

JAN 20 2017

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# A BILL FOR AN ACT

RELATING TO CHARTER SCHOOLS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

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

4           "§302D-     Commingling of moneys for charter school  
5 operation; prohibited. Federal or state moneys distributed to a  
6 nonprofit organization that operates a charter school and which  
7 are earmarked for operations shall not be commingled with any  
8 other moneys held by the nonprofit organization unless the other  
9 moneys have an educational purpose that benefit the charter  
10 school."

11           SECTION 2. Section 302D-1, Hawaii Revised Statutes, is  
12 amended by amending the definition of "nonprofit organization"  
13 to read as follows:

14           ""Nonprofit organization" means a private, nonprofit, tax-  
15 exempt entity that:

16           (1) Is recognized as a tax-exempt organization under  
17           section 501(c)(3) of the Internal Revenue Code; and



1           (2) Is registered to do business in this State in  
2           accordance with chapter 414D."

3           SECTION 3. Section 302D-12, Hawaii Revised Statutes, is  
4 amended to read as follows:

5           "**§302D-12 Charter school governing boards; powers and**  
6 **duties.** (a) No person may serve on the governing board of a  
7 charter school if the person is an employee or former employee  
8 of any charter school under the jurisdiction of that governing  
9 board, a relative of an employee or former employee of any  
10 charter school under the jurisdiction of that governing board,  
11 or any vendor or contractor providing goods or services to any  
12 charter school under the jurisdiction of that governing board,  
13 unless:

14           (1) The person is a former employee of a charter school  
15           under the jurisdiction of that governing board and at  
16           least one year has passed since the conclusion of the  
17           former employee's employment with that charter school;

18           (2) The person is a relative of a former employee of a  
19           charter school under the jurisdiction of that  
20           governing board and at least one year has passed since



1 the conclusion of the former employee's employment  
2 with that charter school;

3 (3) The person is a vendor or contractor and at least one  
4 year has passed since the conclusion of the vendor or  
5 contractor's service to a charter school under the  
6 jurisdiction of that governing board; or

7 (4) The person serving on the governing board shall not  
8 cause more than one-third of the voting members of the  
9 governing board to be made up of:

10 (A) Employees or former employees of any charter  
11 school that is under the jurisdiction of that  
12 governing board; provided that this subparagraph  
13 shall not include persons who are covered under  
14 paragraph (1);

15 (B) Relatives of employees or of former employees of  
16 any charter school that is under the jurisdiction  
17 of that governing board; provided that this  
18 subparagraph shall not include persons who are  
19 covered under paragraph (2); and

20 (C) Vendors or contractors who are providing goods or  
21 services to any charter school that is under the



1 jurisdiction of that governing board; provided  
2 that this subparagraph shall not include persons  
3 who are covered under paragraph (3).

4 (b) In selecting governing board members, consideration  
5 shall be given to persons who:

6 (1) Provide the governing board with a diversity of  
7 perspective and a level of objectivity that accurately  
8 represent the interests of the charter school students  
9 and the surrounding community;

10 (2) Demonstrate an understanding of best practices of  
11 nonprofit governance; and

12 (3) Possess strong financial and academic management and  
13 oversight abilities, as well as human resource and  
14 fundraising experience.

15 (c) No employee or former employee of a charter school,  
16 relative of an employee or former employee of a charter school,  
17 or any vendor or contractor providing goods or services to a  
18 charter school may serve as the chair of the governing board of  
19 that charter school unless at least one year has elapsed since  
20 the conclusion of the employee's employment with the school or  
21 the conclusion of a vendor's or contractor's service to the



1 school; provided that an authorizer may grant an exemption from  
2 the provisions of this subsection based upon a determination by  
3 the authorizer that an exemption is in the best interest of the  
4 charter school.

5 (d) A nonprofit organization that has been approved by an  
6 authorizer to operate and manage a conversion charter school and  
7 serve as the conversion charter school's governing board shall  
8 establish the nonprofit organization's board of directors as the  
9 governing board and shall not be selected pursuant to  
10 subsections (a), (b), and (c); provided that:

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

18 (2) The board of directors of the nonprofit organization,  
19 as the governing board of the conversion charter  
20 school that it operates and manages, shall have the  
21 same protections that are afforded to all other



1 governing boards in its role as the conversion charter  
2 school governing body;

3 (3) Any conversion charter school that is managed and  
4 operated by a nonprofit organization shall be eligible  
5 for the same federal and state funding as other public  
6 schools; provided that nothing in this section shall  
7 prohibit a nonprofit organization from making a  
8 contribution toward the operation of a conversion  
9 charter school; and

10 (4) If, at any time, the board of directors of the  
11 nonprofit organization governing the conversion  
12 charter school votes to discontinue its relationship  
13 with the charter school as the charter contract  
14 holder, the conversion charter school's  
15 administrators, teachers, or community may form a  
16 nonprofit organization and submit a charter  
17 application to the authorizer, in accordance with  
18 section 302D-13 to continue as a conversion charter  
19 school [~~without the participation of the nonprofit~~  
20 ~~organization~~].



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

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

18           (g) Governing boards and charter schools shall be exempt  
19 from chapter 103D, but shall develop internal policies and  
20 procedures for the procurement of goods, services, and  
21 construction, consistent with the goals of public accountability



1 and public procurement practices. Governing boards and charter  
2 schools are encouraged to use the provisions of chapter 103D  
3 wherever possible; provided that the use of one or more  
4 provisions of chapter 103D shall not constitute a waiver of the  
5 exemption from chapter 103D and shall not subject the charter  
6 school to any other provision of chapter 103D.

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

- 10 (1) Hold meetings open to the public;
- 11 (2) Post the notices and agendas of public meetings:
- 12 (A) At a publicly accessible area in the charter  
13 school's office so they are available for review  
14 during regular business hours; and
- 15 (B) On the charter school's internet website,  
16 not less than six calendar days prior to the public  
17 meeting, unless a waiver is granted by the authorizer  
18 or authorizer's designee in the case of an emergency;
- 19 (3) Keep written minutes of all public meetings that shall  
20 include:
- 21 (A) The date, time, and place of the meeting;





- 1 (B) The members of the governing board recorded as
- 2 either present or absent;
- 3 (C) The substance of all matters proposed, discussed,
- 4 and decided;
- 5 (D) The views of the participants;
- 6 (E) A record, by individual member, of any votes
- 7 taken; and
- 8 (F) Any other information that any member of the
- 9 governing board requests be included or reflected
- 10 in the minutes;
- 11 (4) Not be required to produce a full transcript or audio
- 12 or video recording of any public meeting, unless
- 13 otherwise required by law;
- 14 (5) Post the written minutes from public meetings:
- 15 (A) At a publicly accessible area in the charter
- 16 school's office so the minutes are available for
- 17 review during regular business hours; and
- 18 (B) On the charter school's internet website,
- 19 within sixty calendar days after the public meeting or
- 20 five calendar days after the next public meeting,
- 21 whichever is sooner; and



1 (6) Maintain a list of the current names and contact  
2 information of the governing board's members and  
3 officers:

4 (A) In the charter school's office so it is available  
5 for review during regular business hours; and

6 (B) On the charter school's internet website.

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

9 (j) Governing boards shall be exempt from sections 26-34 and  
10 26-36. The State shall afford the governing board of any  
11 charter school the same protections as the State affords the  
12 board in accordance with section 26-35.5.

13 (k) Every governing board shall be a nonprofit organization.  
14 The primary purpose of any nonprofit organization that operates  
15 a charter school shall be the operation of the charter school.

16 [~~(k)~~] (1) For purposes of this section:

17 "Employees" shall include but not be limited to:

18 (1) The chief executive officer, chief administrative  
19 officer, executive director, or otherwise designated  
20 head of a charter school; and



1           (2) Any person under an employment contract to serve as  
2           the chief executive officer, chief administrative  
3           officer, executive director, or designated head of a  
4           charter school.

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

9           ~~[(1)]~~ (m) Governing boards shall have the power to make  
10          and execute contracts and all other instruments necessary or  
11          convenient for the exercise of their duties and functions under  
12          this chapter."

13          SECTION 4. Section 302D-13, Hawaii Revised Statutes, is  
14          amended by amending subsection (b) to read as follows:

15          "(b) Any community, department school, school community  
16          council, group of teachers, group of teachers and  
17          administrators, or nonprofit organization may submit a letter of  
18          intent to an authorizer to form a charter school and establish  
19          an applicant governing board. An applicant governing board may  
20          develop a charter application pursuant to this section; provided  
21          that~~[-]~~ any applicant governing board that is not a nonprofit



1 organization shall form a nonprofit organization prior to  
2 developing a charter application; provided further that:

3 (1) An applicant governing board established by a  
4 community may develop a charter application for a  
5 start-up charter school;

6 (2) An applicant governing board established by a  
7 department school or a school community council may  
8 develop a charter application for a conversion charter  
9 school;

10 (3) An applicant governing board established by a group of  
11 teachers or a group of administrators may develop a  
12 charter application for a start-up or conversion  
13 charter school; [and]

14 (4) A nonprofit organization may:

15 (A) Establish an applicant governing board that is  
16 separate from the nonprofit organization and  
17 develop a charter application for a start-up or  
18 conversion charter school; or

19 (B) Establish an applicant governing board that shall  
20 be the board of directors of the nonprofit  
21 organization and may develop a charter



1 application for a conversion charter school;  
2 provided that any nonprofit organization that  
3 seeks to manage and operate a conversion charter  
4 school shall:

5 (i) Submit to the authorizer at the time of the  
6 charter application bylaws or policies that  
7 describe the manner in which business is  
8 conducted and policies that relate to the  
9 management of potential conflict of interest  
10 situations;

11 (ii) Have experience in the management and  
12 operation of public or private schools or,  
13 to the extent necessary, agree to obtain  
14 appropriate services from another entity or  
15 entities possessing such experience;

16 (iii) Not interfere in the operations of the  
17 department school to be converted until  
18 otherwise authorized by the authorizer in  
19 consultation with the department; and

20 (iv) Have the same protections that are afforded  
21 to all other governing boards in its role as



1                   the conversion charter school governing  
2                   board[-]; and

3       (5) An applicant governing board who has submitted an  
4           application for tax-exempt status under section  
5           501(c)(3) of the Internal Revenue Code but whose  
6           application has not yet been approved shall submit a  
7           copy of the application for tax-exempt status with the  
8           applicant governing board's charter application."

9       SECTION 5. Section 302D-18, Hawaii Revised Statutes, is  
10      amended to read as follows:

11       "**§302D-18 Renewals, revocations, and nonrenewals.** (a) A  
12      charter contract may be renewed for successive five-year terms  
13      of duration, although an authorizer may vary the terms based on  
14      performance, demonstrated capacities, and particular  
15      circumstances of each charter school. An authorizer may grant a  
16      renewal of a charter contract with specific conditions for  
17      necessary improvements to a charter school.

18       (b) The authorizer shall issue a charter school  
19      performance report and charter contract renewal application  
20      guidance to any charter school whose charter contract is in its  
21      final contract year. The performance report shall summarize the



1 charter school's performance record to date, based on the data  
2 required by this chapter and the charter contract, and shall  
3 provide notice of any weaknesses or concerns perceived by the  
4 authorizer concerning the charter school that may jeopardize its  
5 position in seeking renewal.

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

8 (1) Submit any corrections or clarifications to the  
9 performance report;

10 (2) Present additional evidence, beyond the data contained  
11 in the performance report, supporting its case for  
12 charter renewal;

13 (3) Describe improvements undertaken or planned for the  
14 school; and

15 (4) Detail the charter school's plans for the next charter  
16 term.

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



1 (e) No later than thirty days after the issuance of the  
2 performance report, the governing board of a charter school  
3 seeking renewal shall submit a renewal application to the  
4 authorizer pursuant to the renewal guidance issued by the  
5 authorizer. The authorizer shall decide whether or not to renew  
6 the charter no later than forty-five days after the filing of  
7 the renewal application.

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

10 (1) Ground its decisions in evidence of the school's  
11 performance over the term of the charter contract in  
12 accordance with the performance framework set forth in  
13 the charter contract;

14 (2) Ensure that data used in making the renewal decisions  
15 are available to the charter school and the public;  
16 and

17 (3) Provide a public report summarizing the evidence and  
18 basis for each decision.

19 (g) A charter contract shall not be renewed if the  
20 governing board of the charter school seeking renewal is not a  
21 nonprofit organization; provided that a charter contract may be





1 renewed if the governing board of the charter school seeking  
2 renewal has submitted an application for tax exempt status under  
3 section 501(c)(3) of the Internal Revenue Code and the governing  
4 board submits a copy of the application with the contract  
5 renewal application.

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

- 10 (1) Committed a material and substantial violation of any  
11 of the terms, conditions, standards, or procedures  
12 required under this chapter or the charter contract;
- 13 (2) Failed to meet or make sufficient progress toward  
14 performance expectations set forth in the contract;
- 15 (3) Failed to meet generally accepted standards of fiscal  
16 management; or
- 17 (4) Substantially violated any material provision of law  
18 from which the charter school is not exempted.

19 ~~(h)~~ (i) An authorizer shall develop revocation and  
20 nonrenewal processes that:



- 1           (1) Provide charter contract holders with a timely
- 2           notification of the prospect of revocation or non-
- 3           renewal and the reasons for such possible closure;
- 4           (2) Allow charter contract holders a reasonable amount of
- 5           time in which to prepare a response;
- 6           (3) Provide charter contract holders with an opportunity
- 7           to submit documents and give testimony challenging the
- 8           rationale for closure and supporting the continuation
- 9           of the school at an orderly proceeding held for that
- 10          purpose; provided that the proceeding shall be
- 11          governed by the requirements set forth in this section
- 12          and shall not be additionally subject to the
- 13          requirements for an agency hearing under chapter 91;
- 14          (4) Allow charter contract holders access to
- 15          representation by counsel, subject to section 28-8.3,
- 16          and to call witnesses on their behalf;
- 17          (5) Permit the recording of proceedings described in
- 18          paragraph (3); and
- 19          (6) After a reasonable period for deliberation, require a
- 20          final determination to be made and conveyed in writing
- 21          to the charter contract holders.



1           ~~[(i)]~~ (j) If an authorizer revokes or does not renew a  
2 charter contract, the authorizer shall clearly state in writing  
3 the reasons for the revocation or nonrenewal.

4           ~~[(j)]~~ (k) Within fifteen days of taking action to renew,  
5 not to renew, or to revoke a charter contract, the authorizer  
6 shall report to the board the action taken, and shall  
7 simultaneously provide a copy of the report to the charter  
8 school. The report shall set forth the action taken and reasons  
9 for the decision and assurances as to compliance with all the  
10 requirements set forth in this chapter."

11           SECTION 6. Section 302D-25, Hawaii Revised Statutes, is  
12 amended to read as follows:

13           "**§302D-25 Applicability of state laws~~[-]~~; indemnification.**

14           (a) Charter schools shall be exempt from chapters 91 and 92 and  
15 all other state laws in conflict with this chapter, except those  
16 regarding:

17           (1) Collective bargaining under chapter 89; provided that:

18                   (A) The exclusive representatives as defined in  
19                               chapter 89 and the governing board of the charter  
20                               school may enter into supplemental agreements



1                   that contain cost and noncost items to facilitate  
2                   decentralized decision-making;

3                   (B) The agreements shall be funded from the current  
4                   allocation or other sources of revenue received  
5                   by the charter school; provided that collective  
6                   bargaining increases for employees shall be  
7                   allocated by the department of budget and finance  
8                   to the charter school's authorizer for  
9                   distribution to the charter school; and

10                  (C) These supplemental agreements may differ from the  
11                  master contracts negotiated with the department;

12                  (2) Discriminatory practices under section 378-2; and

13                  (3) Health and safety requirements.

14                  (b) Charter schools, the commission, and authorizers shall  
15                  be exempt from chapter 103D, but shall develop internal policies  
16                  and procedures for the procurement of goods, services, and  
17                  construction, consistent with the goals of public accountability  
18                  and public procurement practices. Charter schools, the  
19                  commission, and authorizers are encouraged to use the provisions  
20                  of chapter 103D where possible; provided that the use of one or  
21                  more provisions of chapter 103D shall not constitute a waiver of



1 the exemption from chapter 103D and shall not subject the  
2 charter school, commission, or authorizer to any other provision  
3 of chapter 103D. Charter schools, the commission, and  
4 authorizers shall account for funds expended for the procurement  
5 of goods and services, and this accounting shall be available to  
6 the public.

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

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

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

18 (f) A charter school, including its governing board, shall  
19 indemnify and hold harmless the State, its officers, agents, and  
20 employees from and against any and all claims arising from any



1 misconduct by the school or governing board, or any employee or  
2 agent of the school or governing board.

3 ~~[(f)]~~ (g) Charter schools, the commission, and authorizers  
4 shall be exempt from section 302A-1401.

5 ~~[(g)]~~ (h) For purposes of statutory delegation of  
6 authority to department heads by other state agencies, the  
7 executive director shall be deemed the department head of the  
8 commission and charter schools unless otherwise specifically  
9 provided."

10 SECTION 7. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 8. This Act shall take effect upon its approval.  
13

INTRODUCED BY: Michelle N. Sudani

*Paul E. P.D.*  
Clarence ~~Michien~~  
*Bill Rivers*

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# S.B. NO. 198

**Report Title:**

Charter Schools; Governing Boards; 501(c)(3) Nonprofit Organizations; Contracts

**Description:**

Requires that every charter school governing board be a nonprofit organization whose primary purpose is operating the charter school. Prohibits commingling of moneys distributed by the State or federal government for the purpose of operating a charter school with other moneys that do not have an educational purpose that benefits the charter school. Requires charter schools to indemnify the State against any claims arising from misconduct of the school or governing board.

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