

Charter School Legislative Proposal (SB 1283 Obenshain / HB 2342 Landes)

Executive Summary:

HB 2342 and SB 1283 establish a mechanism by which the Virginia Board of Education may create regional public charter school divisions to be comprised of up to three local school divisions. A regional public charter school division may only include divisions with over 3,000 students and at least one of the divisions must have at least one school with an “accreditation denied” status for at least two of the last three



years. A regional public charter school division will be governed by a local board comprised of representatives of the community and local school divisions. A regional public charter school division will have all of the same authority to approve and supervise public charter schools as local school divisions do. The legislation will:

1. Explicitly authorize the Board of Education to establish “Regional Public Charter School Divisions” within the Commonwealth.
2. Establish a method of selecting the regional public charter school board that will include at least one representative from every elected local governing body within the new division.
3. Establish a new process that allows a charter applicant to contract directly with the regional public charter school division board.
4. Limit funding for regional public charter schools to state and federal funds. No local funding would be permitted.

Constitutional Distinctions from the Opportunity Educational Institution (OEI)

In the OEI case, the circuit court made three major findings. HB 2342 and SB 1283 **differs significantly from the OEI law** regarding those findings:

Court Finding #1: Because Article VIII, § 5 of the Constitution of Virginia, vests the authority to establish school divisions in the Board of Education and not the General Assembly, Virginia Code § 22.1-25(A) (4) is not constitutional because it purports to establish a statewide school division and because it purports to create a school division that is not supervised by a school board.

- Unlike the OEI law, HB 2342 and SB 1283 would establish the framework by which the Board of Education could establish regional public charter school divisions and regional boards to approve and supervise regional public charter schools. Pursuant to Article VIII, Section 1 of the Virginia Constitution (under which the General Assembly is responsible for providing a system of free public elementary and secondary schools for all children of school age) and Article VIII, Section 5(a) (under which the General Assembly sets the criteria and conditions for the Board of Education’s division of the Commonwealth into school divisions), the legislation would specify such conditions under which such a regional school division would be created, including the selection of its school board and its funding streams. However, the General Assembly would not establish a school division itself, as it did in the OEI law.
- With regard to the selection of a school board to supervise a regional school division, Article VIII, Section 7 of the Virginia Constitution clearly vests the General Assembly with power to dictate the membership, selection, term, number, and qualifications of such a board:
“The supervision of schools in each school division shall be vested in a school board, to be composed of members selected in the manner, for the term, possessing the qualifications, and to the number provided by law.”

Court Finding #2: Insofar as Chapter 4.1 of Title 22.1 of the Code of Virginia purports to divest local school boards of authority to supervise public schools within their respective school divisions, it violates Article VIII, § 7 of the Constitution of Virginia.

- Unlike the OEI law, HB 2342 and SB 1283 do not divest local school boards of authority to supervise public schools within their respective school divisions. As outlined above, the Board of Education would be responsible for establishing new regional school divisions to be supervised by a school board in a manner prescribed by law.

Court Finding #3: Because the OEI law purports to require local school boards to relinquish control of school property to OEI and because it purports to prohibit school boards from selling real property without OEI’s permission it violates Article VIII, § 7 of the Constitution of Virginia.

- Unlike the OEI law, HB 2342 and SB 1283 do not require local school boards to relinquish control of school property and does not prohibit school boards from selling real property.

Contact

[Ken Hutcheson](#) (click to email)
khutcheson@williamsmullen.com
803.304.1698

[Russ Simnick](#) (click to email)
russ@publiccharters.org
301.452.0075

[Patrick Cushing](#) (click to email)
pcushing@williamsmullen.com
804.937.0367