

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 645

Short Title: LEAs & Colleges Operate Charter Schools. (Public)

Sponsors: Senators Brock; Allran, Carpenter, Foxx, Pittenger, Rucho, and Shubert.

Referred to: Education/Higher Education.

April 1, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT A LOCAL BOARD OF EDUCATION TO APPLY FOR
3 CHARTER STATUS FOR ONE OR MORE OF ITS PUBLIC SCHOOLS AND TO
4 PERMIT PRIVATE COLLEGES TO SERVE AS CHARTERING ENTITIES FOR
5 CHARTER SCHOOLS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 115C-238.29B reads as rewritten:

8 **"§ 115C-238.29B. Eligible applicants; contents of applications; submission of**
9 **applications for approval.**

10 (a) Any person, group of persons, ~~or nonprofit corporation~~ corporation, or local
11 board of education seeking to establish a charter school may apply to establish a charter
12 school. ~~If the applicant~~ an applicant other than a local board of education seeks to
13 convert a public school to a charter school, the application shall include a statement
14 signed by a majority of the teachers and instructional support personnel currently
15 employed at the school indicating that they favor the conversion and evidence that a
16 significant number of parents of children enrolled in the school favor conversion. If a
17 local board of education seeks a charter for a school, the application shall include a
18 statement that the local board understands that no employee shall be required to work at
19 the charter school and no student shall be assigned to the school except at the request of
20 the student's parent or guardian.

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

- 22 (1) A description of a program that implements one or more of the
23 purposes in G.S. 115C-238.29A.
24 (2) A description of student achievement goals for the school's educational
25 program and the method of demonstrating that students have attained
26 the skills and knowledge specified for those student achievement
27 goals.
28 (3) The governance structure of the ~~school~~ school, unless the applicant is a
29 local board of education, including the names of the proposed initial

- 1 members of the board of directors of the nonprofit, tax-exempt
2 corporation and the process to be followed by the school to ensure
3 parental involvement.
- 4 (4) Admission policies and procedures.
- 5 (5) A proposed budget for the school and evidence that the financial plan
6 for the school is economically sound.
- 7 (6) Requirements and procedures for program and financial audits.
- 8 (7) A description of how the school will comply with G.S. 115C-238.29F.
- 9 (8) Types and amounts of insurance coverage, including bonding
10 insurance for the principal officers of the school, to be obtained by the
11 charter school.
- 12 (9) The term of the charter.
- 13 (10) The qualifications required for individuals employed by the school.
- 14 (11) The procedures by which students can be excluded from the charter
15 school and returned to a public ~~school~~ school other than a charter
16 school. Notwithstanding any law to the contrary, any local board may
17 refuse to admit any student who is suspended or expelled from a
18 charter school due to actions that would lead to suspension or
19 expulsion from a public school under G.S. 115C-391 until the period
20 of suspension or expulsion has expired.
- 21 (12) The number of students to be served, which number shall be at least
22 65, and the minimum number of teachers to be employed at the school,
23 which number shall be at least three. However, the charter school may
24 serve fewer than 65 students or employ fewer than three teachers if the
25 application contains a compelling reason, such as the school would
26 serve a geographically remote and small student population.
- 27 (13) Information regarding the facilities to be used by the school and the
28 manner in which administrative services of the school are to be
29 provided.
- 30 (14) Repealed by Session Laws 1997-430, s. 1.
- 31 (c) An applicant shall submit the application to a chartering entity for
32 preliminary approval. A chartering entity may be:
- 33 (1) The local board of education of the local school administrative unit in
34 which the charter school will be ~~located~~; located, unless the applicant
35 is a local board of education;
- 36 (2) The board of trustees of a constituent institution of The University of
37 North Carolina, so long as the constituent institution is involved in the
38 planning, operation, or evaluation of the charter school; ~~or~~
- 39 (2a) The board of trustees of a private institution of higher education with a
40 teacher education program approved by the State Board of Education,
41 so long as the constituent institution is involved in the planning,
42 operation, or evaluation of the charter school; or
- 43 (3) The State Board of Education.

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

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

11 ~~(d) Unless an applicant submits its application under subsection (e) of this~~
12 ~~section to the local board of education of the local school administrative unit in which~~
13 ~~the charter school will be located, the~~The applicant shall submit a copy of its application
14 to that local board within seven days of its submission under subsection (c) of this
15 ~~section.~~section, unless the applicant is a local board of education or the applicant
16 submits its application under subsection (c) of this section to the local board of
17 education of the local school administrative unit in which the charter school will be
18 located.

19 The local board may offer any information or comment concerning the application it
20 considers appropriate to the chartering entity. The local board shall deliver this
21 information to the chartering entity no later than January 1 of the next calendar year.
22 The applicant shall not be required to obtain or deliver this information to the chartering
23 entity on behalf of the local board. The State Board shall consider any information or
24 comment it receives from a local board and shall consider the impact on the local school
25 administrative unit's ability to provide a sound basic education to its students when
26 determining whether to grant preliminary and final approval of the charter school."

27 **SECTION 2.** G.S. 115C-238.29D reads as rewritten:

28 "**§ 115C-238.29D. Final approval of applications for charter schools.**

29 (a) The State Board shall grant final approval of an application if it finds that the
30 application meets the requirements set out in this Part or adopted by the State Board of
31 Education and that granting the application would achieve one or more of the purposes
32 set out in G.S. 115C-238.29A. The State Board shall act by March 15 of a calendar year
33 on all applications and appeals it receives prior to February 15 of that calendar year.

34 (b) The State Board shall authorize no more than five charter ~~schools~~ schools,
35 except for charter schools operated by the local board of education, per year in one local
36 school administrative unit. The State Board shall authorize no more than 100 charter
37 schools ~~statewide.~~ statewide, except for charter schools operated by local boards of
38 education. If more than five charter schools in one local school administrative unit or
39 more than 100 schools statewide meet the standards for final approval, the State Board
40 shall give priority to applications that are most likely to further State education policies
41 and to strengthen the educational program offered in the local school administrative
42 units in which they are located.

1 The State Board may authorize as many charter schools operated by a local board of
2 education in one local school administrative unit or charter schools operated by local
3 boards of education on a statewide basis, as it deems appropriate.

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

8 (d) The State Board of Education may grant the initial charter for a period not to
9 exceed five years and may renew the charter upon the request of the chartering entity
10 for subsequent periods not to exceed five years each. A material revision of the
11 provisions of a charter application shall be made only upon the approval of the State
12 Board of Education.

13 It shall not be considered a material revision of a charter application and shall not
14 require the prior approval of the State Board for a charter school to increase its
15 enrollment during the charter school's second year of operation and annually thereafter
16 (i) by up to ten percent (10%) of the school's previous year's enrollment or (ii) in
17 accordance with planned growth as authorized in the charter. Other enrollment growth
18 shall be considered a material revision of the charter application, and the State Board
19 may approve such additional enrollment growth of greater than ten percent (10%) only
20 if the State Board finds that:

- 21 (1) The actual enrollment of the charter school is within ten percent (10%)
22 of its maximum authorized enrollment;
- 23 (2) The charter school has commitments for ninety percent (90%) of the
24 requested maximum growth;
- 25 (3) The board of education of the local school administrative unit in which
26 the charter school is located has had an opportunity to be heard by the
27 State Board of Education on any adverse impact the proposed growth
28 would have on the unit's ability to provide a sound basic education to
29 its students;
- 30 (4) The charter school is not currently identified as ~~low performing~~; low
31 performing;
- 32 (5) The charter school meets generally accepted standards of fiscal
33 management; and
- 34 (6) It is otherwise appropriate to approve the enrollment growth."

35 **SECTION 3.** G.S. 115C-238.29E reads as rewritten:

36 "**§ 115C-238.29E. Charter school operation.**

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

1 school administrative unit in which the charter school is located rather than to the State
2 Board.

3 (b) A charter school other than a charter school for which the applicant is a local
4 board of education shall be operated by a private nonprofit corporation that shall have
5 received federal tax-exempt status no later than 24 months following final approval of
6 the application. A charter school for which the applicant is a local board of education
7 shall be operated by the local board of education.

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

15 (d) The board of directors of the charter school operated by a nonprofit
16 corporation shall decide matters related to the operation of the school, including
17 budgeting, curriculum, and operating procedures. The local board of education shall
18 decide those matters for a charter school operated by the local board.

19 ~~A charter school's specific location~~ The specific location of a charter school
20 operated by a private nonprofit corporation shall not be prescribed or limited by a local
21 board or other authority except a zoning authority. The school may lease space from a
22 local board of education or as is otherwise lawful in the local school administrative unit
23 in which the charter school is located. If a charter school leases space from a sectarian
24 organization, the charter school classes and students shall be physically separated from
25 any parochial students, and there shall be no religious artifacts, symbols, iconography,
26 or materials on display in the charter school's entrance, classrooms, or hallways.
27 Furthermore, if a charter school leases space from a sectarian organization, the charter
28 school shall not use the name of that organization in the name of the charter school.

29 At the request of the charter school, the local board of education of the local school
30 administrative unit in which the charter school will be located shall lease any available
31 building or land to the charter school unless the board demonstrates that the lease is not
32 economically or practically feasible or that the local board does not have adequate
33 classroom space to meet its enrollment needs. Notwithstanding any other law, a local
34 board of education may provide a school facility to a charter school free of charge;
35 however, the charter school is responsible for the maintenance of and insurance for the
36 school facility.

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

40 **SECTION 4.** G.S. 115C-238.29F reads as rewritten:

41 "**§ 115C-238.29F. General requirements.**

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

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

5 (c) Civil Liability and Insurance. –

6 (1) The board of directors of a charter school operated by a nonprofit
7 corporation may sue and be sued. The State Board of Education shall
8 adopt rules to establish reasonable amounts and types of liability
9 insurance that the board of directors shall be required by the charter to
10 obtain. The board of directors shall obtain at least the amount of and
11 types of insurance required by these rules to be included in the charter.
12 Any sovereign immunity of the charter school, of the organization that
13 operates the charter school, or its members, officers, or directors, or of
14 the employees of the charter school or the organization that operates
15 the charter school, is waived to the extent of indemnification by
16 insurance.

17 (2) No civil liability shall attach to any chartering entity, to the State
18 Board of Education, or to any of their members or employees,
19 individually or collectively, for any acts or omissions of ~~the~~ any
20 charter school ~~school~~ operated by a nonprofit corporation.

21 (3) The civil liability for a charter school operated by a local board of
22 education shall be the same as for any other school operated by the
23 board.

24 (d) Instructional Program. –

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

26 (2) The school shall design its programs to at least meet the student
27 performance standards adopted by the State Board of Education and
28 the student performance standards contained in the charter.

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

31 (4) The school shall comply with policies adopted by the State Board of
32 Education for charter schools relating to the education of children with
33 special needs.

34 (5) The school is subject to and shall comply with Article 27 of Chapter
35 115C of the General Statutes, except that a charter school operated by
36 a private nonprofit corporation or a charter school operated by a local
37 board of education may also exclude a student from the charter school
38 and return that student to another school in the local school
39 administrative unit in accordance with the terms of its charter.

40 (e) Employees. –

41 (1) An employee of a charter school operated by a private nonprofit
42 corporation is not an employee of the local school administrative unit
43 in which the charter school is located. An employee of a charter school

1 operated by a local board of education is an employee of the local
2 school administrative unit in which the charter school is located.

3 The charter school's board of directors or the local board of
4 education if the charter school is operated by a local board of
5 education shall employ and contract with necessary teachers to
6 perform the particular service for which they are employed in the
7 school; at least seventy-five percent (75%) of these teachers in grades
8 kindergarten through five, at least fifty percent (50%) of these teachers
9 in grades six through eight, and at least fifty percent (50%) of these
10 teachers in grades nine through 12 shall hold teacher certificates. The
11 board also may employ necessary employees who are not required to
12 hold teacher certificates to perform duties other than teaching and may
13 contract for other services. The board may discharge teachers and
14 noncertificated employees.

15 (2) No local board of education shall require any employee of the local
16 school administrative unit to be employed in a charter school.

17 (3) If a teacher employed by a local school administrative unit makes a
18 written request for a leave of absence to teach at a charter school, the
19 local school administrative unit shall grant the leave for one year. For
20 the initial year of a charter school's operation, the local school
21 administrative unit may require that the request for a leave of absence
22 be made up to 45 days before the teacher would otherwise have to
23 report for duty. After the initial year of a charter school's operation, the
24 local school administrative unit may require that the request for a leave
25 of absence be made up to 90 days before the teacher would otherwise
26 have to report for duty. A local board of education is not required to
27 grant a request for a leave of absence or a request to extend or renew a
28 leave of absence for a teacher who previously has received a leave of
29 absence from that school board under this subdivision. A teacher who
30 has career status under G.S. 115C-325 prior to receiving a leave of
31 absence to teach at a charter school may return to a public school in
32 the local school administrative unit with career status at the end of the
33 leave of absence or upon the end of employment at the charter school
34 if an appropriate position is available. If an appropriate position is
35 unavailable, the teacher's name shall be placed on a list of available
36 teachers and that teacher shall have priority on all positions for which
37 that teacher is qualified in accordance with G.S. 115C-325(e)(2).

38 (4) The employees of the charter school operated by a private nonprofit
39 corporation shall be deemed employees of the local school
40 administrative unit for purposes of providing certain State-funded
41 employee benefits, including membership in the Teachers' and State
42 Employees' Retirement System and the Teachers' and State
43 Employees' Comprehensive Major Medical Plan. The State Board of
44 Education provides funds to charter ~~schools~~, schools operated by

1 private nonprofit corporations, approves the original members of the
2 boards of directors of the charter schools, has the authority to grant,
3 supervise, and revoke charters, and demands full accountability from
4 charter schools for school finances and student performance.
5 Accordingly, it is the determination of the General Assembly that
6 charter schools operated by private nonprofit corporations are public
7 schools and that the employees of charter schools are public school
8 employees. Employees of a charter school whose board of directors
9 elects to become a participating employer under G.S. 135-5.3 are
10 "teachers" for the purpose of membership in the North Carolina
11 Teachers' and State Employees' Retirement System. In no event shall
12 anything contained in this Part require the North Carolina Teachers'
13 and State Employees' Retirement System to accept employees of a
14 private employer as members or participants of the System.

15 (f) Accountability. –

- 16 (1) The school is subject to the financial audits, the audit procedures, and
17 the audit requirements adopted by the State Board of Education for
18 charter schools. These audit requirements may include the
19 requirements of the School Budget and Fiscal Control Act.
20 (2) The school shall comply with the reporting requirements established
21 by the State Board of Education in the Uniform Education Reporting
22 System.
23 (3) The school shall report at least annually to the chartering entity and the
24 State Board of Education the information required by the chartering
25 entity or the State Board.

26 (g) Admission Requirements. –

- 27 (1) Any child who is qualified under the laws of this State for admission
28 to a public school is qualified for admission to a charter school.
29 (2) No local board of education shall require any student enrolled in the
30 local school administrative unit to attend a charter school.
31 (3) Admission to a charter school shall not be determined according to the
32 school attendance area in which a student resides, except that any local
33 school administrative unit in which a public school converts to a
34 charter school shall give admission preference to students who reside
35 within the former attendance area of that school.
36 (4) Admission to a charter school shall not be determined according to the
37 local school administrative unit in which a student resides.
38 (5) A charter school shall not discriminate against any student on the basis
39 of ethnicity, national origin, gender, or disability. Except as otherwise
40 provided by law or the mission of the school as set out in the charter,
41 the school shall not limit admission to students on the basis of
42 intellectual ability, measures of achievement or aptitude, athletic
43 ability, disability, race, creed, gender, national origin, religion, or
44 ancestry. The charter school may give enrollment priority to siblings of

1 currently enrolled students who were admitted to the charter school in
2 a previous year and to children of the school's principal, teachers, and
3 teacher assistants. In addition, and only for its first year of operation,
4 the charter school may give enrollment priority to children of the
5 initial members of the charter school's board of directors, so long as (i)
6 these children are limited to no more than ten percent (10%) of the
7 school's total enrollment or to 20 students, whichever is less, and (ii)
8 the charter school is not a former public or private school. Within one
9 year after the charter school begins operation, the population of the
10 school shall reasonably reflect the racial and ethnic composition of the
11 general population residing within the local school administrative unit
12 in which the school is located or the racial and ethnic composition of
13 the special population that the school seeks to serve residing within the
14 local school administrative unit in which the school is located. The
15 school shall be subject to any court-ordered desegregation plan in
16 effect for the local school administrative unit.

17 (6) During each period of enrollment, the charter school shall enroll an
18 eligible student who submits a timely application, unless the number of
19 applications exceeds the capacity of a program, class, grade level, or
20 building. In this case, students shall be accepted by lot. Once enrolled,
21 students are not required to reapply in subsequent enrollment periods.

22 (7) Notwithstanding any law to the contrary, a charter school may refuse
23 admission to any student who has been expelled or suspended from a
24 public school under G.S. 115C-391 until the period of suspension or
25 expulsion has expired.

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

42 A student who attends a charter school operated by a local board of education and
43 who resides within the local school administrative unit in which the school is located

1 has the same right to school transportation as students assigned to other public schools
2 in the local school administrative unit.

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

7 (j) Driving Eligibility Certificates. – In accordance with rules adopted by the
8 State Board of Education, the designee of the school's board of directors shall do all of
9 the following:

- 10 (1) Sign driving eligibility certificates that meet the conditions established
11 in G.S. 20-11.
- 12 (2) Obtain the necessary written, irrevocable consent from parents,
13 guardians, or emancipated juveniles, as appropriate, in order to
14 disclose information to the Division of Motor Vehicles.
- 15 (3) Notify the Division of Motor Vehicles when a student who holds a
16 driving eligibility certificate no longer meets its conditions."

17 **SECTION 5.** G.S. 115C-238.29H reads as rewritten:

18 **"§ 115C-238.29H. State and local funds for a charter school.**

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

- 20 (1) An amount equal to the average per pupil allocation for average daily
21 membership from the local school administrative unit allotments in
22 which the charter school is located for each child attending the charter
23 school except for the allocation for children with special needs and for
24 the allocation for children with limited English proficiency;
- 25 (2) An additional amount for each child attending the charter school who
26 is a child with special needs; and
- 27 (3) An additional amount for children with limited English proficiency
28 attending the charter school, based on a formula adopted by the State
29 Board.

30 In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual
31 adjustments to the amount allocated to a charter school based on its enrollment growth
32 in school years subsequent to the initial year of operation. In the event a child with
33 special needs leaves the charter school and enrolls in a public school during the first 60
34 school days in the school year, the charter school shall return a pro rata amount of funds
35 allocated for that child to the State Board, and the State Board shall reallocate those
36 funds to the local school administrative unit in which the public school is located. In the
37 event a child with special needs enrolls in a charter school during the first 60 school
38 days in the school year, the State Board shall allocate to the charter school the pro rata
39 amount of additional funds for children with special needs.

40 (a1) Funds allocated by the State Board of Education may be used to enter into
41 operational and financing leases for real property or mobile classroom units for use as
42 school facilities for charter schools and may be used for payments on loans made to
43 charter schools for facilities or equipment. However, State funds shall not be used to
44 obtain any other interest in real property or mobile classroom units. No indebtedness of

1 any kind incurred or created by the charter school shall constitute an indebtedness of the
2 State or its political subdivisions, and no indebtedness of the charter school shall
3 involve or be secured by the faith, credit, or taxing power of the State or its political
4 ~~subdivisions.~~ subdivisions, unless the charter school is operated by a local board of
5 education. Every contract or lease into which a charter school enters shall include the
6 previous sentence. The school also may own land and buildings it obtains through
7 non-State sources.

8 (b) If a student attends a charter school, the local school administrative unit in
9 which the child resides shall transfer to the charter school an amount equal to the per
10 pupil local current expense appropriation to the local school administrative unit for the
11 fiscal year."

12 **SECTION 6.** This act is effective when it becomes law.