

JAN 27 2016

A BILL FOR AN ACT

RELATING TO PUBLIC CHARTER SCHOOLS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. In 2011, the legislature established the charter school governance, accountability, and authority task force pursuant to section 7 of Act 130, Session Laws of Hawaii 2011. The task force developed proposed legislation for creating a governance structure for Hawaii's charter school system with clear lines of authority and accountability to foster improved student outcomes. The legislature adopted many of the recommendations of the task force in Act 130, Session Laws of Hawaii 2012, including the recommendation that the State allow for multiple entities, known as "authorizers," to approve or deny organizations seeking to become a charter school and existing charter schools seeking to continue operating.

Multiple authorizers, as recommended by the National Association of Charter School Authorizers, act as a check against the unnecessary growth of a single authorizer. Under a single authorizer system, as a state increases the number of



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1 charter schools, the authorizer receives more funds. This
2 causes the authorizer to hire more staff and generate more
3 charter school regulations, ultimately decreasing charter
4 schools' abilities to innovate and excel. With multiple
5 authorizers, charter schools can switch authorizers if one
6 becomes too overbearing.

7 Hawaii currently has only one authorizer, the state public
8 charter school commission. The commission has jurisdiction over
9 all thirty-four charter schools in Hawaii, which is far beyond
10 the ten to twelve schools recommended by the National
11 Association of Charter School Authorizers. This expansive
12 jurisdiction has been attributed, in part, to the commission's
13 use of a one-size-fits-all model for all charter schools,
14 difficulty encountered by charter school staff in communicating
15 with commissioners, and excessive charter school compliance
16 requirements that consume administrators' time and attention
17 that could be spent on students and teachers. Charter school
18 employees have also voiced concern that the commission tends to
19 focus on charter school compliance through a negative and
20 reactionary manner, instead of encouraging, supporting, and



1 providing a framework for each charter school to innovate,
2 develop, grow, and succeed.

3 These criticisms concerning the commission have led board
4 of education member Jim Williams, at the January 2016 board of
5 education meeting, to call for board action to designate members
6 to an investigative committee to determine if a special review
7 of the state public charter school commission is warranted.

8 Simplifying the process for an entity to become an
9 authorizer will help to develop multiple authorizers in the
10 State and will ultimately strengthen Hawaii's charter school
11 system by accommodating unique missions, providing a more
12 intimate understanding of school community needs, and enabling
13 authorizers and the department of education to collaborate on
14 establishing best practices.

15 The University of Hawaii-West Oahu and the county of Hawaii
16 have submitted formal commitments of interest to become
17 authorizers. The legislature finds the process to create
18 additional authorizers established under chapter 302D, Hawaii
19 Revised Statutes, requires simplification.

20 The legislature also understands that public-private
21 partnerships are critical to charter school communities for



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1 operational and facilities supports. The legislature finds that
2 all funding for charter schools that pass through an authorizer
3 should be transferred to the charter school as soon as possible
4 for the original intended purpose, no later than thirty days
5 after receipt. The legislature further finds that the financial
6 position of a school should include all funding supports from
7 public and private partners.

8 The legislature believes that it is critical that charter
9 schools and their governing boards have the authority to employ
10 and retain access to legal counsel for charter contract
11 negotiation, charter revocation, and the charter nonrenewal
12 processes. While a deputy attorney general represents all the
13 charter schools, this deputy attorney general does not attend
14 the charter school commission meetings, despite requests from
15 charter school staff. Further, the deputy attorney general does
16 not respond to all legal questions asked by the schools.
17 Schools have requested the authority to retain pro bono
18 attorneys, but have been denied this authority.

19 The purpose of this Act is to:

- 20 (1) Simplify the process for an entity to become an
21 authorizer;



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- (2) Establish mandated timelines for the distribution of funds that pass through authorizers;
- (3) Provide charter schools with the authority to employ or retain attorneys for contract negotiations, charter revocation, and the charter nonrenewal process; and
- (4) Require the department of education to submit a report on the status of the policies, criteria, or guidelines for evaluating applications for an entity to become an authorizer.

PART II

SECTION 2. The purpose of this part is to simplify the process for an entity to become an authorizer.

SECTION 3. Section 302D-4, Hawaii Revised Statutes, is amended to read as follows:

"[+]§302D-4[+] Chartering authority application for eligible entities. (a) The commission created under section 302D-3 may authorize public charter schools anywhere in the State.

(b) Governing boards of accredited public and private postsecondary institutions, including community colleges, technical colleges, and four-year universities may apply to the



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1 board, pursuant to this section, for statewide, regional, or
2 local chartering authority, in accordance with each
3 institution's regular operating jurisdiction.

4 (c) A county or state agency may apply to the board,
5 pursuant to this section, for chartering authority.

6 (d) Governing boards of non-profit or charitable
7 organizations, ~~[which]~~ that are exempt from federal taxes under
8 section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, may
9 apply to the board, and may be granted statewide chartering
10 authority. Nonpublic sectarian or religious organizations and
11 any other charitable organization ~~[which]~~ that in their federal
12 Internal Revenue Service Form 1023, Part IV, describe activities
13 indicating a religious purpose, are not eligible to apply to
14 become an authorizer under this chapter.

15 (e) The board shall establish~~[, through administrative~~
16 ~~rules, the annual application and]~~ an annual approval process
17 for all entities eligible to apply for chartering authority
18 pursuant to this section~~[, provided that the board shall not~~
19 ~~approve any application for chartering authority until July 1,~~
20 ~~2014, or until the board adopts rules, whichever is later. By~~
21 ~~June 30 of each year, the]~~. The board shall make available



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1 information and guidelines for all eligible entities concerning
2 the opportunity to apply for chartering authority under this
3 chapter. The application process shall require each interested
4 eligible entity to submit ~~[an application]~~ an official letter of
5 intent that clearly explains or presents the following elements:

6 (1) Written notification of intent to serve as an
7 authorizer in accordance with this chapter;

8 ~~[(2) The applicant entity's strategic vision for~~
9 ~~chartering;~~

10 ~~(3) A plan to support the vision presented, including~~
11 ~~explanation and evidence of the applicant entity's~~
12 ~~budget and personnel capacity and commitment to~~
13 ~~execute the responsibilities of quality charter~~
14 ~~authorizing, in accordance with this chapter;~~

15 ~~(4) A draft or preliminary outline of the request for~~
16 ~~proposals that the applicant entity, if approved as an~~
17 ~~authorizer, would issue to solicit public charter~~
18 ~~school applicants;~~

19 ~~(5) A draft of the performance framework that the~~
20 ~~applicant entity, if approved as an authorizer, would~~
21 ~~use to guide the establishment of a charter contract~~



1 ~~and for ongoing oversight and evaluation of public~~
2 ~~charter schools, consistent with the requirements of~~
3 ~~this chapter,~~

4 ~~(6)~~ ~~A draft of the applicant entity's renewal, revocation,~~
5 ~~and nonrenewal processes, consistent with section~~
6 ~~302D-18,]~~

7 ~~(7)]~~ (2) A statement of assurance that the applicant
8 [entity] seeks to serve as an authorizer in
9 fulfillment of the expectations, spirit, and intent of
10 this chapter, and that if approved as an authorizer,
11 the entity will fully participate in any authorizer
12 training provided or required by the State; and

13 ~~[(8)]~~ (3) A statement of assurance that the applicant will
14 ensure public accountability and transparency in all
15 matters concerning its charter-authorizing practices,
16 decisions, and expenditures.

17 (f) ~~[By June 30 of each year,]~~ Within sixty days of
18 receipt of an official letter of intent by an eligible
19 applicant, the board shall conduct a meeting in accordance with
20 chapter 92 to decide whether to grant or deny chartering
21 authority to [each] the eligible applicant. ~~[The board shall~~



1 ~~make its decisions on the merits of each applicant's proposal~~
2 ~~and plans.]~~

3 (g) If the board denies chartering authority to an
4 eligible applicant, the board shall notify the applicant in
5 writing of the reason for the denial and serve that document to
6 the applicant by registered or certified mail with return
7 receipt requested.

8 ~~[-(g)]~~ (h) Within sixty days of the board's decision~~[7]~~ to
9 grant chartering authority to an eligible applicant, the board
10 shall execute a renewable authorizing contract with each entity
11 it has approved for chartering authority. ~~[The initial term of~~
12 ~~each authorizing contract shall be six years.]~~ The authorizing
13 contract shall specify each approved entity's agreement to serve
14 as an authorizer in accordance with the expectations of this
15 chapter~~[, and shall specify additional performance terms based~~
16 ~~on the applicant's proposal and plan for chartering]~~. No
17 approved entity shall commence charter authorizing without an
18 authorizing contract in effect. An approved entity may apply
19 for grant funding and begin planning, implementation, and
20 development to become an authorizer without an authorizing
21 contract in effect.



~~[(h)]~~ (i) This section shall not apply to the commission."

PART III

SECTION 4. The purpose of this part is to require authorizers to timely distribute funds to charter schools.

SECTION 5. Section 302D-28, Hawaii Revised Statutes, is amended by amending subsection (d) as follows:

"(d) Charter schools shall be eligible for all federal financial support to the same extent as department schools. The department shall provide all authorizers with all state-level federal grant proposals submitted by the department that include charter schools as potential recipients and timely reports on state-level federal grants received for which charter schools may apply or are entitled to receive. Federal funds received by the department for charter schools shall be transferred to authorizers for distribution to the charter schools they authorize in accordance with the federal requirements. If administrative services related to federal grants are provided to the charter school by the department, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that shall not exceed six per cent of the charter school's federal grants.

1 Any charter school shall be eligible to receive any
2 supplemental federal grant or award for which any department
3 school may submit a proposal, or any supplemental federal grants
4 limited to charter schools; provided that if department
5 administrative services, including funds management, budgetary,
6 fiscal accounting, or other related services, are provided with
7 respect to these supplemental grants, the charter school shall
8 reimburse the department for the actual costs of the
9 administrative services in an amount that shall not exceed six
10 per cent of the supplemental grant for which the services are
11 used.

12 Notwithstanding any requirement to the contrary, all
13 federal, supplemental, and grant funds transferred to each
14 authorizer shall be distributed to the appropriate charter
15 school within thirty days of the authorizer receiving notice of
16 the available funds and for the original purpose of the funds.

17 All additional funds generated by the governing boards,
18 that are not from a supplemental grant, shall be held separate
19 from allotted funds and may be expended at the discretion of the
20 governing boards."



SECTION 6. Section 302D-28.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]302D-28.5[§]~~ **Financial insolvency.** (a) ~~[In the event that]~~ If any public charter school becomes financially insolvent, the school shall [be deemed to have surrendered its charter. For purposes of this section, a] implement closure protocol adopted by the authorizer of the charter school as described in section 302D-19(a).

(b) A school shall be determined to be financially insolvent when it is unable to pay its staff when payroll is due[-] and all funding due to the school from state agencies and authorizers has been included in the comprehensive assessment of the school's financial health and viability based on a school's historic trends, near-term financial situation, and future viability as validated by the schools external auditor. For purposes of this section, "financial situation" and "future viability" shall include funding supports from public and private partners with legally binding commitments.

~~[(b) In the event that any public charter school becomes financially insolvent, the authorizer shall adopt a closure protocol as described under section 302D-19(a).]~~ "



PART IV

SECTION 7. The purpose of this part is to authorize public charter schools to retain attorneys for limited purposes.

SECTION 8. Section 28-8.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

(1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;

(2) By any court or judicial or legislative office of the State; provided that if the attorney general is requested to provide representation to a court or judicial office by the chief justice or the chief justice's designee, or to a legislative office by the speaker of the house of representatives and the



1 president of the senate jointly, and the attorney
2 general declines to provide such representation on the
3 grounds of conflict of interest, the attorney general
4 shall retain an attorney for the court, judicial, or
5 legislative office, subject to approval by the court,
6 judicial, or legislative office;

7 (3) By the legislative reference bureau;

8 (4) By any compilation commission that may be constituted
9 from time to time;

10 (5) By the real estate commission for any action involving
11 the real estate recovery fund;

12 (6) By the contractors license board for any action
13 involving the contractors recovery fund;

14 (7) By the office of Hawaiian affairs;

15 (8) By the department of commerce and consumer affairs for
16 the enforcement of violations of chapters 480 and
17 485A;

18 (9) As grand jury counsel;

19 (10) By the Hawaii health systems corporation, or its
20 regional system boards, or any of their facilities;

21 (11) By the auditor;



- 1 (12) By the office of ombudsman;
- 2 (13) By the insurance division;
- 3 (14) By the University of Hawaii;
- 4 (15) By the Kahoolawe island reserve commission;
- 5 (16) By the division of consumer advocacy;
- 6 (17) By the office of elections;
- 7 (18) By the campaign spending commission;
- 8 (19) By the Hawaii tourism authority, as provided in
- 9 section 201B-2.5;
- 10 (20) By the division of financial institutions for any
- 11 action involving the mortgage loan recovery fund;
- 12 (21) By the office of information practices; [e]
- 13 (22) By a charter school as defined in section 302D-1, for
- 14 any action involving the charter contract negotiation,
- 15 charter revocation, or charter nonrenewal processes;
- 16 or
- 17 [+22+] (23) By a department, if the attorney general, for
- 18 reasons deemed by the attorney general to be good and
- 19 sufficient, declines to employ or retain an attorney
- 20 for a department; provided that the governor waives
- 21 the provision of this section."



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1 PART V

2 SECTION 9. No later than twenty days prior to the
3 convening of the regular session of 2017, the board of education
4 shall submit a report to the legislature on the status of the
5 policies, criteria, or guidelines for evaluating official
6 letters of intent for chartering authority.

7 PART VI

8 SECTION 10. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 11. This Act shall take effect on July 1, 2016.

11

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Report Title:

Department of Education; Public Charter Schools; Authorizers;
Attorneys; Fund Distribution

Description:

Simplifies the process for an entity to become an authorizer (an entity that approves or denies applications to become a charter school). Establishes a shortened timeline for the release of charter school funds. Authorizes charter schools to retain attorneys for charter contract negotiation, charter revocation, and charter nonrenewal processes.

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