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## A BILL FOR AN ACT

RELATING TO CHARTER SCHOOLS.

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

1       SECTION 1.   Section 302D-5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "§302D-5   Authorizer powers, duties, and liabilities.   (a)  
4 Authorizers are responsible for executing the following  
5 essential powers and duties:

6       (1)   Soliciting and evaluating charter applications;  
7       (2)   Approving quality charter applications that meet  
8           identified educational needs and promote a diversity  
9           of educational choices;

10       (3)   Declining to approve weak or inadequate charter  
11           applications;

12       (4)   Negotiating and executing sound charter contracts with  
13           each approved charter applicant and with existing  
14           public charter schools;

15       (5)   Monitoring, in accordance with charter contract terms,  
16           the performance and legal compliance of public charter  
17           schools; and



(6) Determining whether each charter contract merits renewal, nonrenewal, or revocation.

(b) An authorizer shall:

(1) Act as a point of contact between the department and a public charter school it authorizes;

(2) Be responsible for and ensure the compliance of a public charter school it authorizes with all applicable state and federal laws, including reporting requirements;

(3) Be responsible for the receipt of applicable federal funds from the department and the distribution of funds to the public charter school it authorizes; and

(4) Be responsible for the receipt of per-pupil funding from the department of budget and finance and distribution of the funding to the public charter school it authorizes.

(c) An authorizer shall have the power to make and execute contracts and all other instruments necessary or convenient for the exercise of its duties and functions under this chapter[-]; provided that at no time shall the per-pupil allocation be used to force an agreement under this subsection.



1 (d) An authorizer may delegate its duties to officers,  
2 employees, and contractors.

3 (e) Regulation by authorizers shall be limited to the  
4 powers and duties set forth in this section, and shall be  
5 consistent with the spirit and intent of this chapter.

6 (f) An authorizer, members of the board of an authorizer  
7 acting in their official capacity, and employees or agents of an  
8 authorizer are immune from civil and criminal liability with  
9 respect to all activities related to a public charter school  
10 authorized by that authorizer, except for any acts or omissions  
11 constituting wilful misconduct. Members of the commission shall  
12 be afforded the same protection afforded the members of the  
13 board pursuant to section 26-35.5.

14 ~~[(g) An authorizer shall not provide technical support to~~  
15 ~~a prospective charter school applicant, an applicant governing~~  
16 ~~board, or a charter school it authorizes in cases in which the~~  
17 ~~technical support will directly and substantially impact any~~  
18 ~~authorizer decision related to the approval or denial of the~~  
19 ~~charter application or the renewal, revocation, or nonrenewal of~~  
20 ~~the charter contract. This subsection shall not apply to~~



1 ~~technical support that an authorizer is required to provide to a~~  
2 ~~charter school pursuant to federal law.]~~

3       (g) For the purposes of this section, "negotiating" means  
4 a two-way conversation between the authorizer and the governing  
5 board resulting in mutually agreeable terms that focus on the  
6 best interest of the student; the individual charter school's  
7 vision, mission, and target population being served; and the  
8 board's strategic goals."

9       SECTION 2. Section 302D-8, Hawaii Revised Statutes, is  
10 amended to read as follows:

11       "**§302D-8 Conflict of interests.** No employee, trustee,  
12 agent, or representative of an authorizer may simultaneously  
13 serve as an employee, trustee, agent, representative, vendor,  
14 funder, or contractor of a public charter school authorized by  
15 that authorizer. Authorizer members shall disclose to the  
16 authorizer a list of all charter schools in which the member has  
17 previously been an employee, governing board member, vendor,  
18 contractor, agent, or representative."

19       SECTION 3. Section 302D-11, Hawaii Revised Statutes, is  
20 amended as follows:

21       1. By amending subsection (d) to read:



1        "(d) If an authorizer persists, after due notice from the  
2 board, in violating a material provision of a charter contract  
3 ~~[or]~~, its authorizing contract with the board, or a state or  
4 federal law, or fails to remedy other identified authorizing  
5 problems, the board shall notify the authorizer, within a  
6 reasonable amount of time under the circumstances, that it  
7 intends to revoke the authorizer's chartering authority unless  
8 the authorizer demonstrates a timely and satisfactory remedy for  
9 the violation or deficiencies."

10        2. By amending subsection (e) to read:

11        "(e) In the event of revocation of any authorizer's  
12 chartering authority, the board shall manage the timely and  
13 orderly transfer of each charter contract and all appropriate  
14 funds, including state, federal, and private funds, held by that  
15 authorizer to another authorizer in the State, with the mutual  
16 agreement of each affected public charter school and proposed  
17 new authorizer. The new authorizer shall enter into a new  
18 charter contract with the charter school for the remainder of  
19 the charter term."

20        SECTION 4. Section 302D-12, Hawaii Revised Statutes, is  
21 amended by amending subsection (e) to read as follows:



1        "(e) Section 78-4 shall not apply to members of governing  
2 boards[, ~~provided that no governing board member shall be~~  
3 ~~allowed to serve on more than two governing boards~~  
4 ~~simultaneously~~]. For purposes of this subsection, a governing  
5 board that governs more than one charter school shall be  
6 considered one board."

7        SECTION 5. Section 302D-15, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9        "(a) The board shall have the power to decide appeals of  
10 decisions by an authorizer to deny the approval of a charter  
11 application, deny renewal of a charter contract, deny a contract  
12 negotiation request, or revoke a charter school's charter  
13 contract. An appeal shall be filed with the board within  
14 twenty-one calendar days of the receipt of the notification of  
15 denial or revocation. Only a party whose charter application  
16 has been denied, whose contract negotiation request has been  
17 denied, whose charter contract renewal has been denied, or whose  
18 charter contract has been revoked may initiate an appeal under  
19 this section for cause. The board shall review an appeal and  
20 issue a final decision within sixty calendar days of the filing  
21 of the appeal."



SECTION 6. Section 302D-16, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(b) Annual academic performance targets shall be negotiated and set by each public charter school in conjunction with its authorizer, and shall be designed to track each school in meeting applicable federal, state, and authorizer expectations."

2. By amending subsection (c) to read:

"(c) The performance framework shall allow the inclusion of additional rigorous, valid, and reliable indicators proposed by a public charter school to augment external evaluations of its performance; provided that the authorizer ~~[approves]~~ negotiates the quality and rigor of ~~[such]~~ these school-proposed indicators, based on target population demographics of similar public school populations and the indicators are consistent with the purposes of this chapter and the charter contract."

SECTION 7. Section 302D-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) An authorizer shall continually monitor the performance and legal compliance of the public charter schools



1 it oversees, including collecting and analyzing data to support  
2 ongoing evaluation according to the charter contract ~~[--]~~ and  
3 target population demographics of similar public school  
4 populations. Every authorizer shall have the authority to  
5 conduct or require oversight activities that enable the  
6 authorizer to fulfill its responsibilities under this chapter,  
7 including conducting appropriate inquiries and investigations,  
8 so long as those activities are consistent with the intent of  
9 this chapter and the requirements of the federal Family  
10 Educational Rights and Privacy Act, and adhere to the terms of  
11 the charter contract."

12 SECTION 8. Section 302D-18, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "§302D-18 Renewals, revocations, and nonrenewals. (a) A  
15 charter contract may be renewed for successive ~~[five-year]~~ ten-  
16 year terms of duration, although an authorizer may vary the  
17 terms based on performance, demonstrated capacities, and  
18 particular circumstances of each charter school. An authorizer  
19 may grant a renewal of a charter contract with specific  
20 conditions negotiated with the governing board for necessary  
21 improvements to a charter school. No governing board shall be





1 forced to sign a contract agreement because of the threat of  
2 withholding per-pupil funding or eliminating their student count  
3 from required legislative budget reports that impact funding.  
4 Only closure proceedings following due processes shall  
5 constitute the withholding of per-pupil funding.

6 (b) The authorizer shall issue a charter school  
7 performance report and charter contract renewal application  
8 guidance to any charter school whose charter contract is in its  
9 final contract year. The performance report shall summarize the  
10 charter school's performance record to date, based on the data  
11 required by this chapter and the charter contract, and shall  
12 provide notice of any weaknesses or concerns perceived by the  
13 authorizer concerning the charter school that may jeopardize its  
14 position in seeking renewal.

15 (c) The renewal application guidance shall, at a minimum,  
16 provide an opportunity for the public charter school to:

17 (1) Submit any corrections or clarifications to the  
18 performance report;

19 (2) Present additional evidence, beyond the data contained  
20 in the performance report, supporting its case for  
21 charter renewal;



1 (3) Describe improvements undertaken or planned for the  
2 school; and

3 (4) Detail the charter school's plans for the next charter  
4 term.

5 (d) The renewal application guidance shall include or  
6 refer explicitly to the criteria that will guide the  
7 authorizer's renewal decisions, which shall be based on the  
8 charter contract and be consistent with this chapter.

9 (e) No later than thirty days after the issuance of the  
10 performance report, the governing board of a charter school  
11 seeking renewal shall submit a renewal application to the  
12 authorizer pursuant to the renewal guidance issued by the  
13 authorizer. The authorizer shall decide whether or not to renew  
14 the charter no later than forty-five days after the filing of  
15 the renewal application.

16 (f) In making charter renewal decisions, every authorizer  
17 shall:

18 (1) Ground its decisions in evidence of the school's  
19 performance over the term of the charter contract in  
20 accordance with the performance framework utilizing  
21 comparative data that clarifies target population



1           demographics of similar public school populations as  
2           indicators of success set forth in the charter  
3           contract;

4           (2) Ensure that data used in making the renewal decisions  
5           are available to the charter school and the public;  
6           and

7           (3) Provide a public report summarizing the evidence and  
8           basis for each decision.

9           (g) A charter contract may be revoked at any time or not  
10          renewed if the authorizer determines that the charter school did  
11          any of the following or otherwise failed to comply with the  
12          provisions of this chapter:

13          (1) Committed a material and substantial violation of any  
14          of the terms, conditions, standards, or procedures  
15          required under this chapter or the charter contract;

16          (2) Failed to meet or make sufficient progress toward  
17          performance expectations set forth in the contract;

18          (3) Failed to meet generally accepted standards of fiscal  
19          management; or

20          (4) Substantially violated any material provision of law  
21          from which the charter school is not exempted.



1 (h) An authorizer shall develop revocation and nonrenewal  
2 processes that:

3 (1) Provide charter contract holders with a timely  
4 notification of the prospect of revocation or non-  
5 renewal and the reasons for ~~[such]~~ each possible  
6 closure;

7 (2) Allow charter contract holders a reasonable amount of  
8 time in which to prepare a response;

9 (3) Provide charter contract holders with an opportunity  
10 to submit documents and give testimony challenging the  
11 rationale for closure and supporting the continuation  
12 of the school at an orderly proceeding held for that  
13 purpose; provided that the proceeding shall be  
14 governed by the requirements set forth in this section  
15 ~~[and shall not be additionally subject to the~~  
16 ~~requirements for an agency hearing under chapter 91];~~

17 (4) Allow charter contract holders access to  
18 representation by counsel[, ~~subject to section 28-~~  
19 ~~8.3,~~] and to call witnesses on their behalf;

20 (5) Permit the recording of proceedings described in  
21 paragraph (3); and



1           (6) After a reasonable period for deliberation, require a  
2           final determination to be made and conveyed in writing  
3           to the charter contract holders.

4           (i) If an authorizer revokes or does not renew a charter  
5 contract, the authorizer shall clearly state in writing the  
6 reasons for the revocation or nonrenewal.

7           (j) Within fifteen days of taking action to renew, not to  
8 renew, or to revoke a charter contract, the authorizer shall  
9 report to the board the action taken, and shall simultaneously  
10 provide a copy of the report to the charter school. The report  
11 shall set forth the action taken and reasons for the decision  
12 and assurances as to compliance with all the requirements set  
13 forth in this chapter.

14           (k) Commission members with a conflict of interest shall  
15 not engage at the committee or board level in school closure  
16 discussions or related decision making processes."

17           SECTION 9. Section 302D-25, Hawaii Revised Statutes, is  
18 amended as follows:

19           1. By amending subsection (a) to read:



1       "(a) Charter schools shall be exempt from chapters 91 and  
2 92 and all other state laws in conflict with this chapter,  
3 except those regarding:

4       (1) Collective bargaining under chapter 89; provided that:

5           (A) The exclusive representatives as defined in  
6 chapter 89 and the governing board of the charter  
7 school may enter into supplemental agreements  
8 that contain cost and noncost items to facilitate  
9 decentralized decision-making;

10          (B) The agreements shall be funded from the current  
11 allocation or other sources of revenue received  
12 by the charter school; provided that collective  
13 bargaining increases for each bargaining unit for  
14 all public schools shall include charter schools  
15 and include, but not be limited to, cost of  
16 living increases, union step increases, hard to  
17 fill incentives, and national certification  
18 incentives for employees and shall be allocated  
19 by the department of budget and finance to the  
20 charter school's authorizer for distribution to  
21 the charter school; and



(C) These supplemental agreements may differ from the master contracts negotiated with the department;

(2) Discriminatory practices under section 378-2; and

(3) Health and safety requirements."

2. By amending subsection (g) to read:

"(g) For purposes of statutory delegation of authority to department heads by other state agencies, the executive director of the commission and the executive director of each authorizer shall be deemed the department head of the ~~[commission and]~~ charter schools within their respective portfolios unless otherwise specifically provided."

SECTION 10. Section 302D-28, Hawaii Revised Statutes, is amended to read as follows:

**"§302D-28 Funding and finance.** (a) Beginning with fiscal year 2012-2013, and each fiscal year thereafter, the non-facility general fund per-pupil funding request for charter school students shall be the same as the general fund per-pupil amount to the department in the most recently approved executive budget recommendation for the department and shall be based upon reasonable projected enrollment figures for all charter schools.



1 The general fund per-pupil request for each regular education  
2 and special education student shall:

3 (1) Include all general fund regular education cost  
4 categories, including comprehensive school support  
5 services, but excluding special education services,  
6 adult education, and the after-school plus program;  
7 provided that these services are provided and funded  
8 by the department; and

9 (2) Exclude fringe benefit costs and debt service.

10 (b) Fringe benefit costs for charter school employees,  
11 regardless of the payroll system utilized by a charter school,  
12 shall be included in the department of budget and finance's  
13 annual budget request. No fringe benefit costs shall be charged  
14 directly to or deducted from the charter school per-pupil  
15 allocations.

16 The legislature shall make an appropriation based upon the  
17 budget request; provided that the legislature may make  
18 additional appropriations for facility and other costs.

19 The governor, pursuant to chapter 37, may impose  
20 restrictions or reductions on charter school appropriations  
21 similar to those imposed on department schools.





1           (c) Notwithstanding any law to the contrary, to ensure  
2 non-facility per-pupil general fund amounts allocated for the  
3 department and charter school students are equal on an  
4 annualized fiscal year basis, each year the director of finance  
5 shall:

6           (1) Determine the sum of general fund appropriations made  
7               for department and charter school student non-facility  
8               costs described in subsections (a) and (b);

9           (2) Determine the sum of department and charter school  
10             student enrollment based on reviewed and verified  
11             student enrollment counts as of October 15;

12           (3) Determine a per-pupil amount by dividing the sum of  
13             general fund appropriations determined under paragraph  
14             (1) by the sum of student enrollment determined under  
15             paragraph (2);

16           (4) Transfer a general fund amount between the department  
17             and charter schools that will provide each with a per-  
18             pupil allocation equal to the amount determined on an  
19             annualized fiscal year basis under paragraph (3); and

20           (5) Annually account for all calculations and transfers  
21             made pursuant to this subsection in a report to the



1 legislature, governor, department, and charter  
2 schools.

3 This subsection shall not limit the ability of the director of  
4 finance to modify or amend any allotment pursuant to chapter 37.

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

20 Any charter school shall be eligible to receive any  
21 supplemental federal grant or award for which any department



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

10 All additional funds generated by the governing boards,  
11 that are not from a supplemental grant, shall be held separate  
12 from allotted funds and may be expended at the discretion of the  
13 governing boards.

14 (e) Authorizers shall calculate a general fund per-pupil  
15 amount based upon the amount of general funds appropriated by  
16 the legislature and released by the governor and the projected  
17 enrollment amount used to calculate the general funds  
18 appropriated pursuant to subsection (a).

19 Authorizers shall submit a report to the legislature no  
20 later than twenty days prior to the convening of each regular  
21 session that contains each charter school's current school year



1 projection that is used to submit the budget request, the  
2 updated May 15 enrollment projection, the actual October 15  
3 enrollment count, the authorizer's reviewed and verified  
4 enrollment count, and the November 15 enrollment count.

5 (f) To enable charter schools to access state funding  
6 prior to the start of each school year, foster their fiscal  
7 planning, enhance their accountability, and avoid over-  
8 allocating general funds to charter schools based on self-  
9 reported enrollment projections, authorizers shall:

10 (1) Provide sixty per cent of a charter school's per-pupil  
11 allocation based on the charter school's projected  
12 student enrollment no later than July 20 of each  
13 fiscal year; provided that the charter school shall  
14 have submitted to its authorizer a projected student  
15 enrollment no later than May 15 of each year;

16 (2) Provide an additional thirty per cent of a charter  
17 school's per-pupil allocation no later than December 1  
18 of each year, based on the October 15 student  
19 enrollment, as reviewed and verified by the  
20 authorizer, only to schools in compliance with all  
21 financial reporting requirements; and



1           (3) Retain no more than the balance of the remaining ten  
2           per cent of a charter school's per-pupil allocation,  
3           as a contingency balance to ensure fiscal  
4           accountability and compliance, no later than June 30  
5           of each year;

6 provided that authorizers may make adjustments in allocations  
7 based on noncompliance with charter contracts and the board may  
8 make adjustments in allocations based on noncompliance with  
9 board policies made in the board's capacity as the state  
10 education agency, department directives made in the department's  
11 capacity as the state education agency, the board's  
12 administrative procedures, and board-approved accountability  
13 requirements.

14           (g) The department shall provide appropriate transitional  
15 resources to a conversion charter school for its first year of  
16 operation as a charter school based upon the department's  
17 allocation to the school for the year prior to the conversion.

18           (h) No charter school may assess tuition; provided that a  
19 charter school may assess and collect special fees and charges  
20 from students for co-curricular activities. Any special fees  
21 and charges collected pursuant to this subsection shall be



1 deposited into insured checking or savings accounts and expended  
2 by each individual charter school.

3 (i) Charter school students who are enrolled in a charter  
4 school that is in the process of negotiating a contract with an  
5 authorizer or transferring authorizers shall be counted with the  
6 authorizer whose contract was held prior to negotiation or  
7 transfer, or both, for the purposes of submitting the  
8 legislative budget request."

9 SECTION 11. Section 302D-30, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§302D-30 Responsibilities of the department; special  
12 education services. (a) The department shall collaborate with  
13 each authorizer to develop a system of technical assistance  
14 related to compliance with federal and state laws and access to  
15 federal and state funds. The department shall collaborate with  
16 each authorizer to develop a list of central services that the  
17 department may offer for purchase by a charter school at an  
18 annual cost to be negotiated between an individual charter  
19 school and the department. The department shall enter into a  
20 contract with a charter school to provide these services, which  
21 shall be renegotiated on an annual basis.



1           (b) The department shall be responsible for the provision  
2 of a free appropriate public education. Any charter school that  
3 enrolls special education students or identifies one of its  
4 students as eligible for special education shall be responsible  
5 for ~~[providing]~~ implementing the educational and related  
6 services required by a student's individualized education  
7 program. The programs and services for the student shall be  
8 determined collaboratively by the student's individualized  
9 education program team, which includes the student's parents or  
10 legal guardians.

11           If the charter school is unable to provide all of the  
12 required services, then the department shall provide the student  
13 with services as determined by the student's individualized  
14 educational program team. The department shall collaborate with  
15 the commission to develop guidelines related to the provision of  
16 special education services and resources to each charter school.  
17 The department shall review all of the current individualized  
18 education programs of special education students enrolled in a  
19 charter school and may offer staff, funding, or both, to the  
20 charter school based upon a per-pupil weighted formula



1 implemented by the department and used to allocate resources for  
2 special education students in the department schools.

3 (c) For the purposes of this section and special  
4 education, charter school authorizers shall be considered by the  
5 department and board as complex areas and host department  
6 positions based on the number of special education students in  
7 its portfolio as compared to other complex areas, to facilitate  
8 streamlined processes with the department for determining the  
9 allocation of all special education resources. The resource  
10 arrangement shall be produced administratively between the  
11 board, department, and authorizer."

12 SECTION 12. Section 302D-31, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "§302D-31 **Athletics.** The department shall provide  
15 students at charter schools, including students enrolled at  
16 charter schools whose curriculum incorporates virtual education,  
17 with the same opportunity to participate in athletics as is  
18 provided to students at department schools. If a student at any  
19 charter school wishes to participate in a sport for which there  
20 is no program at the charter school, the department shall allow  
21 that student to participate in a comparable program at the





1 department school in the service area in which the charter  
2 school is located or where the student resides. All charter  
3 school students participating in athletics shall abide by all  
4 rules, regulations, and policies of the athletic league,  
5 association, and program applicable to the department school in  
6 whose athletic program the student is participating."

7 SECTION 13. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 14. This Act shall take effect upon its approval.

10

INTRODUCED BY:



JAN 24 2018



# H.B. NO. 2716

**Report Title:**

Public Charter Schools; Housekeeping

**Description:**

Amends the Public Charter Schools Law to align the requirements for charter schools. Provides clarity and definitions to the law and makes conforming amendments for issues arising from the 2016 Board of Education special review. Makes other housekeeping amendments.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

