of their charters, except that any of these charter schools may agree to be accountable to the local board of the school administrative unit in which the charter school is located rather than to the State Board.

(b) A charter school shall be operated by a private nonprofit corporation that shall have received federal tax-exempt status no later than 24 months following final approval of the application.

(c) A charter school shall operate under ~~a written contract~~ the written charter signed by the local board of education entity to which it is accountable under subsection (a) of this section and the applicant. A charter school is not required to enter into any other contract. ~~The contract~~ charter shall incorporate at a minimum the information provided in the application, as modified during the charter approval process, and any terms and conditions imposed on the charter school by the State Board of Education. No other terms may be imposed on the charter school as a condition for receipt of local funds.

~~If the local board of education does not sign the contract, the State Board may sign on behalf of the local board.~~

(d) The board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures.

(e) ~~A charter school shall be located in the local school administrative unit with which it signed the contract.~~ A charter school's specific location shall not be prescribed or limited by a local board or other authority except a zoning authority. The school may lease space from a local board of education, from a public or private nonsectarian organization, education or as is otherwise lawful in the local school administrative unit in which the charter school is located. If a charter school leases space from a sectarian organization, the charter school classes and students shall be physically separated from any parochial students, and there shall be no religious artifacts, symbols, iconography, or materials on display in the charter school's entrance, classrooms, or hallways. Furthermore, if a charter school leases space from a sectarian organization, the charter school shall not use the name of that organization in the name of the charter school.

At the request of the charter school, the local board of education of the local school administrative unit in which the charter school will be located shall lease any available building or land to the charter school unless the board demonstrates that the lease is not economically or practically feasible or that the local board does not have adequate classroom space to meet its enrollment needs. Notwithstanding any other law, a local board of education may provide a school facility to a charter school free of charge;

however, the charter school is responsible for the maintenance of and insurance for the school facility.

(f) Except as provided in this Part and pursuant to the provisions of its ~~contract,~~ charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit."

Section 5. G.S. 115C-238.29F reads as rewritten:

**"§ 115C-238.29F. General requirements.**

(a) Health and Safety Standards. – A charter school shall meet the same health and safety requirements required of a local school administrative unit.

(b) School Nonsectarian. – A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge ~~tuition.~~ tuition or fees. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution.

(c) Civil Liability and Insurance. –

(1) The board of directors of a charter school may sue and be sued. The State Board of Education shall adopt rules to establish reasonable amounts and types of liability insurance that the board of directors shall be required by the charter to obtain. The board of directors shall obtain at least the amount of and types of insurance required by these rules to be included in the contract. ~~charter.~~ Any sovereign immunity of the charter school, of the organization that operates the charter school, or its members, officers, or directors, or of the employees of the charter school or the organization that operates the charter school, is waived to the extent of indemnification by insurance.

(2) No civil liability shall attach to any chartering entity, to the State Board of Education, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school. ~~In the event a charter school has not elected total independence from the local board of education under subsection (e) of this section, the immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.~~

(d) Instructional Program. –

(1) The school shall provide instruction each year for at least 180 days.

(2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education and the student performance standards contained in the ~~contract with the local board of education.~~ charter.

(3) A charter school shall conduct the student assessments required for charter schools by the State Board of Education.

- (4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with special needs.
  - (5) The school is subject to and shall comply with Article 27 of Chapter 115C of the General ~~Statutes~~; Statutes, except that a charter school may also exclude a student from the charter school and return that student to another school in the local school administrative unit in accordance with the terms of its ~~contract~~. charter.
- (e) Employees. –
- (1) An employee of a charter school is not an employee of the local school administrative unit in which the charter school is located. The charter school's board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees.
  - (2) No local board of education shall require any employee of the local school administrative unit to be employed in a charter school.
  - (3) If a teacher employed by a local school administrative unit makes a written request for an extended leave of absence to teach at a charter school, the local school administrative unit shall grant the leave. The local school administrative unit shall grant a leave for any number of years requested by the teacher, shall extend the leave for any number of years requested by the teacher, and shall extend the leave at the teacher's request. ~~The~~ For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave or extension of leave be made up to 45 days before the teacher would otherwise have to report for duty. For subsequent years, the local school administrative unit may require that the request for a leave or extension of leave be made up to 90 days before the teacher would otherwise have to report for duty. A teacher who has career status under G.S. 115C-325 prior to receiving an extended leave of absence to teach at a charter school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).



(4) ~~In the event a charter school, in its application, elects total independence from the local board of education, its employees shall not be deemed to be employees of the local school administrative unit and shall not be entitled to any State-funded employee benefits, including membership in the North Carolina Teachers' and State Employees' Retirement System or the Teachers' and State Employees' Comprehensive Major Medical Plan. In the event a charter school, in its application, agrees to be subject to some supervision and control of its administrative operations by the local board of education, the~~ The employees of the charter school shall be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the Teachers' and State Employees' Comprehensive Major Medical Plan. The Board of Trustees of the Teachers' and State Employees' Retirement System, in consultation with the State Board of Education, shall determine the degree of supervision and control necessary to qualify the employees of the applicant for membership in the Retirement System. The State Board of Education provides funds to charter schools, approves the original members of the boards of directors of the charter schools, has the authority to grant, supervise, and revoke charters, and demands full accountability from charter schools for school finances and student performance. Accordingly, it is the determination of the General Assembly that charter schools are public schools and that the employees of charter schools are public school employees and are 'teachers' for purposes of membership in the North Carolina Teachers' and State Employees' Retirement System and State Employees' Comprehensive Major Medical Plan. In no event shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System.

(f) Accountability. –

- (1) The school is subject to the financial audits, the audit procedures, and the audit requirements adopted by the State Board of Education for charter schools.
- (2) The school shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting System.
- (3) The school shall report at least annually to the chartering entity and the State Board of Education the information required by the chartering entity or the State Board.

(g) Admission Requirements. –

- (1) Any child who is qualified under the laws of this State for admission to a public school is qualified for admission to a charter school.

- (2) No local board of education shall require any student enrolled in the local school administrative unit to attend a charter school.
- (3) Admission to a charter school shall not be determined according to the school attendance area in which a student resides, except that any local school administrative unit in which a public school converts to a charter school shall give admission preference to students who reside within the former attendance area of that school.
- (4) Admission to a charter school shall not be determined according to the local school administrative unit in which a student resides, ~~except that the provisions of G.S. 115C 366(d) shall apply to a student who wishes to attend a charter school in a county other than the county in which the student resides.~~
- (5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the ~~contract,~~ charter, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. The charter school may give enrollment priority to siblings of currently enrolled students who were admitted to the charter school in a previous year and to children of the school's principal, teachers, and teacher assistants. In addition, and only for its first year of operation, the charter school may give enrollment priority to children of the initial members of the charter school's board of directors, so long as (i) these children are limited to no more than ten percent (10%) of the school's total enrollment or to 20 students, whichever is less, and (ii) the charter school is not a former public or private school.

Within one year after the charter school begins operation, the population of the school shall reasonably reflect the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit.

- (6) ~~The~~ During each period of enrollment, the charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, students shall be accepted by lot. Once enrolled, students are not required to reapply in subsequent enrollment periods.
- (7) Notwithstanding any law to the contrary, a charter school may refuse admission to any student who has been expelled or suspended from a

public school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(h) Transportation. – The charter school ~~shall provide transportation for students enrolled at the school who reside in the local school administrative unit in which the school is located. The charter school may provide transportation for students enrolled at the school who reside in different local school administrative units.~~ school. The charter school shall develop a transportation plan so that transportation is not a barrier to any student who resides in the local school administrative unit in which the school is located. The charter school is not required to provide transportation to any student who lives within one and one-half miles of the school. At the request of the charter school and if the local board of the local school administrative unit in which the charter school is located operates a school bus system, then that local board may contract with the charter school to provide transportation in accordance with the charter school's transportation plan to students who reside in the local school administrative unit and who reside at least one and one-half miles of the charter school. A local board may charge the charter school a reasonable charge that is sufficient to cover the cost of providing this transportation. Furthermore, a local board may refuse to provide transportation under this subsection if it demonstrates there is no available space on buses it intends to operate during the term of the contract or it would not be practically feasible to provide this transportation.

(i) Assets. – Upon dissolution of the charter school or upon the nonrenewal of the charter, all net assets of the charter school purchased with public funds shall be deemed the property of the local school administrative unit in which the charter school is located."

Section 6. G.S. 115C-238.29G reads as rewritten:

**"§ 115C-238.29G. Causes for nonrenewal or ~~termination.~~ termination; disputes.**

(a) The State Board of Education, or a chartering entity subject to the approval of the State Board of Education, may terminate or not renew a ~~contract~~ charter upon any of the following grounds:

- (1) Failure to meet the requirements for student performance contained in the ~~contract;~~ 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 ~~contract;~~ charter;
- (5) Two-thirds of the faculty and instructional support personnel at the school request that the ~~contract~~ charter be terminated or not renewed;  
or
- (6) Other good cause identified.

(b) The State Board of Education shall develop and implement a process to address contractual and other grievances between a charter school and its chartering ~~entity~~ entity or the local board of education during the time of its charter.

(c) 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 7. G.S. 115C-238.29H(a) reads as rewritten:

"(a) The State Board of Education shall allocate to each charter school (i) 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 special needs and (ii) an additional amount for each child attending the charter school who is a child with special needs. In accordance with G.S. 115C-238.29D(d), 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 special needs 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 special needs 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 special needs.

(a1) Funds allocated by the State Board of Education shall not be used to purchase land or buildings. 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 or equipment. 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 ~~obtained~~ obtains through non-State sources."

Section 8. G.S. 115C-238.29I(d) reads as rewritten:

"(d) The State Board of Education may establish a Charter School Advisory Committee to assist with the implementation of this Part. The Charter School Advisory Committee may (i) provide technical assistance to chartering entities or to potential applicants, (ii) review applications for preliminary approval, (iii) make recommendations as to whether the State Board should approve applications for charter schools, (iv) make recommendations as to whether the State Board should terminate or not renew a ~~contract,~~ charter, (v) make recommendations concerning grievances between a charter school and its chartering entity, the State Board, or a local board, (vi) assist with the review under subsection (c) of this section, and (vii) provide any other assistance as may be required by the State Board."

Section 9. G.S. 115C-238.29I is amended by adding the following new subsection to read:

"(e) Notwithstanding the dates set forth in this Part, the State Board of Education may establish an alternative time line for the submission of applications, preliminary approvals, criminal record checks, appeals, and final approvals so long as the Board grants final approval by March 15 of each calendar year."

Section 10. G.S. 115C-238.29J(a) reads as rewritten:

"(a) Local boards of education are authorized and encouraged to provide administrative and evaluative support to charter schools located within their local school administrative ~~units and to contract with those charter schools to provide student transportation units.~~"

Section 11. G.S. 135-8(b) reads as rewritten:

"(b) Annuity Savings Fund. – The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to any payments from the annuity savings fund shall be made as follows:

- (1) Prior to the first day of July, 1947, each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his actual compensation; and the employer also shall deduct four per centum (4%) of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the State, from salaries other than the appropriations from the State of North Carolina. On and after such date the rate so deducted shall be five per centum (5%) of actual compensation except that, with respect to each member who is eligible for coverage under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of Article 2 of Chapter

135 of Volume 17 of the General Statutes, as amended, and with respect to members covered under G.S. 135-27, with such coverage retroactive to January 1, 1955, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his earnable compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the Board of Trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the Board of Trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955, and December 1, 1955, to be transferred into the contribution fund established under G.S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under Article 2, Chapter 135 of Volume 17 of the General Statutes as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required.

Notwithstanding the foregoing, effective July 1, 1963, with respect to the period of service commencing on July 1, 1963, and ending December 31, 1965, the rates of such deduction shall be four per centum (4%) of the portion of compensation not in excess of forty-eight hundred dollars (\$4,800) and six per centum (6%) of the portion of compensation in excess of forty-eight hundred dollars (\$4,800); and with respect to the period of service commencing January 1, 1966, and ending June 30, 1967, the rate of such deductions shall be four per centum (4%) of the portion of compensation not in excess of fifty-six hundred dollars (\$5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars (\$5,600); and with respect to the period of service commencing July 1, 1967, and ending June 30, 1975, the rate of such deductions shall be five per centum (5%) of the portion of compensation not in excess of fifty-six hundred dollars (\$5,600) and six per centum (6%) of the portion of compensation in excess of fifty-six hundred dollars (\$5,600). Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

Notwithstanding the foregoing, effective July 1, 1975, with respect to the period of service commencing on July 1, 1975, the rate of such deductions shall be six per centum (6%) of the compensation received by any member. Such rates shall apply uniformly to all members of

the Retirement System, without regard to their coverage under the Social Security Act.

- (2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Chapter. The employer shall certify to the Board of Trustees on each and every payroll or in such other manner as the Board of Trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon, to the individual account of the member from whose compensation said deduction was made.
- (3) Each board of education of each county and each board of education of each city, and the employer in any department, agency or institution of the State, in which any teacher receives compensation from sources other than appropriations of the State of North Carolina shall deduct from the salaries of these teachers paid from sources other than State appropriations an amount equal to that deducted from the salaries of the teachers whose salaries are paid from State funds, and remit this amount to the State Retirement System. City boards of education and county boards of education in each and every county and city which has employees compensated from other than the State appropriation shall pay to the State Retirement System the same per centum of the compensation that the State of North Carolina pays and shall transmit same to the State Retirement System monthly: Provided, that for the purpose of enabling the boards of education to make such payment, the tax-levying authorities are hereby authorized, empowered and directed to provide the necessary funds therefor. In case the salary is paid in part from State funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from State funds. In case the entire salary of any teacher, as defined in this Chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the Retirement System the same per centum that would be required if the salary were provided by the State of North Carolina.
- (4) In addition to contributions deducted from compensation as hereinbefore provided, subject to the approval of the Board of

Trustees, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he previously withdrew therefrom, as provided in this Chapter. Such amounts so redeposited shall become a part of his accumulated contributions as if such amounts had initially been contributed within the calendar year of such redeposit. In no event, however, shall any member be permitted to redeposit any amount withdrawn after July 1, 1959, except as provided for in G.S. 135-4(e).

- (5) The Board of Trustees may approve the purchase of creditable service by any member for leaves of absence or for interrupted service to an employer for the sole purpose of acquiring knowledge, talents, or abilities and to increase the efficiency of service to the employer. This approval shall be made prior to the purchase of the creditable service, is limited to a career total of six years for each member, and may be obtained in the following manner:
- a. Approved leave of absence. – Where the employer grants an approved leave of absence, a member may make monthly contributions to the annuity savings fund on the basis of compensation the member was earning immediately prior to such leave of absence. The employer shall make monthly contributions equal to the normal and accrued liability contribution on such compensation or, in lieu thereof, the member may pay into the annuity savings fund monthly an amount equal to the employer's normal and accrued liability contribution when the policy of the employer is not to make such payment.
  - b. No educational leave policy. – Where the employer has a policy of not granting educational leaves of absence or the member has unsuccessfully petitioned for leave of absence and the member has interrupted service for educational purposes, the member may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.
  - c. Educational program prior to July 1, 1981. – Creditable service for leaves of absence or interrupted service for educational purposes prior to July 1, 1981, may be purchased by a member, before or after retirement, who returned as a contributing employee or teacher within 12 months after completing the educational program and completed 10 years of subsequent membership service, by making a lump sum payment into the annuity savings fund equal to the full cost of the service credits calculated on the basis of the assumptions used for purposes of



the actuarial valuation of the system's liabilities and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance as determined by the Board of Trustees upon the advice of the consulting actuary, plus a fee to be determined by the Board of Trustees.

- d. Employment in a charter school. – Notwithstanding subparagraph a. of this subdivision, where the employer grants an approved leave of absence for the member to be employed in a charter school or where the member's service is interrupted by employment in a charter school, authorized under Part 6A of Article 16 of Chapter 115C of the General Statutes, the member may make monthly contributions into the annuity savings fund in an amount equal to the employee contribution plus the employer normal and accrued liability contribution on the basis of the compensation the member was earning immediately prior to the interrupted service.

Payments required to be made by the ~~member and/or the employer member, the employer, or both~~ under subparagraphs a or b are due by the 15th of the month following the month for which the service credit is allowed and payments made after the due date shall be assessed a penalty, in lieu of interest, of one percent (1%) per month or fraction thereof the payment is made beyond the due date; provided, that these payments shall be made prior to retirement and provided further, that if the member did not become a contributing member within 12 months after completing the educational program and failed to complete three years of subsequent membership service, except in the event of death or disability, any payment made by the member including penalty shall be refunded with regular interest thereon and the service credits cancelled prior to or at retirement.

- (6) The contributions of a member, and such interest as may be allowed thereon, paid upon his death or withdrawn by him as provided in this Chapter, shall be paid from the annuity savings fund, and any balance of the accumulated contributions of such a member shall be transferred to the pension accumulation fund."

Section 12. The Board of Trustees of the North Carolina Teachers' and State Employees' Retirement System through the Office of the Attorney General shall request a letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, as to whether the status of the North Carolina Teachers' and State Employees' Retirement System as a governmental plan would be adversely affected by the participation of employees of charter schools. The request shall be made to the Internal Revenue Service after it is approved by the Speaker of the House of Representatives and the President Pro Tempore of the Senate or their designees and no

later than 30 days after the effective date of this act. Employees of charter schools are eligible for participation in the North Carolina Teachers' and State Employees' Retirement System upon the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling.

Section 13. G.S. 115C-238.29F(e)(4), as amended by Section 5 of this act, is effective on the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling from the Internal Revenue Service, United States Department of Treasury, under Section 12 of this act. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of August, 1997.

s/ Dennis A. Wicker  
President of the Senate

s/ Harold J. Brubaker  
Speaker of the House of Representatives

s/ James B. Hunt, Jr.  
Governor

Approved 2:25 p.m. this 22nd day of August, 1997