

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 1739*
Committee Substitute Favorable 6/24/98
Committee Substitute #2 Favorable 7/2/98

Short Title: Retirement/Charter Schs.

(Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW CHARTER SCHOOLS TO ELECT TO PARTICIPATE IN THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, IN THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN, OR BOTH, TO GIVE CHARTER SCHOOLS THE SAME MOTOR FUEL TAX EXEMPTION AS PUBLIC SCHOOLS, TO ALLOW CHARTER SCHOOLS TO OBTAIN THE SAME PERMANENT LICENSE PLATES AS PUBLIC SCHOOLS, TO MAKE CHANGES IN THE CHARTER SCHOOL LAW, TO PERMIT A LOCAL BOARD OF EDUCATION TO APPLY FOR CHARTER STATUS FOR ONE OR MORE OF ITS PUBLIC SCHOOLS, AND TO REQUIRE RULES GOVERNING CHARTER SCHOOLS TO BE SUBJECT TO REVIEW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-238.29F(e) reads as rewritten:

"(e) Employees. –

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

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

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

15 (3) If a teacher employed by a local school administrative unit makes a
16 written request for an extended leave of absence to teach at a charter
17 ~~school,~~ school operated by a private nonprofit corporation, the local
18 school administrative unit shall grant the leave. The local school
19 administrative unit shall grant a leave for any number of years requested
20 by the teacher, shall extend the leave for any number of years requested
21 by the teacher, and shall extend the leave at the teacher's request. For
22 the initial year of a charter school's operation, the local school
23 administrative unit may require that the request for a leave or extension
24 of leave be made up to 45 days before the teacher would otherwise have
25 to report for duty. For subsequent years, the local school administrative
26 unit may require that the request for a leave or extension of leave be
27 made up to 90 days before the teacher would otherwise have to report
28 for duty. A teacher who has career status under G.S. 115C-325 prior to
29 receiving an extended leave of absence to teach at a charter school may
30 return to a public school in the local school administrative unit with
31 career status at the end of the leave of absence or upon the end of
32 employment at the charter school if an appropriate position is available.
33 If an appropriate position is unavailable, the teacher's name shall be
34 placed on a list of available teachers and that teacher shall have priority
35 on all positions for which that teacher is qualified in accordance with
36 G.S. 115C-325(e)(2).

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

1 corporations, approves the original members of the boards of directors
2 of the charter schools, has the authority to grant, supervise, and revoke
3 charters, and demands full accountability from charter schools for
4 school finances and student performance. Accordingly, it is the
5 determination of the General Assembly that charter schools operated by
6 private nonprofit corporations are public schools and that the employees
7 of these charter schools are public school employees and are "teachers" for
8 ~~purposes of membership in the North Carolina Teachers' and State Employees'~~
9 ~~Retirement System and State Employees' Comprehensive Major Medical Plan.~~
10 employees. Employees of a charter school operated by a private
11 nonprofit corporation whose board of directors elects to join under G.S.
12 138-5.3 are 'teachers' for the purpose of membership in the North
13 Carolina Teachers' and State Employees' Retirement System.
14 Employees of a charter school operated by a private nonprofit
15 corporation whose board of directors elects to join under G.S. 135-
16 40.3A are 'teachers' for the purpose of membership in the North
17 Carolina Teachers' and State Employees' Comprehensive Major Medical
18 Plan. In no event shall anything contained in this Part require the North
19 Carolina Teachers' and State Employees' Retirement System to accept
20 employees of a private employer as members or participants of the
21 System."

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

24 **"§ 135-5.3. Optional participation for charter schools operated by private nonprofit**
25 **corporations.**

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

36 (b) No later than 30 days after both parties have signed the written charter under
37 G.S. 115C-238.29E, the board of directors of a charter school operated by a private
38 nonprofit corporation shall elect whether to join the Retirement System in accordance
39 with the laws applicable to that System. This election shall be in writing and filed with
40 the Retirement System and with the State Board of Education and is effective for each
41 charter school employee as of the date of that employee's entry into eligible service. This
42 subsection applies to charter schools that receive State Board of Education approval
43 under G.S. 115C-238.29D after 1998.

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

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

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

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

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

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

37 "(6) Employing Unit. – A North Carolina School System; Community
38 College; State Department, Agency or Institution; Administrative Office
39 of the Courts; or Association or Examining Board whose employees are
40 eligible for membership in a State-Supported Retirement System. An
41 employing unit also shall mean a charter school operated by a private
42 nonprofit corporation in accordance with Part 6A of Chapter 115C of
43 the General Statutes ~~whose employees are deemed to be public employees~~

1 and—members of a State-Supported Retirement System—whose board of
2 directors elects to join the Plan under G.S. 135-40.3A."

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

5 **"§ 135-40.3A. Optional participation for charter schools operated by private**
6 **nonprofit corporations.**

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

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

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

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

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

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

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

41 (1) Reserved.

42 (2) Charter school board. – A nonprofit corporation that has a charter under
43 G.S. 115D-238.29D to operate a charter school.

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

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

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

6 **"§ 20-84. Vehicles owned by State, municipalities or orphanages, etc.; certain**
7 **vehicles operated by the local chapters of American National Red Cross.**

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

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

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

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

1 required by this section and for this purpose shall be in full payment of the permanent
2 registration plates issued for such vehicle operated as a mobile X-ray unit, and such
3 plates need not thereafter be renewed, and such plates may be transferred as provided in
4 G.S. 20-78 to replacement vehicles to be used for the purposes above described and for
5 which the plates were originally issued.

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

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

33 The Division of Motor Vehicles shall, upon appropriate certification of financial
34 responsibility, issue to sheltered workshops recognized or approved by the Division of
35 Vocational Rehabilitation Services and to public and nonprofit agencies or organizations
36 which provide transportation for or operate programs subject to and approved in
37 accordance with standards adopted by the Commission for Mental Health,
38 Developmental Disabilities, and Substance Abuse Services of the Department of Health
39 and Human Services upon application and payment of a fee of six dollars (\$6.00) for each
40 plate, a permanent registration plate for vehicles registered to and operated by such
41 agencies. The initial six dollars (\$6.00) fee required by this section and for this purpose
42 shall be in full payment of the permanent registration plate issued for such vehicle
43 operated by a sheltered workshop and such plates need not thereafter be renewed, and

1 such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be
2 used by the sheltered workshop designated on the registration card.

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

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

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

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

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

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

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

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

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

41 (1) The local board of education of the local school administrative unit in
42 which the charter school will be ~~located~~ located, unless the applicant is
43 a local board of education;

1 (2) The board of trustees of a constituent institution of The University of
2 North Carolina, so long as the constituent institution is involved in the
3 planning, operation, or evaluation of the charter school; or

4 (3) The State Board of Education.

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

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

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

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

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

18 **"§ 115C-238.29E. Charter school operation.**

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

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

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

1 any additional terms, whether requested by the State Board, the local board where the
2 charter school is located, or the entity to which the charter school is accountable. No
3 additional terms may be imposed on the charter school as a condition for receipt of local
4 funds. The charter school shall operate under the written charter signed by the entity to
5 which it is accountable and the applicant.

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

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

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

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

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

41 "(b) School Nonsectarian. – A charter school shall be nonsectarian in its programs,
42 admission policies, employment practices, and all other operations and shall not charge

1 ~~tuition or~~ tuition, application fees, or admission fees. A charter school shall not be
2 affiliated with a nonpublic sectarian school or a religious institution."

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

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

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

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

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

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

29 "(d) Instructional Program. –

- 30 (1) The school shall provide instruction each year for at least 180 days.
31 (2) The school shall design its programs to at least meet the student
32 performance standards adopted by the State Board of Education and the
33 student performance standards contained in the charter.
34 (3) A charter school shall ~~conduct the student assessments required for charter~~
35 ~~schools by the State Board of Education.~~ administer the tests adopted by
36 the State Board of Education under G.S. 115C-174.11 and that are used
37 to implement the School-Based Management and Accountability
38 Program in other public schools.
39 (4) The school shall comply with policies adopted by the State Board of
40 Education for charter schools relating to the education of children with
41 special needs.
42 (5) The school is subject to and shall comply with Article 27 of Chapter
43 115C of the General Statutes, except that a charter school may also

1 exclude a student from the charter school and return that student to
2 another school in the local school administrative unit in accordance with
3 the terms of its charter."

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

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

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

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

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

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

15 "**§ 115C-238.29H. State and local funds for a charter school.**

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

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

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

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

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

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

31 "**§ 115C-452. Fines and forfeitures.**

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

1 certified to the local school administrative units, the charter schools, and the board of
2 county commissioners by the State Board of Education pursuant to G.S. 115C-430 or
3 G.S. 115C-238.29H(b)."

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

5 "**§ 115C-457.3. Transfer of funds to the State School Technology Fund.**

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

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

16 "(8a) 'Rule' means any agency regulation, standard, or statement of general
17 applicability that implements or interprets an enactment of the General
18 Assembly or Congress or a regulation adopted by a federal agency or
19 that describes the procedure or practice requirements of an agency. The
20 term includes the establishment of a fee and the amendment or repeal of
21 a prior rule. The term also includes any State Board of Education or
22 Department of Public Instruction rule, policy, procedure, requirement,
23 standard, term, condition, or regulation that is authorized specifically
24 under Part 6A of Article 16 of Chapter 115C of the General Statutes.

25 The term does not include the following:

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

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

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

24 **"PART 6. RULES AFFECTING CHARTER SCHOOLS.**

25 **"§ 150B-21.30. Procedures applicable to rules affecting charter schools.**

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

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

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

41 (d) The rule proposed by the State Board of Education may create, amend, or
42 repeal a rule. The State Board of Education shall indicate in the notice of proposed text

1 that the rule is authorized specifically under Part 6A of Article 16 of Chapter 115C of the
2 General Statutes and that the State Board of Education is proceeding under that authority.

3 **"§ 150B-21.31. Procedures applicable to charters.**

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

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

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

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

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

1 writing and must include any information and documentation required by the Secretary.
2 A request for a refund is due within six months after the end of the governmental entity's
3 fiscal year.

4 This subsection applies only to the following governmental entities:

- 5 (1) A county.
- 6 (2) A city as defined in G.S. 160A-1.
- 7 (2a) A consolidated city-county as defined in G.S. 160B-2.
- 8 (2b) A local school administrative unit for charter schools operated by the
9 local board of education. Notwithstanding any other provisions of law,
10 a refund payable under this subdivision of the local sales and use taxes
11 to cities levied under Articles 39, 40, and 42 of this Chapter and under
12 the Mecklenburg County Sales and Use Tax Act, Chapter 1096 of the
13 1967 Session Laws, as amended, shall be drawn from the General Fund
14 and shall not be deducted from the distribution to the cities.
- 15 (3) A metropolitan sewerage district or a metropolitan water district in this
16 State.
- 17 (4) A water and sewer authority created under Chapter 162A of the General
18 Statutes.
- 19 (5) A lake authority created by a board of county commissioners pursuant
20 to an act of the General Assembly.
- 21 (6) A sanitary district.
- 22 (7) A regional solid waste management authority created pursuant to G.S.
23 153A-421.
- 24 (8) An area mental health, developmental disabilities, and substance abuse
25 authority, other than a single-county area authority, established pursuant
26 to Article 4 of Chapter 122C of the General Statutes.
- 27 (9) A district health department.
- 28 (10) A regional council of governments created pursuant to G.S. 160A-470.
- 29 (11) A regional planning and economic development commission or a
30 regional economic development commission created pursuant to
31 Chapter 158 of the General Statutes.
- 32 (12) A regional planning commission created pursuant to G.S. 153A-391.
- 33 (13) A regional sports authority created pursuant to G.S. 160A-479.
- 34 (14) A public transportation authority created pursuant to Article 25 of
35 Chapter 160A of the General Statutes.
- 36 (14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter
37 160A of the General Statutes.
- 38 (15) A regional public transportation authority created pursuant to Article 26
39 of Chapter 160A of the General Statutes.
- 40 (16) A local airport authority that was created pursuant to a local act of the
41 General Assembly and has at least one of the following characteristics:
42 a. It has all of the rights of a municipality.

- 1 b. A local act of the General Assembly declares it to be a
2 municipality.
- 3 c. A local act of the General Assembly specifically authorizes it to
4 receive a refund under this section.
- 5 (17) A joint agency created by interlocal agreement pursuant to G.S. 160A-
6 462 to operate a public broadcasting television station.
- 7 (18) The North Carolina Low-Level Radioactive Waste Management
8 Authority created pursuant to Chapter 104G of the General Statutes.
- 9 (19) The North Carolina Hazardous Waste Management Commission created
10 pursuant to Chapter 130B of the General Statutes.
- 11 (20) A constituent institution of The University of North Carolina, but only
12 with respect to sales and use tax paid by it for tangible personal property
13 acquired by it through the expenditure of contract and grant funds.
- 14 (21) The University of North Carolina Hospitals at Chapel Hill."
- 15 Section 28. This act becomes effective July 1, 1998. Section 27 of this act
16 applies to taxes paid on or after January 1, 1999.