



This Bill Analysis reflects the contents of the bill as it was presented in committee.

# SENATE BILL 522: Various Changes to Charter School Laws.

2019-2020 General Assembly

<b>Committee:</b>	Senate Education/Higher Education	<b>Date:</b>	May 2, 2019
<b>Introduced by:</b>	Sen. Tillman	<b>Prepared by:</b>	Drupti Chauhan and Kara McCraw
<b>Analysis of:</b>	First Edition		Committee Counsel

**OVERVIEW:** Senate Bill 522 makes various changes to charter school laws.

## Part I. Authorize Counties to Provide Capital Funds to Charter Schools

**Current Law:** State funds can be used to enter into leases for real property or mobile classrooms for charter school facilities and can be used for payments on loans made to charter schools facilities, equipment, or operations. State funds cannot be used to obtain any other interest in real property or mobile classroom units. The Attorney General's Office has issued an opinion letter that this restriction also prohibits counties from providing funds for charter school facility needs.

**Bill Analysis:** Part I would allow counties to provide funds to charter schools by direct appropriation and to lease real property to charter schools. The funds may only be used for the following purposes:

- The acquisition of real property for school purposes, including by not limited to school sites, playgrounds, and athletic fields.
- The acquisition, construction, reconstruction, enlargement, renovation, or replacement of buildings and other structures, including, but not limited to, buildings for classrooms and laboratories, physical and vocational educational purposes, libraries, auditoriums, and gymnasiums.
- The acquisition or replacement of furniture and furnishings, instructional apparatus, and similar items of furnishings and equipment.

If a charter school used county funds to acquire or improve property, the amount provided by the county must be evidenced by a promissory note and secured by a deed of trust on the property acquired or improved by the funds. The county may subordinate the deed of trust to other liens. If the charter school repays the county in the amount of the funds provided, the county shall execute and file a deed of release or other documentation of satisfaction showing that the charter school repaid the county in the amount of the capital funds provided.

**Effective Date:** This Part is effective when it becomes law and applies with the 2019-2020 fiscal year.

## Part II. Make Charter Schools Eligible for Grants from the Need-Based Public School Capital Fund

**Current Law:** The Need-Based Public School Capital Fund awards grants to counties designated as Tier 1 and Tier 2 to assist with their public school building capital needs, including the acquisition or improvement of real property.

**Bill Analysis:** This Part would allow Tier 1 counties to use grants awarded from the Need-Based Public School Capital Fund for charter school capital facilities. The grant cannot exceed \$1.00 for every \$1.00

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in grant funds provided by the county. Grant funds awarded to the county for this purpose cannot exceed \$3,000,000. The property being acquired or improved by grant funds must be owned by the nonprofit organization that holds the charter for the charter school and the amount provided by the county in grant funds must be evidenced by a promissory note and secured by a deed of trust on the property acquired or improved by the funds. The county may subordinate the deed of trust to other liens secured by the deed of trust. If charter school repays the county in the amount of the grant funds provided, the county must execute and file a deed of release or other documentation of satisfaction showing the charter school repaid the county in the amount of the grant funds provided. The property cannot be conveyed to another entity or person without the approval of the State Board of Education (SBE).

**Effective Date:** This Part is effective July 1, 2019, and applies to applications for grant funds submitted on or after that date.

## **Part III. Superintendent of Public Instruction May Approve Charter School Facility Bonds**

**Current Law:** Under the Internal Revenue Code, a qualified private activity bond is a type of tax-exempt bond that state and local governments may issue to finance certain projects that would otherwise be classified as private activities. These include nonprofit corporations carrying out charitable purposes, including education. 26 U.S.C. 145. The governmental body has authority to serve as a “conduit” issuer, but has no liability for the repayment of the debt, and only acts as an issuer so that the private activity bonds can be tax exempt. Article 2 of Chapter 159D of the General Statutes establishes the North Carolina Capital Facilities Finance Agency as an issuer in North Carolina for these types of conduit bonds. There are also governmental entities such as the Public Finance Authority in Wisconsin that issue conduit bonds for public and private entities throughout all 50 states.

The Internal Revenue Code, 26 U.S.C. 147(f), requires that qualified private activity bonds receive public approval by both the governmental entity issuing the bonds (issuer approval) and a governmental entity having jurisdiction over the area in which the bond-financed facility is to be located (host approval). Public approval may be satisfied by approval of an applicable elected representative of the approving government unit following a public hearing for which there was reasonable public notice, or by a voter referendum. 26 U.S.C. 147(f). An “applicable elected official” includes an official elected by the voters of the governmental unit and authorized by State law to provide such approval. 26 U.S.C. 147(f)(2)(E)(i)(II).

**Bill Analysis:** This Part would designate the Superintendent of Public Instruction as an applicable elected representative under the Internal Revenue Code who may approve issuance of a private activity bond to finance a charter school facility, following a public hearing conducted in accordance with the Internal Revenue Code and applicable State and federal laws and regulations.

**Effective Date:** This Part is effective when it becomes law.

## **Part IV. Clarify Charter School Renewal Standards**

**Current Law:** The SBE must renew a charter for a charter school upon the request of the chartering entity for subsequent periods of 10 years. However, the SBE may renew the charter for less than 10 years or not renew the charter at all if one of the following applies:

- The charter school has not provided financially sound audits for the immediately preceding three years.
- The charter school's student academic outcomes for the immediately preceding three years have not been comparable to the academic outcomes of students in the local school administrative unit in which the charter school is located.

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- The charter school is not, at the time of the request for renewal of the charter, substantially in compliance with State law, federal law, the school's own bylaws, or the provisions set forth in its charter granted by the State Board of Education.

**Bill Analysis:** This Part would revise the student outcome standard so that the SBE could renew the charter for less than 10 years or not renew the charter if the percent of students who scored at or above proficient for all end-of-grade and end-of-course tests taken in the previous school year is at least 5 percentage points lower in the charter school than in the local school administrative unit in which the charter school is located.

**Effective Date:** This Part is effective when it becomes law and applies to applications for the renewal of charters submitted on or after that date.

## **Part V. Charter Application Background Check Standards**

**Bill Analysis:** This Part adds a requirement to the application for a charter to operate a charter school in this State. The application must have the following:

- A nationwide criminal background check for each member of the board of directors of the proposed charter school to ensure that the member has not been convicted of any crime listed in G.S. 115C-332 or a substantially similar crime in another state. The criminal background check must include the following: (i) a social security number trace, including locations returned on at least a county-by-county basis and (ii) any known aliases.
- A certification from each member of the board of directors certifying whether the board member has been convicted of any felony or misdemeanor. If the board member has been convicted of a felony or misdemeanor, the certification shall include a listing of the year of the charge, the charge, and the disposition of the charge.

**Effective Date:** This Part is effective when it becomes law and applies to applications for initial charters received on or after that date.

## **Part VI. Charter Schools in the Workplace**

**Current Law:** G.S.115C-218.45 provides that any child qualified for admission to a public school in the State is qualified for admission to a charter school, and that any student who submits a timely application to a charter school must be enrolled if there is space available. If applications exceed space available, the charter school must conduct a lottery. Charters are allowed to give preference in enrollment to students in certain circumstances, including enrollment of siblings, children of teachers or board members (capped at 15%), and students previously enrolled in charter schools under various circumstances.

**Bill Analysis:** This Part would allow a charter school to give preferential enrollment, capped at 50%, for children of permanent employees of a charter partner.

A charter partner would be a corporation, partnership, or nonprofit organized under Chapters 55, 55A, 55B, 57D, or 59 of the General Statutes that, acting individually or as part of a consortium of corporations, donated one or more of the following, valued at a minimum of fifty thousand dollars (\$50,000), to the charter school:

- Land on which the school is built.
- The school building or space the school occupies. If a lease, the lease must be at no cost to the school and for the duration of the charter to provide enrollment priority.
- Major renovations to the school building.

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- Other capital improvements, including major investments in technology.

For each year the enrollment priority is provided, the charter partner and charter school must enter into a memorandum of understanding specifying the duration of the priority and the methods by which the charter partner shall support the charter school.

Information on the charter partner would be included in the initial charter applications, and adding a charter partner would be a material revision of the charter subject to SBE approval. Students enrolled in the charter at the time of the material revision could not be displaced by the enrollment priority. Persons affiliated with the charter partner could be members of, but not the majority, of a charter board of directors.

**Effective Date:** This Part is effective when it becomes law and applies beginning with the 2019-2020 school year.

## **Part VII. Permit Boards of Trustees of Certain Institutions of Higher Education to Authorize Charter Schools in Collaboration with the State Board of Education**

**Current Law:** The North Carolina Charter Schools Advisory Board (Advisory Board) makes recommendations to the SBE for final approval of charter applications. Final approval of charter applications is granted by the SBE.

**Bill Analysis:** Part VII of the bill allows an applicant for a charter to submit an application to a Higher Education Institution Authorizer or "HEI Authorizer". An HEI Authorizer is a board of trustees of a North Carolina community college or the board of trustees of a constituent institution of The University of North Carolina designated as participating in the NC Promise Tuition Plan. This Part would do the following:

- Prohibit the Advisory Board from reviewing applications submitted to HEI Authorizers.
- Require applications to HEI Authorizers to include how the HEI Authorizer will be involved in the planning, operation, or evaluation of the charter school.
- Allow HEI Authorizers to authorize a charter school if it finds that the application meets statutory requirements, has the ability to operate the school and would be likely to operate the school in an educationally and economically sound manner.
- Require HEI Authorizers to make final decisions on the authorization or denial of application by August 15 in the year before the charter school proposes to begin operation.
- Allow State funds available to an HEI Authorizer to be used to support the charter school.
- Require that the SBE approve the application that the HEI Authorizer authorized and the Superintendent of Public Instruction recommended.
- Allow the HEI Authorizer to renew charters.
- Direct the HEI Authorizer to submit material revisions of charters to the SBE.
- Provide that charters authorized by an HEI Authorizer be accountable to the HEI Authorizer and operate under a written agreement with the HEI Authorizer.
- Give the HEI Authorizer the ability to authorize a weighted lottery for any charter school it authorizes.
- Prohibit the SBE from terminating, not renewing, or assuming a charter school authorized by the HEI Authorizer until the SBE has consulted with the HEI Authorizer. The SBE may enter an agreement with the HEI Authorizer and the charter school to provide an opportunity for the HEI

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Authorizer and the charter school to address concerns that could lead to the termination, nonrenewal, or assumption of the charter school by another entity.

- Allow the board of directors of the charter school authorized by the HEI Authorizer to choose to participate in the Teachers and State Employees Retirement System.

**Effective Date:** This Part is effective when it becomes law and applies to applications submitted to establish a charter school on or after that date.

## **Part VIII. Remove the Cap on Enrollment Growth of Virtual Charter Schools Participating in the Virtual Charter School Pilot Program.**

**Current Law:** Section 8.35 of S.L. 2014-100 directed the SBE to establish a pilot program to authorize the operation of 2 virtual charter schools serving students in kindergarten through 12th grade. Maximum student enrollment in any virtual charter school shall be no greater than 1,500 students in the school's first year of operation and may increase by 20% for each participating school up to a maximum student enrollment of 2,592 in the fourth year of the pilot program. The SBE may waive the maximum student enrollment threshold beginning in the fourth year of the school's operation, if it determines it is in the best interests of students.

**Bill Analysis:** This Part provides that the maximum student enrollment in a virtual charter school may increase annually by 20%. The SBE may increase the maximum student enrollment threshold beginning in the fourth year of the school's operation.

**Effective Date:** This Part is effective when it becomes law and applies beginning with the 2019-2020 school year.