

ACT 114

S.B. NO. 831

A Bill for an Act Relating to Education.

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

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

1. By adding a new definition to be appropriately inserted and to read:

““Applicant governing board” means the initial governing board that is:

 - (1) Established by an eligible group or entity to submit a charter application pursuant to section 302D-13; and
 - (2) Not subject to section 302D-12.”
2. 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;] 302D-13; 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;] 302D-13.”
3. By amending the definition of “start-up charter school” to read:

““Start-up charter school” means a new charter school established under section 302D-13[-] that is not a conversion charter school.”

SECTION 2. Section 302D-3, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Five members of the commission shall constitute a quorum to conduct business [and]. Any action taken by the commission shall be by a simple majority of the members of the commission who are present; provided that any action of the commission that may be appealed pursuant to section 302D-15 shall require a concurrence of at least five members [shall be necessary to make any action of the commission] to be valid.”

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

- “(b) An authorizer shall:
- (1) Act as [the] a point of contact between the department and a public charter school it authorizes;

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

“§302D-12 Charter school governing boards; powers and duties. (a) 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~~ person 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.

(c) No employee or former employee of a charter school, 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) A nonprofit organization that has been approved by an authorizer to operate and manage a conversion charter school and serve as the conversion charter school's governing board shall establish the nonprofit organization's board of directors as the governing board and shall not be selected pursuant to subsections (a), (b), and (c); provided that:

(1) The nonprofit organization may also appoint advisory groups of community representatives for each conversion charter school managed by the nonprofit organization; provided that these groups shall not have governing authority over the conversion charter school and shall serve only in an advisory capacity to the nonprofit organization;

(2) The board of directors of the nonprofit organization, as the governing board of the conversion charter school that it operates and manages, shall have the same protections that are afforded to all other governing boards in its role as the conversion charter school governing body;

(3) 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

(4) 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 as the charter contract holder, the conversion charter school's administrators, teachers, or community may submit a charter application to the authorizer, in accordance with section 302D-13 to continue as a conversion charter school without the participation of the nonprofit organization.

~~(d)~~ (e) 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)~~ (f) 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)]~~ (g) 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)]~~ (h) 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;
- (2) Make available the notices and agendas of public meetings:
 - (A) At a publicly accessible area in the charter school's office so as to be available for review during regular business hours; and
 - (B) On the charter school'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
- (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 charter school's office so as to be available for review during regular business hours; and
 - (B) On the charter school's internet website.

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

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

"Employees" shall include but not be limited to:

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

~~[(k)]~~ (l) 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 5. Section 302D-13, Hawaii Revised Statutes, is amended to read as follows:

“§302D-13 Start-up and conversion charter schools; establishment. (a) New start-up and conversion charter schools may be established pursuant to this section.

(b) Any community, 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 form a charter school^[5] and establish [a] an applicant governing board [as its governing body, and]. An applicant governing board may develop a charter application pursuant to [sub-section (d)-] this section; provided that:

- (1) An applicant governing board established by a community may develop a charter application for a start-up charter school;
- (2) An applicant governing board established by a department school or a school community council may develop a charter application for a conversion charter school;
- (3) An applicant governing board established by a group of teachers or a group of administrators may develop a charter application for a start-up or conversion charter school; and
- (4) A nonprofit organization may:
 - (A) Establish an applicant governing board that is separate from the nonprofit organization and develop a charter application for a start-up or conversion charter school; or
 - (B) Establish an applicant governing board that shall be the board of directors of the nonprofit organization and may develop a charter application for a conversion charter school; provided that any nonprofit organization that seeks to manage and operate a conversion charter school shall:
 - (i) Submit to the authorizer at the time of the charter application 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;
 - (ii) 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; and
 - (iii) Not interfere in the operations of the department school to be converted until otherwise authorized by the authorizer in consultation with the department.

(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 issuance and publication of a request for proposals by the authorizer on the authorizer’s internet website that, at a minimum:
 - (A) Solicits charter applications and presents the authorizer’s strategic vision for chartering;
 - (B) Includes or directs applicant governing boards to the performance framework developed by the authorizer in accordance with section 302D-16;

- (C) Includes criteria that will guide the authorizer's decision to approve or deny a charter application;
 - (D) States clear, appropriately detailed questions and provides guidelines concerning the format and content essential for applicant governing boards to demonstrate the capacities necessary to establish and operate a successful charter school; and
 - (E) Requires charter applications to provide or describe all essential elements, as determined by the authorizer, of proposed school plans;
- [(4)] (2) The submission of a letter of intent to open and operate a start-up charter school[;] or to convert a department school to a conversion 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 a charter application for a conversion charter school shall include certification and documentation that the charter application was approved by a majority of the votes cast by existing administrative, support, and teacher 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 applicant 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[;] including but not limited to:
- (A) An in-person interview with representatives from the applicant governing board; and
 - (B) An opportunity in a public forum for the public to provide input on each charter application;
- (6) Following the review and evaluation of a charter application, approval or denial of the charter application by the authorizer[;] in a meeting open to the public;
- (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[-], pursuant to section 302D-14.5.

(d) A charter application to become a start-up or conversion charter school shall meet the requirements of this subsection ~~[and]~~, section 302D-25~~[-]~~, and any other requirements set by the authorizer. 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;]~~ Include plans for a charter school that are likely to satisfactorily meet the academic, financial, organizational, and operational performance indicators, measures, and metrics set forth in the authorizer's performance framework, pursuant to section 302D-16;
- (2) ~~[A plan for identifying, recruiting, and retaining highly qualified instructional faculty as defined by the department;]~~ Include plans for a charter school that is in compliance with applicable laws; and
- (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) In reviewing a charter application under this section, an authorizer shall take into consideration the constitution of the ~~[applicant's]~~ applicant governing board, terms of applicant governing board members, and the process by which applicant governing board members were selected.

(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 prior to the opening year of the proposed charter school for purposes of meeting any deadlines to request funding from the legislature~~[-]~~; provided that nothing in this section shall be construed as requiring an authorizer to accept and review charter applications annually.

(g) If a conflict between the provisions in this section and other provisions in this chapter occurs, this section shall control."

SECTION 6. Section 302D-14.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) through (c) to read:

“(a) The authorizer may require ~~[a charter]~~ an applicant governing board 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 governing board 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]~~ An applicant governing board shall not be considered an entity of the State ~~[until the]~~, but shall have the authority to execute the initial charter contract; provided that the term of duration of the initial charter contract shall not exceed five years, not including the pre-opening period. Upon the execution of the initial charter contract, the applicant governing board shall become the governing board of the newly established 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.”

2. By amending subsection (f) to read:

“(f) An approved ~~[charter]~~ applicant governing board 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 7. Section 302D-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each authorizer shall annually publish and provide, as part of its annual report to the board and the legislature, a performance report for each public charter school it oversees, in accordance with the performance framework set forth in the charter contract and section 302D-16. The authorizer ~~[shall]~~ may require each public charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school. The annual report ~~[shall]~~ may include the status of the charter school’s compliance with annual performance targets, as determined by the charter contract.”

SECTION 8. 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]~~ the opening day 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) 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;
- (2) A line-item breakdown of all federal funds received by the department and distributed to authorizers;

- (3) Any concerns regarding equity and recommendations to improve access to and distribution of federal funds to public charter schools; and
- (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 9. Section 302D-26, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The department shall establish a process that permits employees of department public schools that become conversion charter schools pursuant to section ~~[302D-14]~~ 302D-13 to transfer to a department public school governed by chapter 302A.”

SECTION 10. Section 302D-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The ~~[commission]~~ authorizer shall ~~[develop procedures for obtaining]~~ require charter schools to obtain 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]~~, including 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]~~ charter school 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.”

SECTION 11. Section 302D-34, Hawaii Revised Statutes, is amended by amending subsection (b) 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; provided that a student who is currently enrolled in a charter school that has been notified of the prospect of revocation in accordance with section 302D-18, or is closing in accordance with section 302D-19, whichever occurs first, may be given first priority to enroll at another charter school to which the student applies, or placed at the top of the waitlist for enrollment;
 - (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 an enrollment preference through a weighted lottery to educationally disadvantaged students. For the purposes of this paragraph;

“Educationally disadvantaged students” means students who are economically disadvantaged, students with disabilities, migrant students, limited English proficient students, neglected or delinquent students, and homeless students.

“Weighted lottery” means any lottery that gives additional weight to individual students who are identified as part of a specified set of students but does not reserve or set aside seats for individual students or sets of students; and

~~(6)~~ (7) 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.”

SECTION 12. Section 302D-14, Hawaii Revised Statutes, is repealed.

SECTION 13. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

(Approved June 12, 2015.)

Note

1. Edited pursuant to HRS §23G-16.5.