

## ACT 159

S.B. NO. 244

A Bill for an Act Relating to Education.

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

SECTION 1. Chapter 302D, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

“§302D-A **Annual audit.** Each charter school shall annually complete an independent financial audit that complies with the requirements of its authorizer and the department.

§302D-B **Criminal history record checks.** (a) The commission shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or seeking employment in any position, including teacher trainees, that places them in close proximity to children. These procedures shall include criminal history record checks in accordance with section 846-2.7. Information obtained pursuant to this subsection shall be used exclusively by the employer or prospective employer for the purpose of determining whether a person is suitable for working in close proximity to children. All such decisions shall be subject to applicable federal laws and regulations.

- (b) The employer or prospective employer may:
- (1) Refuse to allow or continue to allow teacher training;
  - (2) Terminate the employment of any employee; or
  - (3) Deny employment to an applicant,

if the person has committed a crime, and if the employer or prospective employer finds by reason of the nature and circumstances of the crime, that the person poses a risk to the health, safety, or well-being of children. Refusal, termination, or denial may occur only after appropriate investigation and notification to the employee or applicant of the results and planned action and after the employee or applicant is given an opportunity to meet and rebut the findings. Nothing in this subsection shall abrogate any applicable rights under chapter 76 or 89, or any administrative rule of the commission.

(c) Notwithstanding any other law to the contrary, for purposes of this section, the commission shall be exempt from section 831-3.1 and shall not be required to conduct investigations, notifications, or hearings in accordance with chapter 91.

§302D-C **Enrollment.** (a) A public charter school shall not discriminate against any student or limit admission based on race, color, ethnicity, national origin, religion, gender, sexual orientation, income level, disability, level of proficiency in the English language, need for special education services, or academic or athletic ability.

- (b) A start-up charter school:
  - (1) Shall be open to any student residing in the State;
  - (2) Shall enroll all students who submit an application, unless the number of students who submit an application exceeds the capacity of a program, class, grade level, or building;
  - (3) Shall select students through a public lottery if, as described in paragraph (2), capacity is insufficient to enroll all students who have submitted a timely application;
  - (4) May give an enrollment preference to students within a given age group or grade level and may be organized around a special emphasis, theme, or concept as stated in the charter school's application and as approved by the charter school's authorizer;
  - (5) May give an enrollment preference to students enrolled in the charter school during the previous school year and to siblings of students already enrolled at the charter school; and
  - (6) May give any other enrollment preference permitted by the charter school's authorizer, on an individual charter school basis, if consistent with law;

provided that nothing in this subsection shall preclude the formation of a start-up charter school whose mission is focused on serving students with disabilities, who are of the same gender, who pose such severe disciplinary problems that they warrant a specific educational program, or who are at a risk of academic failure.

- (c) A conversion charter school shall:
  - (1) Enroll any student who resides within the school's former geographic service area pursuant to section 302A-1143, for the grades that were in place when the public school converted to a charter school; provided that the department may consult with a conversion charter school every three years to determine whether realignment of the charter school's service area is appropriate given population shifts and the department's overall service area reviews;
  - (2) Follow the department's procedures regarding enrollment, including but not limited to geographic exceptions and enrollment preferences; and
  - (3) Be subject to subsection (b) for grades that were not in place when the school converted to a public charter school.

**§302D-D Rules.** Unless otherwise provided for in this chapter or chapter 302A, the commission may adopt rules pursuant to chapter 91 to administer and implement this chapter; provided that the board shall maintain exclusive rule-making authority over state educational policy.

**§302D-E Facilities funding.** (a) Beginning with fiscal year 2014-2015 and each fiscal year thereafter, the commission may request facilities funding for charter schools as part of its annual budget request to the director of finance.

(b) The legislature may make an appropriation based upon the facilities funding request pursuant to subsection (a).

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

(d) This section shall not limit the ability of the director of finance to modify or amend any allotment pursuant to chapter 37.

(e) The commission shall develop criteria to determine the distribution of funds appropriated pursuant to subsection (b) to the charter schools. The

criteria shall include but not be limited to distribution based on the need and performance of the charter schools.”

SECTION 2. Section 302A-101, Hawaii Revised Statutes, is amended by amending the definition of “public schools” to read as follows:

““Public schools” means all academic and noncollege type schools established and maintained by the department and charter schools ~~[chartered by the board of education, in accordance with law.]~~ governed by chapter 302D.”

SECTION 3. Section 302D-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definitions of “authorizer”, “charter school” or “public charter school”, and “organizational viability” to read:

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

“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]~~ charter contracts 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.

“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 contract 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.”

2. By deleting the definition of “executive director”.

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

SECTION 4. Section 302D-3, Hawaii Revised Statutes, is amended to read as follows:

~~“§302D-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 302D-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.]~~ Commission members shall disclose to the commission a list of all charter schools in which the member is an employee, governing board member, vendor, contractor, agent, or representative. Any member having such a relationship to a charter school that comes before the commission shall be disqualified from voting on or participating in the discussion on that charter school.

(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.

(l) The commission shall have the power to hire staff without regard to chapters 76 and 89."

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

"(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 the compliance of a public charter school it authorizes with all applicable state and federal laws, including reporting requirements;
- (3) Be responsible for the receipt of applicable federal funds from the department and the distribution of funds to the public charter school it authorizes; and
- (4) Be responsible for the receipt of per-pupil funding from the department of budget and finance and distribution of the funding to the public charter school it authorizes."

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

~~“[§302D-6] Principles and standards for charter authorizing.~~ All authorizers shall be required to ~~[develop and maintain chartering policies and practices consistent with]~~ follow 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.”

SECTION 7. Section 302D-12, Hawaii Revised Statutes, is amended to read as follows:

~~“[§302D-12] Charter school governing boards; powers and duties.~~ (a) No more than ~~[thirty per cent]~~ one-third of the voting 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 and charter schools 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]~~:

"Employees" shall include but not be limited to the chief executive officer, chief administrative officer, executive director, or otherwise designated head of a charter school[-] and shall include any person under an employment contract to serve as the chief executive officer, chief administrative officer, executive director, or designated head of a charter school.

"Relative" means a spouse, fiancé, or fiancée of the employee; any person who is related to the employee within four degrees of consanguinity; or the spouse, fiancé, or fiancée of such person.

(i) Whenever a charter school or governing board seeks to enter into a contract with a private organization, whether for-profit or nonprofit, to manage or operate the charter school, which contract requires the private organization to employ or otherwise provide the charter school with an individual to serve in the capacity of the chief executive officer, chief administrative officer, executive director, or designated head of the charter school, the charter school's governing board, in consultation with the state ethics commission, shall adopt standards of conduct that shall apply to the chief executive officer, chief administrative officer, executive director, or designated head of the charter school. The standards of conduct shall include provisions relating to gifts, fair treatment or misuse of position, and conflicts of interest, and shall be incorporated into and made part of any contract or arrangement between the charter school or governing board and the private organization for those services."

SECTION 8. Section 302D-13, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

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

- (1) The submission of a letter of intent to operate a start-up charter school;

- (2) The ~~[timely transmittal]~~ availability of the charter application form and completion guidelines ~~[to] on the [governing board;]~~ authorizer's website;
  - (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 and evaluation of the charter application~~;~~ by qualified persons;
  - (6) Following the ~~[submission]~~ review and evaluation of a charter application, ~~[issuance of a charter or]~~ approval 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 to approve or deny a charter application must be made~~;~~ by the authorizer, 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~~[-]~~ and fulfilling pre-opening requirements that may be imposed by the authorizer.
- (d) A charter application to become a start-up charter school shall meet the requirements of this subsection and section 302D-25. The charter application shall, at a minimum, 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~~;~~ as defined by the department;
  - (3) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist~~;~~ and complies with this chapter;
  - (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.”

SECTION 9. Section 302D-14, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§302D-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]~~ availability of the charter application form and completion guidelines ~~[to]~~ on the [governing board;] authorizer's website;
- (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, and 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]~~ extent of support received in support of the conversion shall be [a] key ~~[factor in an authorizer's decision]~~ factors, along with the applicant's proposed plans, to be considered by the authorizer when deciding whether to award a charter; and
  - (C) A breakdown of the number of administrative, support, and ~~[teacher]~~ teaching personnel, and parents of students who constitute the existing department school and the number [that] who 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 and evaluation of the charter application~~;~~ by qualified persons;
- (6) Following the ~~[submission]~~ review and evaluation of a charter application, ~~[issuance of a charter]~~ approval 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 of whether to approve or deny a charter application must be made by the authorizer, 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~~[-]~~ and fulfilling pre-opening requirements that may be imposed by the authorizer.
- (d) A charter application to become a conversion charter school shall meet the requirements of this subsection and section 302D-25. The charter application shall include, at a minimum, 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~~[s]~~, as defined by the department;
  - (3) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist~~[s]~~, and complies with this chapter;
  - (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 302D-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]~~ extent of support received in support of the conversion shall be a key factor, along with the applicant's proposed plans, in an authorizer's decision to award a charter; and
  - (C) A breakdown of the number of administrative, support, and ~~[teacher]~~ teaching personnel, and parents of students who constitute the existing department school and the number [that] who 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]~~ nothing in this section shall prohibit a nonprofit organization from making a 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 charter 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 302D-15.~~

~~(k)~~ (j) 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.”

SECTION 10. Section 302D-15, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§302D-15]] Appeals; charter applications, [reauthorizations,] renewals, or revocations.~~ (a) The board shall have the power to decide appeals of decisions by an authorizer to deny the approval of a charter application, deny ~~[reauthorization]~~ renewal of a charter ~~[school,]~~ contract, or revoke a charter school's charter~~[-]~~ contract. 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]~~ charter contract renewal has been denied, or whose charter contract 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.]~~**

**(b) The board shall serve as the final arbitrator of appeals authorized by subsection (a).**

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

**(d) The board shall adopt rules pursuant to chapter 91 to implement this section.**”

SECTION 11. Section 302D-16, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(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;]~~ Enrollment variance;
- (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.”

2. By amending subsection (d) to read:

“(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.]~~ as determined by the board.”

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

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

“(b) ~~[No later than September 1, the]~~ 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) ~~Submit any corrections or clarifications to the performance report;~~
- ~~[(1)]~~ (2) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;
- ~~[(2)]~~ (3) Describe improvements undertaken or planned for the school; and
- ~~[(3)]~~ (4) Detail the charter school’s plans for the next charter term.”

2. By amending subsection (e) to read:

“(e) No later than ~~[March 1,]~~ thirty days after the issuance of the performance report, 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.”

3. By amending subsections (h), (i), and (j) to read:

“(h) An authorizer shall develop revocation and non-renewal processes that:

- (1) Provide ~~the~~ charter contract holders with a timely notification of the prospect of revocation or non-renewal and the reasons for such possible closure;
- (2) Allow ~~the~~ charter contract holders a reasonable amount of time in which to prepare a response;
- (3) Provide ~~the~~ charter contract 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 contract 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 contract holders.

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

(j) Within fifteen days of taking action to renew, not to renew, or to revoke a charter~~;~~ contract, 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.”

SECTION 13. Section 302D-21, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§302D-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]~~ comparable subgroups 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.”

SECTION 14. Section 302D-31, Hawaii Revised Statutes, is amended to read as follows:

~~“[§302D-31] Sports.] Athletics.~~ The department shall provide students at charter schools, including students enrolled at charter schools whose curriculum incorporates virtual education, with the same opportunity to participate in athletics as is provided to students at other public schools. If a student at [a] any 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[.] or at the public school in the service area in which the student resides. All charter school students participating in athletics shall abide by all rules, regulations, and policies of the athletic league, association, and program applicable to the public school in whose athletic program the student is participating.”

SECTION 15. Section 378-2.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee’s conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual’s criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

- (1) The State or any of its branches, political subdivisions, or agencies pursuant to sections 78-2.7 and 831-3.1;
- (2) The department of education pursuant to section 302A-601.5;
- (3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services pursuant to section 321-171.5;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section 846-2.7(b)(5), ~~[(32);]~~ (33), (34), ~~[and] (35)[;]~~, and (36);
- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;
- (8) Private schools pursuant to sections 302C-1 and 378-3(8);
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under Title 49 United States Code section 44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to Title 49 United States Code section 44936(a);
- (13) The department of human services pursuant to sections 346-97 and 352-5.5;
- (14) The public library system pursuant to section 302A-601.5;
- (15) The department of public safety pursuant to section 353C-5;

- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 4211-12;
- (17) The board of directors of an association of owners under chapter 514A or 514B, or the manager of a condominium project pursuant to section 514A-82.1 or 514B-133; and
- (18) The department of health pursuant to section 321-15.2.”

SECTION 16. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health or the department’s designee on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health or the department’s designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health or the department’s designee on all applicants for licensure for, operators for, prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for individuals with intellectual disabilities, hospital, rural health center and rehabilitation agency, and, in the case of any of the above facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The county liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control investigations;
- (8) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (9) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (10) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (11) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;



- (12) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (14) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (16) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (17) The board of private detectives and guards on applicants for private detective or private guard licensure as provided by section 463-9;
- (18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
- (19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (20) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (21) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (22) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
- (23) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- (24) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under section 1915(c) of the Social Security Act, Title 42 United States Code section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;

- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
- (26) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (27) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- (28) The department of commerce and consumer affairs on:
- (A) Each principal of every non-corporate applicant for a money transmitter license; and
  - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,
- as provided by section 489D-9;
- (29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (30) The Hawaii health systems corporation on:
- (A) Employees;
  - (B) Applicants seeking employment;
  - (C) Current or prospective members of the corporation board or regional system board; or
  - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
- (31) The department of commerce and consumer affairs on:
- (A) An applicant for a mortgage loan originator license; and
  - (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license,
- as provided by chapter 454F;
- (32) The state public charter school commission or public charter schools on employees, teacher trainees, prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-B;
- ~~[(32)]~~ (33) The counties on prospective employees who work with vulnerable adults or senior citizens in community-based programs;
- ~~[(33)]~~ (34) The counties on prospective employees for fire department positions which involve contact with children or dependent adults;
- ~~[(34)]~~ (35) The counties on prospective employees for emergency medical services positions which involve contact with children or dependent adults;
- ~~[(35)]~~ (36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable and disabled citizens during emergencies or crises; and
- ~~[(36)]~~ (37) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

**ACT 159**

SECTION 17. Section 302D-22, Hawaii Revised Statutes, is repealed.

SECTION 18. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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

SECTION 20. This Act shall take effect upon its approval.

(Approved June 21, 2013.)

**Note**

1. Edited pursuant to HRS §23G-16.5.