

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1739\*  
Committee Substitute Favorable 6/24/98

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 operated by a local school administrative unit is an employee of the

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

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

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

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

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

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

23 **"§ 135-5.3. Optional participation for charter schools operated by private nonprofit**  
24 **corporations.**

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

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

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

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

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

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

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

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

35       "(6) Employing Unit. – A North Carolina School System; Community  
36 College; State Department, Agency or Institution; Administrative Office  
37 of the Courts; or Association or Examining Board whose employees are  
38 eligible for membership in a State-Supported Retirement System. An  
39 employing unit also shall mean a charter school operated by a private  
40 nonprofit corporation in accordance with Part 6A of Chapter 115C of  
41 the General Statutes ~~whose employees are deemed to be public~~  
42 ~~employees and members of a State-Supported Retirement System.~~  
43 whose board of directors elects to join the Plan under G.S. 135-40.3A."

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

3 **"§ 135-40.3A. Optional participation for charter schools operated by private**  
4 **nonprofit corporations.**

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

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

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

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

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

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

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

37 (1) Reserved.

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

40 ~~(1)~~(3) City. – A city as defined by G.S. 160A-1(2). The term also includes  
41 an urban service district defined by the governing board of a  
42 consolidated city-county, as defined by G.S. 160B-2(1).

1           ~~(1a)~~(4)     Code. – The Internal Revenue Code as enacted as of January 1, 1997,  
2                   including any provisions enacted as of that date which become  
3                   effective either before or after that date.

4           ~~(1b)~~(5)     County. – Any one of the counties listed in G.S. 153A-10. The term  
5                   also includes a consolidated city-county as defined by G.S. 160B-  
6                   2(1).

7           ~~(2)~~(6)     Reserved.

8           ~~(3)~~(7)     Electronic Funds Transfer. – A transfer of funds initiated by using an  
9                   electronic terminal, a telephone, a computer, or magnetic tape to  
10                  instruct or authorize a financial institution or its agent to credit or  
11                  debit an account.

12          ~~(4)~~(8)     Reserved.

13          ~~(5)~~(9)     Person. – An individual, a fiduciary, a firm, an association, a  
14                  partnership, a limited liability company, a corporation, a unit of  
15                  government, or another group acting as a unit. The term includes an  
16                  officer or employee of a corporation, a member, a manager, or an  
17                  employee of a limited liability company, and a member or employee  
18                  of a partnership who, as officer, employee, member, or manager, is  
19                  under a duty to perform an act in meeting the requirements of  
20                  Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119  
21                  of the General Statutes.

22          ~~(6)~~(10)    Secretary. – The Secretary of Revenue.

23          ~~(7)~~(11)    Tax. – A tax levied under Subchapter I, V, or VIII of this Chapter or  
24                  an inspection tax levied under Article 3 of Chapter 119 of the General  
25                  Statutes. Unless the context clearly requires otherwise, the terms  
26                  "tax" and "additional tax" include penalties and interest as well as the  
27                  principal amount.

28          ~~(8)~~(12)    Taxpayer. – A person subject to the tax or reporting requirements of  
29                  Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119  
30                  of the General Statutes."

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

32        "**§ 105-449.88. Exemptions from the excise tax.**

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

34                  (1)     Motor fuel removed, by transport truck or another means of transfer  
35                          outside the terminal transfer system, from a terminal for export, if the  
36                          supplier of the motor fuel collects tax on it at the rate of the motor fuel's  
37                          destination state.

38                  (2)     Motor fuel sold to the federal government.

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

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

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

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

2 **"§ 20-84. Vehicles owned by State, municipalities or orphanages, etc.; certain**  
3 **vehicles operated by the local chapters of American National Red Cross.**

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

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

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

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

1 G.S. 20-78 to replacement vehicles to be used for the purposes above described and for  
2 which the plates were originally issued.

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

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

30 The Division of Motor Vehicles shall, upon appropriate certification of financial  
31 responsibility, issue to sheltered workshops recognized or approved by the Division of  
32 Vocational Rehabilitation Services and to public and nonprofit agencies or organizations  
33 which provide transportation for or operate programs subject to and approved in  
34 accordance with standards adopted by the Commission for Mental Health,  
35 Developmental Disabilities, and Substance Abuse Services of the Department of Health  
36 and Human Services upon application and payment of a fee of six dollars (\$6.00) for each  
37 plate, a permanent registration plate for vehicles registered to and operated by such  
38 agencies. The initial six dollars (\$6.00) fee required by this section and for this purpose  
39 shall be in full payment of the permanent registration plate issued for such vehicle  
40 operated by a sheltered workshop and such plates need not thereafter be renewed, and  
41 such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be  
42 used by the sheltered workshop designated on the registration card.



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

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

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

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

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

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

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

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

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

39 (1) The local board of education of the local school administrative unit in  
40 which the charter school will be ~~located~~; located, unless the applicant is  
41 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(d)(5) reads as rewritten:

9 "(5) The school is subject to and shall comply with Article 27 of Chapter  
10 115C of the General Statutes, except that a charter school operated by a  
11 private nonprofit corporation or a charter school operated by a local  
12 school administrative unit may also exclude a student from the charter  
13 school and return that student to another school in the local school  
14 administrative unit in accordance with the terms of its charter."

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

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

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

35 Section 20. G.S. 115C-238.29F(d) reads as rewritten:

36 "(d) Instructional Program. –

- 37 (1) The school shall provide instruction each year for at least 180 days.  
38 (2) The school shall design its programs to at least meet the student  
39 performance standards adopted by the State Board of Education and the  
40 student performance standards contained in the charter.  
41 (3) A charter school shall ~~conduct the student assessments required for~~  
42 ~~charter schools by the State Board of Education.~~ administer the tests  
43 adopted by the State Board of Education under G.S. 115C-174.11 and

1           that are used to implement the School-Based Management and  
2           Accountability Program in other public schools.

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

6           (5)    The school is subject to and shall comply with Article 27 of Chapter  
7           115C of the General Statutes, except that a charter school may also  
8           exclude a student from the charter school and return that student to  
9           another school in the local school administrative unit in accordance with  
10          the terms of its charter."

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

12          "(c)   The State Board and the charter school are encouraged to make a good-faith  
13          attempt to resolve the differences that may arise between them. ~~They~~ Furthermore, the  
14          local board of the local school administrative unit in which the charter school is located  
15          and the charter school are encouraged to make a good-faith attempt to resolve any  
16          differences that may arise between them. The parties in dispute may agree to jointly  
17          select a mediator. The mediator shall act as a neutral facilitator of disclosures of factual  
18          information, statements of positions and contentions, and efforts to negotiate an  
19          agreement settling the differences. The mediator shall, at the request of either ~~the State~~  
20          ~~Board or a charter school, party,~~ commence a mediation immediately or within a  
21          reasonable period of time. The mediation shall be held in accordance with rules and  
22          standards of conduct adopted under Chapter 7A of the General Statutes governing  
23          mediated settlement conferences but modified as appropriate and suitable to the  
24          resolution of the particular issues in disagreement.

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

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

39          "**§ 115C-238.29H. State and local funds for a charter school.**

40          (a)    The State Board of Education shall allocate to each charter school (i) an  
41          amount equal to the average per pupil allocation for average daily membership from the  
42          local school administrative unit allotments in which the charter school is located for each  
43          child attending the charter school except for the allocation for children with special needs

1 and (ii) an additional amount for each child attending the charter school who is a child  
2 with special needs. In accordance with G.S. 115C-238.29D(d), the State Board shall  
3 allow for annual adjustments to the amount allocated to a charter school based on its  
4 enrollment growth in school years subsequent to the initial year of operation.

5 In the event a child with special needs leaves the charter school and enrolls in a public  
6 school during the first 60 school days in the school year, the charter school shall return a  
7 pro rata amount of funds allocated for that child to the State Board, and the State Board  
8 shall reallocate those funds to the local school administrative unit in which the public  
9 school is located. In the event a child with special needs enrolls in a charter school during  
10 the first 60 school days in the school year, the State Board shall allocate to the charter  
11 school the pro rata amount of additional funds for children with special needs.

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

24 (b) If a student attends a charter school, the local school administrative unit in  
25 which the child resides shall transfer to the charter school an amount equal to the per  
26 pupil local current expense appropriation to the local school administrative unit for the  
27 fiscal year. The per pupil local current expense appropriation shall be calculated by  
28 dividing the total county appropriation to the local school administrative unit's local  
29 current expense fund, including appropriations funded by supplemental taxes, by the  
30 unit's average daily membership for the budget year as determined by and certified to the  
31 unit and the board of county commissioners by the State Board. In order to establish the  
32 number of children for whom these funds are to be transferred, the local administrative  
33 unit may require the charter school to provide electronically an invoice that identifies  
34 each child for whom these funds are to be remitted, that child's address, and that child's  
35 Student Information Management System identification number. The local school  
36 administrative unit shall not require any other information from the charter school as a  
37 condition of the unit's remission of these funds. If the local school administrative unit  
38 requires this invoice, the unit shall provide to the charter school the local current expense  
39 appropriation based on the number of children in the most recent invoice. If no invoice is  
40 required, the local current expense appropriation shall be based on the number of children  
41 as mutually agreed upon by the local school administrative unit and the charter school.  
42 The local school administrative unit shall remit these funds to the charter school at times  
43 that are mutually agreed upon by the unit and the charter school, but if no agreement is

1 reached, then the unit shall remit these funds to the charter school no later than one week  
2 after the unit receives the funds from the board of county commissioners as established  
3 under G.S. 115C-437 and upon receipt of an invoice, if required. The State Board may  
4 withhold money used for payment of salaries for the superintendent and school finance  
5 officer of any local school administrative unit if the Board finds that the unit is not using  
6 its best efforts to remit these funds on a timely basis.

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

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

11 **"§ 115C-452. Fines and forfeitures.**

12 The clear proceeds of all penalties and forfeitures and of all fines collected in the  
13 General Court of Justice in each county shall be remitted by the clerk of the superior  
14 court to the county finance officer, who shall forthwith determine what portion of the  
15 total is due to each local school administrative unit and to each charter school in the  
16 county and remit the appropriate portion of the amount to the finance officer of each local  
17 school administrative ~~unit.~~ unit and each charter school. Fines—The first twenty-five  
18 percent (25%) of fines and forfeitures shall be apportioned according to the projected  
19 average daily membership of each local school administrative unit as determined by and  
20 certified to the local school administrative units and the board of county commissioners  
21 by the State Board of Education pursuant to G.S. 115C-430. The remainder of the fines  
22 and forfeitures shall be apportioned according to the projected average daily membership  
23 of each local school administrative unit and each charter school as determined by and  
24 certified to the local school administrative units, the charter schools, and the board of  
25 county commissioners by the State Board of Education pursuant to G.S. 115C-430 or  
26 G.S. 115C-238.29H(b)."

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

28 **"§ 115C-457.3. Transfer of funds to the State School Technology Fund.**

29 The Office of State Budget and Management shall transfer funds accruing to the Civil  
30 Penalty and Forfeiture Fund to the State School Technology Fund. ~~These—The first~~  
31 twenty-five percent (25%) of these funds shall be allocated to local school administrative  
32 units on the basis of average daily membership. The remaining funds shall be allocated  
33 to local school administrative units and charter schools on the basis of average daily  
34 membership. Notwithstanding any other law, the funds allocated to charter schools under  
35 this section shall be used for school technology; however, in accordance with G.S. 115C-  
36 238.29E(f), the charter school is not required to develop or submit a school technology  
37 plan under Part 3A of Article 8 of this Chapter."

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

39 "(8a) 'Rule' means any agency regulation, standard, or statement of general  
40 applicability that implements or interprets an enactment of the General  
41 Assembly or Congress or a regulation adopted by a federal agency or  
42 that describes the procedure or practice requirements of an agency. The  
43 term includes the establishment of a fee and the amendment or repeal of

1 a prior rule. The term also includes any State Board of Education or  
2 Department of Public Instruction rule, policy, procedure, requirement,  
3 standard, term, condition, or regulation that is authorized specifically  
4 under Part 6A of Article 16 of Chapter 115C of the General Statutes.

5 The term does not include the following:

- 6 a. Statements concerning only the internal management of an  
7 agency or group of agencies within the same principal office or  
8 department enumerated in G.S. 143A-11 or 143B-6, including  
9 policies and procedures manuals, if the statement does not  
10 directly or substantially affect the procedural or substantive  
11 rights or duties of a person not employed by the agency or group  
12 of agencies.
- 13 b. Budgets and budget policies and procedures issued by the  
14 Director of the Budget, by the head of a department, as defined  
15 by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing  
16 board, as defined by G.S. 93B-1, or by the State Board of  
17 Elections.
- 18 c. Nonbinding interpretative statements within the delegated  
19 authority of an agency that merely define, interpret, or explain  
20 the meaning of a statute or rule.
- 21 d. A form, the contents or substantive requirements of which are  
22 prescribed by rule or statute.
- 23 e. Statements of agency policy made in the context of another  
24 proceeding, including:
- 25 1. Declaratory rulings under G.S. 150B-4.  
26 2. Orders of establishing or fixing rates or tariffs.
- 27 f. Requirements, communicated to the public by the use of signs or  
28 symbols, concerning the use of public roads, bridges, ferries,  
29 buildings, or facilities.
- 30 g. Statements that set forth criteria or guidelines to be used by the  
31 staff of an agency in performing audits, investigations, or  
32 inspections; in settling financial disputes or negotiating financial  
33 arrangements; or in the defense, prosecution, or settlement of  
34 cases.
- 35 h. Scientific, architectural, or engineering standards, forms, or  
36 procedures, including design criteria and construction standards  
37 used to construct or maintain highways, bridges, or ferries.
- 38 i. Job classification standards, job qualifications, and salaries  
39 established for positions under the jurisdiction of the State  
40 Personnel Commission.
- 41 j. Establishment of the interest rate that applies to tax assessments  
42 under G.S. 105-241.1 and the variable component of the excise  
43 tax on motor fuel under G.S. 105-449.80."



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

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

4 **"§ 150B-21.30. Procedures applicable to rules affecting charter schools.**

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

8 (b) Notwithstanding G.S. 150B-21.3(b), a permanent rule that is adopted by the  
9 State Board of Education, is approved by the Rules Review Commission, and is  
10 authorized specifically under Part 6A of Article 16 of Chapter 115C of the General  
11 Statutes, becomes effective five business days after the Commission delivers the rule to  
12 the Codifier of Rules, unless the rule specifies a later effective date. If the State Board of  
13 Education specifies a later effective date, the rule becomes effective upon that date. A  
14 permanent rule that is adopted by the State Board of Education to implement Part 6A of  
15 Article 16 of Chapter 115C of the General Statutes, but is not approved by the Rules  
16 Review Commission, shall not become effective.

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

20 (d) The rule proposed by the State Board of Education may create, amend, or  
21 repeal a rule. The State Board of Education shall indicate in the notice of proposed text  
22 that the rule is authorized specifically under Part 6A of Article 16 of Chapter 115C of the  
23 General Statutes and that the State Board of Education is proceeding under that authority.

24 **"§ 150B-21.31. Procedures applicable to charters.**

25 The State Board of Education shall submit to the Commission the standard written  
26 charter agreement that the State Board of Education approved and issued under Part 6A  
27 of Article 16 of Chapter 115C of the General Statutes to charter schools that received  
28 State Board approval under G.S. 115C-238.29D in 1997 or 1998. The State Board of  
29 Education also shall submit to the Commission any modifications to that written charter  
30 agreement that the State Board approves after July 1, 1998, for issuance to charter  
31 schools approved in subsequent years. The Commission shall review each portion of the  
32 charter and each modification to that charter as if it is a rule and shall follow the  
33 procedure established in Part 3 of this Article. The Commission shall determine whether  
34 each portion or modification is authorized specifically under Part 6A of Article 16 of  
35 Chapter 115C of the General Statutes. The Commission may approve only portions and  
36 modifications of the charter that are so authorized. All approved portions and  
37 modifications of the charter are binding on the charter school. Each portion or  
38 modification of the charter that is not approved is void and shall not apply to any charter  
39 school unless the charter school's board of directors agrees to its applicability. The board  
40 of directors is not required to agree to any portion or modification of the charter that the  
41 Commission does not approve. This section shall not apply to information in a charter  
42 school's application, as modified during the approval process, that is incorporated in each  
43 charter school's charter agreement."

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

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

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

13 "(c) Certain Governmental Entities. – A governmental entity listed in this  
14 subsection is allowed an annual refund of sales and use ~~tax~~taxes paid by it under this  
15 Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct  
16 purchases of tangible personal property. Sales and use tax liability indirectly incurred by  
17 a governmental entity on building materials, supplies, fixtures, and equipment that  
18 become a part of or annexed to any building or structure that is owned or leased by the  
19 governmental entity and is being erected, altered, or repaired for use by the governmental  
20 entity is considered a sales or use tax liability incurred on direct purchases by the  
21 governmental entity for the purpose of this subsection. A request for a refund must be in  
22 writing and must include any information and documentation required by the Secretary.  
23 A request for a refund is due within six months after the end of the governmental entity's  
24 fiscal year.

25 This subsection applies only to the following governmental entities:

- 26 (1) A county.  
27 (2) A city as defined in G.S. 160A-1.  
28 (2a) A consolidated city-county as defined in G.S. 160B-2.  
29 (2b) A local school administrative unit for charter schools operated by the  
30 local board of education. Notwithstanding any other provisions of law,  
31 a refund payable under this subdivision of the local sales and use taxes  
32 to cities levied under Articles 39, 40, and 42 of this Chapter and under  
33 the Mecklenburg County Sales and Use Tax Act, Chapter 1096 of the  
34 1967 Session Laws, as amended, shall be drawn from the General Fund  
35 and shall not be deducted from the distribution to the cities.  
36 (3) A metropolitan sewerage district or a metropolitan water district in this  
37 State.  
38 (4) A water and sewer authority created under Chapter 162A of the General  
39 Statutes.  
40 (5) A lake authority created by a board of county commissioners pursuant  
41 to an act of the General Assembly.  
42 (6) A sanitary district.

- 1 (7) A regional solid waste management authority created pursuant to G.S.  
2 153A-421.
- 3 (8) An area mental health, developmental disabilities, and substance abuse  
4 authority, other than a single-county area authority, established pursuant  
5 to Article 4 of Chapter 122C of the General Statutes.
- 6 (9) A district health department.
- 7 (10) A regional council of governments created pursuant to G.S. 160A-470.
- 8 (11) A regional planning and economic development commission or a  
9 regional economic development commission created pursuant to  
10 Chapter 158 of the General Statutes.
- 11 (12) A regional planning commission created pursuant to G.S. 153A-391.
- 12 (13) A regional sports authority created pursuant to G.S. 160A-479.
- 13 (14) A public transportation authority created pursuant to Article 25 of  
14 Chapter 160A of the General Statutes.
- 15 (14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter  
16 160A of the General Statutes.
- 17 (15) A regional public transportation authority created pursuant to Article 26  
18 of Chapter 160A of the General Statutes.
- 19 (16) A local airport authority that was created pursuant to a local act of the  
20 General Assembly and has at least one of the following characteristics:  
21 a. It has all of the rights of a municipality.  
22 b. A local act of the General Assembly declares it to be a  
23 municipality.  
24 c. A local act of the General Assembly specifically authorizes it to  
25 receive a refund under this section.
- 26 (17) A joint agency created by interlocal agreement pursuant to G.S. 160A-  
27 462 to operate a public broadcasting television station.
- 28 (18) The North Carolina Low-Level Radioactive Waste Management  
29 Authority created pursuant to Chapter 104G of the General Statutes.
- 30 (19) The North Carolina Hazardous Waste Management Commission created  
31 pursuant to Chapter 130B of the General Statutes.
- 32 (20) A constituent institution of The University of North Carolina, but only  
33 with respect to sales and use tax paid by it for tangible personal property  
34 acquired by it through the expenditure of contract and grant funds.
- 35 (21) The University of North Carolina Hospitals at Chapel Hill."  
36 Section 28. This act becomes effective July 1, 1998. Section 27 of this act  
37 applies to taxes paid on or after January 1, 1999.