

ACT 144

S.B. NO. 2589

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 the charter school movement has progressed over the past few decades into a system with its own administrative office and review panel to operate, maintain, and develop charter schools. With the growth and maturation of the charter school system, however, the legislature also finds the need for greater accountability and improved processes within the system to ensure that prudent financial decisions are made and that a standard of quality is maintained across all charter schools.

Further, the legislature finds that some public charter schools face daunting obstacles such as the high cost of rent and less-than-desirable locations of their facilities, while the department of education is considering the closure of certain non-charter public schools due to departmental financial constraints.

The purpose of this Act is to:

- (1) Require the charter school review panel to adopt a clear process with rigorous criteria for charter schools to be reauthorized;
- (2) Require the charter school review panel to reauthorize a charter school no later than four years following the initial issue of the charter and every six years thereafter;
- (3) Require the charter school review panel to evaluate and investigate charter schools when concerns arise that necessitate the resolution or assistance with the resolution of legal, fiscal, health, safety, and other serious issues;
- (4) Require the charter school administrative office to withhold not more than two per cent of the annual general fund allocation for its operational expenses, including salaries for staff and the executive director;
- (5) Require the charter school administrative office to report annually to the charter school review panel individual and aggregate expenditures of charter schools, clearly distinguishing between expenditures for operational and instructional purposes;
- (6) Require per-pupil allocation checks paid by the charter school administrative office to individual charter schools to be co-signed by the executive director of the charter school administrative office and an agent of the charter school review panel to encourage more intentional and well-informed financial decision-making;
- (7) Increase the limit on the number of new start-up charter schools;
- (8) Require the department of education to make available vacant school facilities or portions of school facilities for use by charter schools; provided that the department may elect to use the facilities to support public education programs with preference given to instructional uses over administrative uses; and
- (9) Make changes to charter school funding, including the creation of the charter schools account as a separate account in the state treasury, to further encourage fairness in funding and the availability of resources to charter schools.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Use of vacant public school facilities by charter schools. (a) When the department considers whether to close any particular public school, it shall simultaneously give reasonable consideration to making all or portions of the facilities of the public school available for the exclusive occupancy and use by a charter school or joint occupancy and use by the charter school and the department; provided that the department may elect to use the facilities for the support of public education programs, with preference given to instructional uses over administrative uses.

(b) The department shall submit a notice of possible availability of a public school to the charter school review panel as early as possible; provided that if a vacancy is established, a notice of vacancy shall be submitted to the charter school review panel no later than thirty days after the establishment of the vacancy.

(c) Pursuant to section 302B-A and upon receipt of a notice pursuant to subsection (b), the charter school review panel shall solicit applications from charter schools interested in using and occupying all or portions of the facilities of the public school and submit a prioritized list of charter schools to the

department for final determination of which charter school, if any, shall be authorized to use and occupy the public school facilities.

(d) Upon the selection of a charter school to use a vacant school facility or portion of a school facility, the department and the charter school review panel shall enter into necessary agreements within ninety days of the selection to carry out the purposes of this section.

(e) After receipt by the charter school review panel of a notice pursuant to subsection (b), if the charter school review panel does not provide a prioritized list of charter schools because no charter school has requested to use the facilities of the public school, or if the department receives the prioritized list but determines that no charter school on the list is an appropriate candidate to occupy and use the facilities, the department shall give reasonable consideration to making all or portions of the facilities of the public school, if closed, available for occupancy and use for other educational purposes.

(f) The department shall adopt rules necessary to carry out the purposes of this section.

(g) For purposes of this section, "public school" means any school that falls within the definition of public schools in section 302A-101, except for charter schools."

SECTION 3. Chapter 302B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§302B-A Occupancy and use of facilities of public schools. (a) When the department considers whether to close any particular public school, the department shall submit a notice of possible availability of a public school or notice of vacancy of a public school to the charter school review panel pursuant to section 302A- (b); provided that the department has not elected to use the public school to support education programs.

(b) If a charter school exclusively or jointly occupies or uses buildings or facilities of a public school immediately prior to converting to a charter school, upon conversion that charter school shall be given continued exclusive or joint use of the buildings or facilities; provided that:

- (1) The State may reclaim some or all of the buildings or facilities if it demonstrates a tangible and imperative need for such reclamation;
- (2) The State and the conversion charter school voluntarily enter into an agreement detailing the portion of those buildings or facilities that shall be reclaimed by the State and a timetable for the reclamation. If a timetable cannot be reached, the State may petition the panel for the reclamation, and the panel may grant the petition only to the extent that is not possible for the conversion charter school and the department to jointly occupy or use the buildings or facilities.

(c) Upon receipt of a notice pursuant to section 302A- (b), the panel shall solicit applications from charter schools interested in using and occupying all or portions of the facilities of the public school by:

- (1) Promptly notifying all charter schools that the public school is being considered for closure; and
- (2) Affording each charter school an opportunity to submit an application with a written explanation and justification of why the charter school should be considered for possible occupancy and use of the facilities of the public school.

(d) After fully considering each charter school's application and based on the applications received and on other considerations, the panel shall:

- (1) Provide a written response to each charter school's application after each application has been fully considered; and

- (2) Compile a prioritized list of charter schools and submit the list to the department for final determination of which charter school, if any, shall be authorized to use and occupy the public school facilities.
- (e) Upon the selection of a charter school to use a vacant school facility or portion of a school facility, the department and the panel shall enter into necessary agreements within ninety days of the selection to carry out the purposes of this section; provided that any agreement between the panel and the department shall stipulate that a charter school that uses and occupies a public school facility or portion of a public school facility shall be responsible for the full or pro rata share of the repair and maintenance costs for that facility or portion of the facility, as the case may be.
- (f) The panel shall adopt policies and procedures necessary to carry out the purposes of this section, including but not limited to:
 - (1) Procedures for charter schools to apply in writing to use vacant school facilities;
 - (2) Criteria for the panel to use in determining which charter schools to include on the prioritized list to be submitted to the department; and
 - (3) Procedures for the panel to notify charter school applicants that are granted or denied the use of vacant school facilities.
- (g) For purposes of this section, "public school" means any school that falls within the definition of public schools in section 302A-101, except for charter schools."

SECTION 4. Section 302A-1151, Hawaii Revised Statutes, is amended to read as follows:

“~~§§302A-1151~~ Sale of school lands unnecessary for school purposes. The chairperson of the board of land and natural resources is hereby requested, upon the recommendation and approval of the superintendent, to sell any state lands, including the buildings thereon, once used but no longer necessary for school purposes~~];~~ provided that no school facility or portion of a school facility shall be sold before that facility or portion of the facility is made available for use by the department or charter schools, pursuant to sections 302A- and 302B-A.”

SECTION 5. Section 302B-3, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

- (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) Pursuant to section 302B-A, compile and submit prioritized lists of charter schools to the department and enter into necessary agreements with the department to authorize charter schools to use

- and occupy vacant public school facilities or portions of school facilities;
- [(4)] (5) Adopt reporting requirements for charter schools;
- [(5)] (6) Review annual self-evaluation reports from charter schools and take appropriate action;
- (7) Adopt a clear process and rigorous organizational and educational criteria, including student achievement as a significant factor, for the authorization and reauthorization of school charters;
- (8) Evaluate each school charter, for the purpose of determining reauthorization, no later than four years following the initial issue of a charter and every six years thereafter;
- [(6)] (9) 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)] (10) Periodically adopt improvements in the panel's monitoring and oversight of charter schools;
- [(8)] (11) Periodically adopt improvements in the office's support of charter schools and management of the charter school system;
- [(9)] (12) Review, modify, and approve charter schools' all means of finance budget, based upon criteria and an approval process established by the panel; [and]
- [(10)] (13) 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[-]; and
- (14) Evaluate and investigate charter schools when concerns arise that necessitate the resolution or assistance with the resolution of legal, fiscal, health, safety, and other serious issues."

SECTION 6. Section 302B-4, Hawaii Revised Statutes, is amended to read as follows:

"§302B-4 [Limits on] Encouraging the growth of successful charter schools. [The] Upon the approval of administrative rules, the panel may authorize [one] up to three new start-up charter [schœol] schools for each existing start-up charter school that has received a three-year or longer accreditation from the Western Association of Schools and Colleges or a comparable accreditation authority as determined by the panel, [œr] and one new start-up charter school for each start-up charter school whose charter is revoked[-] or that voluntarily closes. The total number of conversion charter schools authorized by the panel shall not exceed twenty-five."

SECTION 7. Section 302B-8, Hawaii Revised Statutes, is amended to read as follows:

“§302B-8 Charter school administrative office. (a) There is established a charter school administrative office, which shall be attached to the department 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 panel 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 panel shall hire the executive director, who may be contracted for a term of up to four years; shall offer the executive director a written contract; and may terminate the executive director’s contract only for cause. The executive director, with the approval of the panel, may hire necessary staff without regard to chapters 76 and 89 to assist in the administration of the office.

(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.

(c) The executive director shall be evaluated annually by the panel. The annual evaluation shall be conducted sufficiently in advance of the end of a term to provide the executive director the opportunity to respond to concerns and improve performance.

(d) The office shall withhold funds for its operational expenses, including the salaries of the executive director and staff, from the annual charter school general fund appropriation. The total amount of operational expenses withheld:

- (1) Shall not exceed two per cent of the annual charter school general fund allocation, which shall not include any funds carried over from previous years;
- (2) Shall not include the amount of funds withheld under subsections (g) and (h); and
- (3) Shall be determined annually by the panel.

The' [salary] salaries 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 at an amount to be determined annually by the panel.] and in accordance with the requirements of this subsection.

(e) The office shall report annually to the review panel individual and aggregate expenditures of charter schools, clearly distinguishing between expenditures for operational purposes and for instructional purposes. The office shall adopt rules to develop a standardized method for charter schools to report the expenditures and to determine expenditures that constitute expenditures for operational expenses and expenditures for instructional purposes. If any charter school fails to meet the reporting requirements under this subsection, the office may retain a portion of that charter school's per-pupil allocation pursuant to section 302B-12(e)(3).

~~(e)~~ (f) The office shall include in its annual budget request additional funds to cover the estimated costs of:

- (1) Vacation and sick leave accrued by employees transferring to a charter school from another state agency or department;
- (2) Substitute teachers needed when a teacher is out on vacation or sick leave;
- (3) Adjustments to enrollments; and
- (4) Arbitration in the grievance process.

~~(f)~~ (g) The office shall withhold funds for charter school enrollments that are inconsistent with approved detailed implementation plans.

~~(g)~~ (h) The office shall withhold funds to repay overpayments or overallocations received by charter schools when not repaid in a timely manner in accordance with rules adopted by the board.

~~(h)~~ (i) The office may carry over funds from previous year allocations. Funds distributed to charter schools shall be considered expended."

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

“§302B-12 Funding and finance. (a) Beginning with fiscal year ~~[2009-2010,]~~ 2010-2011, and each fiscal year thereafter, the non-facility general fund per-pupil funding request for charter school students shall ~~[not]~~ be ~~[less than]~~ the same as the general fund 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 general fund per-pupil funding request shall ~~[include funding for]~~ be based upon reasonable projected enrollment figures for ~~[each]~~ all charter [school,] schools; and
- (2) The general fund per-pupil request for each regular education and special education student shall:
 - (A) Include all general fund regular education cost categories, including comprehensive school support services, but excluding special education services~~;~~, adult education, and the after-school plus program; provided that ~~[special education]~~ these services are provided and funded by the department; and
 - ~~[(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; and~~
 - ~~(C)]~~ (B) Exclude fringe benefit costs and debt service.

(b) Fringe benefit costs 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.

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. The legislature may make additional appropriations for other requested amounts that benefit charter schools.] and other costs.

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

(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.

(d) The office shall calculate a general fund per-pupil amount based upon the amount of general funds appropriated by the legislature and released by the governor and the projected enrollment amount used to calculate the general funds appropriated pursuant to subsection (a); provided that:

- (1) Per-pupil distributions to the charter schools pursuant to subsection (e) shall be based upon the per-pupil amount as calculated by the office pursuant to this subsection. The per-pupil distributions shall be deposited into the charter schools account established by subsection (i); and
- (2) In years when the projected enrollment used to calculate the per-pupil amount pursuant to this subsection exceeds the total actual enrollment as reported by the charter schools as of October 15, the excess funds shall remain in the state treasury in the charter schools account:
 - (A) General funds appropriated pursuant to this section remaining in the charter schools account within the state treasury at the end of each fiscal year and in excess of \$5,000,000 shall lapse to the credit of the state general fund; and
 - (B) General funds remaining in the charter schools account in the state treasury appropriated pursuant to this section that are less than \$5,000,000 shall carry over to subsequent years to be used to provide per-pupil funding in years when the projected enrollment amount is less than the actual per-pupil enrollment reported by the charter schools on October 15 of each year.

The office shall submit a report to the legislature no later than twenty days prior to each regular session that contains each charter school's current school year projection that is used to submit the budget request, the updated May 15 enrollment projection, the actual October 15 enrollment count, the office's reviewed and verified enrollment count, the office's reviewed and verified enrollment count, and the November 15 enrollment count. This report shall also provide an accounting of the use, if any, of state general funds subject to paragraph (2)(B).

~~(d)~~ (e) To enable charter schools to access state funding prior to the start of each school year, foster their fiscal planning, ~~and~~ enhance their accountability, and avoid over-allocating general funds to charter schools based on self-reported enrollment projections, the office shall:

- (1) Provide ~~fifty~~ sixty 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~~ thirty per cent of a charter school's per-pupil allocation no later than ~~November 15~~ December 1 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;], based on the October 15 student enrollment, as reviewed and verified by the office, only to schools in compliance with the office financial reporting requirements; and
- (3) Retain no more than the balance of the remaining ten per cent of a charter school's per-pupil allocation, as a contingency balance to ensure fiscal accountability and compliance, no later than 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 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.

(f) Any check transferring a per-pupil allocation from the office to a charter school under this section shall be co-signed by the executive director and an authorized agent of the charter school review panel.

~~(e)~~ (g) 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.

~~(f)~~ (h) No start-up charter school or conversion charter school may assess tuition.

(i) There is created in the treasury of the State, as a separate account, the charter schools account, into which shall be deposited per-pupil distributions in accordance with subsection (d)."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 10. In codifying the new section added by section 3 of this Act, the revisor of statutes shall substitute appropriate section number for the letter used in designating the new section in this Act.

SECTION 11. This Act shall take effect on July 1, 2010.

(Approved May 26, 2010.)

Notes

1. Prior to amendment "(d)" appeared before "The".
2. Edited pursuant to HRS §23G-16.5.