

retirement plans must be public employees. There is concern that a “private, nonprofit corporation” cannot be made into a public entity, and, therefore, no charter school will be able to have its employees eligible for participation. The committee substitute would allow applicants to declare whether they want to be operated by a non-profit, tax-exempt corporation or by a board of directors whose members are approved by the State Board.

Employees of charter schools operated by a board of directors whose members are approved by the State Board would be eligible for participation in the State Retirement System. Employees of charter schools operated by private, nonprofit corporations would not be eligible for participation. In the case of a board of directors whose members are approved by the State Board, there can be no more than 25 members. The terms for the initial members can be no longer than the term of the charter that the State Board grants (i.e., no more than 5 years); subsequent members’ terms can be no more than 5 years. No member may serve more than two full terms. Appointments, including those to fill vacancies, shall be recommended by the current board of directors and approved by the State Board. Nonrenewal of a charter operated by this board of directors shall constitute a termination of that body.

- The committee substitute provides that the local board of education of the local school administrative unit in which the charter school is proposed to be located may offer any information or comment concerning an application for a charter. The board must deliver the information to the chartering entity by January 1 following the date applications must be submitted for preliminary approval (November 1). The bill provides specifically that the applicant is not required to obtain or deliver this information. Currently, the State Board’s policy is that applicants must include an “impact statement” from the local board as part of their applications.
- Section 2 creates a new G.S. 115C-238.29C1 to direct the State Board to adopt a uniform policy on whether and under what circumstances it will require operators of a charter school and their employees and independent contractors who have significant access to students or who have responsibility for the fiscal management of the schools to be subject to a criminal history check. The criminal history check must occur after preliminary approval is given. Funds allocated or to be allocated to the charter school by the State Board may be used to reimburse persons for the criminal history checks and the fingerprinting. This section is virtually identical to G.S. 115C-332, which directs local boards to adopt a similar policy for their school personnel. The check is to be done for purposes of deciding whether to grant final approval of a charter and for the State Board to make employment recommendations to charter schools. If the State Board

recommends dismissal or non employment of a person, then the charter school shall dismiss or refuse to employ that person.

- Section 4 amends G.S. 115C-238.29E(a) to provide that charter schools denied preliminary approval from the local board of the school unit in which the school will be located shall be accountable to the State Board for purposes of ensuring compliance with applicable laws and their respective charters. All other charter schools will be accountable to that local board for these purposes. Currently, a charter school is to be accountable to the local board of the local school administrative unit in which the school is to be located. This change also removes the requirement that the State Board may sign on behalf of the local board the contract under which the school is to be operated.
- Also, Section 4 directs the State Board to provide the opportunity for charter who received final approval of their applications by March 31, 1997, the opportunity for them to be operated by a board of directors whose members are approved by the State Board.
- Section 4 also amends G.S. 115C-238.29E(e) to require local boards to lease any available building or land to the charter school, upon its request, unless it is not “economically or practically feasible” or the local board does not have adequate classroom space to meet its enrollment needs.
- Section 5 amends G.S. 115C-238.29F(c) to direct the State Board to adopt rules to set a reasonable amount and types of liability insurance that a charter school must be required by contract to obtain. In addition, this change would exempt charter schools from the State Tort Claims Act and would provide that the State will not defend the charter schools in the defense of any civil or criminal action or proceeding. For any charter school that possibly could have any sovereign immunity, this immunity is waived to the extent of indemnification by insurance.
- In addition, Section 5 requires local boards to allow teachers, during the first year of a charter school’s operation, to make a request for a leave of absence up to 45 days before the teacher would otherwise have to report for duty. In subsequent years, teachers can be required to make this request up to 90 days before they would otherwise have to report for duty. Under current law, there is no distinction between the initial and subsequent years of the charter school’s operation, and boards can require 90 days’ notice.
- Section 5 also removes the requirement that students who reside in a local school administrative unit other than the one where the charter school is located must have the approval of both local boards. This requirement also allowed the local board of the unit in which the school is located to charge the student tuition.
- In addition, Section 5 amends G.S. 115C.29F(h) to direct the charter school to 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 school is not required to provide transportation to any student who lives within 1-1/2 miles of the school. The bill also allows the local board of the unit in which the school is located to contract with the school, upon the school's request, for the provision of transportation in accordance with the transportation plan for students who reside at least 1-1/2 miles of the school in that school unit. The local board may refuse to provide the transportation 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. The board may charge a reasonable charge sufficient to cover the cost of providing this transportation. Currently, charter schools receive the State funds for transportation for each student. In addition, the charter schools are required to provide transportation for students who reside in the local school administrative unit in which the school is located. Also, local boards are not required to provide transportation for students who live within 1-1/2 miles of the public school to which they are assigned.

- Finally, Section 5 amends G.S. 115C-238.29F(i) to limit the assets to “net assets” that are considered property of the local school administrative unit upon dissolution of the school or upon nonrenewal of the charter. Net assets are obtained by subtracting the liabilities from the total assets.
- Section 6 would create a new G.S. 115C-238.29F1 to enumerate the powers of a board of directors that operates a charter school and whose members are approved by the State Board. These powers do not include the power to levy taxes, issue bonds, or acquire property by eminent domain. The enumerated powers include: (i) sue and be sued; (ii) make contracts; (iii) adopt, alter, and use a seal; (iv) purchase, lease, rent, dispose of, own, mortgage, or encumber real or personal property; (v) establish, construct, purchase, maintain, equip, and operate facilities necessary for the operation of the school; (vi) pay costs and expenses in the formation, organization, administration, and operation of the school; (vii) apply for, accept, and administer loans and grants, to expend the money in accordance with the lender's or donor's requirements, and give any required evidences of indebtedness; (viii) execute financing agreements, security documents, and other instruments; (ix) employ, elect, or appoint personnel, define their duties, and fix their compensation; (x) receive and use allocations from the State Board and local board; and (xi) pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for current and former directors, officers, employees, and agents. This section provides that any indebtedness incurred or created by the board of directors is not an indebtedness of the State or its political subdivisions and shall not involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.

- Section 7 amends G.S. 115C-238.29G, which currently directs the State Board to develop and implement a process to resolve grievances between a charter school and its chartering entity. The amendment requires the process also to address disputes between charter schools and local boards or the State Board.
- Section 8 amends G.S. 115C-238.29H(a) to allow funds allocated by the State Board to be used to enter into operational leases for real property or mobile classroom units for use as school facilities for charter schools. This law currently prohibits using these funds “to purchase land or buildings”. Legally, the word “purchase” means any type of acquisition of property, which includes leasing. Using State funds to obtain any other interest in real property will still be prohibited.
- Section 9 allows the State Board to establish an alternative timeline for the application, approval, and appeals process. Currently, the law gives specific dates for specific steps in the process. The Board’s alternative timeline must still provide for final approval by March 15 of each calendar year.
- Section 13 allows the State Board to use a streamlined procedure for adopting rules directly related to the implementation of this legislation. The Board may publish the text of any proposed rule as the first step in the rule making procedure, and a rule may take effect without waiting for submission to the General Assembly.¹

ASSUMPTIONS AND METHODOLOGY:

1. Assume 150 – 500 full record checks and FBI and State fingerprint checks at \$38.00 each. No increase over four years, in the absence of experience on personnel turnover and projections on the increased numbers of charter schools.
2. Assume an additional ½ position in FY1997-98 in the Department of Public Instruction to process and secure the record checks and fingerprint records. This would increase to a full time position by year two. The estimate of salary cost is adjusted for inflation for years two through five. These funds are in addition to the estimated \$220,000 in costs incurred by the agency in FY1997-98 to implement charter schools.

¹ Summary provided by General Research Division of the N.C. General Assembly.

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