

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1739*

Committee Substitute Favorable 6/24/98
Committee Substitute #2 Favorable 7/2/98
Committee Substitute #3 Favorable 7/13/98

Short Title: Retirement/Charter Schs.

(Public)

Sponsors:

Referred to:

June 1, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW CHARTER SCHOOLS TO ELECT TO PARTICIPATE IN THE
3 NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' RETIREMENT
4 SYSTEM, IN THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES'
5 COMPREHENSIVE MAJOR MEDICAL PLAN, OR BOTH, TO GIVE CHARTER
6 SCHOOLS THE SAME MOTOR FUEL TAX EXEMPTION AS PUBLIC
7 SCHOOLS, TO ALLOW CHARTER SCHOOLS TO OBTAIN THE SAME
8 PERMANENT LICENSE PLATES AS PUBLIC SCHOOLS, TO MAKE CHANGES
9 IN THE CHARTER SCHOOL LAW, TO PERMIT A LOCAL BOARD OF
10 EDUCATION TO APPLY FOR CHARTER STATUS FOR ONE OR MORE OF ITS
11 PUBLIC SCHOOLS, TO REQUIRE RULES GOVERNING CHARTER SCHOOLS
12 TO BE SUBJECT TO REVIEW, AND TO ALLOW ANNUAL SALES TAX
13 REFUNDS FOR LOCAL SCHOOL ADMINISTRATIVE UNITS.
14 The General Assembly of North Carolina enacts:
15 Section 1. G.S. 115C-238.29F(e) reads as rewritten:
16 "(e) Employees. –

- 1 (1) An employee of a charter school operated by a private nonprofit
2 corporation is not an employee of the local school administrative unit in
3 which the charter school is located. An employee of a charter school
4 operated by a local school administrative unit is an employee of the
5 local school administrative unit in which the charter school is located.
6 The charter school's board of directors shall employ and contract with
7 necessary teachers to perform the particular service for which they are
8 employed in the school; at least seventy-five percent (75%) of these
9 teachers in grades kindergarten through five, at least fifty percent (50%)
10 of these teachers in grades six through eight, and at least fifty percent
11 (50%) of these teachers in grades nine through 12 shall hold teacher
12 certificates. The board also may employ necessary employees who are
13 not required to hold teacher certificates to perform duties other than
14 teaching and may contract for other services. The board may discharge
15 teachers and noncertificated employees.
- 16 (2) No local board of education shall require any employee of the local
17 school administrative unit to be employed in a charter school.
- 18 (3) If a teacher employed by a local school administrative unit makes a
19 written request for an extended leave of absence to teach at a charter
20 ~~school,~~ school operated by a private nonprofit corporation, the local
21 school administrative unit shall grant the leave. The local school
22 administrative unit shall grant a leave for any number of years requested
23 by the teacher, shall extend the leave for any number of years requested
24 by the teacher, and shall extend the leave at the teacher's request. For
25 the initial year of a charter school's operation, the local school
26 administrative unit may require that the request for a leave or extension
27 of leave be made up to 45 days before the teacher would otherwise have
28 to report for duty. For subsequent years, the local school administrative
29 unit may require that the request for a leave or extension of leave be
30 made up to 90 days before the teacher would otherwise have to report
31 for duty. A teacher who has career status under G.S. 115C-325 prior to
32 receiving an extended leave of absence to teach at a charter school may
33 return to a public school in the local school administrative unit with
34 career status at the end of the leave of absence or upon the end of
35 employment at the charter school if an appropriate position is available.
36 If an appropriate position is unavailable, the teacher's name shall be
37 placed on a list of available teachers and that teacher shall have priority
38 on all positions for which that teacher is qualified in accordance with
39 G.S. 115C-325(e)(2).
- 40 (4) The employees of the charter school operated by a private nonprofit
41 corporation shall be deemed employees of the local school
42 administrative unit for purposes of providing certain State-funded
43 employee benefits, including membership in the Teachers' and State

1 Employees' Retirement System and the Teachers' and State Employees'
2 Comprehensive Major Medical Plan. The State Board of Education
3 provides funds to charter ~~schools, schools operated by private nonprofit~~
4 corporations, approves the original members of the boards of directors
5 of the charter schools, has the authority to grant, supervise, and revoke
6 charters, and demands full accountability from charter schools for
7 school finances and student performance. Accordingly, it is the
8 determination of the General Assembly that charter schools operated by
9 private nonprofit corporations are public schools and that the employees
10 of these charter schools are public school employees and are "teachers" for
11 ~~purposes of membership in the North Carolina Teachers' and State Employees'~~
12 ~~Retirement System and State Employees' Comprehensive Major Medical Plan.~~
13 employees. Employees of a charter school operated by a private
14 nonprofit corporation whose board of directors elects to join under G.S.
15 135-5.3 are 'teachers' for the purpose of membership in the North
16 Carolina Teachers' and State Employees' Retirement System.
17 Employees of a charter school operated by a private nonprofit
18 corporation whose board of directors elects to join under G.S. 135-
19 40.3A are 'teachers' for the purpose of membership in the North
20 Carolina Teachers' and State Employees' Comprehensive Major Medical
21 Plan. In no event shall anything contained in this Part require the North
22 Carolina Teachers' and State Employees' Retirement System to accept
23 employees of a private employer as members or participants of the
24 System."

25 Section 2. Article 1 of Chapter 135 of the General Statutes is amended by
26 adding the following new section:

27 "**§ 135-5.3. Optional participation for charter schools operated by private nonprofit**
28 **corporations.**

29 (a) The board of directors of each charter school operated by a private nonprofit
30 corporation shall elect whether to join the Retirement System in accordance with the laws
31 applicable to that System. This election shall be in writing, shall be made no later than
32 September 1, 1998, and shall be filed with the Retirement System and with the State
33 Board of Education. For each charter school employee who is employed on or before the
34 date the board makes the election, this election is effective as of the date the board makes
35 the election. For each charter school employee who is employed after the date the board
36 makes the election, the election is effective as of the date of that employee's entry into
37 eligible service. This subsection applies only to charter schools that received State Board
38 of Education approval under G.S. 115C-238.29D in 1997 or 1998.

39 (b) No later than 30 days after both parties have signed the written charter under
40 G.S. 115C-238.29E, the board of directors of a charter school operated by a private
41 nonprofit corporation shall elect whether to join the Retirement System in accordance
42 with the laws applicable to that System. This election shall be in writing and filed with
43 the Retirement System and with the State Board of Education and is effective for each

1 charter school employee as of the date of that employee's entry into eligible service. This
2 subsection applies to charter schools that receive State Board of Education approval
3 under G.S. 115C-238.29D after 1998.

4 (c) A board's election to join the Retirement System under this section is
5 irrevocable and shall require all employees of the charter school to participate.

6 (d) No retirement benefit, death benefit, or other benefit under the Retirement
7 System shall be paid by the State of North Carolina or the Board of Trustees of the
8 Teachers' and State Employees' Retirement System with respect to any employee of a
9 charter school whose board of directors does not elect to join the Retirement System
10 under this section or with respect to any beneficiary of that employee.

11 (e) The board of directors of each charter school shall notify each of its employees
12 as to whether the board elected to join the Retirement System under this section. This
13 notification shall be in writing and shall be provided within 30 days of the board's
14 election or at the time an initial offer for employment is made, whichever occurs last. If
15 the board did not elect to join the Retirement System, the notice shall include a statement
16 that the employee shall have no legal recourse against the board or the State for any
17 possible credit or reimbursement under the Retirement System. The employee shall
18 provide written acknowledgment of the employee's receipt of the notification under this
19 subsection."

20 Section 3. G.S. 135-4 is amended by adding the following new subsection to
21 read:

22 "(bb) Credit for Employment in Charter School Operated by a Private Nonprofit
23 Corporation. – Any member may purchase creditable service for any employment as an
24 employee of a charter school operated by a private nonprofit corporation whose board of
25 directors did not elect to participate in the Retirement System under G.S. 135-5.3 upon
26 completion of five years of membership service after that charter school employment by
27 making a lump-sum payment into the Annuity Savings Fund. The payment by the
28 member shall be equal to the full liability of the service credits calculated on the basis of
29 the assumptions used for purposes of the actuarial valuation of the Retirement System's
30 liabilities, taking into account the additional retirement allowance arising on account of
31 the additional service credits commencing at the earliest age at which the member could
32 retire with an unreduced retirement allowance, as determined by the Board of Trustees
33 upon the advice of the actuary plus an administrative expense fee to be determined by the
34 Board of Trustees. Notwithstanding the foregoing provisions of this subsection that
35 provide for the purchase of service credits, the terms 'full cost', 'full liability', and 'full
36 actuarial cost' include assumed annual postretirement allowance increases, as determined
37 by the Board of Trustees, from the earliest age at which a member could retire on an
38 unreduced service allowance."

39 Section 4. G.S. 135-40.1(6) reads as rewritten:

40 "(6) Employing Unit. – A North Carolina School System; Community
41 College; State Department, Agency or Institution; Administrative Office
42 of the Courts; or Association or Examining Board whose employees are
43 eligible for membership in a State-Supported Retirement System. An

1 employing unit also shall mean a charter school operated by a private
2 nonprofit corporation in accordance with Part 6A of Chapter 115C of
3 the General Statutes whose employees are deemed to be public employees
4 and members of a State-Supported Retirement System, whose board of
5 directors elects to join the Plan under G.S. 135-40.3A."

6 Section 5. Part 3 of Article 3 of Chapter 135 is amended by adding the
7 following new section:

8 **"§ 135-40.3A. Optional participation for charter schools operated by private**
9 **nonprofit corporations.**

10 (a) The board of directors of each charter school operated by a private nonprofit
11 corporation shall elect whether to join the Plan in accordance with the laws applicable to
12 that Plan. This election shall be in writing, shall be made no later than September 1, 1998,
13 and shall be filed with the Executive Administrator and Board of Trustees and with the
14 State Board of Education. For each charter school employee who is employed on or
15 before the date the board makes the election, this election is effective as of the date the
16 board makes the election. For each charter school employee who is employed after the
17 date the board makes the election, the election is effective as of the date of that
18 employee's entry into eligible service. This subsection applies only to charter schools
19 that received State Board of Education approval under G.S. 115C-238.29D in 1997 or
20 1998.

21 (b) No later than 30 days after both parties have signed the written charter under
22 G.S. 115C-238.29E, the board of directors of a charter school operated by a private
23 nonprofit corporation shall elect whether to join the Plan in accordance with the laws
24 applicable to that Plan. This election shall be in writing and filed with the Executive
25 Administrator, the Board of Trustees, and the State Board of Education. This election is
26 effective for each charter school employee as of the date of that employee's entry into
27 eligible service. This subsection applies to charter schools that receive State Board of
28 Education approval under G.S. 115C-238.29D after 1998.

29 (c) A board's election to join the Plan under this section is irrevocable and shall
30 require all employees of the charter school to participate.

31 (d) If a charter school's board of directors does not elect to join the Plan under this
32 section, that school's employees and the dependents of those employees are not eligible
33 for any benefits under the Plan.

34 (e) The board of directors of each charter school shall notify each of its employees
35 as to whether the board elected to join the Plan under this section. This notification shall
36 be in writing and shall be provided within 30 days of the board's election or at the time an
37 initial offer for employment is made, whichever occurs last. If the board did not elect to
38 join the Plan, the notice shall include a statement that the employee shall have no legal
39 recourse against the board or the State for any possible benefit under the Plan. The
40 employee shall provide written acknowledgment of the employee's receipt of the
41 notification under this subsection."

42 Section 6. G.S. 105-228.90(b) reads as rewritten:

43 "(b) Definitions. – The following definitions apply in this Article:

- 1 (1) Reserved.
- 2 (2) Charter school board. – A nonprofit corporation that has a charter under
3 G.S. 115D-238.29D to operate a charter school.
- 4 ~~(+)~~(3) City. – A city as defined by G.S. 160A-1(2). The term also includes an
5 urban service district defined by the governing board of a consolidated
6 city-county, as defined by G.S. 160B-2(1).
- 7 ~~(4a)~~(4) Code. – The Internal Revenue Code as enacted as of January 1, 1997,
8 including any provisions enacted as of that date which become effective
9 either before or after that date.
- 10 ~~(4b)~~(5) County. – Any one of the counties listed in G.S. 153A-10. The term
11 also includes a consolidated city-county as defined by G.S. 160B-2(1).
- 12 ~~(2)~~(6) Reserved.
- 13 ~~(3)~~(7) Electronic Funds Transfer. – A transfer of funds initiated by using an
14 electronic terminal, a telephone, a computer, or magnetic tape to instruct
15 or authorize a financial institution or its agent to credit or debit an
16 account.
- 17 ~~(4)~~(8) Reserved.
- 18 ~~(5)~~(9) Person. – An individual, a fiduciary, a firm, an association, a
19 partnership, a limited liability company, a corporation, a unit of
20 government, or another group acting as a unit. The term includes an
21 officer or employee of a corporation, a member, a manager, or an
22 employee of a limited liability company, and a member or employee of
23 a partnership who, as officer, employee, member, or manager, is under a
24 duty to perform an act in meeting the requirements of Subchapter I, V,
25 or VIII of this Chapter or of Article 3 of Chapter 119 of the General
26 Statutes.
- 27 ~~(6)~~(10) Secretary. – The Secretary of Revenue.
- 28 ~~(7)~~(11) Tax. – A tax levied under Subchapter I, V, or VIII of this Chapter or an
29 inspection tax levied under Article 3 of Chapter 119 of the General
30 Statutes. Unless the context clearly requires otherwise, the terms "tax"
31 and "additional tax" include penalties and interest as well as the
32 principal amount.
- 33 ~~(8)~~(12) Taxpayer. – A person subject to the tax or reporting requirements of
34 Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of
35 the General Statutes."

36 Section 7. G.S. 105-449.88 reads as rewritten:

37 **"§ 105-449.88. Exemptions from the excise tax.**

38 The excise tax on motor fuel does not apply to the following:

- 39 (1) Motor fuel removed, by transport truck or another means of transfer
40 outside the terminal transfer system, from a terminal for export, if the
41 supplier of the motor fuel collects tax on it at the rate of the motor fuel's
42 destination state.
- 43 (2) Motor fuel sold to the federal government.

1 (3) Motor fuel sold to the State for its use.

2 (4) Motor fuel sold to a local board of education for use in the public school
3 system.

4 (5) Motor fuel sold to a charter school board for use for charter school
5 purposes."

6 Section 8. G.S. 20-84 reads as rewritten:

7 **"§ 20-84. Vehicles owned by State, municipalities or orphanages, etc.; certain**
8 **vehicles operated by the local chapters of American National Red Cross.**

9 The Division upon proper proof being filed with it that any motor vehicle for which
10 registration is herein required is owned by the State or any department thereof, or by any
11 county, township, city or town, or by any board of education, or by any nonprofit
12 corporation that has a charter under G.S. 115C-238.29D to operate a charter school, or by
13 any orphanage or civil air patrol, or incorporated emergency rescue squad, or
14 incorporated REACT (" Radio Emergency Association of Citizen Teams") Team, or for
15 any motor vehicle involved exclusively in the support of a disaster relief effort, shall
16 collect six dollars (\$6.00) for the registration of such motor vehicles, but shall not collect
17 any fee for application for certificate of title in the name of the State or any department
18 thereof, or by any county, township, city or town, or by any board of education or
19 orphanage: Provided, that the term "owned" shall be construed to mean that such motor
20 vehicle is the actual property of the State or some department thereof or of the county,
21 township, city or town, or of the board of education, and no motor vehicle which is the
22 property of any officer or employee of any department named herein shall be construed
23 as being "owned" by such department. Provided, that the above exemptions from
24 registration fees shall also apply to any church-owned bus used exclusively for
25 transporting children and parents to Sunday school and church services and for no other
26 purpose.

27 In lieu of the annual six dollars (\$6.00) registration provided for in this section, the
28 Division may for the license year 1950 and thereafter provide for a permanent
29 registration of the vehicles described in this section and issue permanent registration
30 plates for such vehicles. The permanent registration plates issued pursuant to this
31 paragraph shall be of a distinctive color and shall bear thereon the word "permanent."
32 Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle of the
33 same classification. For the permanent registration and issuance of permanent registration
34 plates provided for in this paragraph, the Division shall collect a fee of six dollars (\$6.00)
35 for each vehicle so registered and licensed.

36 The provisions of this section are hereby made applicable to vehicles owned by a rural
37 fire department, agency or association.

38 The Division of Motor Vehicles shall issue to the North Carolina Tuberculosis
39 Association, Incorporated, or any local chapter or association of said corporation, for a
40 fee of six dollars (\$6.00) for each plate a permanent registration plate which need not be
41 thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is
42 owned by said North Carolina Tuberculosis Association, Incorporated, or any local
43 chapter or local association thereof and operated exclusively in this State for the purpose

1 of diagnosis, treatment and discovery of tuberculosis. The initial six dollars (\$6.00) fee
2 required by this section and for this purpose shall be in full payment of the permanent
3 registration plates issued for such vehicle operated as a mobile X-ray unit, and such
4 plates need not thereafter be renewed, and such plates may be transferred as provided in
5 G.S. 20-78 to replacement vehicles to be used for the purposes above described and for
6 which the plates were originally issued.

7 The Division of Motor Vehicles shall issue to the American National Red Cross, upon
8 application of any local chapter thereof and payment of a fee of six dollars (\$6.00) for
9 each plate, a permanent registration plate, which need not be thereafter renewed, for all
10 disaster vans, bloodmobiles, handivans, and such sedans and station wagons as are used
11 for emergency or disaster work, and operated by a local chapter in this State in the
12 business of the American National Red Cross. Such plates may be transferred as provided
13 in G.S. 20-78 to a replacement vehicle to be used for the purposes above described and
14 for which the plates were originally issued. In the event of transfer of ownership to any
15 other person, firm or corporation, or transfer or reassignment of any vehicle bearing such
16 registration plate to any chapter or association of the American National Red Cross in any
17 other state, territory or country, the registration plate assigned to such vehicle shall be
18 surrendered to the Division of Motor Vehicles.

19 In lieu of all other registration requirements, the Commissioner shall each year assign
20 to the State Highway Patrol, upon payment of six dollars (\$6.00) per registration plate, a
21 sufficient number of regular registration plates of the same letter prefix and in numerical
22 sequence beginning with number 100 to meet the requirements of the State Highway
23 Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander
24 of the Patrol shall, when such plates are assigned, issue to each member of the State
25 Highway Patrol a registration plate for use upon the Division vehicle assigned to him
26 pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle
27 operated by the Patrol. An index of such assignments of registration plates shall be kept
28 at each State Highway Patrol radio station and a copy thereof shall be furnished to the
29 registration division of the Division. Information as to the individual assignments of such
30 registration plates shall be made available to the public upon request to the same extent
31 and in the same manner as regular registration information. The commander, when
32 necessary, may reassign registration plates provided that such reassignment shall be made
33 to appear upon the index required herein within 20 days after such reassignment.

34 The Division of Motor Vehicles shall, upon appropriate certification of financial
35 responsibility, issue to sheltered workshops recognized or approved by the Division of
36 Vocational Rehabilitation Services and to public and nonprofit agencies or organizations
37 which provide transportation for or operate programs subject to and approved in
38 accordance with standards adopted by the Commission for Mental Health,
39 Developmental Disabilities, and Substance Abuse Services of the Department of Health
40 and Human Services upon application and payment of a fee of six dollars (\$6.00) for each
41 plate, a permanent registration plate for vehicles registered to and operated by such
42 agencies. The initial six dollars (\$6.00) fee required by this section and for this purpose
43 shall be in full payment of the permanent registration plate issued for such vehicle

1 operated by a sheltered workshop and such plates need not thereafter be renewed, and
2 such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be
3 used by the sheltered workshop designated on the registration card.

4 On and after January 1, 1972, permanent registration plates used on all vehicles
5 owned by the State of North Carolina or a department thereof shall be of a distinctive
6 color and design which shall be readily distinguishable from all other permanent
7 registration plates issued pursuant to this section or G.S. 20-84.1. For the purpose of
8 carrying out the intent of this paragraph, all vehicles owned by the State of North
9 Carolina or a department thereof in operation as of October 1, 1971, and bearing a
10 permanent registration shall be reregistered during the months of October, November and
11 December, 1971, and upon reregistration, registration plates issued for such vehicles shall
12 be of a distinctive color and design as provided for hereinabove."

13 Section 9. G.S. 115C-238.29B(a) reads as rewritten:

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

25 Section 10. G.S. 115C-238.29B(b)(3) reads as rewritten:

26 "(3) The governance structure of the ~~school~~ school, if the applicant is not a
27 local board of education, including the names of the proposed initial
28 members of the board of directors of the nonprofit, tax-exempt
29 corporation and the process to be followed by the school to ensure
30 parental involvement."

31 Section 11. G.S. 115C-238.29B(b)(11) reads as rewritten:

32 "(11) The procedures by which students can be excluded from the charter
33 school and returned to a public ~~school~~ school other than a charter
34 school. Notwithstanding any law to the contrary, any local board may
35 refuse to admit any student who is suspended or expelled from a charter
36 school due to actions that would lead to suspension or expulsion from a
37 public school under G.S. 115C-391 until the period of suspension or
38 expulsion has expired."

39 Section 12. G.S. 115C-238.29B(c) reads as rewritten:

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

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

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

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

18 Section 13. G.S. 115C-238.29B(d) is repealed.

19 Section 14. G.S. 115C-238.29D(b) is repealed.

20 Section 15. G.S. 115C-238.29E reads as rewritten:

21 "**§ 115C-238.29E. Charter school operation.**

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

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

36 (c) ~~A charter school shall operate under the written charter signed by the entity to~~
37 ~~which it is accountable under subsection (a) of this section and the applicant. A charter~~
38 ~~school is not required to enter into any other contract. The charter shall incorporate the~~
39 ~~information provided in the application, as modified during the charter approval process,~~
40 ~~and any terms and conditions imposed on the charter school by the State Board of~~
41 ~~Education. No other terms may be imposed on the charter school as a condition for~~
42 ~~receipt of local funds. The State Board shall issue the written charter no later than 30~~
43 ~~days after the date on which the State Board grants final approval for the charter. The~~

1 written charter shall incorporate the information provided in the application, as modified
2 during the charter approval process, and any terms and conditions applicable to all charter
3 schools under the rules of the State Board. The charter school is not required to agree to
4 any additional terms, whether requested by the State Board, the local board where the
5 charter school is located, or the entity to which the charter school is accountable. No
6 additional terms may be imposed on the charter school as a condition for receipt of local
7 funds. The charter school shall operate under the written charter signed by the entity to
8 which it is accountable and the applicant.

9 (d) The board of directors of the charter school operated by a private nonprofit
10 corporation shall decide matters related to the operation of the school, including
11 budgeting, curriculum, and operating procedures. The local board of education shall
12 decide these matters for a charter school operated by a local board.

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

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

31 (f) Except as provided in this Part and pursuant to the provisions of its charter, a
32 charter school is exempt from statutes and rules applicable to a local board of education
33 or local school administrative unit. The State Board shall not adopt any rules, policies,
34 procedures, requirements, standards, terms, conditions, or regulations governing charter
35 schools unless they are authorized specifically under this Part; they are applicable
36 uniformly to all charter schools; and the Board proceeds under Chapter 150B of the
37 General Statutes. Only those rules, policies, procedures, requirements, standards, terms,
38 conditions, and regulations that are adopted by the Board shall apply to charter schools
39 and may be included in the written charter and amendments to that charter. The Board
40 may adopt guidelines to assist charter schools. These guidelines are not binding on
41 charter schools and shall not be included in any written charter unless the charter school
42 agrees to the inclusion."

43 Section 16. G.S. 115C-238.29F(b) reads as rewritten:

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

5 Section 17. G.S. 115C-238.29F(c) is amended by adding the following new
6 subdivision:

7 "(3) The civil liability for a charter school operated by a local school
8 administrative unit shall be the same as for any other school operated by
9 the unit."

10 Section 18. G.S. 115C-238.29F(h) reads as rewritten:

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

26 A student who attends a charter school operated by a local board of education and
27 who resides within the local school administrative unit in which the school is located has
28 the same right to school transportation as students assigned to other public schools in the
29 local school administrative unit."

30 Section 19. G.S. 115C-238.29F(d) reads as rewritten:

31 "(d) Instructional Program. –

- 32 (1) The school shall provide instruction each year for at least 180 days.
33 (2) The school shall design its programs to at least meet the student
34 performance standards adopted by the State Board of Education and the
35 student performance standards contained in the charter.
36 (3) A charter school shall ~~conduct the student assessments required for charter~~
37 ~~schools by the State Board of Education.~~ administer the tests adopted by
38 the State Board of Education under G.S. 115C-174.11 and that are used
39 to implement the School-Based Management and Accountability
40 Program in other public schools.
41 (4) The school shall comply with policies adopted by the State Board of
42 Education for charter schools relating to the education of children with
43 special needs.

1 (5) The school is subject to and shall comply with Article 27 of Chapter
2 115C of the General Statutes, except that a charter school may also
3 exclude a student from the charter school and return that student to
4 another school in the local school administrative unit in accordance with
5 the terms of its charter."

6 Section 20. G.S. 115C-238.29F(g)(5) reads as rewritten:

7 "(5) A charter school shall not discriminate against any student on the basis
8 of ethnicity, national origin, gender, or disability. Except as otherwise
9 provided by law or the mission of the school as set out in the charter, the
10 school shall not limit admission to students on the basis of intellectual
11 ability, measures of achievement or aptitude, athletic ability, disability,
12 race, creed, gender, national origin, religion, or ancestry. The charter
13 school may give enrollment priority to siblings of currently enrolled
14 students who were admitted to the charter school in a previous year and
15 to children of the school's principal, teachers, and teacher assistants. In
16 addition, and only for its first year of operation, the charter school may
17 give enrollment priority to children of the initial members of the charter
18 school's board of directors, so long as (i) these children are limited to no
19 more than ten percent (10%) of the school's total enrollment or to 20
20 students, whichever is less, and (ii) the charter school is not a former
21 public or private school. ~~Within one year after the charter school begins~~
22 ~~operation,~~ The charter school shall make a good faith effort to attract and
23 enroll students so that the population of the school shall—reasonably
24 ~~reflect—reflects~~ the racial and ethnic composition of the general
25 population residing within the local school administrative unit in which
26 the school is located or the racial and ethnic composition of the special
27 population that the school seeks to serve residing within the local school
28 administrative unit in which the school is located. The school shall be
29 subject to any court-ordered desegregation plan in effect for the local
30 school administrative unit."

31 Section 21. G.S. 115C-238.29G(c) reads as rewritten:

32 "(c) The State Board and the charter school are encouraged to make a good-faith
33 attempt to resolve the differences that may arise between them. ~~They—Furthermore, the~~
34 local board of the local school administrative unit in which the charter school is located
35 and the charter school are encouraged to make a good-faith attempt to resolve any
36 differences that may arise between them. The parties in dispute may agree to jointly
37 select a mediator. The mediator shall act as a neutral facilitator of disclosures of factual
38 information, statements of positions and contentions, and efforts to negotiate an
39 agreement settling the differences. The mediator shall, at the request of either ~~the State~~
40 ~~Board or a charter school,~~ party, commence a mediation immediately or within a reasonable
41 period of time. The mediation shall be held in accordance with rules and standards of
42 conduct adopted under Chapter 7A of the General Statutes governing mediated settlement

1 conferences but modified as appropriate and suitable to the resolution of the particular
2 issues in disagreement.

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

16 Section 22. G.S. 115C-238.29H reads as rewritten:

17 "**§ 115C-238.29H. State and local funds for a charter school.**

18 (a) The State Board of Education shall allocate to each charter school (i) an
19 amount equal to the average per pupil allocation for average daily membership from the
20 local school administrative unit allotments in which the charter school is located for each
21 child attending the charter school except for the allocation for children with special needs
22 and (ii) an additional amount for each child attending the charter school who is a child
23 with special needs. In accordance with G.S. 115C-238.29D(d), the State Board shall
24 allow for annual adjustments to the amount allocated to a charter school based on its
25 enrollment growth in school years subsequent to the initial year of operation.

26 In the event a child with special needs leaves the charter school and enrolls in a public
27 school during the first 60 school days in the school year, the charter school shall return a
28 pro rata amount of funds allocated for that child to the State Board, and the State Board
29 shall reallocate those funds to the local school administrative unit in which the public
30 school is located. In the event a child with special needs enrolls in a charter school during
31 the first 60 school days in the school year, the State Board shall allocate to the charter
32 school the pro rata amount of additional funds for children with special needs.

33 (a1) Funds allocated by the State Board of Education may be used to enter into
34 operational and financing leases for real property or mobile classroom units for use as
35 school facilities for charter schools and may be used for payments on loans made to
36 charter schools for facilities or equipment. However, State funds shall not be used to
37 obtain any other interest in real property or mobile classroom units. No indebtedness of
38 any kind incurred or created by the charter school shall constitute an indebtedness of the
39 State or its political subdivisions, and no indebtedness of the charter school shall involve
40 or be secured by the faith, credit, or taxing power of the State or its political ~~subdivisions.~~
41 subdivisions, unless the charter school is operated by a local board of education. Every
42 contract or lease into which a charter school enters except for contracts or leases entered

1 into by a local board of education shall include the previous sentence. The school also
2 may own land and buildings it obtains through non-State sources.

3 (b) If a student attends a charter school, the local school administrative unit in
4 which the child resides shall transfer to the charter school an amount equal to the per
5 pupil local current expense appropriation to the local school administrative unit for the
6 fiscal year. The per pupil local current expense appropriation shall be calculated by
7 dividing the total county appropriation to the local school administrative unit's local
8 current expense fund, including appropriations funded by supplemental taxes, by the
9 unit's average daily membership for the budget year as determined by and certified to the
10 unit and the board of county commissioners by the State Board. In order to establish the
11 number of children for whom these funds are to be transferred, the local administrative
12 unit may require the charter school to provide electronically an invoice that identifies
13 each child for whom these funds are to be remitted, that child's address, and that child's
14 Student Information Management System identification number. The local school
15 administrative unit shall not require any other information from the charter school as a
16 condition of the unit's remission of these funds. If the local school administrative unit
17 requires this invoice, the unit shall provide to the charter school the local current expense
18 appropriation based on the number of children in the most recent invoice. If no invoice is
19 required, the local current expense appropriation shall be based on the number of children
20 as mutually agreed upon by the local school administrative unit and the charter school.
21 The local school administrative unit shall remit these funds to the charter school at times
22 that are mutually agreed upon by the unit and the charter school, but if no agreement is
23 reached, then the unit shall remit these funds to the charter school no later than one week
24 after the unit receives the funds from the board of county commissioners as established
25 under G.S. 115C-437 and upon receipt of an invoice, if required. The State Board may
26 withhold money used for payment of salaries for the superintendent and school finance
27 officer of any local school administrative unit if the Board finds that the unit is not using
28 its best efforts to remit these funds on a timely basis.

29 (c) The board of county commissioners of the county in which the charter school
30 is located may allocate to the charter school funds that may be used for capital outlay
31 purposes."

32 Section 23. G.S. 115C-452 reads as rewritten:

33 **"§ 115C-452. Fines and forfeitures.**

34 The clear proceeds of all penalties and forfeitures and of all fines collected in the
35 General Court of Justice in each county shall be remitted by the clerk of the superior
36 court to the county finance officer, who shall forthwith determine what portion of the
37 total is due to each local school administrative unit and to each charter school in the
38 county and remit the appropriate portion of the amount to the finance officer of each local
39 school administrative unit—unit and each charter school. ~~Fines~~—The first twenty-five
40 percent (25%) of fines and forfeitures shall be apportioned according to the projected
41 average daily membership of each local school administrative unit as determined by and
42 certified to the local school administrative units and the board of county commissioners
43 by the State Board of Education pursuant to G.S. 115C-430. The remainder of the fines

1 and forfeitures shall be apportioned according to the projected average daily membership
2 of each local school administrative unit and each charter school as determined by and
3 certified to the local school administrative units, the charter schools, and the board of
4 county commissioners by the State Board of Education pursuant to G.S. 115C-430 or
5 G.S. 115C-238.29H(b)."

6 Section 24. G.S. 115C-457.3 reads as rewritten:

7 **"§ 115C-457.3. Transfer of funds to the State School Technology Fund.**

8 The Office of State Budget and Management shall transfer funds accruing to the Civil
9 Penalty and Forfeiture Fund to the State School Technology Fund. ~~These~~The first
10 twenty-five percent (25%) of these funds shall be allocated to local school administrative
11 units on the basis of average daily membership. The remaining funds shall be allocated
12 to local school administrative units and charter schools on the basis of average daily
13 membership. Notwithstanding any other law, the funds allocated to charter schools under
14 this section shall be used for school technology; however, in accordance with G.S. 115C-
15 238.29E(f), the charter school is not required to develop or submit a school technology
16 plan under Part 3A of Article 8 of this Chapter."

17 Section 25. (a) G.S. 150B-2(8a) reads as rewritten:

18 "(8a) 'Rule' means any agency regulation, standard, or statement of general
19 applicability that implements or interprets an enactment of the General
20 Assembly or Congress or a regulation adopted by a federal agency or
21 that describes the procedure or practice requirements of an agency. The
22 term includes the establishment of a fee and the amendment or repeal of
23 a prior rule. The term also includes any State Board of Education or
24 Department of Public Instruction rule, policy, procedure, requirement,
25 standard, term, condition, or regulation that is authorized specifically
26 under Part 6A of Article 16 of Chapter 115C of the General Statutes.
27 The term does not include the following:

- 28 a. Statements concerning only the internal management of an
29 agency or group of agencies within the same principal office or
30 department enumerated in G.S. 143A-11 or 143B-6, including
31 policies and procedures manuals, if the statement does not
32 directly or substantially affect the procedural or substantive
33 rights or duties of a person not employed by the agency or group
34 of agencies.
- 35 b. Budgets and budget policies and procedures issued by the
36 Director of the Budget, by the head of a department, as defined
37 by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing
38 board, as defined by G.S. 93B-1, or by the State Board of
39 Elections.
- 40 c. Nonbinding interpretative statements within the delegated
41 authority of an agency that merely define, interpret, or explain
42 the meaning of a statute or rule.

- 1 d. A form, the contents or substantive requirements of which are
2 prescribed by rule or statute.
- 3 e. Statements of agency policy made in the context of another
4 proceeding, including:
- 5 1. Declaratory rulings under G.S. 150B-4.
6 2. Orders of establishing or fixing rates or tariffs.
- 7 f. Requirements, communicated to the public by the use of signs or
8 symbols, concerning the use of public roads, bridges, ferries,
9 buildings, or facilities.
- 10 g. Statements that set forth criteria or guidelines to be used by the
11 staff of an agency in performing audits, investigations, or
12 inspections; in settling financial disputes or negotiating financial
13 arrangements; or in the defense, prosecution, or settlement of
14 cases.
- 15 h. Scientific, architectural, or engineering standards, forms, or
16 procedures, including design criteria and construction standards
17 used to construct or maintain highways, bridges, or ferries.
- 18 i. Job classification standards, job qualifications, and salaries
19 established for positions under the jurisdiction of the State
20 Personnel Commission.
- 21 j. Establishment of the interest rate that applies to tax assessments
22 under G.S. 105-241.1 and the variable component of the excise
23 tax on motor fuel under G.S. 105-449.80."

24 (b) Article 2A of Chapter 150B of the General Statutes is amended by adding the
25 following new Part:

26 "Part 6. Rules Affecting Charter Schools.

27 **"§ 150B-21.30. Procedures applicable to rules affecting charter schools.**

28 (a) G.S. 150B-21.2(a)(1) shall not apply to proposed rules adopted by the State
29 Board of Education if the proposed rules are authorized specifically under Part 6A of
30 Article 16 of Chapter 115C of the General Statutes.

31 (b) Notwithstanding G.S. 150B-21.3(b), a permanent rule that is adopted by the
32 State Board of Education, is approved by the Rules Review Commission, and is
33 authorized specifically under Part 6A of Article 16 of Chapter 115C of the General
34 Statutes, becomes effective five business days after the Commission delivers the rule to
35 the Codifier of Rules, unless the rule specifies a later effective date. If the State Board of
36 Education specifies a later effective date, the rule becomes effective upon that date. A
37 permanent rule that is adopted by the State Board of Education to implement Part 6A of
38 Article 16 of Chapter 115C of the General Statutes, but is not approved by the Rules
39 Review Commission, shall not become effective.

40 (c) G.S. 150B-21.4(b1) shall not apply to permanent rules the State Board of
41 Education proposes to adopt if those rules are authorized specifically under Part 6A of
42 Article 16 of Chapter 115C of the General Statutes.

1 (d) The rule proposed by the State Board of Education may create, amend, or
2 repeal a rule. The State Board of Education shall indicate in the notice of proposed text
3 that the rule is authorized specifically under Part 6A of Article 16 of Chapter 115C of the
4 General Statutes and that the State Board of Education is proceeding under that authority.
5 **"§ 150B-21.31. Procedures applicable to charters.**

6 The State Board of Education shall submit to the Commission the standard written
7 charter agreement that the State Board of Education approved and issued under Part 6A
8 of Article 16 of Chapter 115C of the General Statutes to charter schools that received
9 State Board approval under G.S. 115C-238.29D in 1997 or 1998. The State Board of
10 Education also shall submit to the Commission any modifications to that written charter
11 agreement that the State Board approves after July 1, 1998, for issuance to charter
12 schools approved in subsequent years. The Commission shall review each portion of the
13 charter and each modification to that charter as if it is a rule and shall follow the
14 procedure established in Part 3 of this Article. The Commission shall determine whether
15 each portion or modification is authorized specifically under Part 6A of Article 16 of
16 Chapter 115C of the General Statutes. The Commission may approve only portions and
17 modifications of the charter that are so authorized. All approved portions and
18 modifications of the charter are binding on the charter school. Each portion or
19 modification of the charter that is not approved is void and shall not apply to any charter
20 school unless the charter school's board of directors agrees to its applicability. The board
21 of directors is not required to agree to any portion or modification of the charter that the
22 Commission does not approve. This section shall not apply to information in a charter
23 school's application, as modified during the approval process, that is incorporated in each
24 charter school's charter agreement."

25 Section 26. (a) The State Board of Education, in collaboration with the Charter
26 School Professional Association, shall evaluate the Uniform Education Reporting System
27 to determine whether this is the best way for charter schools to report information to the
28 State Board or whether there is a mutually functional alternative that could be
29 implemented. The State Board shall report the results of this evaluation and its
30 recommendations, including any proposed legislative changes, to the Joint Legislative
31 Commission on Governmental Operations by December 1, 1998.

32 (b) If, at any time, a majority of charter schools present to the State Board of
33 Education an alternative reporting system that is the functional equivalent of the Uniform
34 Education Reporting System and the alternative system has been benchmarked, the State
35 Board shall consider the adoption of that system for charter schools.

36 Section 27. G.S. 105-164.14(c) reads as rewritten:

37 "(c) Certain Governmental Entities. – A governmental entity listed in this
38 subsection is allowed an annual refund of sales and use ~~tax~~-taxes paid by it under this
39 Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct
40 purchases of tangible personal property. Sales and use tax liability indirectly incurred by
41 a governmental entity on building materials, supplies, fixtures, and equipment that
42 become a part of or annexed to any building or structure that is owned or leased by the
43 governmental entity and is being erected, altered, or repaired for use by the governmental

1 entity is considered a sales or use tax liability incurred on direct purchases by the
2 governmental entity for the purpose of this subsection. A request for a refund must be in
3 writing and must include any information and documentation required by the Secretary.
4 A request for a refund is due within six months after the end of the governmental entity's
5 fiscal year.

6 This subsection applies only to the following governmental entities:

- 7 (1) A county.
- 8 (2) A city as defined in G.S. 160A-1.
- 9 (2a) A consolidated city-county as defined in G.S. 160B-2.
- 10 (2b) A local school administrative unit.
- 11 (3) A metropolitan sewerage district or a metropolitan water district in this
12 State.
- 13 (4) A water and sewer authority created under Chapter 162A of the General
14 Statutes.
- 15 (5) A lake authority created by a board of county commissioners pursuant
16 to an act of the General Assembly.
- 17 (6) A sanitary district.
- 18 (7) A regional solid waste management authority created pursuant to G.S.
19 153A-421.
- 20 (8) An area mental health, developmental disabilities, and substance abuse
21 authority, other than a single-county area authority, established pursuant
22 to Article 4 of Chapter 122C of the General Statutes.
- 23 (9) A district health department.
- 24 (10) A regional council of governments created pursuant to G.S. 160A-470.
- 25 (11) A regional planning and economic development commission or a
26 regional economic development commission created pursuant to
27 Chapter 158 of the General Statutes.
- 28 (12) A regional planning commission created pursuant to G.S. 153A-391.
- 29 (13) A regional sports authority created pursuant to G.S. 160A-479.
- 30 (14) A public transportation authority created pursuant to Article 25 of
31 Chapter 160A of the General Statutes.
- 32 (14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter
33 160A of the General Statutes.
- 34 (15) A regional public transportation authority created pursuant to Article 26
35 of Chapter 160A of the General Statutes.
- 36 (16) A local airport authority that was created pursuant to a local act of the
37 General Assembly and has at least one of the following characteristics:
 - 38 a. It has all of the rights of a municipality.
 - 39 b. A local act of the General Assembly declares it to be a
40 municipality.
 - 41 c. A local act of the General Assembly specifically authorizes it to
42 receive a refund under this section.

- 1 (17) A joint agency created by interlocal agreement pursuant to G.S. 160A-
2 462 to operate a public broadcasting television station.
- 3 (18) The North Carolina Low-Level Radioactive Waste Management
4 Authority created pursuant to Chapter 104G of the General Statutes.
- 5 (19) The North Carolina Hazardous Waste Management Commission created
6 pursuant to Chapter 130B of the General Statutes.
- 7 (20) A constituent institution of The University of North Carolina, but only
8 with respect to sales and use tax paid by it for tangible personal property
9 acquired by it through the expenditure of contract and grant funds.
- 10 (21) The University of North Carolina Hospitals at Chapel Hill."
11 Section 28. This act becomes effective July 1, 1998. Section 27 of this act
12 applies to taxes paid on or after July 1, 1998.