

ACT 130

S.B. NO. 2115

A Bill for an Act Relating to Charter Schools.

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

PART I

SECTION 1. The legislature finds that the charter school governance, accountability, and authority task force (“task force”) was established pursuant to section 7 of Act 130, Session Laws of Hawaii 2011 in response to questions and concerns raised by policy makers and advocates alike about the integrity of Hawaii’s charter school governance structure and the overall strength of Hawaii’s laws in establishing clear lines of authority that ensured accountability of the charter school system.

Specifically, the goal of the task force was to provide clarity to the relationships, responsibilities, and lines of accountability and authority among stakeholders of Hawaii’s charter school system, including the board of education, department of education, charter school administrative office, charter school review panel, and local school boards.

In conducting its work, the task force looked at various sections of the charter school model law put forth by the National Alliance for Public Charter Schools and used the model law as a guide in compiling its recommendations to the legislature.

The task force was also fortunate to have the assistance and input of the National Association of Charter School Authorizers and the National Governors Association.

After in-depth examination and discussion, the task force concluded its work and issued its report and recommendations to the legislature.

The purpose of this Act is to adopt the recommendations of the task force by repealing chapter 302B, Hawaii Revised Statutes, and establishing a new charter school law that creates a solid governance structure for Hawaii's charter school system with clear lines of authority and accountability that will foster improved student outcomes.

The legislature finds that this Act will support new approaches to education that accommodate the individual needs of students and provide the State with successful templates that can dramatically improve Hawaii's educational standards for the twenty-first century. This Act will create genuine opportunities for communities to implement innovative models of community-based education.

PART II

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER PUBLIC CHARTER SCHOOLS

§ -1 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Authorizer” means an entity established under this chapter with chartering authority to review charter applications, decide whether to approve or reject charter applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to authorize, reauthorize, or reject charter contracts. The term may include the commission when appropriate.

“Board” means the board of education.

“Charter” means a charter application as approved by an authorizer.

“Charter application” means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status.

“Charter contract” means a fixed-term, bilateral, renewable contract between a public charter school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

“Charter school” or “public charter school” refers to those public schools and their respective governing boards, as defined in this section, that are holding charters to operate as charter schools under this chapter, including start-up and conversion charter schools, and that have the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management.

“Commission” means the state public charter school commission established pursuant to § -3 as a statewide authorizer.

“Conversion charter school” means:

- (1) Any existing department school that converts to a charter school and is managed and operated in accordance with section § -14;

- (2) Any existing department school that converts to a charter school and is managed and operated by a nonprofit organization in accordance with section -14; or
- (3) A newly created school consisting of programs or sections of existing public school populations that are funded and governed independently and may include part of a separate Hawaiian language immersion program using existing public school facilities.

“Department” means the department of education.

“Executive director” means the executive director of the state public charter school commission.

“Governing board” means the independent board of a public charter school that is party to the charter contract with the authorizer that:

- (1) Is responsible for the financial, organizational, and academic viability of the charter school and implementation of the charter;
- (2) Possesses the independent authority to determine the organization and management of the school, the curriculum, and virtual education;
- (3) Has the power to negotiate supplemental collective bargaining agreements with exclusive representatives of their employees and is considered the employer of charter school employees for purposes of chapters 76, 78, and 89; and
- (4) Ensures compliance with applicable state and federal laws.

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

that:

- (1) Is recognized as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code; and
- (2) Is domiciled in this State.

“Organizational viability” means that a charter school:

- (1) Has been duly constituted and operates in accordance with its charter;
- (2) Has a governing board established in accordance with law and the charter school’s charter;
- (3) Employs sufficient faculty and staff to provide the necessary educational program and support services to operate the facility in accordance with its charter;
- (4) Maintains accurate and comprehensive records regarding students and employees as determined by its authorizer;
- (5) Meets appropriate standards of student achievement as defined by the board pursuant to its duties under article X, section 3, of the Constitution of the State of Hawaii;
- (6) Cooperates with board and authorizer requirements in conducting its functions;
- (7) Complies with applicable federal, state, and county laws and requirements;
- (8) In accordance with authorizer 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;
- (11) Complies with all authorizer directives, policies, and procedures; and

- (12) Complies with all board policies deemed applicable to charter schools by the board.

“Start-up charter school” means a new school established under section -13.

§ -2 Existing charter schools. Any charter school holding a charter to operate under part IV, subpart D, of chapter 302A, as that subpart existed before July 11, 2006, and any charter school holding a charter to operate under chapter 302B as it existed before the enactment of this chapter, shall be considered a charter school for the purposes of this chapter under a charter contract with the commission unless the charter contract is revoked, transferred to another authorizer, or not renewed, or the charter school voluntarily closes.

§ -3 State public charter school commission; establishment; appointment. (a) There is established the state public charter school commission with statewide chartering jurisdiction and authority. The commission shall be placed within the department for administrative purposes only. Notwithstanding section -25 and any law to the contrary, the commission shall be subject to chapter 92.

(b) The mission of the commission shall be to authorize high-quality public charter schools throughout the State.

(c) The commission shall consist of nine members to be appointed by the board. The board shall appoint members who will be tasked with authorizing public charter schools that serve the unique and diverse needs of public school students. The chair of the commission shall be designated by the members of the commission for each school year beginning July 1, and whenever there is a vacancy. The board shall consider the combination of abilities, breadth of experiences, and characteristics of the commission, including but not limited to reflecting the diversity of the student population, geographical representation, and a broad representation of education-related stakeholders.

(d) Understanding that the role of the commission is to ensure a long-term strategic vision for Hawaii’s public charter schools, each nominee to the commission shall meet the following minimum qualifications:

- (1) Commitment to education. Each nominee’s record should demonstrate a deep and abiding interest in education, and a dedication to the social, academic, and character development of young people through the administration of a high performing charter school system;
- (2) Record of integrity, civic virtue, and high ethical standards. Each nominee shall demonstrate integrity, civic virtue, and high ethical standards and be willing to hold fellow commission members to the same;
- (3) Availability for constructive engagement. Each nominee shall commit to being a conscientious and attentive commission member; and
- (4) Knowledge of best practices. Each nominee shall have an understanding of best practices in charter school educational governance or shall be willing to be trained in such.

(e) Each nominee to the commission shall ideally meet the following recommended qualifications:

- (1) Experience governing complex organizations. Each nominee should possess experience with complex organizations, including but not limited to performance contract management, and a proven ability to function productively within them; and

- (2) Collaborative leadership ability. Each nominee should have substantial leadership experience that ideally illustrates the nominee's ability to function among diverse colleagues as an effective team member, with the ability to articulate, understand, and help shape consensus surrounding commission policies.

(f) Five members of the commission shall constitute a quorum to conduct business and a concurrence of at least five members shall be necessary to make any action of the commission valid.

(g) Commission members shall serve not more than three consecutive three-year terms, with each term beginning on July 1; provided that the initial terms that commence after June 30, 2012, shall be staggered as follows:

- (1) Three members, including the chairperson, to serve three-year terms;
- (2) Three members to serve two-year terms; and
- (3) Three members to serve one-year terms.

(h) Notwithstanding the terms of the members, the board may fill vacancies in the commission at any time when a vacancy occurs due to resignation, non-participation, the request of a majority of the commission members, or termination by the board for cause.

(i) Commission members shall receive no compensation. When commission duties require that a commission member take leave of the member's duties as a state employee, the appropriate state department shall allow the commission member to be placed on administrative leave with pay and shall provide substitutes, when necessary, to fulfill that member's departmental duties. Members shall be reimbursed for necessary travel expenses incurred in the conduct of official commission business.

(j) The commission shall establish operating procedures that shall include conflict of interest procedures for any member whose school of employment or governing board is before the commission.

(k) The commission shall operate with dedicated resources and staff qualified to execute the day-to-day responsibilities of the commission pursuant to this chapter.

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

(b) Governing boards of accredited public and private postsecondary institutions, including community colleges, technical colleges, and four-year universities may apply to the board, pursuant to this section, for statewide, regional, or local chartering authority, in accordance with each institution's regular operating jurisdiction.

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

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

(e) The board shall establish, through administrative rules, the annual application and approval process for all entities eligible to apply for chartering authority pursuant to this section; provided that the board shall not approve any application for chartering authority until July 1, 2014, or until the board adopts

rules, whichever is later. By June 30 of each year, the board shall make available information and guidelines for all eligible entities concerning the opportunity to apply for chartering authority under this chapter. The application process shall require each interested eligible entity to submit an application that clearly explains or presents the following elements:

- (1) Written notification of intent to serve as an authorizer in accordance with this chapter;
- (2) The applicant entity's strategic vision for chartering;
- (3) A plan to support the vision presented, including explanation and evidence of the applicant entity's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing, in accordance with this chapter;
- (4) A draft or preliminary outline of the request for proposals that the applicant entity, if approved as an authorizer, would issue to solicit public charter school applicants;
- (5) A draft of the performance framework that the applicant entity, if approved as an authorizer, would use to guide the establishment of a charter contract and for ongoing oversight and evaluation of public charter schools, consistent with the requirements of this chapter;
- (6) A draft of the applicant entity's renewal, revocation, and nonrenewal processes, consistent with section -18;
- (7) A statement of assurance that the applicant entity seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of this chapter, and that if approved as an authorizer, the entity will fully participate in any authorizer training provided or required by the State; and
- (8) A statement of assurance that the applicant will ensure public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures.

(f) By June 30 of each year, the board shall decide whether to grant or deny chartering authority to each applicant. The board shall make its decisions on the merits of each applicant's proposal and plans.

(g) Within sixty days of the board's decision, the board shall execute a renewable authorizing contract with each entity it has approved for chartering authority. The initial term of each authorizing contract shall be six years. The authorizing contract shall specify each approved entity's agreement to serve as an authorizer in accordance with the expectations of this chapter, and shall specify additional performance terms based on the applicant's proposal and plan for chartering. No approved entity shall commence charter authorizing without an authorizing contract in effect.

(h) This section shall not apply to the commission.

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

- (1) Soliciting and evaluating charter applications;
- (2) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices;
- (3) Declining to approve weak or inadequate charter applications;
- (4) Negotiating and executing sound charter contracts with each approved public charter school;
- (5) Monitoring, in accordance with charter contract terms, the performance and legal compliance of public charter schools; and
- (6) Determining whether each charter contract merits renewal, nonrenewal, or revocation.

- (b) An authorizer shall:
 - (1) Act as the point of contact between the department and a public charter school it authorizes and be responsible for the administration of all applicable state and federal laws;
 - (2) Be responsible for and ensure compliance of a charter school it authorizes with all applicable state and federal laws, including reporting requirements;
 - (3) Be responsible for the receipt of applicable federal funds from the department and the distribution of funds to the public charter school it authorizes; and
 - (4) Be responsible for the receipt of per-pupil funding from the department of budget and finance and distribution of the funding to the public charter school it authorizes.
- (c) An authorizer may delegate its duties to officers, employees, and contractors.
- (d) Regulation by authorizers shall be limited to the powers and duties set forth in this section, and shall be consistent with the spirit and intent of this chapter.
- (e) An authorizer, members of the board of an authorizer acting in their official capacity, and employees or agents of an authorizer are immune from civil and criminal liability with respect to all activities related to a public charter school authorized by that authorizer, except for any acts or omissions constituting wilful misconduct.
- (f) An authorizer shall not provide technical support to a charter school it authorizes in cases where the technical support will directly and substantially impact any authorizer decision related to the authorization, renewal, revocation, or nonrenewal of the charter school. This subsection shall not apply to technical support that an authorizer is required to provide to a charter school pursuant to federal law.

§ -6 Principles and standards for charter authorizing. All authorizers shall be required to develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing responsibility including:

- (1) Organizational capacity and infrastructure;
- (2) Soliciting and evaluating charter applications;
- (3) Performance contracting;
- (4) Ongoing public charter school oversight and evaluation; and
- (5) Charter and charter contract renewal decision-making.

Authorizers shall carry out all their duties under this chapter in a manner consistent with nationally recognized principles and standards and with the spirit and intent of this chapter. Evidence of material or persistent failure to do so shall constitute grounds for losing charter authorizing powers.

§ -7 Authorizer reporting. Every authorizer shall be required to submit to the board and the legislature an annual report summarizing:

- (1) The authorizer's strategic vision for chartering and progress toward achieving that vision;
- (2) The academic and financial performance of all operating public charter schools overseen by the authorizer, according to the performance expectations for public charter schools set forth in this chapter;
- (3) The status of the authorizer's public charter school portfolio, identifying all public charter schools in each of the following categories:

ries: approved (but not yet open), not approved, operating, renewed, transferred, revoked, not renewed, voluntarily closed, or never opened;

- (4) The authorizing functions provided by the authorizer to the public charter schools under its purview, including the authorizer's operating costs and expenses detailed in annual audited financial statements that conform with generally accepted accounting principles;
- (5) The services purchased from the authorizer by the public charter schools under its purview;
- (6) A line-item breakdown of the federal funds received by the department and distributed by the authorizer to public charter schools under its control; and
- (7) Any concerns regarding equity and recommendations to improve access to and distribution of federal funds to public charter schools.

§ -8 Conflict of interests. No employee, trustee, agent, or representative of an authorizer may simultaneously serve as an employee, trustee, agent, representative, vendor, or contractor of a public charter school authorized by that authorizer.

§ -9 Exclusivity of authorizing functions and rights. No governmental or other entity, other than those expressly granted chartering authority as set forth in this chapter, may assume any charter authorizing function or duty in any form, unless expressly allowed by law.

§ -10 Services purchased from authorizer; itemized accounting. (a) No public charter school shall be required to purchase services from its authorizer as a condition of charter approval or renewal or of executing a charter contract, nor may any such condition be implied.

(b) A public charter school may, at its discretion, choose to purchase services from its authorizer. In such event, the public charter school and authorizer shall execute an annual service contract, separate from the charter contract, stating the parties' mutual agreement concerning any services to be provided by the authorizer and any service fees to be charged to the public charter school. An authorizer may not charge more than market rates for services provided to a public charter school.

§ -11 Oversight of public charter school authorizers. (a) The board shall be responsible for overseeing the performance and effectiveness of all authorizers established under this chapter.

(b) In accordance with section -7, every authorizer shall submit to the board and the legislature an annual report. The board shall communicate to every authorizer the requirements for the format, content, and submission of the annual report.

(c) Persistently unsatisfactory performance of an authorizer's portfolio of public charter schools, a pattern of well-founded complaints about the authorizer or its public charter schools, or other objective circumstances may trigger a special review by the board. In reviewing or evaluating the performance of authorizers the board shall apply nationally recognized principles and standards for quality charter authorizing. If at any time the board finds that an authorizer is not in compliance with an existing charter contract, its authorizing contract with the board, or the requirements of all authorizers under this chapter, the board shall notify the authorizer in writing of the identified problems, and

the authorizer shall have reasonable opportunity to respond to and remedy the problems.

(d) If an authorizer persists, after due notice from the board, in violating a material provision of a charter contract or its authorizing contract with the board, or fails to remedy other identified authorizing problems, the board shall notify the authorizer, within a reasonable amount of time under the circumstances, that it intends to revoke the authorizer's chartering authority unless the authorizer demonstrates a timely and satisfactory remedy for the violation or deficiencies.

(e) In the event of revocation of any authorizer's chartering authority, the board shall manage the timely and orderly transfer of each charter contract held by that authorizer to another authorizer in the State, with the mutual agreement of each affected public charter school and proposed new authorizer. The new authorizer shall enter into a new charter contract with the charter school for the remainder of the charter term.

§ -12 Charter school governing boards; powers and duties. (a) No more than thirty per cent of the members of a governing board shall be employees of a school or relatives of employees of a school under the jurisdiction of that governing board; provided that the chief executive officer, chief administrative officer, executive director, or otherwise designated head of a charter school may serve as an ex officio, non-voting member of the governing board. In selecting members, consideration shall be given to persons who:

- (1) Provide the governing board with a diversity of perspective and a level of objectivity that accurately represent the interests of the charter school students and the surrounding community;
- (2) Demonstrate an understanding of best practices of non-profit governance; and
- (3) Possess strong financial and academic management and oversight abilities, as well as human resource and fundraising experience.

(b) No employee of a charter school or relative of an employee of a charter school may serve as the chair of the governing board of that charter school; provided that an authorizer may grant an exemption from the provisions of this subsection based upon a determination by the authorizer that an exemption is in the best interest of the charter school.

(c) The governing board shall be the independent governing body of its charter school and shall have oversight over and be responsible for the financial, organizational, and academic viability of the charter school, implementation of the charter, and the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws. The governing board shall ensure its school complies with the terms of the charter contract between the authorizer and the school. The governing board shall have the power to negotiate supplemental collective bargaining agreements with the exclusive representatives of their employees.

(d) Governing boards shall be exempt from 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. Governing boards and charter schools are encouraged to use the provisions of chapter 103D wherever possible; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the charter school to any other provision of chapter 103D.

(e) Charter schools and their governing boards shall be exempt from the requirements of chapters 91 and 92. The governing boards shall:

- (1) Make available the notices and agendas of public meetings:
 - (A) At a publicly accessible area in the governing board's office and the authorizer's office so as to be available for review during regular business hours; and
 - (B) On the governing board's or charter school's internet website, if applicable, and the authorizer's internet website not less than six calendar days prior to the public meeting, unless a waiver is granted by the authorizer or authorizer's designee in the case of an emergency; and
- (2) Make available the minutes from public meetings within thirty days and maintain a list of the current names and contact information of the governing board's members and officers:
 - (A) In the governing board's office and the authorizer's office so as to be available for review during regular business hours; and
 - (B) On the governing board's or charter school's internet website, if applicable, and the authorizer's internet website.

(f) All charter school employees and members of governing boards shall be subject to chapter 84.

(g) The State shall afford the governing board of any charter school the same protections as the State affords the board.

(h) For purposes of this section, "employees" shall include the chief executive officer, chief administrative officer, executive director, or otherwise designated head of a charter school.

§ -13 Start-up charter schools; establishment. (a) New start-up charter schools may be established pursuant to this section.

(b) Any community, group of teachers, group of teachers and administrators, or nonprofit organization may submit a letter of intent to an authorizer to form a charter school, establish a governing board as its governing body, and develop a charter application pursuant to subsection (d).

(c) The start-up charter school charter application process and schedule shall be determined by the authorizer, and shall provide for and include the following elements:

- (1) The submission of a letter of intent to operate a start-up charter school;
- (2) The timely transmittal of the charter application form and completion guidelines to the governing board;
- (3) The timely submission of a completed charter application to the authorizer;
- (4) The timely review of the charter application by the authorizer for completeness, and notification by the authorizer to the governing board that the charter application is complete;
- (5) Upon receipt of a completed charter application, the convening of the commission, if applicable, by the commission chairperson to begin review of the charter application;
- (6) Following the submission of a charter application, issuance of a charter or denial of the charter application by the authorizer or if submitted to the commission, by majority vote;
- (7) A provision for a final date by which a decision must be made, upon receipt of a complete charter application; and

- (8) A provision that no start-up charter school may begin operation before obtaining authorizer approval of its charter application and charter contract.
- (d) A charter application to become a start-up charter school shall meet the requirements of this subsection and section -25. The charter application shall include the following:
- (1) A description of employee rights and management issues and a framework for addressing those issues that protects the rights of employees;
 - (2) A plan for identifying, recruiting, and retaining highly qualified instructional faculty;
 - (3) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;
 - (4) The curriculum and instructional framework to be used to achieve student outcomes, including an assessment plan;
 - (5) A 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 the educational content and performance standards developed by the department for the public school system;
 - (C) Includes a system of faculty and staff accountability that holds faculty and staff 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;
 - (6) A governance structure for the charter school that incorporates a conflict of interest policy and a plan for periodic training to carry out the duties of governing board members;
 - (7) A description of the constitution of the governing board, terms of governing board members, and the process by which governing board members were selected;
 - (8) 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
 - (9) A facilities plan.
- (e) Any applicant whose charter application is denied by the authorizer shall not be allowed to amend or resubmit the charter application to the authorizer during a given cycle, as defined by the authorizer; provided that an applicant shall have the right to appeal the authorizer's denial of its charter application pursuant to section -15.
- (f) In reviewing a charter application under this section, an authorizer shall take into consideration the constitution of the applicant's governing board, terms of governing board members, and the process by which governing board members were selected.
- (g) In reviewing charter applications under this section, an authorizer shall develop a schedule to approve or deny a charter application by the end of the calendar year for purposes of meeting any deadlines to request funding from the legislature.

§ -14 Conversion charter schools; establishment. (a) A conversion charter school may be established pursuant to this section.

(b) Any department school, school community council, group of teachers, group of teachers and administrators, or nonprofit organization may submit a letter of intent to an authorizer to convert a department school to a charter school, establish a governing board as its governing body, and develop a charter application pursuant to subsection (d).

(c) The conversion charter school charter application process and schedule shall be determined by the authorizer, and shall provide for and include the following elements:

- (1) The submission of a letter of intent to convert to a charter school;
- (2) The timely transmittal of the charter application form and completion guidelines to the governing board;
- (3) The timely submission of a completed charter application to the authorizer; provided that the charter application shall include certification and documentation that the charter application was approved by a majority of the votes cast by existing administrative, support, teaching personnel, and parents of students at the existing department school; provided that:
 - (A) This vote shall be considered by the authorizer to be the primary indication of the existing administrative, support, and teaching personnel, and parents' approval to convert to a charter school;
 - (B) The balance of stakeholders represented in the vote and the broad support received in support of the conversion shall be a key factor in an authorizer's decision to award a charter; and
 - (C) A breakdown of the number of administrative, support, and teacher personnel, and parents that actually participated in the vote shall be provided to the authorizer;
- (4) The timely review of the charter application by the authorizer for completeness, and notification by the authorizer to the governing board that the charter application is complete;
- (5) Upon receipt of a completed charter application, the convening of the commission, if applicable, by the commission chairperson to begin review of the charter application;
- (6) Following the submission of a charter application, issuance of a charter or denial of the charter application by the authorizer or if submitted to the commission, by majority vote;
- (7) A provision for a final date by which a decision must be made upon receipt of a complete charter application; and
- (8) A provision that no conversion charter school may begin operation before obtaining authorizer approval of its charter and charter contract.

(d) A charter application to become a conversion charter school shall meet the requirements of this subsection and section -25. The charter application shall include the following:

- (1) A description of employee rights and management issues and a framework for addressing those issues that protects the rights of employees;
- (2) A plan for identifying, recruiting, and retaining highly qualified instructional faculty;
- (3) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;

- (4) The curriculum and instructional framework to be used to achieve student outcomes, including an assessment plan;
- (5) A 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 the educational content and performance standards developed by the department for the public school system;
 - (C) Includes a system of faculty and staff accountability that holds faculty and staff 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;
- (6) A governance structure for the charter school that incorporates a conflict of interest policy and a plan for periodic training to carry out the duties of governing board members;
- (7) A description of the constitution of the governing board, terms of governing board members, and the process by which governing board members were selected;
- (8) 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
- (9) A facilities plan.
- (e) A nonprofit organization may submit a letter of intent to an authorizer to convert a department school to a conversion charter school, operate and manage the school, establish a governing board as its governing body, and develop a charter application pursuant to subsection (d); provided that:
 - (1) As the governing body of the conversion charter school, the governing board shall be the board of directors of the nonprofit organization and shall not be selected pursuant to section -12. The nonprofit organization may also appoint advisory groups of community representatives for each school managed by the nonprofit organization; provided that these groups shall not have governing authority over the school and shall serve only in an advisory capacity to the nonprofit organization;
 - (2) The charter application for each conversion charter school to be operated by the nonprofit organization shall be formulated, developed, and submitted by the nonprofit organization, and shall be approved by a majority of the votes cast by existing administrative, support, and teaching personnel, and parents of the students of the existing department school; provided that:
 - (A) This vote shall be considered by the authorizer to be the primary indication of the existing administrative, support, and teaching personnel, and parents' approval to convert to a charter school;
 - (B) The balance of stakeholders represented in the vote and the broad support received in support of the conversion shall be a key factor in an authorizer's decision to award a charter; and
 - (C) A breakdown of the number of administrative, support, and teacher personnel, and parents that actually participated in the vote shall be provided to the authorizer;

- (3) The board of directors of the nonprofit organization, as the governing body for the conversion charter school that it operates and manages, shall have the same protections that are afforded to the board in its role as the conversion charter school governing body;
- (4) Any 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 makes a minimum annual contribution of \$1 per pupil toward the operation of a conversion charter school for every \$4 per pupil allocated by the department of budget and finance for the operation of the conversion charter school; provided further that in no event shall the nonprofit organization be required to contribute more than the total required contribution per pupil per year. As used in this paragraph, "total required contribution" means:
 - (A) \$1,650 for school years 2012-2013 through 2015-2016; and
 - (B) \$1,815 for school years 2016-2017 through 2020-2021; and
- (5) If, at any time, the board of directors of the nonprofit organization governing the conversion charter school votes to discontinue its relationship with the charter school, the charter school may submit a revised charter application to the authorizer to continue as a conversion school without the participation of the nonprofit organization.
 - (f) Any nonprofit organization that seeks to manage or operate a conversion charter school as provided in subsection (e) shall comply with the following at the time of charter application:
 - (1) Have bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of potential conflict of interest situations;
 - (2) Have experience in the management and operation of public or private schools or, to the extent necessary, agree to obtain appropriate services from another entity or entities possessing such experience;
 - (3) Comply with all applicable federal, state, and county laws, including licensure or accreditation, as applicable; and
 - (4) Comply with any other requirements prescribed by the department to ensure adherence with applicable federal, state, and county laws, and the purposes of this chapter.
 - (g) Any public school or schools, programs, or sections of existing public school populations that are part of a separate Hawaiian language immersion program using existing public school facilities may submit a letter of intent to an authorizer to form a conversion charter school pursuant to this section.
 - (h) In reviewing a charter application for a charter under this section, an authorizer shall take into consideration the constitution of the applicant's governing board, terms of governing board members, and the process by which governing board members were selected.
 - (i) In the event of a conflict between the provisions in this section and other provisions in this chapter, this section shall control.
 - (j) Any applicant whose charter application is denied by the authorizer shall not be allowed to amend or resubmit the charter application to the authorizer during a given cycle, as defined by the authorizer, except as provided in subsection (e)(5); provided that an applicant shall have the right to appeal the authorizer's denial of its charter application pursuant to section -15.
 - (k) In reviewing charter applications for a charter under this section, an authorizer shall develop a schedule to approve or deny a charter application by

the end of the calendar year for purposes of meeting any deadlines to request funding from the legislature.

§ -15 Appeals; charter applications, reauthorizations, or revocations. The board shall have the power to decide appeals of decisions by an authorizer to deny the approval of a charter application, deny reauthorization of a charter school, or revoke a charter school's charter. An appeal shall be filed with the board within twenty-one calendar days of the receipt of the notification of denial or revocation. Only a party whose charter application has been denied, whose reauthorization has been denied, or whose charter has been revoked may initiate an appeal under this section for cause. The board shall review an appeal and issue a final decision within sixty calendar days of the filing of the appeal. The board may adopt applicable rules and procedures pursuant to chapter 91 for implementing the appeals process.

§ -16 Performance framework. (a) The performance provisions within the charter contract shall be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures, and metrics that will guide the authorizer's evaluations of each public charter school. The performance framework, as established by the authorizer, shall include indicators, measures, and metrics for, at a minimum:

- (1) Student academic proficiency;
- (2) Student academic growth;
- (3) Achievement gaps in proficiency and growth between major student subgroups;
- (4) Attendance;
- (5) Recurrent enrollment from year to year;
- (6) Postsecondary readiness, as applicable for high schools;
- (7) Financial performance and sustainability;
- (8) Performance and stewardship, including compliance with all applicable laws, rules, and terms of the charter contract; and
- (9) Organizational viability.

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

(c) The performance framework shall allow the inclusion of additional rigorous, valid, and reliable indicators proposed by a public charter school to augment external evaluations of its performance; provided that the authorizer approves the quality and rigor of such school-proposed indicators, and the indicators are consistent with the purposes of this chapter and the charter contract.

(d) The performance framework shall require the disaggregation of all student performance data by major student subgroups, including gender, race, poverty status, special education status, English as a second language status, and gifted and talented status.

(e) For each public charter school it oversees, the authorizer shall be responsible for managing all data from assessments in accordance with the performance framework.

(f) Multiple schools operating under a single charter contract or overseen by a single governing board shall be required to report their performance as separate, individual charter schools, and each charter school shall be held independently accountable for its performance.

§ -17 Ongoing oversight and corrective actions. (a) An authorizer shall continually monitor the performance and legal compliance of the public charter

schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the charter contract. Every authorizer shall have the authority to conduct or require oversight activities that enable the authorizer to fulfill its responsibilities under this chapter, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this chapter and adhere to the terms of the charter contract.

(b) Each authorizer shall annually publish and provide, as part of its annual report to the board and the legislature, a performance report for each public charter school it oversees, in accordance with the performance framework set forth in the charter contract and section -16. The authorizer shall require each public charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school. The annual report shall include the status of the charter school's compliance with annual performance targets, as determined by the charter contract.

(c) In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify the public charter school of the perceived problem and provide reasonable opportunity for the charter school to remedy the problem, unless the problem warrants revocation in which case the revocation timeframes set forth in section -18 shall apply.

(d) Notwithstanding section -18 to the contrary, every authorizer shall have the authority to take appropriate corrective actions or exercise sanctions short of revocation in response to apparent deficiencies in public charter school performance or legal compliance. Such actions or sanctions may include, if warranted, requiring a school to develop and execute a corrective action plan within a specified timeframe.

(e) If there is an immediate concern for student or employee health or safety at a charter school, the authorizer may adopt an interim restructuring plan that may include the appointment of an interim governing board, a governing 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 governing board which shall appoint a new interim principal.

The board shall have the authority to direct the authorizer 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.

§ -18 Renewals, revocations, and nonrenewals. (a) A charter contract may be renewed for successive five-year terms of duration, although an authorizer may vary the terms based on performance, demonstrated capacities, and particular circumstances of each charter school. An authorizer may grant a renewal of a charter contract with specific conditions for necessary improvements to a charter school.

(b) No later than September 1, the authorizer shall issue a charter school performance report and charter contract renewal application guidance to any charter school whose charter contract will expire the following year. The performance report shall summarize the charter school's performance record to date, based on the data required by this chapter and the charter contract, and shall provide notice of any weaknesses or concerns perceived by the authorizer concerning the charter school that may jeopardize its position in seeking renewal if not timely rectified. The charter school shall have thirty days to respond to the performance report and submit any corrections or clarifications for the report.

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

- (1) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;
- (2) Describe improvements undertaken or planned for the school; and
- (3) Detail the charter school's plans for the next charter term.

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

(e) No later than March 1, the governing board of a charter school seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal guidance issued by the authorizer. The authorizer shall decide whether or not to renew the charter no later than forty-five days after the filing of the renewal application.

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

- (1) Ground its decisions in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;
- (2) Ensure that data used in making the renewal decisions are available to the charter school and the public; and
- (3) Provide a public report summarizing the evidence and basis for each decision.

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

- (1) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;
 - (2) Failed to meet or make sufficient progress toward performance expectations set forth in the contract;
 - (3) Failed to meet generally accepted standards of fiscal management; or
 - (4) Substantially violated any material provision of law from which the charter school is not exempted.
- (h) An authorizer shall develop revocation and non-renewal processes

that:

- (1) Provide the charter holders with a timely notification of the prospect of revocation or non-renewal and the reasons for such possible closure;
 - (2) Allow the charter holders a reasonable amount of time in which to prepare a response;
 - (3) Provide the charter holders with an opportunity to submit documents and give testimony challenging the rationale for closure and supporting the continuation of the school at an orderly proceeding held for that purpose;
 - (4) Allow charter holders access to representation by counsel, subject to section 28-8.3, and to call witnesses on their behalf;
 - (5) Permit the recording of proceedings described in paragraph (3); and
 - (6) After a reasonable period for deliberation, require a final determination to be made and conveyed in writing to the charter holders.
- (i) If an authorizer revokes or does not renew a charter, the authorizer shall clearly state in writing the reasons for the revocation or nonrenewal.

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

§ -19 School closure and dissolution. (a) Prior to any public charter school closure decision, an authorizer shall have developed a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets in accordance with the requirements of this chapter. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the school and the authorizer. In the event of a public charter school closure for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol.

(b) In the event of a public charter school closure for any reason, the assets of the school, excluding facilities, shall be distributed first to satisfy outstanding payroll obligations for employees of the school, then to creditors of the school, and then to the state treasury to the credit of the general fund. If the assets of the school are insufficient to pay all parties to whom the school owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.

(c) In the event of a public charter school closure for any reason, if the public charter school received an appropriation for capital improvements to its facilities, the charter school or its authorizer shall negotiate with the expending agency for a lump sum or installment repayment to the State of the amounts appropriated. This restriction shall be registered, recorded, and indexed in the bureau of conveyances or with the assistant registrar of the land court as an encumbrance on the property. Amounts received from the repayment under this subsection shall be deposited into the general fund.

(d) In the event of a public charter school closure for any reason, other public charter schools shall have the right of first refusal for the closed public charter school's facilities, if the facilities are owned by the State. If no other public charter school exercises the right of first refusal, the facilities shall revert back to the department and the State.

§ -20 Charter transfers. (a) Transfer of a charter contract, and of oversight of that public charter school, from one authorizer to another before the expiration of the charter term shall not be permitted except by special petition to the board by a public charter school or its authorizer. The board shall review such petitions on a case-by-case basis and may grant transfer requests in response to special circumstances and evidence that such a transfer would serve the best interests of the public charter school's students.

(b) The board may adopt rules pursuant to chapter 91 to carry out the purposes of this section.

§ -21 Annual board report. No later than twenty days prior to the convening of each regular session of the legislature, the board shall issue to the governor, the legislature, and the public, an annual report on the State's public charter schools, drawing from the annual reports submitted by every authorizer as well as any additional relevant data compiled by the board, for the school year ending in the preceding calendar year. The annual report shall include:

- (1) A comparison of the performance of public charter school students with the performance of academically, ethnically, geographically, and economically comparable groups of students in public schools governed by chapter 302A;
- (2) The board's assessment of the successes, challenges, and areas for improvement in meeting the purposes of this chapter, including the board's assessment of the sufficiency of funding for public charter schools, and any suggested changes in state law or policy necessary to strengthen the State's public charter schools;
- (3) A line-item breakdown of all federal funds received by the department and distributed to authorizers;
- (4) Any concerns regarding equity and recommendations to improve access to and distribution of federal funds to public charter schools; and
- (5) A discussion of all board policies adopted in the previous year, including a detailed explanation as to whether each policy is or is not applicable to charter schools.

§ -22 Board as final arbitrator. (a) The board shall serve as the final arbitrator of those appeals listed in section -15.

(b) A party shall not be entitled to a hearing before the board under this section until it has exhausted all available administrative remedies.

(c) The board shall adopt applicable rules and procedures pursuant to chapter 91 for implementing this section.

§ -23 Minimum educational data reporting standards. The board shall establish educational reporting standards that shall include minimum standards for reporting fiscal, personnel, and student data, by means of electronic transfer of data files from charter schools to the department. The minimum standards established by the board shall include but not be limited to data required for the department, as the state education agency, to meet all applicable federal reporting requirements.

§ -24 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 board pursuant to section 302A-1151.5(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; and
- (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 board for the reclamation, and the board may grant the petition only to the extent that it is not possible for the conversion charter school and the State to jointly occupy or use the buildings or facilities.

(c) Upon receipt of a notice pursuant to section 302A-1151.5(b), the board 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 board shall:

- (1) Provide a written response to each charter school's application after each application has been fully considered;
- (2) Compile a prioritized list of charter schools; and
- (3) Make a 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 charter school's authorizer 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 authorizer 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 board 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 board to use in determining which charter schools to include on the prioritized list to be submitted to the department; and
- (3) Procedures for the board 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.

§ -25 Applicability of state laws. (a) Charter schools shall be exempt from chapters 91 and 92 and all other state laws in conflict with this chapter, except those regarding:

- (1) Collective bargaining under chapter 89; provided that:
 - (A) The exclusive representatives as defined in chapter 89 and the governing board of the charter school may enter into supplemental agreements that contain cost and noncost items to facilitate decentralized decision-making;
 - (B) The agreements shall be funded from the current allocation or other sources of revenue received by the charter school; provided that collective bargaining increases for employees shall be allocated by the department of budget and finance to the charter school's authorizer for distribution to the charter school; and
 - (C) These supplemental agreements may differ from the master contracts negotiated with the department;
- (2) Discriminatory practices under section 378-2; and

(3) Health and safety requirements.

(b) Charter schools, the commission, and authorizers shall be exempt from 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. Charter schools, the commission, and authorizers are encouraged to use the provisions of chapter 103D where possible; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the charter school, commission, or authorizer to any other provision of chapter 103D. Charter schools, the commission, and authorizers shall account for funds expended for the procurement of goods and services, and this accounting shall be available to the public.

(c) Charter schools and their employees, the commission and its employees, and governing boards and their members shall be subject to chapter 84.

(d) Any charter school, prior to the beginning of the school year, may enter into an annual contract with any department for centralized services to be provided by that department.

(e) Notwithstanding any law to the contrary, as public schools and entities of the State, a charter school, including its governing board, the commission, and any authorizer may not bring suit against any other entity or agency of the State.

§ -26 Civil service status; employee rights. (a) Civil service employees of department schools shall retain their civil service status upon the conversion of their school to a conversion charter school. Positions in a conversion charter school that would be civil service in a department public school shall be civil service positions and subject to chapter 76. An employee with civil service status at a conversion charter school who transfers, is promoted, or takes a voluntary demotion to another civil service position shall be entitled to all of the rights, privileges, and benefits of continuous, uninterrupted civil service. Civil service employees of a conversion charter school shall have civil service status in the department's civil service system and shall be entitled to all rights, privileges, and benefits as other civil service employees employed by the department. Exempt employees as provided in section 76-16(b)(11)(B) of a conversion charter school shall have support services personnel status in the department's support services personnel system and shall be entitled to all rights, privileges, and benefits as other exempt employees employed by the department in their support services personnel system.

(b) The State shall afford administrative, support, and instructional employees in 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.

(c) The department, to the extent possible, shall provide its position listings to authorizers and any interested governing board of any charter school.

(d) The department, in conjunction with authorizers, shall facilitate the movement of instructional personnel between the department and charter schools; provided that:

(1) Comparable and verifiable professional development and employee evaluation standards and practices, as determined and certified by the authorizers, are in place in charter schools for instructional staff;

- (2) Licensed charter school teachers, as determined by the Hawaii teacher standards board, 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 a charter school, shall be subject to no more than one year of probationary status; and
- (3) Tenured department licensed teachers, as determined by the department, who transfer to charter schools shall not be required to serve a probationary period.
- (e) The department shall establish a process that permits employees of department public schools that become conversion charter schools pursuant to section -14 to transfer to a department public school governed by chapter 302A.

§ -27 Administration of workers' compensation. The department of human resources development shall administer workers' compensation claims for employees of charter schools, who shall be covered by the same self-insured workers' compensation system as other public employees. The department of human resources development shall process, investigate, and make payments on claims; provided that:

- (1) 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.

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

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

- (1) Determine the sum of general fund appropriations made for department and charter school student non-facility costs described in subsections (a) and (b);
- (2) Determine the sum of department and charter school student enrollment based on reviewed and verified student enrollment counts as of October 15;
- (3) Determine a per-pupil amount by dividing the sum of general fund appropriations determined under paragraph (1) by the sum of student enrollment determined under paragraph (2);
- (4) Transfer a general fund amount between the department and charter schools that will provide each with a per-pupil allocation equal to the amount determined on an annualized fiscal year basis under paragraph (3); and
- (5) Annually account for all calculations and transfers made pursuant to this subsection in a report to the legislature, governor, department, and charter schools.

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

(d) Charter schools shall be eligible for all federal financial support to the same extent as all other public schools. The department shall provide all authorizers with all state-level federal grant proposals submitted by the department that include charter schools as potential recipients and timely reports on state-level federal grants received for which charter schools may apply or are entitled to receive. Federal funds received by the department for charter schools shall be transferred to authorizers for distribution to the charter schools they authorize in accordance with the federal requirements. If administrative services related to federal grants 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 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 per cent of the supplemental grant for which the services are used.

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

(e) Authorizers 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).

Authorizers shall submit a report to the legislature no later than twenty days prior to the convening of 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 authorizer's reviewed and verified enrollment count, and the November 15 enrollment count.

(f) To enable charter schools to access state funding prior to the start of each school year, foster their fiscal planning, enhance their accountability,

and avoid over-allocating general funds to charter schools based on self-reported enrollment projections, authorizers shall:

- (1) Provide 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 its authorizer a projected student enrollment no later than May 15 of each year;
- (2) Provide an additional thirty per cent of a charter school's per-pupil allocation no later than December 1 of each year, based on the October 15 student enrollment, as reviewed and verified by the authorizer, only to schools in compliance with all 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;

provided that the board may make adjustments in allocations based on non-compliance 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 board's administrative procedures, and board-approved accountability requirements.

(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.

(h) No charter school may assess tuition.

§ -29 Weighted student formula. (a) Notwithstanding section -28, charter schools shall elect whether to receive allocations calculated according to the department's procedures and methodology used to calculate the weighted student formula allocation adopted pursuant to section 302A-1303.6; provided that:

- (1) All charter schools, as a group, with each governing board being accorded one vote, shall elect, by greater than two-thirds agreement among the governing boards, whether to receive allocations calculated through the department's procedures and methodology for the weighted student formula; provided that a nonprofit organization that governs more than one conversion charter school may cast one vote representing each school it governs; and
- (2) Any election by charter schools to receive allocations, or not to receive allocations, calculated through the procedures and methodology for the department's weighted student formula shall be made by September 1 of each even-numbered year, and the election shall apply to the fiscal biennium beginning July 1 of the following year.

(b) The charter schools, through their authorizer, may propose to the board an alternative weighted student formula, approved by more than two-thirds of the governing boards, with each governing board being accorded one vote, to be administered by the commission and to apply to the per-pupil allocation for charter schools.

§ -30 Responsibilities of the department; special education services. (a) The department shall collaborate with each authorizer to develop a system of technical assistance related to compliance with federal and state laws and access to federal and state funds. The department shall collaborate with each authoriz-

er to develop a list of central services that the department may offer for purchase by a charter school at an annual cost to be negotiated between an individual charter school and the department. The department shall enter into a contract with a charter school to provide these services, which shall be renegotiated on an annual basis.

(b) The department shall be responsible for the provision of a free appropriate public education. Any 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 program. The programs and services for the student shall be determined collaboratively by the student's individualized education program team, which includes the student's parents or legal guardians.

If the charter school is unable to provide all of the required services, then the department shall provide the student with services as determined by the student's individualized educational program team. The department shall collaborate with the commission to develop guidelines related to the provision of special education services and resources to each charter school. The department shall review all of the current individualized education programs of special education students enrolled in a charter school and may offer staff, funding, or both, to the charter school based upon a per-pupil weighted formula implemented by the department and used to allocate resources for special education students in the public schools.

§ -31 Sports. The department shall provide students at charter schools with the same opportunity to participate in athletics as is provided to students at other public schools. If a student at a charter school wishes to participate in a sport for which there is no program at the charter school, the department shall allow that student to participate in a comparable program of any public school in the complex in which the charter school is located."

SECTION 3. (a) There is established a charter school administrative office, hereinafter referred to as the 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, Hawaii Revised Statutes, by the state public charter school commission 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 state public charter school commission shall hire the executive director, who may be contracted for a term of up to one year; shall offer the executive director a written contract; and may terminate the executive director's contract only for cause; provided that the executive director's contract shall automatically terminate upon the repeal of this section. The executive director, with the approval of the state public charter school commission, may hire necessary staff without regard to chapters 76 and 89, Hawaii Revised Statutes, to assist in the administration of the office.

(b) The executive director, under the direction of the state public charter school commission, 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 state public charter school commission, the board of education, the governor, and the legislature; provided that, in

preparing the budget request with regard to needs-based facilities funding, the executive director shall ensure that, as a budget item separate from other operating costs, the request is accompanied by a detailed explanation of the formula used and a funding request breakdown by school;

- (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 of education for centralized services to be provided by the department of education;
- (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 analyses and recommendations on charter school issues;
- (7) Representing charter schools and the charter school system in communications with the board of education, 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 state public charter school commission review;
- (10) Assisting charter applicants and charter schools in coordinating their interactions with the state public charter school commission, as needed;
- (11) Assisting the state public charter school commission to coordinate with charter schools in state public charter school commission investigations and evaluations of charter schools;
- (12) Serving as the conduit to disseminate communications from the state public charter school commission, the board of education, and the department of education to all charter schools;
- (13) Determining charter school system needs and communicating those needs to the state public charter school commission, the board of education, and the department of education;
- (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 state public charter school commission. 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 state public charter school commission.

The salaries of the executive director and staff shall be set by the state public charter school commission in accordance with the requirements of this subsection and chapter 89C, Hawaii Revised Statutes.

(e) The office shall report annually to the state public charter school commission 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 26-28, Hawaii Revised Statutes.

(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.

(g) The office shall withhold funds for charter school enrollments that are inconsistent with approved charter contracts entered into pursuant to chapter 89C, Hawaii Revised Statutes.

(h) The office shall withhold funds to repay overpayments or over-allocations received by charter schools when not repaid in a timely manner in accordance with rules adopted by the board of education.

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

(j) The office shall serve as the designated staff of the state public charter school commission.

PART III

SECTION 4. Section 26-35.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For purposes of this section, “member” means any person who is appointed, in accordance with the law, to serve on a temporary or permanent state board, including members of the board of education, the ~~[local school]~~ governing board of any charter school established under chapter ~~[302B,]~~ _____, council, authority, committee, or commission, established by law or elected to the board of trustees of the employees' retirement system under section 88-24, or the corporation board of the Hawaii health systems corporation under section 323F-3 and its regional system boards under section 323F-3.5; provided that “member” shall not include any person elected to serve on a board or commission in accordance with chapter 11.”

SECTION 5. Section 89-6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

- (1) Elected or appointed official;
- (2) Member of any board or commission; provided that nothing in this paragraph shall prohibit a member of a collective bargaining unit from serving on a ~~[local school]~~ governing board of a charter school, on the state public charter school commission, or ~~[the]~~ as a charter school [review panel] authorizer established under chapter ~~[302B;]~~ ___;
- (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;
- (4) Secretary to top-level managerial and administrative personnel under paragraph (3);
- (5) Individual concerned with confidential matters affecting employee-employer relations;
- (6) Part-time employee working less than twenty hours per week, except part-time employees included in unit (5);
- (7) Temporary employee of three months' duration or less;
- (8) Employee of the executive office of the governor or a household employee at Washington Place;
- (9) Employee of the executive office of the lieutenant governor;
- (10) Employee of the executive office of the mayor;
- (11) Staff of the legislative branch of the State;
- (12) Staff of the legislative branches of the counties, except employees of the clerks' offices of the counties;
- (13) Any commissioned and enlisted personnel of the Hawaii national guard;
- (14) Inmate, kokua, patient, ward, or student of a state institution;
- (15) Student help;
- (16) Staff of the Hawaii labor relations board;
- (17) Employees of the Hawaii national guard youth challenge academy; or
- (18) Employees of the office of elections."

SECTION 6. Section 89-10.55, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) For the purpose of negotiating a memorandum of agreement or a supplemental agreement that only applies to employees of a charter school, the employer shall mean the ~~[local school]~~ governing board, subject to the conditions and requirements contained in the applicable sections of this chapter governing any memorandum of agreement or supplemental agreement.

(d) Negotiations over matters covered by this section shall be conducted between the employer and exclusive representative pursuant to this chapter. Cost items that are appropriated for and approved by the legislature and contained in a collective bargaining agreement, memorandum of agreement, or supplemental agreement covering, wholly or partially, employees in charter schools shall be allocated by the department of budget and finance to ~~[the]~~ a charter school [administrative office] authorizer for distribution to the charter [schools.] schools it authorizes. However, if the charter school ~~[administrative office]~~ authorizer deems it appropriate, the cost items may be funded from a charter school's existing allocation or other sources of revenue received by a charter school."

SECTION 7. Section 302A-101, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

““Authorizer” has the same meaning as in section -1.
 “Commission” has the same meaning as in section -1.”

2. By deleting the definitions of “charter school administrative office” or “office” and “charter school review panel” or “panel”.

[“Charter school administrative office” or “office” means the office established in section 302B-8 responsible for the internal organization, operation, and management of the charter school system.

“Charter school review panel” or “panel” means the panel established in section 302B-3.”]

SECTION 8. Section 302A-1101, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The board shall appoint the state public charter school [review panel] commission which shall serve as the statewide charter authorizer for charter schools, with the power and duty to issue charters, oversee and monitor charter schools, hold charter schools accountable for their performance, and revoke charters.”

SECTION 9. 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-1151.5 and [302B-3-6.] -24.”

SECTION 10. Section 302A-1151.5, Hawaii Revised Statutes, is amended by amending subsections (b) to (e) to read as follows:

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

(c) Pursuant to section [302B-3-6] -24 and upon receipt of a notice pursuant to subsection (b), the [~~charter school review panel~~] board 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~~] selected charter school’s governing board 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~~] board of a notice pursuant to subsection (b), if the [~~charter school review panel~~] board does not [~~provide~~] compile a prioritized list of charter schools because no charter school has requested to use the facilities of the public school, or if the [~~department re-~~

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~~receives the prioritized list but~~ board 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.”

SECTION 11. Section 302A-1302, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1302 School-based budget flexibility. (a) Beginning with the 1995-1997 fiscal biennium, the department shall implement school-based budget flexibility for schools, complexes, and learning support centers. The flexibility shall be limited to the school-based budgeting program EDN 100 of the department for all schools except charter schools.

(b) Beginning in fiscal year 2006-2007, ~~[and every year thereafter,]~~ the office shall distribute the allocations due to a charter school directly to the charter school.

(c) Beginning in fiscal year 2012-2013, and every year thereafter, each authorizer, as defined in section -1, shall distribute the allocations due to each charter school it authorizes directly to the charter school.”

SECTION 12. Section 302A-1303.6, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1303.6 Weighted student formula. Based upon recommendations from the committee on weights, the board of education, not less than once every odd-numbered year, shall adopt a weighted student formula for the allocation of moneys to public schools that takes into account the educational needs of each student. The department, upon the receipt of appropriated moneys, shall use the weighted student formula to allocate funds to public schools. Principals shall expend moneys provided to the principals’ schools. This section shall only apply to charter schools for fiscal years in which the charter schools elect pursuant to section ~~[302B-13]~~ -29 to receive allocations according to the weighted student formula.”

SECTION 13. Section 302A-1403, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1403 Authority to secure federal funds. The department, the state public charter school [administrative office,] commission, a charter school authorizer, director of finance, and governor may take such steps and perform such acts as may be necessary or proper to secure any such federal funds for the purposes specified in sections 302A-1401 and 302A-1402.”

SECTION 14. Section 302A-1404, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department and the state public charter school [administrative office,] commission or an authorizer, as appropriate, may retain and expend federal indirect overhead reimbursements for discretionary grants in excess of the negotiated rate for such reimbursements as determined by the director of finance and the superintendent or the director of finance and the [executive director of the] state public charter school [administrative office,] commission or an authorizer, as appropriate.”

SECTION 15. Section 302A-1505, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Prior to informing the department about the school’s repair and maintenance needs, the school’s principal shall consider the recommendations made by the school community council or the ~~[local school]~~ governing board, if the school is a charter school.”

SECTION 16. Chapter 302B, Hawaii Revised Statutes, is repealed.

PART IV

SECTION 17. Notwithstanding any law to the contrary, the members of the charter school review panel serving on the day of the effective date of this Act shall serve on the state public charter school commission until the appointment of no fewer than five members to the state public charter school commission pursuant to section 2 this Act, at which time all members of the charter school review panel shall be discharged from service and the members of the state public charter school commission shall begin their service; provided that any vacancy in the charter school review panel occurring between the effective date of this Act and the discharge from office of all charter school review panel members shall remain vacant until appointed to the state public charter school commission by the board of education pursuant to this Act.

SECTION 18. All rights, powers, functions, and duties of the charter school administrative office as established pursuant to section 302B-8, Hawaii Revised Statutes, are transferred to the charter school administrative office as established pursuant to section 3 of this Act.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 19. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal prop-

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erty heretofore made, used, acquired, or held by the charter school administrative office as established pursuant to section 302B-8, Hawaii Revised Statutes, relating to the functions transferred to the charter school administrative office as established pursuant to section 3 of this Act shall be transferred with the functions to which they relate.

SECTION 20. All rules, policies, procedures, guidelines, and other material adopted or developed by the board of education to implement provisions of the Hawaii Revised Statutes that are made applicable to public charter schools prior to the effective date of this Act, shall remain in full force and effect until amended or repealed by the board of education pursuant to chapter 91, Hawaii Revised Statutes.

SECTION 21. As of the effective date of this Act, all moneys in the charter schools account established pursuant to section 302B-12(i), Hawaii Revised Statutes, shall be transferred to the general fund of the State of Hawaii.

SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 23. This Act shall take effect upon its approval; provided that section 3 of this Act shall be repealed on July 1, 2013.

(Approved June 19, 2012.)