

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1438

S.P. 522

In Senate, April 7, 2009

An Act To Permit Charter Schools in Maine

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator DAMON of Hancock.
Cosponsored by Representative PIOTTI of Unity and
Senators: ALFOND of Cumberland, MILLS of Somerset, Representatives: CASAVANT of
Biddeford, CHASE of Wells, KNIGHT of Livermore Falls, RICHARDSON of Carmel.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 20-A MRSA §1, sub-§26, ¶F**, as enacted by PL 2007, c. 668, §1, is
3 amended to read:

4 F. A municipal or quasi-municipal district responsible for operating public schools
5 that has not reorganized as a regional school unit pursuant to chapter 103-A; ~~and~~

6 **Sec. 2. 20-A MRSA §1, sub-§26, ¶G**, as enacted by PL 2007, c. 668, §1, is
7 amended to read:

8 G. A municipal school unit, school administrative district, community school district
9 or any other quasi-municipal district responsible for operating public schools that
10 forms a part of an alternative organizational structure approved by the commissioner;
11 and

12 **Sec. 3. 20-A MRSA §1, sub-§26, ¶H** is enacted to read:

13 H. A charter school under chapter 112.

14 **Sec. 4. 20-A MRSA §202, sub-§16**, as enacted by PL 1981, c. 693, §§5 and 8, is
15 amended to read:

16 **16. Other entities.** Other entities authorized by the Legislature; ~~and~~

17 **Sec. 5. 20-A MRSA §202, sub-§17**, as enacted by PL 1981, c. 693, §§5 and 8, is
18 amended to read:

19 **17. Other bureaus.** Any other bureau the commissioner establishes; and

20 **Sec. 6. 20-A MRSA §202, sub-§18** is enacted to read:

21 **18. Charter schools.** Charter schools.

22 **Sec. 7. 20-A MRSA c. 112** is enacted to read:

23 **CHAPTER 112**

24 **CHARTER SCHOOLS**

25 **§2401. Definitions**

26 As used in this chapter, unless the context otherwise indicates, the following terms
27 have the following meanings.

28 **1. Applicant.** "Applicant" means a person or group that develops and submits an
29 application for a public charter school to an authorizer.

30 **2. Application.** "Application" means a proposal from an applicant to an authorizer
31 to enter into a charter contract whereby the proposed school obtains public charter school
32 status.

1 **3. At-risk pupil.** "At-risk pupil" means a pupil who has an economic or academic
2 disadvantage that requires special services and assistance to enable the student to succeed
3 in educational programs. "At-risk pupil" includes, but is not limited to, pupils who are
4 members of economically disadvantaged families, pupils who are identified as having
5 special educational needs, pupils who are limited in English proficiency, pupils who are
6 at risk of dropping out of high school and pupils who do not meet minimum standards of
7 academic proficiency.

8 **4. Authorizer.** "Authorizer" means an entity empowered under this chapter to
9 review applications, decide whether to approve or reject applications, enter into charter
10 contracts with applicants, oversee and monitor public charter schools and decide whether
11 to renew, not renew or revoke charter contracts.

12 **5. Charter contract.** "Charter contract" means a performance-based contract for a
13 fixed term between a public charter school and an authorizer that describes performance
14 expectations, defines operational responsibilities and outlines the autonomy and
15 accountability for each party to the contract.

16 **6. Conversion public charter school.** "Conversion public charter school" means a
17 public charter school that existed as a noncharter public school before becoming a public
18 charter school.

19 **7. Governing board.** "Governing board" means the independent board of a public
20 charter school that is party to the charter contract with the authorizer and whose members
21 have been elected or selected pursuant to the school's application.

22 **8. Local school board.** "Local school board" means a school board exercising
23 management and control of a local school district pursuant to the Constitution of Maine
24 and the laws of the State.

25 **9. Local school district.** "Local school district" means a system of public schools
26 established and maintained by a local school board within its limits pursuant to the
27 Constitution of Maine and the laws of the State.

28 **10. Noncharter public school.** "Noncharter public school" means a public school
29 that is under the direct management, governance and control of a local school board.

30 **11. Nonprofit education service provider.** "Nonprofit education service provider"
31 means an education management organization, charter management organization, school
32 design provider or any other partner entity with whom a public charter school intends to
33 contract for educational design, implementation or comprehensive management.

34 **12. Parent.** "Parent" means a parent, guardian or other person or entity having legal
35 custody of a child.

36 **13. Public charter school.** "Public charter school" means a public school that:

37 A. Has autonomy over key decisions, including, but not limited to, decisions
38 concerning finance, personnel, scheduling, curriculum and instruction;

39 B. Is governed by an independent board;

1 C. Is established and operated under the terms of a charter contract between the
2 governing board and its authorizer in accordance with this chapter;

3 D. Is a school to which parents choose to send their children;

4 E. Provides a program of education that includes one or more of the following:
5 preschool, prekindergarten, any grade or grades from kindergarten to grade 12 and
6 career and technical education programs;

7 F. Operates in pursuit of a specific set of educational objectives as defined in its
8 charter contract; and

9 G. Operates under the oversight of the authorizer from which its charter contract is
10 granted and in accordance with its charter contract.

11 14. Pupil. "Pupil" means any child who is eligible for attendance in public schools
12 in the State.

13 15. Start-up public charter school. "Start-up public charter school" means a public
14 charter school that did not exist as a noncharter public school prior to becoming a public
15 charter school.

16 16. Virtual public charter school. "Virtual public charter school" means a public
17 charter school that offers educational services predominantly through an online program.

18 **§2402. Charter schools authorized**

19 Charter schools may be established as public schools pursuant to this chapter to
20 improve pupil learning by creating more high-quality schools with high standards for
21 pupil performance; to close achievement gaps between high-performing and low-
22 performing groups of public school students; to increase high-quality educational
23 opportunities within the public education system; to create new professional opportunities
24 for teachers and other school personnel; to encourage the use of different, high-quality
25 models of teaching and other aspects of schooling; and to provide students, parents,
26 community members and local entities with expanded opportunities for involvement in
27 the public education system.

28 **§2403. Pilot program**

29 1. Ten-year pilot phase. The charter school program set out in this chapter must
30 begin with a 10-year pilot phase, beginning on the effective date of this section. During
31 the pilot phase, the commissioner shall register the charters approved by all authorizers in
32 chronological order by date of approval under this chapter.

33 2. Limited number of public charter schools. During the pilot phase, only 20
34 public charter schools may be approved by authorizers other than local school boards.
35 Once the cap is reached, the commissioner may not accept further registrations from
36 authorizers other than local school boards and only local school boards may approve
37 charters until the end of the pilot phase.

38 3. Repeal. This section is repealed June 1, 2019.

1 **§2404. Role of the department; commissioner**

2 **1. Information and technical assistance.** The department shall support the charter
3 school pilot program established in section 2403 and disseminate information to the
4 public directly and through authorizers on how to form and operate a public charter
5 school and on how to enroll in public charter schools once they are created. The
6 department may provide assistance and guidance to authorizers in developing effective
7 authorization and oversight procedures.

8 **2. Applications for federal funds.** The department may apply for assistance from
9 the federal charter school grant program on behalf of potential and actual public charter
10 schools in the State. If the department does not apply for assistance from the federal
11 charter school grant program within one year of the effective date of this chapter, a public
12 charter school may apply on its own behalf.

13 **3. Use of federal funds.** If the department receives a grant from the federal charter
14 school grant program on behalf of potential and actual charter schools, 95% of the grant
15 must be used for planning and start-up grants to public charter school organizers who
16 have met the applicable federal guidelines. The department may use up to 5% of the
17 grant for such activities as:

- 18 A. Establishing a charter school office in the department;
19 B. Providing information and technical assistance to potential and actual public
20 charter school organizers and authorizers; and
21 C. Allocating funds to support the work of potential and actual authorizers.

22 **4. Four-year and 8-year reports.** After 4 years during which public charter schools
23 have operated, the commissioner shall issue to the Governor, the Legislature and the
24 public a report on the State's charter school program, drawing from the annual reports
25 submitted by every authorizer pursuant to section 2409, subsection 4 as well as any
26 additional relevant data compiled by the commissioner, for the school years ending in the
27 preceding calendar year. The report must include an assessment of the charter school
28 program's successes, challenges and areas for improvement in meeting the purposes of
29 this chapter and any suggested changes in state law or policy necessary to strengthen the
30 program. The commissioner shall issue a similar report after 8 years of operation of
31 public charter schools.

32 **§2405. Charter school eligibility; enrollment**

33 **1. Eligibility.** Any student residing in the State is eligible to apply to a public
34 charter school.

35 **2. Enrollment.** A public charter school shall enroll students in accordance with this
36 subsection.

- 37 A. A public charter school shall enroll all students who wish to attend the school,
38 unless the number of students exceeds the enrollment capacity of a program, class,
39 grade level or building. The enrollment capacity of a public charter school must be

1 determined annually by the governing board of the public charter school in
2 conjunction with the authorizer.

3 B. A public charter school may not enroll more than 10% of a school administrative
4 unit's public school students per grade level, unless a local school board acting as the
5 authorizer approves a different percentage for students residing in the school
6 administrative unit. This paragraph does not apply to conversions of existing public
7 schools and public school programs.

8 C. If capacity is insufficient to enroll all students who wish to attend the school, the
9 public charter school shall select students through a random selection process. A new
10 process must be conducted each year to fill vacancies that become available, and any
11 list maintained to fill potential vacancies may not be carried over to the succeeding
12 year.

13 D. A public charter school may limit enrollment to pupils within a given age group
14 or grade level and may be organized around a special emphasis, theme or concept as
15 stated in the school's application for a charter contract pursuant to section 2411.

16 E. Any noncharter public school converting partially or entirely to a public charter
17 school shall adopt and maintain a policy that gives enrollment preference to pupils
18 who reside within the former attendance area of that public school.

19 F. A public charter school shall give enrollment preference to pupils enrolled in the
20 public charter school the previous school year and to siblings of pupils already
21 enrolled in the public charter school.

22 G. A public charter school may give enrollment preference to children of a public
23 charter school's founders, governing board members and full-time employees, as long
24 as they constitute no more than 10% of the school's total student population.

25 H. A public charter school may enroll students from outside the State if space is
26 available.

27 I. An authorizer may not restrict the number of pupils a public charter school may
28 enroll, except that a public charter school and its authorizer may negotiate and agree
29 to limitations on the number of students the public charter school may enroll as
30 necessary to:

31 (1) Facilitate the academic success of students enrolled in the public charter
32 school;

33 (2) Facilitate the public charter school's ability to achieve the other objectives
34 specified in the charter contract; or

35 (3) Ensure that the public charter school's student enrollment does not exceed the
36 capacity of the public charter school facility or site.

37 **3. Discrimination prohibited.** A public charter school may not discriminate on the
38 basis of race, ethnicity, national origin, religion, gender, income level, disabling
39 condition, proficiency in the English language or academic or athletic ability, except that
40 nothing in this subsection may be construed to limit the formation of a public charter
41 school that is dedicated to focusing educational services to at-risk pupils, students with

1 disabilities and students who pose such severe disciplinary problems that they warrant a
2 specific educational program.

3 **§2406. Transfer of credits**

4 If a student who was previously enrolled in a public charter school enrolls in another
5 public school in this State, the school to which the student transferred must accept credits
6 earned by the student in courses or instructional programs at the public charter school in a
7 uniform and consistent manner and according to the same criteria that are used to accept
8 academic credits from other public schools.

9 **§2407. Prohibition**

10 A local school district may not require a student enrolled in the local school district to
11 attend a public charter school.

12 **§2408. Public information**

13 A local school district shall provide or publicize to parents and the general public
14 information about public charter schools authorized by the district as an enrollment
15 option within the district to the same extent and through the same means that the district
16 provides and publicizes information about noncharter public schools in the district.

17 **§2409. Authorizers**

18 **1. Eligible authorizers.** The organizers of a proposed public charter school may
19 apply to and the proposed public charter school may be granted a charter contract by:

20 A. A local school board within the boundaries of a school administrative unit;

21 B. A collaborative among local school boards and other eligible authorizing entities
22 that form to set up a public charter school for their region; or

23 C. A college or university located in the State that offers a baccalaureate degree in
24 education.

25 **2. Powers and duties.** An authorizer may:

26 A. Solicit, invite and evaluate applications from organizers of proposed public
27 charter schools;

28 B. Approve applications that meet identified educational needs;

29 C. Deny applications that do not meet identified educational needs;

30 D. Create a framework to guide the development of charter contracts;

31 E. Negotiate and execute sound charter contracts with each approved public charter
32 school;

33 F. Monitor the performance and compliance of public charter schools; and

34 G. Determine whether each charter contract merits renewal or revocation.

35 Regulation by authorizers is limited to the duties set forth in this subsection.

1 **3. Principles and professional standards.** An authorizer shall develop and
2 maintain policies and practices consistent with nationally recognized principles and
3 professional standards for authorizing public charter schools including standards relating
4 to:

5 A. Organizational capacity and infrastructure;

6 B. Soliciting and evaluating applications;

7 C. Performance contracting;

8 D. Ongoing public charter school oversight and evaluation; and

9 E. Charter renewal decision making.

10 **4. Reporting and evaluation.** An authorizer shall submit to the commissioner an
11 annual report summarizing:

12 A. The authorizer's strategic vision for chartering and progress toward achieving that
13 vision;

14 B. The performance of all operating public charter schools overseen by the
15 authorizer, according to the performance measures and expectations specified in its
16 charter contracts;

17 C. The status of the authorizer's public charter school portfolio, identifying all public
18 charter schools within that portfolio as:

19 (1) Approved, but not yet open;

20 (2) Operating;

21 (3) Renewed;

22 (4) Transferred;

23 (5) Terminated;

24 (6) Closed; or

25 (7) Never opened.

26 D. The oversight and services provided by the authorizer to the public charter
27 schools under its purview.

28 **5. Funding.** To cover costs for overseeing public charter schools in accordance with
29 this chapter, an authorizer may:

30 A. Expend its own resources, seek grant funds and establish partnerships to support
31 its charter school office and activities; and

32 B. Charge up to 3% of annual per-pupil allocations received by each public charter
33 school it authorizes. These funds must be used to cover the costs for an authorizer to
34 provide oversight services to its public charter schools.

35 **6. Conflicts of interest.** An employee, trustee, agent or representative of an
36 authorizer may not simultaneously serve as an employee, trustee, agent, representative,
37 vendor or contractor of a public charter school of that authorizer.

1 7. Exclusivity of authorizing functions and rights. A governmental entity or other
2 entity, other than an entity expressly granted chartering authority as set forth in this
3 chapter, may not assume any authorizing function or duty in any form, unless expressly
4 allowed by law.

5 8. Services purchased from authorizer. With the exception of oversight services
6 as required by subsection 5, a public charter school may not be required to purchase
7 services from its authorizer as a condition of charter approval or of executing a charter
8 contract, nor may any such condition be implied.

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

15 B. Within 90 days after the end of each fiscal year, an authorizer shall provide to
16 each public charter school it oversees an itemized accounting of all the actual costs of
17 services purchased by the public charter school from the authorizer.

18 C. Any difference between the amount initially charged to the public charter school
19 and the actual cost must be reconciled and paid to the owed party. If either party
20 disputes the itemized accounting, any charges included in such accounting or charges
21 to either party, the disputing party is entitled to request a 3rd-party review at its own
22 expense.

23 **§2410. Request for proposals**

24 1. Issuance. To invite, solicit, encourage and guide the development of high-quality
25 public charter school applications, an authorizer shall issue and broadly publicize a
26 request for proposals by May 1st or October 1st of each year, but an authorizer may not
27 approve an application for a public charter school to open in less than 6 months from the
28 date of application. The content and dissemination of the request for proposals must be
29 consistent with the purposes and requirements of this chapter.

30 2. Content. An authorizer's requests for proposals must contain information
31 outlined in this subsection.

32 A. A request for proposals must present the authorizer's strategic vision for and
33 interests in chartering, including a clear statement of any preferences or priority the
34 authorizer wishes to grant to particular types of applications to meet community
35 needs. An authorizer's preferences or priorities may include but are not limited to
36 proposals to serve primarily at-risk pupils or particular categories of at-risk pupils or
37 geographic priorities.

38 B. A request for proposals must include or otherwise direct applicants to the
39 performance framework that the authorizer has developed for charter school
40 oversight and evaluation in accordance with section 2413.

1 C. A request for proposals must include the criteria and standards that will guide the
2 authorizer's decision to approve or deny an application.

3 D. A request for proposals must state clear, appropriately detailed questions as well
4 as guidelines concerning the format and content essential for applicants to
5 demonstrate the capacities necessary to establish and operate a successful public
6 charter school.

7 E. A request for proposals must require applications to provide or describe
8 thoroughly, at a minimum, all of the following essential elements of the proposed
9 public charter school plan:

10 (1) The proposed public charter school's vision, including:

11 (a) An executive summary;

12 (b) The mission and vision of the proposed public charter school, including
13 identification of the targeted student population and the community the
14 school hopes to serve; and

15 (c) Evidence of need and community support for the proposed public charter
16 school;

17 (2) The proposed public charter school's governance plan, including:

18 (a) Background information on proposed board members and any assurances
19 or certifications required by the authorizer;

20 (b) Proposed governing bylaws;

21 (c) An organization chart that clearly presents the school's organizational
22 structure, including lines of authority and reporting between the governing
23 board, staff and any related bodies such as advisory bodies or parent and
24 teacher councils, and any external organizations that will play a role in
25 managing the school;

26 (d) A clear description of the roles and responsibilities for the governing
27 board, the school's leadership and management team and any other entities
28 shown on the organization chart;

29 (e) Identification of the proposed founding governing board members and, if
30 identified, the proposed school leader or leaders; and

31 (f) Background information on the school's leadership and management team,
32 if identified;

33 (3) The proposed public charter school's plan of organization, including:

34 (a) The location or geographic area of the school;

35 (b) The grades to be served each year for the full term of the charter;

36 (c) Minimum, planned and maximum enrollment per grade per year for the
37 term of the charter;

38 (d) The school's proposed calendar and sample daily schedule;

- 1 (e) Plans and timelines for student recruitment and enrollment, including
2 lottery procedures;
- 3 (f) Explanations of any partnerships or contractual relationships central to
4 the school's operations or mission;
- 5 (g) The school's proposals for providing transportation, food service and
6 other significant operational or ancillary services;
- 7 (h) A facilities plan, including backup or contingency plans if appropriate;
- 8 (i) A detailed school start-up plan, identifying tasks, timelines and
9 responsible individuals; and
- 10 (j) A closure protocol, outlining orderly plans and timelines for transitioning
11 students and student records to new schools and for appropriately disposing
12 of school funds, property and assets in the event of school closure;
- 13 (4) The proposed public charter finances, including:
- 14 (a) A description of the school's financial plan and policies, including
15 financial controls and audit requirements;
- 16 (b) Start-up and 3-year budgets with clearly stated assumptions;
- 17 (c) Start-up and first-year cash-flow projections with clearly stated
18 assumptions;
- 19 (d) Evidence of anticipated fund-raising contributions, if claimed in the
20 application; and
- 21 (e) A description of the insurance coverage the school proposes to obtain;
22 and
- 23 (5) The proposed public charter school's student policy, including:
- 24 (a) The school's plans for identifying and successfully serving students with
25 disabilities as well as at-risk pupils, English as a Second Language students
26 and gifted students, including but not limited to plans for compliance with
27 applicable laws, rules and regulations; and
- 28 (b) The proposed school's student discipline plans and policies, including
29 those for special education students;
- 30 (6) The proposed public charter school's academic program, including:
- 31 (a) A description of the academic program aligned with the statewide system
32 of learning results under section 6209;
- 33 (b) A description of the school's instructional design, including the type of
34 learning environment, such as classroom-based or independent study, class
35 size and structure, curriculum overview, teaching methods and research
36 basis;
- 37 (c) The proposed school's plan for using internal and external assessments to
38 measure and report student progress on the measures and metrics of the

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performance framework developed by the authorizer in accordance with section 2413; and

(d) A description of cocurricular or extracurricular programs and how they will be funded and delivered; and

(7) The proposed public charter school's staff policy, including:

(a) A staffing chart for the school's first year and a staffing plan for the term of the charter;

(b) Plans for recruiting and developing school leadership and staff;

(c) The school's leadership and teacher employment policies, including performance evaluation plans; and

(d) Opportunities and expectations for parent involvement.

F. With respect to the conversion of an existing public school to public charter school status, in addition to the other requirements of this subsection, the request for proposals must require applicants to demonstrate support for the proposed conversion public charter school by submitting:

(1) A petition signed by at least 60% of teachers in the existing public school;

(2) A petition signed by a majority of parents and guardians of students in the existing public school; or

(3) Other evidence or information presented at a public hearing convened by the authorizer in accordance with section 2411, subsection 4, paragraph B.

If the school to be converted is the only public school option for students in the school administrative unit, the request for proposals must additionally require that the conversion be approved by voters in that school administrative unit.

G. With respect to a proposed charter school that intends to contract with a nonprofit education service provider for substantial educational or management services, in addition to the other requirements of this subsection, the request for proposals must require applicants to:

(1) Explain how and why the nonprofit education service provider was selected;

(2) Provide evidence of the nonprofit education service provider's success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions if applicable;

(3) Provide information on the proposed duration of the service contract; roles and responsibilities; scope of services and resources to be provided by the nonprofit education service provider; performance evaluation measures and timelines; compensation structure, including clear identification of all fees to be paid to the nonprofit education service provider; methods of contract oversight and enforcement; investment disclosure; and conditions for renewal and termination of the contract;

1 (4) Provide a draft of the proposed service contract including all of the terms in
2 subparagraphs (1), (2) and (3);

3 (5) Explain the relationship between the governing board and the nonprofit
4 education service provider, specifying how the governing board will monitor and
5 evaluate the performance of the nonprofit education service provider, the internal
6 controls that will guide the relationship and how the governing board will ensure
7 fulfillment of performance expectations;

8 (6) Provide a statement of assurance that the governing board is legally and
9 operationally independent from the nonprofit education service provider; and

10 (7) Disclose and explain any existing or potential conflicts of interest between
11 the governing board and the nonprofit education service provider or any affiliated
12 business entities.

13 H. With respect to a public charter school proposal from a nonprofit applicant that
14 currently operates one or more schools in any other state or nation, in addition to the
15 other requirements of this subsection, the request for proposals must require
16 applicants to provide evidence of past performance and current capacity for growth.

17 **§2411. Charter applications**

18 **1. Application.** An applicant for approval as a public charter school must submit an
19 application as set out in this section. An applicant may submit an application only to an
20 authorizer that has issued a request for proposals in accordance with section 2410. An
21 applicant may submit a proposal for a particular public charter school to no more than
22 one authorizer at a time. The purposes of the application are to present the proposed
23 public charter school's academic and operational vision and plans, demonstrate the
24 applicant's capacities to execute the proposed vision and plans and provide the authorizer
25 a clear basis for assessing the applicant's plans and capacities.

26 **2. Conversion of existing public schools.** A public school or public school program
27 may apply to its local school board to become a conversion public charter school.

28 **3. Start-up schools.** An application for a start-up public charter school may be
29 submitted by a nonprofit, nonreligious organization.

30 **4. Application review process.** In reviewing and evaluating applications,
31 authorizers shall employ procedures, practices, criteria and standards consistent with
32 nationally recognized principles and standards for authorizing high-quality public charter
33 schools.

34 A. The application review process must include, at a minimum, substantive
35 participation by a team of reviewers who collectively possess appropriate academic
36 and operational expertise and experience with charter schools.

37 B. The application review process must include thorough evaluation of each
38 application, an in-person interview with the applicant and a public hearing.

39 C. In deciding whether to approve applications, authorizers shall:

1 (1) Grant charters only to applicants that have demonstrated competence in each
2 element of the authorizer's published approval criteria and are likely to open and
3 operate a successful public charter school;

4 (2) Base decisions on documented evidence collected through the application
5 review process; and

6 (3) Follow charter-granting policies and practices that are transparent, based on
7 merit and avoid conflicts of interest or any appearance of a conflict of interest.

8 **5. Approval; denial.** No later than 90 days after the filing of an application, an
9 authorizer shall decide to approve or deny the application. The authorizer shall make and
10 announce all charter approval or denial decisions in a meeting of the authorizer's
11 governing entity open to the public.

12 A. An approval decision may include, if appropriate, reasonable conditions that the
13 applicant must meet before a charter contract may be executed.

14 B. If the authorizer denies an application, the authorizer shall clearly state, for public
15 record, its reasons for denial. An applicant may subsequently reapply to that
16 authorizer or apply to any other authorizer in the State. An applicant may appeal a
17 denial to the commissioner, and the commissioner's decision is a final agency action
18 for purposes of Title 5, chapter 375, subchapter 7.

19 C. Within 10 days of taking action to approve or deny an application, the authorizer
20 shall report to the commissioner the action it has taken. The authorizer shall provide
21 a copy of the report to the applicant at the same time that the report is submitted to
22 the commissioner.

23 D. The commissioner shall register the charters approved by all chartering authorities
24 in chronological order by date of approval.

25 E. An approved application may not serve as a school's charter contract nor may it be
26 incorporated by reference into the charter contract.

27 F. A decision on an application must be conveyed in writing to the applicant. A
28 decision may grant approval or conditional approval, request resubmission or reject
29 the application and must include written reasons for the decisions.

30 **§2412. Charter contracts**

31 **1. Charter contracts.** When an application is approved, a charter contract must be
32 executed in accordance with this section.

33 A. Within 90 days of approval of an application, the authorizer and the governing
34 board shall execute a charter contract that sets forth:

35 (1) Performance provisions describing the academic and operational
36 performance expectations and measures by which the public charter school will
37 be judged; and

38 (2) Administrative provisions articulating the administrative relationship
39 between the authorizer and the public charter school, including each party's rights
40 and duties.

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B. The performance provisions set forth in a charter contract under paragraph A must include but need not be limited to applicable federal and state accountability requirements.

C. The performance provisions set forth in a charter contract under paragraph A may be refined or amended by mutual agreement of the parties to the charter contract after the public charter school is operating and has collected baseline achievement data for its enrolled students.

D. A charter contract must be signed by the president of the authorizer's governing entity and the president of the governing board.

E. A public charter school may not commence operations without a charter contract executed in accordance with this section and approved in a meeting open to the public of the authorizer's governing entity.

2. Requirements prior to opening. An authorizer may establish reasonable requirements or conditions prior to the opening of a public charter school to monitor the start-up progress of a newly approved charter school, ensure that it is prepared to open smoothly on the date agreed and ensure that the school meets all building, health, safety, insurance and other legal requirements for school opening.

3. Virtual public charter schools. The charter contract of a virtual public charter school must require the governing board to:

A. Provide each student enrolled in the school with online courses that meet or exceed state standards and all instructional materials required for the student's participation in the school;

B. Ensure that the persons who operate the school on a day-to-day basis comply with and carry out all applicable requirements, statutes, regulations, rules and policies of the school;

C. Ensure that a parent of each student verifies the number of hours of educational activities completed by the student each school year; and

D. Adopt a plan by which it will provide:

(1) Frequent, ongoing monitoring to ensure and verify that each student is participating in the school, including proctored assessments each semester in core subjects graded or evaluated by the teacher, and at least biweekly parent-teacher conferences in person or by telephone;

(2) Regular instructional opportunities in real time that are directly related to the school's curricular objectives, including, but not limited to, meetings with teachers and educational field trips and outings;

(3) Verification of ongoing student attendance in the school;

(4) Verification of ongoing student progress and performance in each course as documented by ongoing assessments and examples of student course work; and

(5) Administration to all students in a proctored setting of all applicable assessments as required by the State.

1 Nothing in this subsection prohibits a virtual public charter school from reimbursing
2 families of enrolled students for costs associated with their Internet connection for use in
3 the program.

4 Only students enrolled in a virtual public charter school as full-time students may be
5 reported in the school's average daily membership to the department for the purposes of
6 receiving local, state and federal funds.

7 **§2413. Charter school performance framework**

8 **1. Performance framework.** The performance provisions of a charter contract must
9 be based on a performance framework developed by the authorizer that sets forth the
10 academic and operational performance indicators that will guide the authorizer's
11 evaluations of each public charter school.

12 **2. Data elements.** The performance framework developed under subsection 1 must
13 include, at a minimum, indicators for:

- 14 A. Student academic proficiency;
- 15 B. Student academic growth;
- 16 C. Achievement gaps in both proficiency and growth between major student
17 subgroups;
- 18 D. Attendance;
- 19 E. Recurrent enrollment from year to year;
- 20 F. With respect to high school, postsecondary readiness;
- 21 G. Financial performance and sustainability;
- 22 H. Governing board performance and stewardship; and
- 23 I. Parent and community engagement.

24 **3. Annual performance targets.** Annual performance targets must be set by a
25 public charter school in conjunction with its authorizer and must be designed to help each
26 school meet applicable federal and state requirements and authorizer expectations.

27 **4. Data disaggregation.** The performance framework developed under subsection 1
28 must require the disaggregation of all student performance data by major student
29 subgroups, including gender, race, poverty status, special education status, English as a
30 Second Language status and gifted status.

31 **5. Reports for multiple campuses.** With respect to a public charter school that
32 contains multiple campuses operating under a single charter contract or overseen by a
33 single governing board, the performance framework developed under subsection 1 must
34 require the performance of each campus to be reported separately and must hold each
35 campus independently accountable for its performance.

1 **§2414. Oversight**

2 **1. Data collection; monitoring.** For each public charter school it oversees, the
3 authorizer is responsible for collecting, analyzing and reporting all data from state
4 assessments in accordance with the performance framework developed under section
5 2413, subsection 1. An authorizer shall monitor the performance and legal compliance of
6 the public charter schools it oversees, including collecting and analyzing all data to
7 support ongoing evaluation according to the charter contract.

8 **2. Notification of unsatisfactory performance or compliance.** In the event that a
9 public charter school's performance or legal compliance appears unsatisfactory, the
10 authorizer shall promptly notify the public charter school of the perceived problem and
11 provide reasonable opportunity for the school to remedy the problem.

12 **3. Sanctions.** An authorizer may exercise, as appropriate, sanctions short of
13 revocation of the charter contract in response to deficiencies in public charter school
14 performance or legal compliance. Such sanctions may include, if warranted, opportunities
15 for a school to develop and execute a plan for improvement within a specified time frame.

16 **§2415. Charter term and renewal**

17 **1. Initial charter term.** An initial charter must be granted for a term of 5 operating
18 years. The charter term commences on the public charter school's first day of operation.
19 An approved public charter school may delay its opening for one school year in order to
20 plan and prepare for the school's opening. If the school requires an opening delay of
21 more than one school year, the school must request an extension from its authorizer. The
22 authorizer may grant or deny the extension depending on the particular school's
23 circumstances.

24 **2. Charter renewal term.** A charter may be renewed for successive terms of 5
25 years, although an authorizer may grant renewal with specific terms or conditions for
26 necessary improvements to a public charter school.

27 **3. Authorizer renewal responsibilities.** No later than June 30th of a public charter
28 school's 4th year of operation under a term of a charter contract, the authorizer shall issue
29 a charter school performance report and charter renewal application guidance to the
30 school.

31 A. The performance report required in this subsection must summarize the public
32 charter school's performance record to date, based on the data required by this chapter
33 and the charter contract, and must provide notice of any weaknesses or concerns
34 perceived by the authorizer concerning the school that may jeopardize its position in
35 seeking renewal if not timely rectified. The school must be given the opportunity to
36 respond to the performance report and submit any corrections or clarifications for the
37 report.

38 B. The renewal application guidance required by this subsection must include or
39 refer explicitly to the criteria and standards that will guide the authorizer's renewal
40 decisions, which must be based on the performance framework set forth in the charter

1 contract and consistent with this chapter. The renewal application guidance must, at a
2 minimum, require and provide an opportunity for the public charter school to:

3 (1) Present additional evidence, beyond the data contained in the performance
4 report, supporting its case for charter renewal;

5 (2) Describe improvements undertaken or planned for the school; and

6 (3) Detail the school's plans for the next charter term.

7 **4. Renewal application.** No later than September 30th of a public charter school's
8 5th year of operation under a term of a charter contract, the governing board of a public
9 charter school seeking renewal shall submit a renewal application to the authorizer
10 pursuant to the renewal application guidance issued by the authorizer under subsection 3.

11 **5. Renewal decision.** An authorizer shall rule by resolution on a renewal application
12 under this section no later than 45 days after the filing of the renewal application. In
13 making charter renewal decisions, every authorizer shall:

14 A. Ground its decisions in evidence of the public charter school's performance over
15 the term of the charter in accordance with the performance framework set forth in the
16 charter contract;

17 B. Ensure that data used in making renewal decisions are available to the school and
18 the public; and

19 C. Provide a public report summarizing the evidence basis for each decision.

20 **6. Charter revocation and nonrenewal.** A decision by an authorizer to revoke or
21 not to renew the charter of a public charter school must be made in accordance with this
22 subsection.

23 A. A charter may be revoked at any time or not renewed if the authorizer determines
24 that the public charter school failed to comply with the provisions of this chapter or:

25 (1) Committed a material violation of any of the terms, conditions, standards or
26 procedures required under this chapter or the charter contract;

27 (2) Failed to meet or make sufficient progress toward the performance
28 expectations set forth in the charter contract;

29 (3) Failed to meet generally accepted standards of fiscal management; or

30 (4) Violated any provision of law from which the school was not exempted.

31 B. If an authorizer revokes or does not renew a charter, the authorizer shall clearly
32 state, in a resolution of its governing entity, the reasons for the revocation or
33 nonrenewal.

34 **7. Notification to commissioner; appeal.** Within 10 days of taking action to renew,
35 not renew or revoke a charter under this section, the authorizer shall report to the
36 commissioner the action taken and shall provide a copy of the report to the public charter
37 school at the same time that the report is submitted to the commissioner. The report must
38 include a copy of the governing entity of the authorizer's resolution setting forth the
39 action taken and reasons for the decision. In case of nonrenewal or revocation, a public

1 charter school may appeal a denial to the commissioner and the commissioner's decision
2 is a final agency action for the purposes of Title 5, chapter 375, subchapter 7.

3 **8. School closure and dissolution.** In the event of a public charter school closure
4 for any reason:

5 A. The authorizer shall oversee and work with the closing public charter school to
6 ensure timely notification to parents and guardians, orderly transition of students and
7 student records to new schools and proper disposition of school funds, property and
8 assets in accordance with the requirements of this chapter; and

9 B. The assets of the public charter school must be distributed first to satisfy
10 outstanding payroll obligations for employees of the school and then to creditors of
11 the school. Any remaining funds must be paid to the Treasurer of State to the credit
12 of the General Fund. If the assets of the school are insufficient to pay all parties to
13 whom the school owes compensation, the prioritization of the distribution of assets
14 may be determined by decree of a court of law.

15 **9. Charter transfers.** A charter contract and its oversight may not be transferred
16 from one authorizer to another before the expiration of the charter contract term except by
17 special petition to the commissioner by a public charter school or its authorizer.

18 **§2416. Operations**

19 **1. Legal status.** Notwithstanding any provision of law to the contrary, to the extent
20 that any provision of this chapter is inconsistent with any other state or local law, rule or
21 regulation, the provisions of this chapter govern and are controlling.

22 A. A public charter school is subject to all federal laws and authorities, to local law
23 not inconsistent with this chapter and to the charter contract.

24 B. A charter contract may include one or more schools, to the extent approved by the
25 authorizer and consistent with applicable law.

26 C. A single governing board may hold one or more charter contracts. Each public
27 charter school overseen by a particular governing board is a discrete legal entity,
28 separate and distinct from any others.

29 **2. Local educational agency status.** Public charter schools may choose either of
30 the following options concerning local educational agency status:

31 A. Under the first option:

32 (1) The local school district in which the public charter school is located remains
33 the local educational agency and the public charter school is a school within that
34 local educational agency;

35 (2) The public charter school receives services, resources and support in the
36 same manner as other local school district public schools, except that the public
37 charter school is treated as a local educational agency for purposes of applying
38 for competitive federal grants; and

1 (3) The local school district retains responsibility for special education and
2 serves students in public charter schools in a manner consistent with local
3 educational agency obligations under applicable federal, state and local law; and

4 B. Under the 2nd option:

5 (1) The public charter school functions for all purposes as a local educational
6 agency independent of the local school district in which the school is located.
7 Local educational agency status does not preclude a school from developing links
8 to local school districts for services, resources and programs, by mutual
9 agreement or by formal contract;

10 (2) The public charter school is responsible for meeting the requirements of local
11 educational agencies under applicable federal, state and local laws, including
12 those relating to special education, receipt of funds and compliance with funding
13 requirements; and

14 (3) The public charter school has primary responsibility for special education at
15 the school, including identification and provision of service, and is responsible
16 for meeting the needs of enrolled students with disabilities. In instances when a
17 student's individualized education program team, including representatives from
18 the student's local school district of residence, determines that a student's needs
19 are so profound that they cannot be met in the public charter school and that the
20 school cannot provide to the student a free, appropriate public education as
21 defined in section 7001, subsection 2-A, the individualized education program
22 team must work with the student's local school district of residence to find a
23 placement in a more appropriate setting.

24 **3. Powers of public charter schools.** A public charter school has all the powers
25 necessary for carrying out the terms of its charter contract, including the powers to:

26 A. Receive and disburse funds for school purposes;

27 B. Secure appropriate insurance and enter into contracts and leases, free from
28 prevailing wage laws;

29 C. Contract with a nonprofit educational service provider for the management and
30 operation of the school, as long as the school's governing board retains oversight
31 authority over the school;

32 D. Incur debt in reasonable anticipation of the receipt of public or private funds;

33 E. Pledge, assign or encumber its assets to be used as collateral for loans or
34 extensions of credit;

35 F. Solicit and accept any gifts or grants for school purposes subject to applicable
36 laws and the terms of its charter contract;

37 G. Acquire real property for use as its facility or facilities from public or private
38 sources; and

39 H. Sue and be sued in its own name.

1 4. General requirements. A public charter school is subject to the general
2 requirements set out in this subsection.

3 A. A public charter school may not discriminate against any person on the basis of
4 race, creed, color, sex, disability or national origin or on any other basis that would be
5 unlawful if done by a public school.

6 B. A public charter school may not engage in any sectarian practices in its
7 educational program, admissions or employment policies or operations.

8 C. A public charter school may not charge tuition and may only charge such fees as
9 may be imposed by other public schools in the State. A public charter school may
10 charge tuition to an out-of-state student admitted to the school on a space-available
11 basis.

12 D. The powers, obligations and responsibilities set forth in a charter contract may not
13 be delegated or assigned by either party.

14 5. Applicability of other laws, rules and regulations. The applicability of other
15 laws, rules and regulations to public charter schools is as set out in this subsection.

16 A. Public charter schools are subject to the same civil rights, health and safety
17 requirements applicable to other public schools in the State, except as otherwise
18 specifically provided in this chapter.

19 B. Public charter schools are subject to the same student assessment and
20 accountability requirements applicable to other public schools in the State, but
21 nothing in this chapter precludes a public charter school from establishing additional
22 student assessment measures that go beyond state requirements if the school's
23 authorizer approves such measures.

24 C. Governing boards are subject to and must comply with Title 1, chapter 13.

25 D. Except as provided in this chapter and its charter contract, a public charter school
26 is exempt from all statutes and rules applicable to a public school, a local school
27 board or a local school district, although it may elect to comply with one or more
28 provisions of statutes or rules. School administrative units may not interpret this
29 paragraph as reducing their obligation to provide education for their residents.

30 E. A public charter school is exempt from the restrictions normally associated with
31 any state-funded categorical education funding program.

32 6. Teachers. This subsection governs teacher employment in a public charter school.

33 A. A public charter school must comply with applicable federal laws and regulations
34 regarding the qualification of teachers and other instructional staff.

35 B. At least 50% of full-time teachers in a public charter school must hold an
36 appropriate teaching certificate. Teachers in charter schools have the same rights and
37 privileges as other public school teachers except as otherwise provided in this
38 chapter.

39 C. A teacher in a noncharter public school may take leave to teach in a public charter
40 school. A local school district must grant service credit to those teachers for teaching

1 experience at a public charter school, as long as their service at a public charter
2 school is reasonably comparable to service in a noncharter public school.

3 (1) A teacher may apply for a leave of absence in renewable one-year terms, up
4 to a maximum of 2 years.

5 (2) A teacher on leave from local school district teaching assignments remains
6 eligible for continued union membership and participation in retirement and other
7 benefits programs of the teacher's local school district for as long as the teacher
8 teaches in a public charter school within the State.

9 D. Teachers and other public charter school personnel, as well as governing board
10 trustees, are subject to criminal history record checks and fingerprinting requirements
11 applicable to other public schools.

12 E. Teachers at a public charter school may choose to bargain collectively or form a
13 professional group in accordance with this paragraph.

14 (1) Teachers who are employees of the public charter school have the same
15 rights as other teachers in public education to organize and bargain collectively.
16 Bargaining units at the public charter school must be separate from other
17 bargaining units, such as a district bargaining unit. Staff at noncharter public
18 schools converting to public charter schools have a right to employment benefits
19 as stated in applicable collective bargaining agreements or they may vote to be
20 represented in alternative ways.

21 (2) A teacher who is an employee of the school may choose to be part of a
22 professional group that operates the instructional program under an agreement
23 with the school, forming a partnership or producer cooperative that the teachers
24 collectively own.

25 (3) Teachers who are employees of the school may not be required to be
26 members of any existing collective bargaining agreement between a local school
27 district and its employees. A public charter school may not interfere with civil
28 service laws or other applicable rules protecting the rights of employees to
29 organize and be free from discrimination.

30 7. External audit. A public charter school shall adhere to generally accepted
31 accounting principles and shall annually engage an external auditor to do an independent
32 audit of the school's finances.

33 **§2417. Funding**

34 1. Enrollment count; report. Students attending public charter schools must be
35 included in the enrollment, attendance and, if applicable, count of students with
36 disabilities of the local school districts in which the students reside. The public charter
37 school shall report all such data to the local school districts of residence in a timely
38 manner. Each local school district shall report such enrollment, attendance and count of
39 students with disabilities to the department.

40 2. Revenue provisions. All state and local operating funds follow each student to
41 the public charter school attended by the student, except that the school administrative

1 unit of the student's residence may retain up to 2% of the per-pupil allocation described in
2 this subsection to cover associated administrative costs.

3 A. For each public charter school student, the school administrative unit in which the
4 student resides must forward the per-pupil allocation to the public charter school
5 attended by the student as follows.

6 (1) The per-pupil allocation amounts must be based on the same per-pupil rates
7 as described in section 15676, subsection 1 that are provided for subsidizable
8 pupils who reside in the school administrative unit and who are educated at
9 public expense for the current fiscal year.

10 (2) For each fiscal year, allocations must be made in 4 quarterly payments on
11 September 1st, December 1st, March 1st and June 1st. The September payment
12 must be based on the number of students enrolled or anticipated to be enrolled in
13 the public charter school at the opening of school for that school year, which may
14 not exceed the maximum enrollment approved in the charter contract for that year
15 unless a waiver is obtained from the authorizer. If the number of students is
16 higher or lower than the number of students in the following February of the
17 school year, adjustments must be made in the June payment, with 50% of the
18 annual per-pupil allocation added for additional students or subtracted if the total
19 number of students is lower.

20 B. School administrative units shall forward to public charter schools state funds for
21 other subsidizable costs as described in section 15681-A on a per-pupil basis, on the
22 same schedule as listed in paragraph A, for transportation, career and technical
23 education and special education costs. Public charter schools may contract or
24 cooperate with noncharter public schools for such services.

25 C. The funding and educational decision-making process for at-risk pupils attending
26 a public charter school is the responsibility of the local educational agency of
27 residence, and all current options available to the parents and the local educational
28 agency through the pupil's original local school district must be retained.

29 (1) Public charter schools must receive state funding for the special education
30 costs as described in section 15681-A, subsection 2 and section 15689-A,
31 subsections 1 and 2 on the same basis as schools in a school administrative unit.

32 (2) The local school district shall also pay directly to the public charter school
33 any federal or state aid attributable to a student with a disability attending the
34 public charter school in proportion to the level of services for the student with a
35 disability that the public charter school provides directly or indirectly.

36 D. Except as otherwise provided in this subsection, a public charter school must
37 receive state and federal aid, grants and revenue through its authorizer, or through the
38 State in the case of Title I of the federal Elementary and Secondary Education Act of
39 1965, 20 United States Code, Section 6301 et seq. and similar programs. A public
40 charter school is deemed a local educational agency for purposes of applying for
41 competitive federal grants. The public charter school may receive gifts and grants
42 from private sources in whatever manner is available to school administrative units.
43 Public charter schools with students eligible for Title I funds must receive and use
44 these funds in accordance with federal and state law.

1 E. A public charter school may not levy taxes or issue bonds secured by tax
2 revenues.

3 F. In the event of the failure of the local school district to make payments required
4 by this section, the Treasurer of State shall deduct from any state funds that become
5 due to the local school district an amount equal to the unpaid obligation. The
6 Treasurer of State shall pay over the amount to the public charter school upon
7 certification of the department. The department shall adopt rules to implement the
8 provisions of this paragraph. Rules adopted pursuant to this paragraph are routine
9 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

10 G. Any money received by a public charter school from any source and remaining in
11 the school's accounts at the end of any budget year remains in the school's accounts
12 for use by the school during subsequent budget years and may not revert to the
13 authorizer or to the State.

14 H. Nothing in this chapter may be construed to prohibit any person or organization
15 from providing funding or other assistance for the establishment or operation of a
16 public charter school. The governing board of a public charter school may accept
17 gifts, donations or grants of any kind made to the school and expend or use such gifts,
18 donations or grants in accordance with the conditions prescribed by the donor except
19 that a gift, donation or grant may not be accepted if subject to a condition that is
20 contrary to any provision of law or term of the charter contract.

21 I. Public charter schools have the same access as other public schools to any risk
22 pool for high-cost special education services and to any fund for fiscal emergencies.

23 **§2418. Facilities**

24 **1. Facilities; property.** A public charter school may acquire facilities and property
25 in accordance with this subsection.

26 A. A public charter school has a right of first refusal to purchase or lease at or below
27 fair market value a closed public school facility or property or unused portions of a
28 public school facility or property located in a local school district from which it
29 draws its students if the local school district decides to sell or lease the public school
30 facility or property. The local school district may not require purchase or lease
31 payments that exceed the fair market value of the property.

32 B. A public charter school may negotiate and contract with a local school district, the
33 governing body of a state college or university or public community college or any
34 other public or for-profit or nonprofit private entity for the use of a school building.

35 C. Library, community service, museum, performing arts, theater, cinema, church,
36 community college, college and university facilities may provide space to public
37 charter schools within their facilities under their preexisting zoning and land use
38 designations.

39 D. A public charter school may purchase or lease at or below fair market value part
40 or all of any surplus or unused state-owned facility or property located in the State.
41 The state agency in control of the facility may not require purchase or lease payments
42 that exceed the fair market value of the property.

