

ACT 86

S.B. NO. 496

A Bill for an Act Relating to Charter Schools.

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

SECTION 1. The legislature finds that, pursuant to Act 115, Session Laws of Hawaii 2007, the legislature sought to improve the public charter school system by clarifying the functions, duties, and roles of the charter school review panel and the board of education in the administration and operations of charter schools in the State. The legislature further finds that although the changes made were important and effective in assisting in charter schools administration, additional reform is necessary to allow charter schools in the State to continue to strive for excellence through effective and efficient operations.

The purpose of this Act is to make clarifying amendments to charter school administration, including among other things:

- (1) Clarifying that the charter school review panel is subject to the requirements of the sunshine law;
- (2) Authorizing the board of education to remove a charter school review panel member for cause;
- (3) Requiring the charter school review panel to approve the charter schools budget;
- (4) Requiring the charter school review panel to survey all charter school facilities prior to determining recommendations to allocate non-per-pupil facilities funds to charter schools with facilities needs;
- (5) Specifying the duties of the executive director of the charter school administrative office with regard to the preparation of the budget;
- (6) Changing the requirements for the per-pupil funding;
- (7) Requiring the charter school review panel to evaluate a charter school on its fourth anniversary and every five years after; and
- (8) Requiring the charter school review panel to establish criteria and an approval process for the development and submission of a capital improvement projects budget for charter school facilities.

SECTION 2. Section 302B-1, Hawaii Revised Statutes, is amended by amending the definition of "local school board" to read as follows:

"Local school board" means the autonomous governing body of a charter school that ~~receives~~:

- (1) Receives the charter and is responsible for the financial and academic viability of the charter school and implementation of the charter; ~~possesses~~;
- (2) Possesses the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws ~~and has~~; and
- (3) Has the power to negotiate supplemental collective bargaining agreements with exclusive representatives of their employees."

SECTION 3. Section 302B-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) There is established the charter school review panel, ~~which~~ that shall be placed within the department for administrative purposes only. The

panel shall be accountable to the charter schools and the board. Notwithstanding section 302B-9[;] and any other law to the contrary, the panel shall be subject to chapter 92.”

2. By amending subsection (e) to read:

“(e) Notwithstanding the terms of members, the board may add panel members at any time and replace panel members at any time when their positions become vacant through resignation, through non-participation, [~~or~~] upon request of a majority of panel members[-], or upon termination by the board for cause.”

3. By amending subsection (i) to read:

“(i) The powers and duties of the panel shall be to:

- (1) Appoint and evaluate the executive director and approve staff and salary levels for the charter school administrative office;
- (2) Review, approve, or deny charter applications for new charter schools in accordance with section 302B-5 for the issuance of new charters; provided that applicants that are denied a charter may appeal to the board for a final decision pursuant to section 302B-3.5;
- (3) Review, approve, or deny significant amendments to detailed implementation plans to maximize the school’s financial and academic success, long-term organizational viability, and accountability. Charter schools that are denied a significant amendment to their detailed implementation plan may appeal to the board for a final decision pursuant to section 302B-3.5;
- (4) Adopt reporting requirements for charter schools;
- (5) Review annual self-evaluation reports from charter schools and take appropriate action;
- (6) Evaluate any aspect of a charter school that the panel may have concerns with and take appropriate action, which may include probation or revocation;
- (7) Periodically adopt improvements in the panel’s monitoring and oversight of charter schools; [~~and~~]
- (8) Periodically adopt improvements in the office’s support of charter schools and management of the charter school system[-];
- (9) Review, modify, and approve charter schools’ all means of finance budget, based upon criteria and an approval process established by the panel; and
- (10) Survey all charter school facilities prior to, and in preparation for, determining recommendations to allocate non-per-pupil facilities funds to charter schools with facilities needs. The survey shall include, at minimum, for each charter school facility:
 - (A) The current status of the facility;
 - (B) Facilities costs, including all rents, leases, purchases, and repair and maintenance for lands and buildings;
 - (C) A prioritized list of facilities needs;
 - (D) Any capital improvement projects underway or scheduled; and
 - (E) Whether the facility is a conversion or start-up charter school, and current and projected enrollment.”

SECTION 4. Section 302B-8, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) The executive director, under the direction of the panel and in consultation with the charter schools, shall be responsible for the internal organization, operation, and management of the charter school system, including:

- (1) Preparing and executing the budget and the capital improvement projects request for the charter schools, including submission of the all means of finance budget request that reflects all anticipated expenditures to the panel, the board, the governor, and the legislature; provided that, in preparing the budget request with regard to facilities funding, the executive director shall ensure that, as a budget item separate from other operating costs, the request provides:
 - (A) Funding for projected enrollment for the next school year for each charter school;
 - (B) A calculation showing the per-pupil funding based on the department of budget and finance’s debt service appropriation for the department of education divided by the department of education’s actual enrollment that school year; and
 - (C) That no less than seventy per cent of the amount appropriated shall be allocated by the office to start-up charter schools on a per-pupil basis; provided that the funds remaining shall be allocated to charter schools with facilities needs as recommended by the office and approved by the panel;
 - (2) Allocating annual appropriations to the charter schools and distribution of federal funds to charter schools;
 - (3) Complying with applicable state laws related to the administration of the charter schools;
 - (4) Preparing contracts between the charter schools and the department for centralized services to be provided by the department;
 - (5) Preparing contracts between the charter schools and other state agencies for financial or personnel services to be provided by the agencies to the charter schools;
 - (6) Providing independent analysis and recommendations on charter school issues;
 - (7) Representing charter schools and the charter school system in communications with the board, the governor, and the legislature;
 - (8) Providing advocacy, assistance, and support for the development, growth, progress, and success of charter schools and the charter school system;
 - (9) Providing guidance and assistance to charter applicants and charter schools to enhance the completeness and accuracy of information for panel review;
 - (10) Assisting charter applicants and charter schools in coordinating their interactions with the panel as needed;
 - (11) Assisting the panel to coordinate with charter schools in panel investigations and evaluations of charter schools;
 - (12) Serving as the conduit to disseminate communications from the panel, the board, and the department to all charter schools;
 - (13) Determining charter school system needs and communicating those needs to the panel, the board, and the department;
 - (14) Establishing a dispute resolution and mediation process; and
 - (15) Upon request by one or more charter schools, assisting in the negotiation of a collective bargaining agreement with the exclusive representative of its employees.”
2. By amending subsection (d) to read:

“(d) The salary of the executive director and staff shall be set by the panel based upon the recommendations of charter schools within the State; provided that the salaries and operational expenses of the office shall be paid from the annual charter school appropriation and shall not exceed two per cent of the total general fund allocation ~~[in any fiscal year.]~~ at an amount to be determined annually by the panel.”

SECTION 5. Section 302B-12, Hawaii Revised Statutes, is amended to read as follows:

“§302B-12 Funding and finance. (a) Beginning with fiscal year ~~[2006-2007,]~~ 2009-2010, and each fiscal year thereafter, ~~[the office shall submit a request for general fund appropriations for each charter school based upon:]~~ the non-facility per-pupil funding request for charter school students shall not be less than the per-pupil amount to the department in the most recently approved executive budget recommendation for the department, as set forth in paragraph (2); provided that:

- (1) ~~The [actual and] per-pupil funding request shall include funding for projected enrollment figures [in the current school year] for each charter school; and~~
- (2) ~~[A] The per-pupil [amount] request for each regular education and special education student[, which shall be equivalent to the total per-pupil cost based upon average enrollment in] shall:~~
 - (A) Include all regular education cost categories, including comprehensive school support services, but excluding special education services[, and for]; provided that special education services are provided and funded by the department;
 - (B) Include all means of financing except federal funds, as reported in the most recently-approved executive budget recommendations for the department; provided that in preparing the budget the executive director shall include an analysis of the proposed budget in relationship to the most recently published department consolidated annual financial report[; provided further that the legislature may make an adjustment to the per-pupil allocation for the purposes of this section]; and
 - (C) Exclude fringe benefit costs and debt service.

~~[(3) Those fringe] (b) Fringe benefit costs [requested] for charter school employees, regardless of the payroll system utilized by a charter school, 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 [unless they are already included in the funds distributed to the charter school].~~

The legislature shall make an appropriation based upon the budget request; provided that the legislature may make additional appropriations for fringe, workers’ compensation, and other employee benefits[; and facility costs[; and]. The legislature may make additional appropriations for other requested amounts[;] that benefit charter schools.

The governor, pursuant to chapter 37, may impose restrictions or reductions on charter school appropriations similar to those imposed on other public schools.

~~[(b)] (c) Charter schools shall be eligible for all federal financial support to the same extent as all other public schools. The department shall provide the office 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 the office for distribution to charter schools in accordance with the federal requirements. 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 shall not exceed six and one-half per cent of the charter school's federal grants and subsidies.

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

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

[(e)] (d) To enable charter schools to access state funding prior to the start of each school year, foster their fiscal planning, and enhance their accountability, the office shall:

- (1) Provide fifty per cent of a charter school's per-pupil allocation based on the charter school's projected student enrollment no later than July 20 of each fiscal year; provided that the charter school shall have submitted to the office a projected student enrollment no later than May 15 of each year;
- (2) Provide an additional forty per cent of a charter school's per-pupil allocation no later than November 15 of each year; provided that the charter school shall have submitted to the office:
 - (A) Student enrollment as verified on October 15 of each year; provided that the student enrollment shall be verified on the last business day immediately prior to October 15 should that date fall on a weekend; and
 - (B) An accounting of the percentage of student enrollment that transferred from public schools established and maintained by the department; provided that these accountings shall also be submitted by the office to the legislature no later than twenty days prior to the start of each regular session; and
- (3) Retain ~~the remaining~~ no more than ten per cent of a charter school's per-pupil allocation no later than ~~January 1~~ June 30 of each year as a contingency balance to ensure fiscal accountability; and compliance;

provided that the panel may make adjustments in allocations based on noncompliance with ~~[federal and state reporting requirements,]~~ board policies made in the board's capacity as the state education agency, department directives made in the department's capacity as the state education agency, the office's administrative procedures, and board-approved accountability requirements.

[(d)] (e) The department shall provide appropriate transitional resources to a conversion charter school for its first year of operation as a charter school based upon the department's allocation to the school for the year prior to the conversion.

[(e)] (f) No start-up charter school or conversion charter school may assess tuition."

SECTION 6. Section 302B-14, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) The panel shall conduct a multi-year [evaluations] evaluation of each charter [schools that have been chartered for four or more years.] school on its fourth anniversary year and every five years thereafter. The panel may from time to time establish a schedule to stagger the multi-year evaluations.”

2. By amending subsection (g) to read:

“(g) If there is an immediate concern for student or employee health or safety at a charter school, the panel, in consultation with the office, may adopt an interim restructuring plan that may include the appointment of an interim local school board, an interim local school board chairperson, or a principal to temporarily assume operations of the school; provided that if possible without further jeopardizing the health or safety of students and employees, the charter school’s stakeholders and community are first given the opportunity to elect a new local school board which shall appoint a new interim principal. The board shall have the authority to direct the panel to take appropriate action to immediately address serious health and safety issues that may exist at a charter school in order to ensure the health and safety of students and employees and mitigate significant liability to the State.”

SECTION 7. (a) The charter school review panel shall establish criteria and an approval process for the development and submission of a capital improvement projects budget for charter school facilities, and recommendations to allocate non-per-pupil facilities funds to charter schools with facilities needs, including:

(1) A calculation showing the per-pupil funding based on the department of budget and finance’s debt service appropriation for the department of education divided by the department of education’s actual enrollment that school year; and

(2) A determination of the portion of the amount appropriated to be allocated to start-up charter schools on a per-pupil basis.

(b) The charter school review panel shall report its findings and recommendations, including any budget requests and proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2010.

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

SECTION 9. This Act shall take effect on July 1, 2009.

(Approved June 3, 2009.)