

## ACT 87

S.B. NO. 1643

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

PART I  
PURPOSE

SECTION 1. The legislature finds that the State has made a commitment to public education and public schools through its Constitution and numerous laws. Until recently, all public education was established, financially supported, and controlled by the board of education and the department of education. However, the creation of new century charter schools outside of the department of education, chartered directly by the board of education, has in effect created two groups of schools. Although they share a wide variety of common objectives, there has been an ongoing debate among the stakeholders as to which operational similarities should, in the interests of parity, be clarified in statute as legally comparable as well.

There are nevertheless some important differences between the two groups, particularly with regard to their target populations, approaches to education, legal mandates, and funding structures. The flexibility that generates many of these differences is at the heart of the vitality of charter schools as an educational reform model in Hawaii and should be retained.

While many of Hawaii's education laws were enacted at a time when all public schools were department of education schools, the creation of new century charter schools requires clarifications within the statutes. These necessary modifications center primarily on the issues of:

- (1) Accountability, personnel, and weighted student formula;
- (2) Funding;
- (3) Workers' compensation; and
- (4) The federal Individuals with Disabilities Education Act.

PART II  
ACCOUNTABILITY, PERSONNEL, AND WEIGHTED STUDENT  
FORMULA

SECTION 2. The purpose of this part is to facilitate the ongoing improvement of new century charter school laws by:

- (1) Clarifying certain aspects of Hawaii's charter school laws and updating the definitions of "public schools" and "new century charter schools";

- (2) Creating a more rigorous standard for the chartering of additional new century charter schools;
- (3) Allowing local school boards to participate in the department of education listings;
- (4) Ensuring that qualified personnel may move more freely between department schools and charter schools;
- (5) Enabling charter schools to propose their own weighted student formula;
- (6) Requiring collective bargaining increases allocated by the department of budget and finance to the charter schools administrative office;
- (7) Exempting the charter schools administrative office from the state procurement code;
- (8) Allowing the executive director to be hired through a multi-year contract;
- (9) Prohibiting any chief executive officer, chief administrative officer, executive director, or otherwise from serving as chair of the local school board; and
- (10) Creating a task force to identify and recommend to the legislature revisions to the existing charter school law and to help create an effective framework for overseeing and supporting new and existing charter schools.

To alleviate the confusion regarding the designation of new century charter schools as public schools, it is the legislature's intent to clarify that new century charter schools are public schools under the board of education. Although there may be references to public schools within other chapters of the Hawaii Revised Statutes, these statutes may not necessarily call for the inclusion of new century charter schools. However, amending these two definitions clarifies that new century charter schools are in fact public schools.

SECTION 3. Section 302A-101, Hawaii Revised Statutes, is amended by amending the definitions of "new century charter schools" and "public schools" to read as follows:

"New century charter schools" means ~~[the implementation of]~~ public schools chartered by the board of education with the flexibility to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, length of the school day, week, or year, and personnel management, ~~[formed under section 302A-1182].~~

"Public schools" means all academic and noncollege type schools ~~[either]~~ established and maintained by the department ~~[, or issued a charter]~~ and new century charter schools chartered by the board of education, in accordance with law. [All other academic and noncollege type schools are "private schools", irrespective of the hours during which the sessions take place.]

SECTION 4. Section 302A-1182, Hawaii Revised Statutes, is amended to read as follows:

**"§302A-1182 New century charter schools; establishment.** (a) Up to a total of twenty-three schools may be established as new century charter schools. These new century charter schools may be established by:

- (1) The creation of a new school~~;~~ pursuant to subsections (b) and (c); or
- (2) The creation of a new school, comprising programs or sections of existing public school populations and using existing public school facilities, pursuant to ~~[subsection]~~ subsections (b) and (c).

(b) Any community, group of teachers, group of teachers and administrators, entity recognized as a nonprofit organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any program within an existing school may submit a letter of intent to the board to form a new century charter school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to subsection (c).

(c) The local school board, with the support and guidance of the executive director, shall formulate and develop a detailed implementation plan that meets the requirements of this subsection and section 302A-1184. The plan shall include the following:

- (1) A description of employee rights and management issues and a framework for addressing those issues that protect the rights of employees;
  - (2) A plan for identifying, recruiting, and retaining highly-qualified instructional faculty;
  - [2] (3) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;
  - [3] (4) The curriculum and instructional framework to be used to achieve student outcomes, including an assessment plan;
  - [4] (5) A comprehensive plan for the assessment of student, administrative support, and teaching personnel performance[;] that:
    - (A) Recognizes the interests of the general public;
    - (B) Incorporates or exceeds state educational content and performance standards;
    - (C) Includes a system of faculty and staff accountability that holds faculty and staff both individually and collectively accountable for their performance, and that is at least equivalent to the average system of accountability in public schools throughout the State; and
    - (D) Provides for program audits and annual financial audits[-];
  - [5] (6) The governance structure of the school[;] that incorporates a conflict of interest policy and a plan for periodic board training;
  - (7) A financial plan based on the most recent fiscal year's per-pupil charter school allocation that demonstrates the ability to meet the financial obligations of one-time start-up costs and ongoing costs such as monthly payrolls, faculty recruitment, professional development, and facilities costs; and
  - [6] (8) A plan for any necessary design, construction, renovation, and management of facilities that is consistent with the state facilities plan; provided that:
    - (A) If the facilities management plan includes use of existing school facilities, the new century charter school shall receive authorization from the administrator responsible for the facilities; and
    - (B) The final determination of use shall fall within the board's discretion.
- (d) The detailed implementation plan shall be submitted to the new century charter school review panel, which shall be composed of seven members as follows:
- (1) [~~Four~~] Two of the members shall be board of education members or their designees appointed by the chairperson of the board of education;
  - (2) Two of the members shall be members of the new century charter school community approved by the chairperson of the board of education from a list submitted by existing new century charter schools; [and]
  - (3) One member shall be the executive director or the executive director's designee[-];

- (4) One member shall be appointed by the dean of the University of Hawaii's college of education; and
- (5) One member shall be a representative of the business community appointed by chairperson of the board of education.

Panel review procedures shall be as provided in this section. The board may adopt rules pursuant to chapter 91 to further guide the panel's review process.

(e) The new century charter school review panel shall have sixty working days to review the completed implementation plan for a proposed new century charter school to ensure that it meets the requirements of subsection (c) and section 302A-1184. Within forty-five working days, the panel shall issue a report of its preliminary findings to the board of education and the local school board. If the panel subsequently determines that the implementation plan:

- (1) Meets the requirements of subsection (c) and section 302A-1184, the panel shall by the sixtieth working day submit a recommendation to the board of education to issue a charter to the proposed new century charter school. Upon receipt of the panel's recommendation, the board ~~[shall]~~ may issue a charter, and the implementation plan shall be converted to a written performance contract between the school and the board; ~~[or]~~ provided that if the board does not issue a charter, the board shall:

- (A) Clearly identify its reasons for not issuing the charter; and
- (B) Allow the local school board to revise its plan, in accordance with the board's reasons for rejecting the plan, and resubmit the amended plan; or

- (2) Fails to meet the requirements of subsection (c) or section 302A-1184, the panel:
  - (A) Shall notify the local school board of the finding in writing to enable the local school board to appropriately amend the plan to address the findings; and
  - (B) May submit a recommendation to the board to issue a provisional approval for a charter if the panel determines that the applicant may reasonably be expected to expeditiously resolve any remaining findings impeding the issuance of a charter. The provisional approval shall be effective for one year. The board may extend the provisional approval beyond a period of one year. If a charter is subsequently issued, the amended implementation plan shall be converted to a written performance contract between the school and the board.

(f) An amended implementation plan shall be submitted within thirty working days of notification pursuant to subsection (e)(2)(A). The board shall deny the issuance of a charter if the local school board does not submit an amended implementation plan within the thirty working day period. The panel shall have thirty working days to review the amended implementation plan. If the amended implementation plan:

- (1) Meets the requirements of subsection (c) and section 302A-1184, the panel shall, by the thirtieth working day, submit a recommendation to the board of education to issue a charter to the proposed new century charter school. If a charter is issued, the amended implementation plan shall be converted to a written performance contract between the school and the board; or
- (2) Fails to address the findings to the panel's satisfaction, the panel shall deny issuance of a charter.

(g) A local school board may file an appeal of the denial of an application for a charter with the panel. Upon filing an appeal, the panel shall forward the

implementation plan and appropriate documentation of the appeal to the board of education. Within thirty working days, the board of education shall issue a report of its findings and final determination to the local school board. If the implementation plan is approved, the board of education shall issue a charter and the implementation plan shall be converted to a written performance contract between the school and the board of education.

(h) The State shall afford the local school board of any new century charter school the same protections as the State affords to the board of education.

(i) The State shall afford administrative, support, and instructional employees in new century charter schools full participation in the State's systems for retirement, workers' compensation, unemployment insurance, temporary disability insurance, and health benefits in accordance with the qualification requirements for each.

(j) The department, to the extent possible, shall provide its position listings to the charter school administrative office and any interested local school board of any new century charter school.

(k) The department, in conjunction with the charter school administrative office, shall facilitate and encourage the movement of instructional personnel between the department and new century charter schools, including limiting probationary status to one year; provided that:

- (1) Comparable and verifiable professional development and employee evaluation standards and practices, as determined and certified by the charter school administrative office, are in place in new century charter schools for instructional staff;
- (2) New century charter school licensed teachers or highly qualified individuals, as determined by the department, who are not yet tenured in the department and are entering or returning to the department, after full-time employment of no less than one full school year at the charter school, shall be subject to no more than one year of probationary status; and
- (3) Tenured department licensed teachers or highly qualified individuals, as determined by the department, who transfer to new century charter schools shall not be required to serve a probationary period.

[(†)] (l) Any new century [conversion] charter school may, prior to the beginning of the school year, enter into an annual contract with [the] any department [of education] for centralized services to be provided by the department."

SECTION 5. Section 302A-1182.5, Hawaii Revised Statutes, is amended to read as follows:

**“[[§302A-1182.5]] New century charter schools and new century conversion charter schools; weighted student formula. (a)** Notwithstanding section 302A-1185 and beginning on September 1, 2006, new century charter schools and new century conversion charter schools shall elect whether to receive allocations according to the department's weighted student formula adopted pursuant to section 302A-1303.6 by the board of education; provided that:

- (1) All new century charter schools and new century conversion charter schools, as a group, with each local school board being accorded one vote, shall elect, by greater than two-thirds agreement among the local school boards, whether to receive allocations through the department's weighted student formula;
- (2) Any election by new century charter schools and new century conversion charter schools to receive department allocations, or not to receive allocations, through the department's weighted student formula shall be

made by September 1 of each even-numbered year, and [such] the election shall apply to the fiscal biennium beginning July 1 of the following year; and

- (3) The election to receive allocations, or not to receive allocations, through the department’s weighted student formula shall be communicated to the department through the charter school administrative office.

(b) The new century charter schools, working through the charter school administrative office, may propose to the board of education an alternative weighted student formula, approved of by more than two-thirds of the local school boards, with each local school board being accorded one vote, to be administered by the charter school administrative office and to apply to the per-pupil allocation for charter schools.’’

SECTION 6. Section 302A-1184, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Schools designated as new century charter schools shall be exempt from chapter 92 and all applicable state laws, except those regarding:

- (1) Collective bargaining under chapter 89; provided that:
  - (A) The exclusive representatives defined in chapter 89 may enter into agreements that contain cost and noncost items to facilitate decentralized decisionmaking;
  - (B) The exclusive representatives and the local school board of the new century charter school may enter into agreements that contain cost and noncost items;
  - (C) The agreements shall be funded from the current allocation or other sources of revenue received by the new century charter school; [and] provided that employees included in collective bargaining increases shall be allocated by the department of budget and finance to the charter school administrative office for distribution to charter schools; and
  - (D) These agreements may differ from the master contracts;
- (2) Discriminatory practices under section 378-2; and
- (3) Health and safety requirements.

New century charter schools and the charter school administrative office shall be exempt from the state procurement code, chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. However, where possible, the new century charter school is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the new century charter school to any other provision of chapter 103D. New century charter schools shall account for funds expended for the procurement of goods and services, and this accounting shall be available to the public. In addition, notwithstanding any law to the contrary, as public schools and entities of the State, new century [public] charter schools shall not bring suit against any other entity or agency of the State [of Hawaii].’’

SECTION 7. Section 302A-1186, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) The board shall initiate an annual independent evaluation of each new century charter school for the first two years after its establishment and every four years thereafter to assure organizational viability and compliance with applicable~~

~~state laws, statewide student content and performance standards, and fiscal accountability; provided that each new century charter school established prior to July 1, 1998, shall be evaluated four years after July 1, 1998, and every four years thereafter. Upon a determination by the board that student achievement within a new century charter school does not meet the student performance standards, or that the new century charter school is not fiscally responsible, a new century charter school shall be placed on probationary status and shall have one year to bring student performance into compliance with statewide standards and improve the school's fiscal accountability. If a new century charter school fails to meet its probationary requirements, or fails to comply with any of the requirements of this section, the board, upon a two-thirds majority vote, may then revoke the charter of the new century charter school.]~~

(b) The board shall adopt guidelines for multi-year evaluations of charter schools that have been chartered for four or more years, or for special evaluations at any time, including a schedule of such evaluations. Based upon the findings of an evaluation, the board may place a new century charter school on probationary status. The board shall adopt guidelines for placing new century charter schools on probation, provided that:

- (1) The new century charter school and the charter school administrative office are involved in substantive discussions with the board regarding the evaluation;
- (2) The notice of probation is delivered to the new century charter school and specifies the deficiencies requiring corrections, the probation period, and monitoring and reporting requirements; and
- (3) For deficiencies related to student performance, a new century charter school shall be allowed two years to improve student performance; and
- (4) For deficiencies related to financial plans, a new century charter school shall be allowed one year to develop a sound financial plan.

The new century charter school shall remain on probationary status until the board votes to either remove the new century charter school from probationary status or revoke the charter. If a new century charter school fails to resolve deficiencies by the end of the probation period, the board may, by two-thirds vote, revoke the charter. The board may revoke the charter for serious student or employee health or safety deficiencies in accordance with guidelines adopted by the board, provided that:

- (1) The new century charter school is given notice of specific health or safety deficiencies and is afforded an opportunity to present its case to the board;
- (2) The chairperson of the board appoints a task group to visit the new century charter school and conduct meetings with its local school board and its school community to gather input;
- (3) Two-thirds of the board vote to revoke the charter;
- (4) The best interest of the school's students guide all decisions; and
- (5) After a decision to revoke a charter, the new century charter school shall be allowed to remain open until a plan for an orderly shut-down or transfer of students and assets is developed and executed.

If there is an immediate concern for student or employee health or safety at a new century charter school, the board, in consultation with the charter school administrative office, may adopt an interim restructuring plan that may include appointment of an interim local school board, and interim local school board chairperson, or a principal to temporarily assume operations of the school.

For the purposes of this subsection, "organizational viability" means that a new century charter school:

- (1) Has been duly constituted in accordance with its charter;

- (2) Has a local school board established in accordance with law and its charter;
- (3) Employs sufficient faculty and staff to provide the necessary educational program and support services and to operate the facility in accordance with its charter; [and]
- (4) Maintains accurate and comprehensive records regarding students[;] and employees[, and complies with federal and state health and safety requirements.] as determined by the charter school administrative office;
- (5) Meets appropriate standards of student achievement;
- (6) Cooperates with board requirements in conducting its function as charter authorizer;
- (7) Complies with applicable federal, state, and county laws and requirements;
- (8) In accordance with the charter school administrative office guidelines and procedures, is financially sound and fiscally responsible in its use of public funds, maintains accurate and comprehensive financial records, operates in accordance with generally accepted accounting practices, and maintains a sound financial plan;
- (9) Operates within the scope of its charter and fulfills obligations and commitments of its charter;
- (10) Complies with all health and safety laws and requirements; and
- (11) Complies with all charter school administrative office directives, policies, and procedures.”

SECTION 8. Section 302A-1187, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a charter school administrative office, which shall be attached to the department [~~of education~~] for administrative purposes only. The office shall be administered by an executive director, who shall be appointed without regard to chapters 76 and 89 by the board of education based upon the recommendations of an organization of charter schools operating within the State or from a list of nominees submitted by the charter schools. The board of education may hire the executive director on a multi-year contract. The executive director may hire necessary staff without regard to chapters 76 and 89 to assist in the administration of the office.”

SECTION 9. Section 302A-1191, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) As used in this section:

“New century conversion charter school” means:

- (1) Any existing department school that converts to a charter school and is managed and operated in accordance with subsection (d); or
- (2) Any existing department school that converts to a charter school and is managed and operated by a nonprofit organization in accordance with this section, excluding subsection (d).

“Nonprofit organization” means a private, nonprofit, tax-exempt entity that:

- (1) Is recognized as a [~~tax-exempt~~] tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- (2) Is domiciled in this State; and
- (3) Makes a minimum annual contribution of \$1 per pupil toward the operation of a new century conversion charter school for every \$4 per

pupil allocated by the charter school administrative office for the operation of the charter school.

(b) A nonprofit organization may submit a letter of intent to the board of education to convert a department of education school to a charter school, operate and manage [an existing public school as a new century conversion charter school,] the school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to section 302A-1182(c); provided that:

- (1) The local school board as the governing body of the new century conversion charter school shall be composed of the board of directors of the nonprofit organization and not the participants specified in subsection (d)(1). The nonprofit organization may also appoint advisory panels of community representatives for each school managed by the organization, with whom the organization may consult; provided that these panels shall not have governing authority over the school and shall serve only in an advisory capacity to the nonprofit organization;
- (2) The detailed implementation plan for each new century conversion charter school to be operated by the nonprofit organization shall be formulated, developed, and submitted by the local school board. The detailed implementation plan shall be approved by a majority of the votes cast by existing administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representative to certify and conduct the elections for their respective bargaining units;
- (3) After the detailed implementation plan for a new century conversion charter school operated and managed by the nonprofit organization has been approved by the new century charter school review panel and the board of education as provided in section 302A-1182(d) to (g), the board of education shall issue a charter, and the implementation plan shall be converted to a written performance contract between the nonprofit organization and the board of education, under which the new century conversion charter school shall be managed and operated as a division of the nonprofit organization[;] and shall have the same relationship with the charter school administrative office as any other local school board for a charter school;
- (4) The board of directors of the nonprofit organization, as the governing body for the new century conversion charter school that it operates and manages, shall have the same protections that are afforded to the state board of education;
- (5) Any new century conversion charter school that is managed and operated by a nonprofit organization shall be eligible for the same federal and state funding as other public schools; provided that the nonprofit organization may allocate federal and state funds among two or more of the new century conversion charter schools that it operates and manages to the extent permitted by law; [and]
- (6) If, at any time, the board of directors of the nonprofit organization governing the new century conversion charter school votes to discontinue its relationship with the charter school, the charter school may submit an application to the board to continue as a conversion school without the participation of the nonprofit organization; and
- [~~(6)~~] (7) If, at any time, the new century conversion charter school dissolves or the charter is revoked, the State [of Hawaii] shall have first right, at no cost to the State, to all the assets and facilities of the new century conversion charter school, except as provided in the detailed implementation plan.”

2. By amending subsections (d) and (e) to read:

“(d) As an alternative to subsection (b), any public school or schools may submit a letter of intent to the board of education to form a new century conversion charter school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to section 302A-1182(c); provided that:

- (1) The local school board as its governing body shall be composed of, at a minimum, one representative from each of the following participant groups:
  - (A) Principals;
  - (B) Instructional staff members selected by the school instructional staff;
  - (C) Support staff selected by the support staff of the school;
  - (D) Parents of students attending the school selected by the parents of the school;
  - (E) Student body representatives selected by the students of the school; and
  - (F) The community at-large; ~~and~~

(2) No chief executive officer, chief administrative officer, executive director, or otherwise designated head of a school may serve as the chair of the local school board; and

~~[(2)]~~ (3) The detailed implementation plan shall be approved by a majority of the votes cast by existing administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representative to certify and conduct the elections for their respective bargaining units.

(e) ~~[Up to a total of twenty-five schools may be established as new century conversion charter schools.]~~ Any new century conversion charter school may, prior to the beginning of the school year, enter into an annual contract with the department of education for centralized services to be provided by the department.”

SECTION 10. (a) There is established the task force on charter school governance to identify and recommend to the legislature revisions to the existing charter school law and to help create an effective framework for overseeing and supporting new and existing charter schools. The recommendations of the task force, at a minimum, shall address:

- (1) The powers, authority, and requirements of schools, local school boards, the charter school administrative office, and board of education, including:
  - (A) The responsibility and authority to impose sanctions when a charter school fails to comply with contractual or statutory requirements;
  - (B) The authority for and management of technical support and interventions, including mergers and closure of charter schools and transfer of students to other public schools; and
  - (C) The ability to impose accountability measures for all charter schools, such as appropriate accreditations and adherence to generally accepted government accounting standards;
- (2) An application and start-up process for charter schools requiring sufficient time and proper scrutiny to ensure a school’s readiness prior to accepting students;
- (3) The limitation of charter school exemptions from laws to only those laws applying to public schools;

- (4) The State's rights and liabilities when charter schools or their governing corporate bodies acquire real property or conduct for-profit business activities, including clarification of charter schools' authority to incur debt and the State's responsibility in case of default;
- (5) The conflict of interest inherent in the position of the director of the charter school administrative office;
- (6) The eligibility, administration, and funding of state benefits for non-certificated employees of charter schools;
- (7) The feasibility of assisting charter schools with facilities needs, including priority access to any vacant government buildings suitable for conversion to a charter school;
- (8) Whether there should be a different per-pupil allocation for those new century charter schools and new century conversion charter schools whose physical plant is located on state property and therefore reap the benefits of being accommodated on the State of Hawaii's preexisting, regularly scheduled repair and maintenance and capital improvement program initiatives;
- (9) The feasibility of creating a formal charter school board to bring needed expertise and focus on charter school support and accountability issues, and to operate in a manner similar to the Hawaii teacher standards board;
- (10) The feasibility of exempting local school boards from the requirements of chapter 91 and 92, provided that the local school boards shall make available the notices and agendas of public meetings:
  - (A) At a publicly accessible area in the local school board or new century charter school's administrative office so as to be available for review during regular business hours; and
  - (B) On the local school board's or new century charter school's Internet web site not less than six days prior to the public meeting, unless a waiver is granted by the charter school administrative office executive director in the case of an emergency; and
- (11) The appropriate applicability of state and county land use and zoning laws.
  - (b) The task force shall consist of sixteen members as follows:
    - (1) The executive director of the charter school administrative office or the executive director's designee, who shall serve as the chairperson and facilitator of the task force;
    - (2) The state auditor or the auditor's designee;
    - (3) The superintendent of education or the superintendent's designee;
    - (4) The chairperson of the board of education or the chairperson's designee;
    - (5) The chairperson of the charter schools committee of the board of education or the chairperson's designee;
    - (6) The director of human resources development or the director's designee;
    - (7) The state director of finance or the director's designee;
    - (8) The dean of the University of Hawaii college of education or the dean's designee;
    - (9) The director of the Hawaii Educational Policy Center or the director's designee;
    - (10) A representative from the Hawaii State Teachers Association;
    - (11) A representative from the Hawaii Government Employees Association;
    - (12) A representative from the Hawaii Charter Schools Network;

- (13) A representative from Na Lei Na'auao Native Hawaiian Charter School Alliance;
- (14) A representative from the Ho'okako'o Corporation;
- (15) A representative from Ho'olako Like; and
- (16) A representative from the business community to be appointed by the governor, without regard to section 26-34, Hawaii Revised Statutes.

The charter school administrative office shall staff the task force.

(c) The task force on charter school governance may form advisory subcommittees to obtain input from key stakeholders as determined necessary by the task force.

(d) Members of the task force on charter school governance shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(e) The charter school administrative office shall submit a report to the legislature on the task force's progress, findings, and recommendations no later than twenty days prior to the convening of the regular session of 2006.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2005-2006 to support the operations of the task force on charter school governance.

The sum appropriated shall be expended by the department of education for the purposes of this part.

### PART III FUNDING

SECTION 12. The purpose of this part is to bring new century charter schools closer to a more equitable and stable funding level for basic operations by:

- (1) Establishing and appropriating funds for a per-pupil allocation funding mechanism to be based on the most recently enacted department of education budget;
- (2) Requiring that the charter school administrative office's request for general fund appropriations for each school also be based on fringe benefit costs that must be included in the department of budget and finance's annual budget request, and appropriating funds for these fringe benefits;
- (3) Requiring the legislature to make additional appropriations for collective bargaining increases for charter school employee members of collective bargaining units;
- (4) Allowing the legislature to make additional appropriations for workers' compensation benefits; and
- (5) Providing charter schools with access to all federal education funds that are received by the State and authorizing the charter school administrative office to manage the federal funds.

SECTION 13. Section 302A-1185, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) Beginning with the fiscal year [~~2004-2005 supplemental~~] 2005-2006 budget request, and each budget request thereafter, the charter school administrative office shall submit a request for general fund appropriations for each new century charter school based upon:

- (1) The actual and projected enrollment figures in the current school year for each charter school; [~~and~~]

- (2) A ~~[per pupil]~~ per-pupil amount for each regular education and special education student, which shall be equivalent to the total ~~[per pupil]~~ per-pupil cost based upon average enrollment in all cost categories, including comprehensive school support services but excluding special education services, and for all means of financing except federal funds, as reported in the most recently published department of education consolidated annual financial report, provided that the legislature may make an adjustment to the ~~[per pupil]~~ per-pupil allocation for the purposes of this section[-]; and
- (3) Those fringe benefit costs requested shall be included in the department of budget and finance's annual budget request. No fringe benefit costs shall be charged directly to or deducted from the charter school per-pupil allocations.

The legislature shall make an appropriation based upon the budget request; provided that the legislature may make additional appropriations for ~~[collective bargaining increases for charter school employee members of collective bargaining units,]~~ fringe ~~[and]~~, workers' compensation, and other employee benefits, facility costs, and ~~[for]~~ other requested amounts. The governor, pursuant to chapter 37, may impose restrictions or reductions on charter school appropriations similar to those imposed on other public schools.

(b) All federal financial support for new century charter schools shall be no less than all other public schools; provided that if administrative services related to federal grants and subsidies 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 does not exceed six and one-half per cent of the charter school's federal grants and subsidies. The department shall provide the charter school administrative office with all federal grant proposals that include charter schools as potential recipients and timely reports on federal grants received for which charter schools may apply. Federal funds received by the department for charter schools shall be transferred to the charter school administrative office for distribution to charter schools in accordance with the federal requirements.

Any new century charter school shall be eligible to receive any supplementary financial grant or award for which any other public school may submit a proposal, or any supplemental federal grants limited to new century charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to these supplementary grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the supplementary grant for which the services are used.

All additional funds that are generated by the local school boards, not from a supplementary grant, shall be separate and apart from allotted funds and may be expended at the discretion of the local school boards."

2. By amending subsection (f) to read:

"(f) The department shall transfer, no later than November 15, additional funds [from EDN 100] of not less than eighty per cent of the additional per-pupil allocation to EDN 600 for new century charter schools [whose] in which student enrollment, verified on or immediately prior to October 15 as provided for by subsection (c), exceeds the new century charter schools' preliminary projected student enrollment, in an amount corresponding to the number of additional students and the [per pupil] per-pupil allocation. The charter school administrative office shall transfer [from EDN 600 to EDN 100 any excess per pupil allocations for new century charter schools whose verified student enrollment is lower than their projected student enrollment in an amount corresponding to the lower number of

students and the per pupil allocation-], no later than November 15, excess funds of not more than eighty per cent of the excess per-pupil allocation to EDN 100 for new century charter schools in which student enrollment, verified on or immediately prior to October 15 as provided for by subsection (c), fails to equal or exceed the new century charter schools' preliminary projected student enrollment, in an amount corresponding to the number of additional students and the per-pupil allocation.''

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,200,000, or so much thereof as may be necessary for fiscal year 2005-2006 and the sum of \$1,500,000, or so much thereof as may be necessary for fiscal year 2006-2007 for EDN 600.

The sums appropriated shall be expended by the department of education for the purposes of this part.

#### PART IV WORKERS' COMPENSATION

SECTION 15. The workers' compensation law is established in chapter 386 of the Hawaii Revised Statutes and applies to all employees suffering injuries arising out of, and in the course of their, employment. It is not a "benefit" per se but an entitlement arising from the employment relationship. The legislature finds that the State operates a self-insured workers' compensation system where claims are investigated and processed by state workers. These claims are then paid from legislative appropriations. Meanwhile, public schools are not required to reduce their operational funds to pay for workers' compensation claims for state workers at their schools. Charter school employees deserve the right to participate in this same system as public employees without having the funding for this coverage come from charter school operational funds.

The legislature further finds that the department of human resources development administers a majority of the state agencies' workers' compensation claims, and it would be appropriate for the department to extend this service to charter schools. In fairness to the department of human resources development, it should be compensated for this additional workload in an amount that is not more than the amount paid by the charter school administrative office to the department of education for performing comparable worker's compensation services under the terms of a memorandum of understanding.

The purpose of this part is to allow charter school employees to participate in the State's workers' compensation system; provided that the department of human resources development shall administer and pay the claims and the individual new century charter schools shall be responsible for compiling the preliminary claim form.

SECTION 16. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§302A- New century charter schools; administration of workers' compensation.** The department of human resources development shall administer workers' compensation claims for employees of new century charter schools, who shall be covered by the same self-insured workers' compensation system offered to other public employees and administrative state units, including the processing, investigation, and payment of claims; provided that:

- (1) New century charter schools shall compile the preliminary claim form and forward it to the department of human resources development; and

- (2) The department of human resources development shall receive no more than 0.07 per cent of the EDN 600 appropriation to process these workers' compensation claims."

## PART V

### FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SECTION 17. The legislature finds an inconsistency between the Hawaii Revised Statutes and the Individuals with Disabilities Education Act. To ensure federal funding for students enrolled in public charter schools who are eligible for special education, section 302A-1188, Hawaii Revised Statutes, must be amended to comply with Part B regulations of the Individuals with Disabilities Education Act.

The purpose of this part is to comply with federal regulations under the Individuals with Disabilities Education Act.

SECTION 18. Section 302A-1188, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall be responsible for the provision of a free, appropriate public education. Any new century charter school that enrolls special education students or identifies one of its students as eligible for special education shall be responsible for providing the educational and related services required by a student's individualized education [plan; provided that if the] program. The programs and services for the student shall be determined collaboratively by the student's individualized education program team and the student's parents or legal guardians. If the new century charter school is unable to provide all of the required services [due to limited resources within its control, then services to the student shall be determined and provided by the department of education.], then services to the student shall be provided by the department according to services determined by the student's individualized educational program team. The department [of education] shall collaborate with the charter school administrative office to develop guidelines related to the provision of special education services and resources to each new century charter school. [In making the determination about the provision of services to a special education student enrolled in a charter school, the] The department shall review all of the current individualized education [plans] programs of special education students enrolled in a new century charter school[,] and may offer staff or funding, or both, to the new century charter school based upon a [per-pupil] per-pupil weighted formula implemented by the department and used to allocate resources for special education students in the public schools. [The department may also offer services to the special education student at a public school within the same school complex that the charter school is located.]"

## PART VI

### MISCELLANEOUS

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 20. This Act shall take effect upon approval; provided that sections 3, 11, and 14 of this Act shall take effect on July 1, 2005.

(Approved June 1, 2005.)

#### Note

1. Edited pursuant to HRS §23G-16.5.