

ACT 99

H.B. NO. 1745

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 two new sections to be appropriately designated and to read as follows:

“§302D-A Fees. (a) In administering its responsibilities, the commission may assess fees on non-state entities and individuals to help offset its operating costs.

(b) Fees collected by the commission shall be deposited into insured checking or savings accounts and shall be expended by the commission.

(c) The commission shall adopt rules pursuant to chapter 91 to implement this section; provided that, notwithstanding this section or any other law to the contrary, the commission may set the initial amount of fees authorized pursuant to this section at any time without regard to chapter 91, if the commission:

- (1) Holds at least one public hearing to take and discuss public testimony on the proposed fee amount; and
- (2) Provides public notice at least thirty days prior to the date of the public hearing.

§302D-B Approved charter applications; start-up period; pre-opening charter schools. (a) The authorizer may require a charter applicant whose charter application is approved by the authorizer pursuant to section 302D-13 or 302D-14 to satisfactorily meet pre-contracting criteria set by the authorizer before being allowed to enter into a charter contract.

(b) An approved charter applicant that fails to satisfactorily meet the pre-contracting criteria and enter into a charter contract with its authorizer within the period initially established or subsequently extended by the authorizer shall be considered to have withdrawn its application.

(c) A charter applicant shall not be considered an entity of the State until the pre-opening charter school is established by execution of the charter contract. A pre-opening charter school that is a conversion charter school shall be a separate entity of the State from the department school from which it is converting during the start-up period.

(d) The authorizer shall establish pre-opening criteria in order to ensure that a pre-opening charter school is prepared to successfully open and operate as a charter school. Until such time as the pre-opening school satisfactorily meets such pre-opening criteria and commences operations in its first full academic year, the pre-opening charter school:

- (1) Shall not be entitled to receive funding under section 302D-26, 302D-28, 302D-29, or 302D-29.5;
- (2) Shall employ no employees but may engage independent contractors;
- (3) Shall not be subject to the performance framework under section 302D-16; and
- (4) May be granted temporary exemptions from provisions of the charter contract by the authorizer.

(e) The charter contract of a pre-opening charter school that fails to satisfactorily meet its pre-opening criteria within the start-up period initially established or subsequently extended by the authorizer shall be void. The pre-opening charter school shall thereupon be considered an approved charter applicant that has withdrawn its application.

(f) An approved charter applicant that withdraws its application shall not be allowed to execute a charter contract unless it reapplies and has its charter application approved by an authorizer in accordance with this chapter."

SECTION 2. Section 89C-1.5, Hawaii Revised Statutes, is amended by amending the definition of "appropriate authority" to read as follows:

"Appropriate authority" means the governor, the respective mayors, the chief justice of the supreme court, the board of education, the board of regents, the state public charter school commission, the Hawaii health ~~[[systems]]~~ corporation board, the auditor, the ombudsman, and the director of the legislative reference bureau. These individuals or boards may make adjustments for their respective excluded employees."

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

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

"Department school" means any school that falls within the definition of "public schools" as defined in section 302A-101 and that is not a charter school.

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

"Pre-opening charter school" means a charter school that has not yet satisfactorily fulfilled the authorizer's pre-opening assurance as required under section 302D-B or has not yet commenced full operations as a charter school during its first full academic year."

2. By amending the definition of "charter contract" to read:

"Charter contract" or "charter" 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."

3. By amending the definition of “charter school” or “public charter school” to read:

““Charter school” or “public charter school” refers to those public schools and their respective governing boards, as defined in this section, that are holding current 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.”

4. By amending the definition of “conversion charter school” to read: ““Conversion charter school” means:

(1) Any existing department school that converts to a charter school and is managed and operated in accordance with section 302D-14; or

(2) Any existing department school that converts to a charter school and is managed and operated by a nonprofit organization in accordance with section 302D-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].”~~

5. By amending the definition of “nonprofit organization” to read:

““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~~] registered to do business in this State[.] in accordance with chapter 414D.”

6. By deleting the definition of “charter”.

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

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. The commission shall be exempt from sections 26-34 and 26-36.

(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) 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)~~ (j) The commission shall operate with dedicated resources and staff qualified to execute the day-to-day responsibilities of the commission pursuant to this chapter. Beginning with the 2015-2016 fiscal year, the legislature shall make an appropriation to the commission separate from, and in addition to, any appropriation made to charter schools pursuant to sections 302D-28 and 302D-29.5.

~~[(4)]~~ (k) The commission shall have the power to hire staff without regard to chapters 76 and 89. The commission shall determine staff wages, hours, benefits, and other terms and conditions for employment in accordance with chapter 89C."

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

"§302D-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 charter applicant and with existing public charter [school;] schools;
- (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 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.

(c) An authorizer shall have the power to make and execute contracts and all other instruments necessary or convenient for the exercise of its duties and functions under this chapter.

~~[(e)]~~ (d) An authorizer may delegate its duties to officers, employees, and contractors.

~~[(d)]~~ (e) 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)]~~ (f) 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. Members of the commission shall be afforded

the same protection afforded the members of the board pursuant to section 26-35.5.

~~[(f)]~~ (g) 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.”

SECTION 6. Section 302D-7, Hawaii Revised Statutes, is amended to read as follows:

~~[[§302D-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~~]; including a comparison of the performance of public charter school students with public school students statewide;~~
- ~~(3)~~ The 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)]~~ (4) The status of the authorizer’s public charter school portfolio, identifying all public charter schools and applicants in each of the following categories: approved (but not yet open), approved (but withdrawn), not approved, operating, renewed, transferred, revoked, not renewed, or voluntarily closed~~[- or never opened];~~
- ~~[(4)]~~ (5) 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)]~~ (6) The services purchased from the authorizer by the public charter schools under its purview;
- ~~[(6)]~~ (7) 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)]~~ (8) Any concerns regarding equity and recommendations to improve access to and distribution of federal funds to public charter schools.”

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

~~[[§302D-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. Authorizer members shall disclose to the authorizer a list of all charter schools in which the member has previously been an employee, governing board member, vendor, contractor, agent, or representative.”

SECTION 8. 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 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.]~~ No person may serve on the governing board of a charter school if the person is an employee or former employee of any charter school under the jurisdiction of that governing board, a relative of an employee or former employee of any charter school under the jurisdiction of that governing board, or any vendor or contractor providing goods or services to any charter school under the jurisdiction of that governing board, unless:

- (1) The person is a former employee of a charter school under the jurisdiction of that governing board and at least one year has passed since the conclusion of the former employee’s employment with that charter school;
- (2) The person is a relative of a former employee of a charter school under the jurisdiction of that governing board and at least one year has passed since the conclusion of the former employee’s employment with that charter school;
- (3) The person is a vendor or contractor and at least one year has passed since the conclusion of the vendor or contractor’s service to a charter school under the jurisdiction of that governing board; or
- (4) The person’s serving on the governing board shall not cause more than one-third of the voting members of the governing board to be made up of:
 - (A) Employees or former employees of any charter school that is under the jurisdiction of that governing board; provided that this subparagraph shall not include persons who are covered under paragraph (1);
 - (B) Relatives of employees or of former employees of any charter school that is under the jurisdiction of that governing board; provided that this subparagraph shall not include persons who are covered under paragraph (2); and
 - (C) Vendors or contractors who are providing goods or services to any charter school that is under the jurisdiction of that governing board; provided that this subparagraph shall not include persons who are covered under paragraph (3).

(b) In selecting governing board 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 nonprofit governance; and
- (3) Possess strong financial and academic management and oversight abilities, as well as human resource and fundraising experience.

~~[(b)]~~ (c) No employee or former employee of a charter school [or], relative of an employee or former employee of a charter school, or any vendor or contractor providing goods or services to a charter school may serve as the chair of the governing board of that charter school[;] unless at least one year has elapsed since the conclusion of the employee’s employment with the school or the conclusion of a vendor’s or contractor’s service to the 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.

(d) Section 78-4 shall not apply to members of governing boards; provided that no governing board member shall be allowed to serve on more than two governing boards simultaneously. For purposes of this subsection, a governing board that governs more than one charter school shall be considered one board.

~~[(e)]~~ (e) 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.

~~[(f)]~~ (f) 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.

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

- (1) Hold meetings open to the public;
- ~~[(1)]~~ (2) 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]~~ charter school'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)]~~ (3) 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]~~ charter school'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]~~.

~~[(h)]~~ (h) All charter school employees and members of governing boards shall be subject to chapter 84.

~~[(i)]~~ (i) Governing boards shall be exempt from sections 26-34 and 26-36. The State shall afford the governing board of any charter school the same protections as the State affords the board~~[-]~~ in accordance with section 26-35.5.

~~[(j)]~~ (j) For purposes of this section:

"Employees" shall include but not be limited to ~~[the]~~:

- (1) The chief executive officer, chief administrative officer, executive director, or otherwise designated head of a charter school [and shall include any]; and
- (2) 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, fiancée, or fiancée of the employee; any person who is related to the employee within four degrees of consanguinity; or the spouse, fiancée, or fiancée of such person.

~~[(f)]~~ (k) Governing boards shall have the power to make and execute contracts and all other instruments necessary or convenient for the exercise of their duties and functions under this chapter. 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 9. Section 302D-13, Hawaii Revised Statutes, is amended to read as follows:

“§302D-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, at a minimum, the following elements:

- (1) The submission of a letter of intent to operate a start-up charter school;
- (2) The availability of the charter application form and completion guidelines on the 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 review and evaluation of the charter application by qualified persons;
- (6) Following the review and evaluation of a charter application, approval or denial of the charter application by the authorizer;
- (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.

~~[(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 302D-15.~~

(f) (e) 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)]~~ (f) 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."

SECTION 10. 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 availability of the charter application form and completion guidelines on the 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 extent of support received in support of the conversion shall be key 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 teaching personnel, and parents of students who constitute the existing department school and the number 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 review and evaluation of the charter application by qualified persons;
- (6) Following the review and evaluation of a charter application, approval or denial of the charter application by the authorizer;
- (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, 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.
- (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 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 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 teaching personnel, and parents of students who constitute the existing department school and the number 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 nothing in this section shall prohibit a nonprofit organization from making a contribution toward the operation of a conversion charter school; 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)~~ (g) 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)~~ (h) In the event of a conflict between the provisions in this section and other provisions in this chapter, this section shall control.
- ~~(j)~~ (i) 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 11. Section 302D-16, Hawaii Revised Statutes, is amended as follows:

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

“(a) The performance provisions within the charter contract shall be based on a performance framework that clearly sets forth the academic, financial, organizational, 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) 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.

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

2. By amending subsections (d) through (f) to read:

“(d) The performance framework shall require the disaggregation of all student performance data by major student subgroups~~[- as determined by the board]~~.

(e) For each public charter school it oversees, the authorizer shall be responsible for [managing] verifying and either maintaining or having access to all charter school data [from assessments in accordance with] upon which the performance [framework-] framework relies.

(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.”

SECTION 12. Section 302D-17, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) Notwithstanding section 302D-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]~~:

- (1) Requiring a school to develop and execute a corrective action plan within a specified time frame~~[-]; and~~
- (2) Reconstituting the governing board of the charter school; provided that the following conditions are met:
 - (A) Reconstitution occurs only under exigent circumstances, including the following:
 - (i) Unlawful or unethical conduct by governing board members;
 - (ii) Unlawful or unethical conduct by the charter school’s personnel that raises serious doubts about the governing

board's ability to fulfill its statutory, contractual, or fiduciary responsibilities; and

(iii) Other circumstances that raise serious doubts about the governing board's ability to fulfill its statutory, contractual, or fiduciary responsibilities;

(B) The authorizer shall replace up to, but no more than, the number of governing board members necessary so that the newly appointed members constitute a voting majority in accordance with the governing board's bylaws; except that the authorizer may replace the entire governing board if the alternative is the initiation of revocation of the charter school's charter contract and the governing board opts instead for reconstitution; and

(C) Reconstitution occurs in accordance with processes set forth by the authorizer that provide the charter school's personnel and parents with timely notification of the prospect of reconstitution.

(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 authorizer shall have the authority to direct the governing board and the charter school 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 or mitigate significant liability to the State.

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.”

SECTION 13. Section 302D-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) 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]~~ is in its final contract 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.”

SECTION 14. 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 comparable subgroups of students in public schools governed by chapter 302A;
- ~~[(2)]~~ (1) 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)]~~ (2) A line-item breakdown of all federal funds received by the department and distributed to authorizers;
- ~~[(4)]~~ (3) Any concerns regarding equity and recommendations to improve access to and distribution of federal funds to public charter schools; and
- ~~[(5)]~~ (4) 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 15. Section 302D-24, Hawaii Revised Statutes, is amended to read as follows:

~~[[§302D-24]]~~ **Occupancy and use of facilities of [public] department schools.** (a) When the department considers whether to close any particular [public] department school, the department shall submit a notice of possible availability of a [public] department school or notice of vacancy of a [public] department school to the board pursuant to section 302A-1151.5(b); provided that the department has not elected to use the [public] department school to support education programs.

(b) If a charter school exclusively or jointly occupies or uses buildings or facilities of a [public] department 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] department school by:

- (1) Promptly notifying all charter schools that the [public] department 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] department 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]~~ department school facilities.
- (e) Upon the selection of a charter school to use a vacant department school facility or portion of a department 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]~~ department school facility or portion of a ~~[public]~~ department 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 department 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 department school facilities.
- ~~[(g) For purposes of this section, "public school" means any school that falls within the definition of public schools in section 302A-101, except for charter schools.]~~

SECTION 16. Section 302D-25, Hawaii Revised Statutes, is amended to read as follows:

~~[[§302D-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.

(f) Charter schools, the commission, and authorizers shall be exempt from section 302A-1401.

(g) For purposes of statutory delegation of authority to department heads by other state agencies, the executive director shall be deemed the department head of the commission and charter schools unless otherwise specifically provided."

SECTION 17. Section 302D-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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."

SECTION 18. Section 302D-28, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(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~~ department schools."

2. By amending subsection (d) to read:

“(d) Charter schools shall be eligible for all federal financial support to the same extent as ~~[all other public]~~ department 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]~~ department 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.”

3. By amending subsection (f) to read:

“(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 authorizers may make adjustments in allocations based on non-compliance with charter contracts and the board may make adjustments in allocations based on noncompliance with board policies made in the board’s capacity as the state education agency, department directives made in the department’s capacity as the state education agency, the board’s administrative procedures, and board-approved accountability requirements.”

SECTION 19. Section 302D-29.5, Hawaii Revised Statutes, is amended to read as follows:

“~~§302D-29.5~~ **Facilities funding.** (a) Beginning with fiscal year 2014-2015 and each fiscal year thereafter, the commission may request facilities fund-

ing for charter schools as part of its annual budget request to the director of finance[-] and may receive, expend, or allocate any funds provided by the facilities funding request.

(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]~~ department 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.

(f) Nothing in this section shall be construed as restricting the authority of the commission to support the facilities needs of the charter schools through other means."

SECTION 20. Section 302D-30, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall be responsible for the provision of a free appropriate public education. Any 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]~~ department schools."

SECTION 21. Section 302D-31, Hawaii Revised Statutes, is amended to read as follows:

"**§302D-31 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]~~ department schools. If a student at 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]~~ department 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]~~ department school in whose athletic program the student is participating."

SECTION 22. Section 302D-32, Hawaii Revised Statutes, is amended to read as follows:

“[§302D-32] Annual audit[-] or financial review. Each charter school shall annually complete an independent financial audit that complies with the requirements of its authorizer and the department[-]; provided that the authorizer shall have the discretion to allow a financial review in lieu of an independent financial audit.”

SECTION 23. Section 302D-34, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) A start-up charter school:

- (1) Shall be open to any student residing in the State[;] who is entitled to attend a department school;
- (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~~ department 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.”

SECTION 24. Section 302D-2, Hawaii Revised Statutes, is repealed.

SECTION 25. The state public charter school commission shall submit a report to the chairs of the senate committee on ways and means, senate committee on education, house committee on finance, and house committee on educa-

ACT 99

tion, on the commission's staffing and operational expenditures by the twentieth day after the commission submits its 2015-2016 budget request to the governor or December 1, 2014, whichever is earlier.

SECTION 26. 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 27. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 28. This Act shall take effect on July 1, 2014.
(Approved June 18, 2014.)

Note

1. Edited pursuant to HRS §23G-16.5.