



# A New Model Law For Supporting The Growth Of High-Quality Public Charter Schools

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## ACKNOWLEDGEMENTS

To create a model law for public charter schools that is grounded in principle, flexible enough to serve in a wide variety of state policy environments, and well-supported by empirical evidence, the National Alliance for Public Charter Schools convened a working group of individuals with deep expertise in public charter school law. The members of this working group were:

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## WHY IS A NEW MODEL PUBLIC CHARTER SCHOOL LAW NEEDED?

It has been 18 years since Minnesota passed the nation's first public charter school law. The development of this landmark legislation was guided by the wisdom of a handful of policy innovators in Minnesota, such as Ted Kolderie, Joe Nathan, and Ember Reichgott Junge. Subsequent to the passage of Minnesota's statute, Kolderie developed a model public charter school law and shared it with many of the governors and legislators who would eventually pass charter legislation across the country.

In the early-1990s, the Morrison Institute for Public Policy at Arizona State University created an initial list of essential public charter school law criteria. These criteria focused on legal components which best supported the creation of autonomous public charter schools (e.g., number of schools allowed, multiple chartering authorities, automatic waiver from laws and regulations, legal and operational autonomy), and was used to rate the strength of each state's public charter school law. Later, the Center for Education Reform began using these criteria (with minor revisions) to issue specific grades for each state against a set of 10 criteria.

While these resources have been helpful in the development of public charter school policy, they were created early in the life of the public charter school movement. Supporters of public charter schools have learned much in the past decade about which ingredients in a charter law support the creation of high-quality public charter schools – and which do not. Advocates of public charter schools have learned these lessons on the ground in state capitals across the country. A growing body of research and analysis has also documented these lessons, including evaluations commissioned by state departments of education and analyses produced by education policy organizations.

Initially, for example, a law was considered “strong” if it placed few limits on how many schools could open and provided ample funding and genuine autonomy. These provisions remain important, yet we now know that effective laws must address additional challenges, such as:

- **Finding and financing a facility.** Only 14 states provide direct funding in this area, forcing charters in most states to divert substantial proportions of operating revenue into bricks and mortar.
- **Authorizing.** Although charter authorizers play a critical role in establishing high-quality public charter schools, current analyses of charter laws only scratch the surface of how to address authorizing, identifying who can authorize charters but saying nothing about whether they are funded properly or held accountable for the quality of their work.
- **Special education.** Another critical challenge for charters is special education, especially for smaller charters and those unaffiliated with networks or district authorizers – yet special education is inadequately addressed in most charter laws.

With the number of public charter schools and students steadily growing – and the body of evidence documenting their success mounting – legislative battles over charter laws are intensifying. As charter supporters fight these battles, the time is right for a new model law that supports more and better public charter schools based upon lessons learned from experience, research, and analysis.

It is important to note that a strong charter law is a necessary but insufficient factor in driving positive results for public charter schools. Experience with public charter schools across the country has shown that there are five primary ingredients of a successful public charter school environment in a state, as demonstrated by strong student results:

- Supportive laws and regulations (both what is on the books and how it is implemented);

- Quality authorizers;<sup>1</sup>
- Effective charter support organizations, such as state charter associations and resource centers;<sup>2</sup>
- Outstanding school leaders and teachers; and,
- Engaged parents and community members.

While it is critical to get the law right, it is equally critical to ensure these additional ingredients exist in a state's charter sector.

Our intent is for the new model law to be useful to the 41 jurisdictions with charter laws as well as the 10 states that have yet to enact a charter law. For a state with an existing law, our hope is that the new model law will guide their actions to strengthen it, particularly in such consistently challenging areas as facilities, authorizing, and special education. In the other 10 states, we hope that this work will serve as the foundation for enacting charter laws informed by hard-fought lessons learned in states with successful charter sectors.

The remainder of this document is organized in the following way:

- First, we present a description of the essential components for a strong public charter school law.
- Second, we provide a rationale for the key sections of the model law.
- Finally, we present proposed statutory language.

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1 See National Association of Charter School Authorizers, *Principles & Standards for Quality Charter School Authorizing*, Chicago, IL: Author, 2007.

2 See National Alliance for Public Charter Schools, *Principles and Standards for Quality Charter Support Organizations*, Washington, D.C.: Author, 2008.

# ESSENTIAL COMPONENTS OF A STRONG PUBLIC CHARTER SCHOOL LAW<sup>3</sup>

As a quick guide to the primary ingredients of a strong public charter school law, we developed the following list of the essential components of such a law.

- 1) **No Caps**, on the growth of public charter schools in a state.<sup>4</sup>
- 2) **A Variety of Public Charter Schools Allowed**, including new start-ups, public school conversions, and virtual schools.
- 3) **Multiple Authorizers Available**, including non-local school board authorizers, to which charter applicants may directly apply.
- 4) **Authorizer Accountability System Required**, whereby all authorizers must affirm interest to become an authorizer (except for a legislatively-created state public charter school commission) and participate in an authorizer reporting program based on objective data, as overseen by some state-level entity with the power to remedy.
- 5) **Adequate Authorizer Funding**, including provisions for guaranteed funding from authorizer fees, and public accountability for such expenditures.
- 6) **Transparent Charter Application, Review, and Decision-making Processes**, including comprehensive academic, operational, governance, and performance application requirements, with such applications reviewed and acted upon following professional authorizer standards.
- 7) **Comprehensive Public Charter School Monitoring and Data Collection Processes**, so that all authorizers can verify public charter school compliance with applicable law and their performance-based contracts.
- 8) **Clear Processes for Renewal, Nonrenewal, and Revocation Decisions**, including school closure and dissolution procedures to be used by all authorizers.
- 9) **Performance-Based Charter Contracts Required**, with such contracts created as separate post-application documents between authorizers and public charter schools detailing at least academic performance expectations, operational performance expectations, and school and authorizer rights and duties.
- 10) **Fiscally and Legally Autonomous Schools, with Independent Public Charter School Boards**, whereby public charter schools are created as autonomous entities with their boards having most powers granted to other traditional public school district boards.
- 11) **Clear Student Recruitment, Enrollment and Lottery Procedures**, which must be followed by all public charter schools.
- 12) **Automatic Exemptions from Many State Laws**, except for those covering health, safety, civil rights, student accountability, employee criminal history checks, open meetings, freedom of information requirements, and generally accepted accounting principles.

<sup>3</sup> These essential components of a strong public charter school law were created by Louann Bierlein Palmer, Associate Professor at Western Michigan University. Palmer also developed the original list of essential components of a strong public charter school law while she was at the Morrison Institute at Arizona State University during the early 1990s.

<sup>4</sup> The ideal state policy does not contain caps on the growth of public charter schools. While not ideal, some states have created “soft caps” that statutorily allow for annual charter growth sufficient to meet demand, which are preferable to “hard caps” on the total number of charters allowed in a state. As examples of “soft caps,” California allows for 100 new public charter schools a year and D.C. allows for 20 new public charter schools a year.

- 13) **Automatic Collective Bargaining Exemption**, whereby public charter schools are exempt from any outside collective bargaining agreements, while not interfering with laws and other applicable rules protecting the rights of employees to organize and be free from discrimination.
- 14) **Educational Service Providers Allowed**, provided there is a clear performance contract between the independent public charter school board and the service provider and there are no conflicts of interest between the two entities.
- 15) **Multi-School Charter Contracts and Multi-Charter Contract Boards Allowed**, whereby an independent public charter school board may oversee multiple schools linked under a single charter contract or may hold multiple charter contracts.
- 16) **Extra-Curricular and Interscholastic Activities Eligibility and Access**, where: (a) public charter school students and employees are eligible for state- and district-sponsored interscholastic leagues, competitions, awards, scholarships, and recognition programs to the same extent as traditional public school students and employees; and (b) students at charters that do not provide extra-curricular and interscholastic activities have access to those activities at traditional public schools for a fee via a mutual agreement.
- 17) **Clear Identification of Special Education Responsibilities**, including clarity on which entity is the local education agency (LEA) responsible for such services and how such services are to be funded (especially for low-incident, high cost cases).
- 18) **Equitable Operational Funding and Equal Access to All State and Federal Categorical Funding**, flowing to the school in a timely fashion and in the same amount as district schools following eligibility criteria similar to all other public schools.
- 19) **Equitable Access to Capital Funding and Facilities**, including multiple provisions such as: a per-pupil facility allowance (equal to statewide average per-pupil capital costs); facility grant and revolving loan programs; a charter school bonding authority (or access to all relevant state tax-exempt bonding authorities available to all other public schools); the right of first refusal to purchase or lease at or below fair market value a closed or unused public school facility or property; and clarity that no state or local entity may impose any facility-related requirements that are stricter than those applied to traditional public schools.
- 20) **Access to Relevant Employee Retirement Systems**, with the option to participate in a similar manner to all other public schools.

The time is right for a new model law that supports more and better public charter schools based upon lessons learned from experience, research, and analysis.



# THE RATIONALE FOR THE KEY SECTIONS OF THE NEW MODEL PUBLIC CHARTER SCHOOL LAW

This section provides the rationale for the key aspects of the new model law, organized by its major building blocks: legislative declarations; definitions; enrollment; authorizers; application process; accountability; operations and autonomy; funding; and, facilities. The discussion of these aspects of the law is intended to highlight some of the most important lessons we have learned about public charter school law over the past 18 years. For each major section, we highlight the significant provisions from the law, discuss the rationale for the language in the law, and provide pertinent state examples to further illustrate the law's provisions.

## Legislative Declarations

The model law's "Legislative Declarations" section provides the state legislature opportunities to outline the need for the state to enact a public charter school law, to present the purposes of the state's public charter schools as a whole, and to state explicitly that public charter schools are part of the state's public education system. While much of this language will look familiar to those who have been working on public charter school law, we highlight four provisions from this section below that merit particular attention.

### "As A Whole"

Most state laws list several purposes for the state's public charter schools. What is sometimes unclear is whether an individual public charter school needs to meet each one of the purposes or the state's public charter schools as a whole need to meet

all of them. To clarify the intent of these purposes (and to prevent charter opponents from hounding a particular public charter school because it only meets some of the law's purposes), the model law contains the following provision:

- "The general assembly finds and declares that the purposes of the state's public charter schools as a whole are:"

### Closing the Achievement Gap

Over the past decade or so, there has been increasing focus on closing the achievement gap between low-performing groups of students and their high-performing peers. The enactment of the No Child Left Behind (NCLB) Act in 2001 intensified this focus, especially NCLB's requirements to disaggregate student results by race and ethnicity, economic status, special education status, and English language learner status. Most charter laws, however, were enacted prior to NCLB, and the purposes of public charter schools as outlined in these laws are often silent on the very issue – closing the achievement gap – that has attracted countless school leaders, teachers, and parents into the public charter school movement. To place public charter school innovation within the larger aims of the state's public education system, and to capture the aspirations of many of the best public charter schools across the country, the model law adds the following purpose for a state's public charter schools:

- "To close achievement gaps between high-performing and low-performing groups of public school students."

### Encouraging Replication of High-Performing Charter Schools

When most charter laws were enacted, they envisioned groups of individuals banding together to start a single new public school. Over the life of the charter school movement, we have seen an increasing focus on expanding and replicating what is working in public charter schools through the creation of non-profit charter management organizations

(CMOs) and for-profit education management organizations (EMOs). In fact, as of the 2007-08 school year, nearly one-quarter of charters are managed by CMOs or EMOs (13% by CMOs and 10% by EMOs). Most charter laws have failed to adequately capture the role of high-performing charters that are replicating in their states. The model law attempts to do it in a few places. In the “Legislative Declarations” section, the model law adds the following purpose for a state’s public charter schools:

- “To encourage the replication of successful public charter schools.”

### **Charters are Part of the State’s Public Education System**

According to research conducted for the National Alliance for Public Charter Schools, only 41% of voters know that charters are public schools.<sup>5</sup> It is a misunderstanding that has significant ramifications for public charter schools, particularly regarding the charter movement’s goal of equitable public funding for public charter school students. Several states understood the importance of explicitly stating the public nature of charter schools in their initial charter laws, sometimes in anticipation of lawsuits to be filed challenging the legality of public charter schools. Such states include Colorado, Florida, and Minnesota.<sup>6</sup> The model law includes such a provision as well:

- “All public charter schools in the state established under this Act are public schools and are part of the state’s public education system. The provisions of this Act should be interpreted liberally to support the findings and purposes of this section and to advance a renewed commitment by the state to the mission, goals, and diversity of public education.”

<sup>5</sup> The Glover Park Group conducted a telephone survey of 800 Registered Voters nationwide between March 17 and March 22, 2009 for the National Alliance for Public Charter Schools. The margin of error on a sample size of 800 is +/-3.5%. The wording of the question cited here was: Do you think charter schools are public schools, private schools, religious schools, other – please specify, don’t know/not sure.

<sup>6</sup> See Colorado: CO Rev Stat § 22-30.5-102, (3). Florida: FL Stat § 1002.33, (1). Minnesota: MN Stat § 124D.10, Subd. 7.

## **Definitions**

The model law’s “Definitions” section defines the key terms used in the law. We highlight six definitions from this section below that merit particular attention.

### **Applicant**

The model law takes a liberal view of eligible applicants for a public charter school, with the understanding that there must be fair but rigorous approval, oversight, and renewal processes that will work to ensure that only those applicants with a high probability for success will be allowed to operate public charter schools. After all, receiving approval to operate a public charter school is a privilege not a right. As a result, the model law’s definition of an “applicant” would allow a wide variety of public charter schools, including new start-ups, public school conversions, and virtual schools:

- “An ‘applicant’ means any person or group that develops and submits an application for a public charter school to an authorizer.”

### **Governing Board**

The model law makes it clear that public charter schools must be autonomous entities and as such they must have an independent governing board which must sign a formal charter contract with the school’s authorizer. Even for public charter schools authorized by their local school board, a separate governing board must be created in order for there to be two formal parties to the charter contract. Specific language in the model law states:

- “A ‘governing board’ means the independent board of a public charter school that is party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the school’s application.”

### **Public Charter School**

Many state laws do not provide a specific definition of a public charter school. Where states do provide such definitions, they are usually brief and vague.

The most comprehensive legal definition of a public charter school is actually found in federal law via the Charter School Program (CSP).<sup>7</sup> As a way to define the essential components of public charter schools, the model law provides a modified version of the definition in the CSP that highlights such things as autonomy, independent board governance, accountability via a charter contract, and parent choice:

- “A ‘public charter school’ means a public school that:
  - Has autonomy over decisions including, but not limited to, matters concerning finance, personnel, scheduling, curriculum and instruction;
  - Is governed by an independent governing board;
  - Is established, operating, and accountable under the terms of a charter contract between the school’s board and its authorizer;
  - Is a school to which parents choose to send their children;
  - Is a school that admits students on the basis of a lottery if more students apply for admission than can be accommodated;
  - Provides a program of education that includes one or more of the following: pre-school, pre-kindergarten, any grade or grades from kindergarten through 12<sup>th</sup> grade, and adult community, continuing, and vocational education programs;
  - Operates in pursuit of a specific set of educational objectives as defined in its charter contract; and
  - Operates under the oversight of its authorizer in accordance with its charter contract.”

### Authorizer

When most states enacted their charter laws, they gave short attention (if any at all) to charter authorizers beyond stating which entities were eligible to serve in this role. We have since learned (sometimes the hard way as in Ohio and Texas<sup>8</sup>) the critical role that autho-

rizers play in a state’s public charter school sector. From our perspective, quality authorizers are one of the primary ingredients of a successful public charter school sector in a state. Therefore, the model law gives considerable attention to the roles and responsibilities of authorizers. In the “Definitions” section, the model law defines an authorizer as follows:

- “An ‘authorizer’ means an entity authorized under this Act to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to renew, not renew, or revoke charter contracts.”

### Education Service Provider

A wide variety of education service providers have played important roles in opening and operating public charter schools. Just as the model law contemplates a wide variety of applicants but rigorous approval processes, it takes a liberal view of potential education service providers held accountable through contracts:

- “An ‘education service provider’ means a for-profit education management organization, non-profit charter management organization, school design provider, or any other partner entity with which a public charter school intends to contract for educational design, implementation, or comprehensive management.”

### Charter Contract

One of the essential characteristics of the public charter school concept is a fixed-term, renewable contract between a school and its authorizer. Such a contract defines the roles, powers, responsibilities, and performance expectations for the school and its authorizer. While some states explicitly require an authorizer to enter into a charter contract with a school, several state laws omit such a requirement. To make clear that schools and authorizers must

<sup>7</sup> See Elementary and Secondary Education Act, Title V, Part B, Subpart I, Section 5210, (1).

<sup>8</sup> See Alexander Russo, *A Tough Nut to Crack in Ohio: Charter Schooling in the Buckeye State*, Washington, D.C.: Progressive Policy Institute, 2005; Nelson Smith, *Texas Roundup: Charter Schooling in the Lone Star State*,

Washington, D.C.: Progressive Policy Institute, 2005; Thomas B. Fordham Institute, National Alliance for Public Charter Schools, and National Association of Charter School Authorizers, *Turning the Corner to Quality: Policy Guidelines for Strengthening Ohio’s Charter Schools*, Washington, D.C.: Authors, 2006.

enter into such contracts, the model law provides the following definition of a “charter contract”:

- “A ‘charter contract’ means a fixed-term, renewable contract between a public charter school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.”

## Enrollment

The model law’s “Enrollment” section outlines the policies that govern enrollment in a public charter school in a state. We highlight four provisions from this section below that merit particular attention.

### Open Enrollment

As public schools, charters must be open to any student who wishes to attend the school. A public charter school should not limit admissions based on such factors as academic ability. To ensure that public charter schools are open enrollment schools, the model law contains the following two provisions:

- “A public charter school shall be open to any student residing in the state.”
- “A public charter school shall not limit admission based on ethnicity, national origin, religion, gender, income level, disabling condition, proficiency in the English language, or academic or athletic ability.”

### Lottery

To provide all students an equally fair chance at attending a public charter school, charters must hold a lottery if student demand exceeds the supply of available seats in a school. This approach prohibits a “first come, first serve” approach to enrollment which often discriminates against students who do not have parents aggressively pursuing each and every potential school option. Instead, when a school is looking to fill 100 seats from a list of 600 enrollees, student number #600 has an equally good chance as student #1 of attending the school. The model law contains the following language for lotteries:

- “If capacity is insufficient to enroll all students who wish to attend the school, the public charter school shall select students through a lottery.”

### Limited Enrollment Preferences

While public charter schools must be open enrollment schools, they should also be allowed to provide enrollment preferences in limited circumstances. First, non-charter public schools that convert to public charter school status should be allowed to give an enrollment preference to students who live in the former attendance area of the school. Such a preference would allow the current students to remain at the school after it converts. Here is the relevant language from the model law:

- “Any non-charter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.”

Second, it should be explicit that charters are allowed to give enrollment preferences to students enrolled in the school the previous year so those students are not subject to a lottery each year. Also, since it is a high priority for some families to have each of their children attend the same school, public charter schools should be allowed to give enrollment preferences to siblings of students already enrolled in the school. Here is the relevant language from the model law:

- “A public charter school shall give enrollment preference to students enrolled in the public charter school the previous school year and to siblings of students already enrolled in the public charter school. An enrollment preference for returning students excludes those students from entering into a lottery.”

Finally, public charter schools should be allowed to give an enrollment preference to the children of the school’s founders, governing board members, and full-time employees. Since these individuals often devote much

of their energies into starting and operating public charter schools, it is reasonable to allow a limited percentage of a school's available seats to be reserved for them, as long as it is no more than 10%. Here is the relevant language from the model law:

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

### Focus on Serving Certain Groups of Students

While public charter schools should be open enrollment schools, state law should make it explicit that a school's mission can focus on serving certain groups of students. By making such schools explicitly allowable in state law, states provide avenues for parents and educators who want to create learning environments that are tailored to the particular needs of certain groups of students. One notable example is public charter schools that serve students with disabilities. According to a recent report, 71 public charter schools across the country have been specifically designed to serve students with disabilities.<sup>9</sup> Although such schools are focused on certain groups of students, they are still open enrollment schools and do not have enrollment preferences for these groups of students. To make it explicit that such schools are permitted, the model law provides the following language:

- “This section does not preclude the formation of a public charter school whose mission is focused on serving students with disabilities, students of the same gender, students who pose such severe disciplinary problems that they warrant a specific educational program, or students who are at risk of academic failure. If capacity is insufficient to enroll all students who wish to attend the school, the public charter school shall select students through a lottery.”

## Authorizers

The model law breaks new ground on the authorizer front. It not only addresses the standard question of which entities should be allowed to authorize in a state, but it also tackles newer areas of state law such as authorizer powers and duties, authorizer funding, and authorizer accountability. We discuss each of these four areas below.

### Creating Choice in Authorizers: Multiple Ways to Create Multiple Authorizers

A well-designed public charter school law must allow multiple authorizers to which any group of potential charter founders can apply, so that all charter applicants have the opportunity to seek approval from a conscientious and well-motivated authorizer. The model law presents multiple approaches for creating a multiple-authorizer environment, with the understanding that the conditions and capacities within a state will determine which environment makes the most sense in that state. To create multiple authorizers, the model law provides for three things:

- Establishment of a state public charter school commission;
- Opportunity for local school boards to register as authorizers with the state's designated authorizer oversight body; and,
- Opportunity for various entities – including mayors, city councils, non-profit organizations, and public and private postsecondary institutions – to apply for authorizing ability to the state's designated authorizer oversight body.

It is important to note that some believe only existing public entities should be allowed to serve as authorizers, while others argue for the inclusion of private and non-profit entities to bring new expertise into the authorizing world. Experiences in various states with both public and non-public authorizing entities reveal that all types of authorizers *can* be successful if they meet at least three criteria: a clear desire to become an

<sup>9</sup> See Julie F. Mead, *Charter Schools Designed for Children with Disabilities: An Initial Examination of Issues and Questions Raised*, Alexandria, VA: National Association of State Directors of Special Education, 2008.

authorizer; enough political insulation to allow data-driven decisions; and, the ability to create adequate infrastructure to carry out their authorizer tasks.<sup>10</sup>

To this end, the model law envisions the inclusion of multiple entities as authorizers, all under an authorizer accountability system. Given the dynamics within a given state, the specific portfolio of authorizers may vary. For example, one state may allow local school boards and a state public charter school commission to authorize public charter schools, while another state may allow local school boards, universities, and mayors to do so.

#### *State Public Charter School Commission*

The model law establishes a special-purpose state public charter school commission with statewide chartering authority. In a growing phenomenon across the country, seven states and D.C. now have special-purpose chartering boards, with a number of other states seriously discussing the creation of such entities.<sup>11</sup> The primary advantage of such boards is that their core mission is the authorization of public charter schools. That, and only that, is what they do, allowing them to develop expertise on a tough task that is usually given inadequate attention in a state. When Colorado created its special-purpose chartering board in 2004, one of its stated purposes was to enhance public charter school authorizing in the state. According to the law, it is “the intent of the general assembly that the institute shall exist to model best practices in authorizing charter schools and make those practices available to school districts.”<sup>12</sup>

There is no single “right way” to structure the appointment and composition of such a state public charter school commission. Particularly in the matter of appointing commission members, various approaches can produce successful results. The most practical

approach for a particular state will usually be determined by state-specific circumstances. For this reason, while the model law illustrates one possible approach to making such appointments, we recognize that variations on some specifics – such as the appointment process, number of board members, and terms of office – might make sense in some states.

Notwithstanding such potential variations, we recommend that states adhere to the following general principles and recommendations when creating a state public charter school commission:

- The commission should consist of an odd number of members to avoid tie votes. Seven or nine is a typical and practical size.
- Members should be appointed (either directly or through “advice and consent”) for staggered terms by multiple state government leaders or bodies that share responsibility for, and high interest in, the success of K-12 public education in the state. These appointing leaders or entities might include the governor, legislative leadership, the state board of education, and the state superintendent of education.
- The commission membership should be bipartisan, with no more than a simple majority of members from the same political party.
- The commission membership should include breadth of experience and expertise well-suited to the commission’s work.

In addition, in most states it would be advisable for the commission membership to reflect the geographic concentrations of population and likely concentrations of chartering activity throughout the state.

#### *Local School Boards*

To date, local school boards have been allowed to authorize often without having developed the commitment and capacity to doing the job well. To encourage local school boards to take their authorizing work seriously if they decide to do it, the model law requires them to register with the state’s designated authorizer oversight body and provide

<sup>10</sup> See Louann Bierlein Palmer, *Alternative Charter School Authorizers: Playing a Vital Role in the Charter Movement*, Washington D.C.: Progressive Policy Institute, 2006.

<sup>11</sup> The states with state chartering boards are Arizona, Colorado, Georgia, Hawaii, Idaho, South Carolina, Utah, and Washington, D.C.

<sup>12</sup> See CO Rev Stat § 22-30.5-501, (2), (a).

information in several areas, such as their charter authorizing budget and personnel.

### *Mayors, City Councils, and Public Postsecondary Institutions*

Currently, two states allow mayors or city councils to serve as authorizers, and 11 states allow public postsecondary institutions to serve in this role.<sup>13</sup> In most cases, these entities have been granted the ability to authorize by state law, without any kind of application and accountability requirements. The model law also allows the inclusion of such entities and requires them to apply to the state's designated authorizer for statewide, regional, or local chartering authority (in accordance with each entity's regular operating jurisdiction and mission). They must provide information in several areas, such as a draft or preliminary outline of the request for proposals that they would issue to solicit public charter school applicants.

### *Other Private and Non-Profit Options*

In addition to the options above, a small number of states currently allow other types of entities – such as private postsecondary institutions or nonprofit organizations – to serve as, or apply to serve as, charter authorizers.<sup>14</sup> The model law allows the inclusion of such entities, and includes language requiring public accountability and transparency for such private or non-profit institutions in all matters concerning their charter-authorizing practices and decisions. The model law requires that such entities must apply to the state's designated authorizer oversight body, and clearly demonstrate their interest in, and capacity for, authorizing schools. These requirements mean that no pre-established longevity or asset amounts

are specified in the law, allowing new single-purpose non-profit authorizers to be established.

### **Authorizer Powers and Duties**

Too often, state laws are silent or vague about authorizer powers and duties. Given that charter authorizing is still such a new and difficult task within K-12 public education, it is critical that state laws provide clarity regarding the roles and responsibilities of authorizers. To do so, the model law provides the following language:

- “Authorizers are responsible for executing, in accordance with this Act, the following essential powers and duties:
  - Soliciting and evaluating charter applications;
  - Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices;
  - Declining to approve weak or inadequate charter applications;
  - Negotiating and executing sound charter contracts with each approved public charter school;
  - Monitoring, in accordance with charter contract terms, the academic and fiscal performance and legal compliance of public charter schools; and
  - Determining whether each charter contract merits renewal, nonrenewal, or revocation.”

### **Authorizer Funding: Developing a Statewide Formula**

In two studies analyzing authorizing quality across the country the Thomas B. Fordham Institute found that authorizers often lack sufficient fiscal resources to fulfill their responsibilities professionally.<sup>15</sup> Authorizer funding structures generally fall into three categories: fees retained from authorized public charter schools; budget allocation from parent organization (such as a university); and, state or local budget appropriation.

<sup>13</sup> The two states that allow mayors or city councils to serve as authorizers are Indiana (the Indianapolis mayor only) and Wisconsin (the Milwaukee common council only). The 11 states that allow public postsecondary institutions to serve as authorizers are Florida (state universities for lab schools only and community college district boards of trustees for charter technical career centers only), Indiana, Michigan, Minnesota, Missouri (only in the two districts where charters are permitted – Kansas City and St. Louis), Nevada, New York, North Carolina, Ohio, Oklahoma (only in the 13 districts where charters are permitted), and Wisconsin (only in Milwaukee and Racine).

<sup>14</sup> The two states that allow private postsecondary institutions to serve as charter authorizers are Minnesota and Missouri. The two states that allow non-profit organizations to serve as charter authorizers are Minnesota and Ohio.

<sup>15</sup> See Louann Bierlein Palmer and Rebecca Gau, *Charter School Authorizing: Are States Making the Grade?*, Washington, D.C.: Thomas B. Fordham Institute, 2003; Rebecca Gau, *Trends in Charter School Authorizing*, Washington, D.C.: Thomas B. Fordham Institute, 2006.

Similar to the practice in 14 states, the model law allows an authorizer to retain a percentage or portion of revenue from each school it charters.<sup>16</sup> There is no single formula for authorizer funding that is “the best” for every state. The determination of an adequate, efficient, and well-working formula for authorizer funding will depend on conditions in each state, including the variety and preexisting financial capacities of authorizers in the state. Below are a few principles and tips that guided the model law’s provisions on authorizer funding:

- The funding formula should be set by the state and apply uniformly to all authorizers in the state. Authorizers should not be permitted to offer “cut-rate” or “below-market” oversight fees to public charter schools, thereby creating an environment in which public charter schools seek out the lowest-cost instead of the highest-quality or best-fitting authorizer.
- To ensure efficient and well-directed use of tax dollars, the state’s designed authorizer oversight body should periodically review and, if warranted by the actual costs of authorizing (as reported annually to the state), adjust the authorizer funding formula or scale. Charter authorizing should be neither a financial burden nor a “cash cow” for authorizers. The funding formula should provide adequate funding for authorizers to fulfill the responsibilities of quality authorizing in accordance with the charter law, but should not give authorizers a financial incentive to pursue volume chartering at the possible expense of *quality* chartering.
- Three percent of public charter school per-pupil funding is generally regarded as adequate funding for authorizers in most states, particularly where separate start-up funding is allocated for the establishment of new authorizers like a statewide commission. In addition, once an authorizer has chartered schools for a few years and oversees a “critical mass” of charters, it might be able to continue authorizing effectively with a lower-

percentage fee (because it is beyond start-up and also may have achieved some economies of scale) until the point where the number of schools it authorizes increases costs on a per-school basis. Such a determination should be made by the state’s designated authorizer oversight body based on several consecutive years of financial data from all authorizers in the state. If the data warrant, the state’s designated authorizer oversight body could, for example, establish a sliding scale that provides for authorizers to receive a higher-percentage fee (not to exceed three percent of public charter school per-pupil dollars) in their first three years of authorizing, with the percentage decreasing thereafter.

### Authorizer Accountability

One of the principles of the model law is that all authorizers should be held accountable for their work. The model law establishes accountability in two ways. First, the model law requires each authorizer to submit to the state’s designated authorizer oversight body and the legislature an annual report that includes the following items:

- The authorizer’s strategic vision for chartering and progress toward achieving that vision;
- The academic and financial performance of all operating public charter schools overseen by the authorizer, according to the performance expectations for public charter schools set forth in the state’s Public Charter Schools Act;
- The status of the authorizer’s public charter school portfolio, identifying all public charter schools in each of the following categories: approved (but not yet open), operating, renewed, transferred, revoked, not renewed, voluntarily closed, or never opened;
- The authorizing functions provided by the authorizer to the public charter schools under its purview, including the authorizer’s operating costs and expenses as detailed through annual audited financial statements that conform with Generally Accepted Accounting Principles; and

<sup>16</sup> See National Association of Charter School Authorizers, *Dollars and Sense: Funding Authorizers Responsibly*, Chicago, IL: Author, 2009.



- The services purchased from the authorizer by the public charter schools under its purview, including an itemized accounting of the actual costs of these services.

Second, the model law requires that each authorizer's performance be reviewed by the state's designated authorizer oversight body to ensure adherence to the charter law as well as quality performance. The model law allows the state's designated authorizer oversight body to conduct a special review of an authorizer for persistently unsatisfactory performance of the authorizer's portfolio of public charter schools, a pattern of well-founded complaints about the authorizer or its public charter schools, or other objective circumstances. As a result of such a review, the state's designated authorizer oversight body must notify an authorizer of identified problems and give the authorizer reasonable opportunity to respond and remedy the problems. If the authorizer fails to do so, the state's designated authorizer oversight body may sanction the authorizer, which can include the termination of the authorizer's chartering authority.

The key question is which entity is best-positioned and most competent and trustworthy in a state to serve this "authorizer oversight" function. It is highly unlikely that the answer will be the same in every state, which is one of the challenges in writing a model law. One size does not fit all.

The designated entity for authorizer oversight must be committed to the success of public charter schools and authorizers in the state as well as to the successful implementation of chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing. In some states, it may make the most sense for lawmakers to designate the state board of education or the state department of education as the state's designated authorizer oversight body. These entities oversee all public education in a state, and are sometimes positioned well to oversee the work of charter authorizers.

Where state boards and departments of education are already serving as authorizers themselves or have a track record of being unsupportive or ambivalent toward public charter schools, lawmakers should designate another entity to serve as the state's designated authorizer oversight body. One option is to create a special legislative or governor's office of charter authorizer oversight, similar to other special legislative or governor's offices relating to public education. Another option is to designate a university to serve this role.

As practical conditions and circumstances may vary from state to state, lawmakers should carefully consider where to vest ultimate statewide authority over public charter school authorizers. The best choice for each state should be based on the long-term best interests of the state's public charter schools and students, rather than short-term, temporary, or political circumstances.

## Application Process

The model law also breaks new ground in the section on the charter application process, particularly by requiring authorizers to issue a request for proposals at the front end of the process. We discuss three areas from this section below.

### Request for Proposals

Too often, authorizers implement a charter application process without reflecting on how they can use chartering strategically to meet the most pressing educational challenges in their communities. And too many authorizers, even years into their role, approve charters without clear processes for holding them accountable.

To solicit, encourage, and guide the development of quality public charter school applications, the model law requires authorizers to issue and broadly publicize a request for proposals (RFP) that contains the following:

- The authorizer’s strategic vision for chartering, including a clear statement of any preferences the authorizer wishes to grant to applications that help at-risk students. While these preferences should guide an authorizer’s chartering decisions, authorizers should remain open to bold new ideas that show promise for improving public education in a particular community.
- The performance framework that the authorizer has developed for public charter school oversight and evaluation.
- The criteria that will guide the authorizer’s decision to approve or deny a charter application.
- Clear, appropriately detailed questions as well as guidelines concerning the format and content essential for applicants to demonstrate the capacities necessary to establish and operate a successful public charter school.
- The essential elements of the charter application.
- Specific requirements for conversion public charter schools, virtual public charter schools, public charter school governing boards seeking to contract with an education service provider, and public charter school governing boards currently operating one or more schools in the state or the nation.
- A statewide timeline for charter approval or denial decisions annually published by the state’s designated authorizer oversight body which shall apply to all authorizers in the state.
- A thorough evaluation of each written charter application, an in-person interview with the applicant group, and an opportunity in a public forum for local residents to learn about and provide input on each application.
- Approval guidelines that include the following:
  - Grant charters only to applicants that have demonstrated competence in each element of the authorizer’s published approval criteria and are likely to open and operate a successful public charter school;
  - Base decisions on documented evidence collected through the application review process; and,
  - Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest or any appearance thereof.
- The authorizer shall adopt by resolution all charter approval or denial decisions in an open meeting of the authorizer’s governing board. For any charter denial, the authorizer shall clearly state, for public record, its reasons for denial.

### **Application Decision-making Process**

State laws usually address authorizers’ decision-making processes for charter applications through one of two approaches. The first approach treats the process rather vaguely (or not at all in the case of Maryland), leaving much discretion to authorizers for creating and implementing their own application process. The second approach provides some specifics about the process, but creates a situation where authorizers feel compelled to approve charter applications because the applicants have simply complied with the application submission requirements in the law.

The model law offers a third approach that provides some specifics about certain items, but also makes clear that the authorizer has discretion to make the appropriate call about charter applications within the bounds of certain principles and standards. The key aspects of the model law’s approach include:

### **Charter Contracts**

As mentioned earlier, one of the essential characteristics of the public charter school concept is a fixed-term, renewable contract between a school and its authorizer. Such a contract defines the roles, powers, responsibilities, and performance expectations for the school and its authorizer. While some states explicitly require authorizers to enter into charter contracts with public charter schools, other state laws do not. To make clear that schools and authorizers must enter into such contracts, the model law provides the following language:

- “Within [INSERT NUMBER OF DAYS] of approval of a charter application, the authorizer and the governing board of the approved public charter school shall execute a charter contract that clearly

sets forth the academic and operational performance expectations and measures by which the public charter school will be judged and the administrative relationship between the authorizer and public charter school, including each party's rights and duties charter.”

Even in those states that require charter contracts, it is not always clear that a charter contract must be created as a separate document from the charter application. The purposes of the charter application are to present the proposed public charter school's academic and operational vision and plans, demonstrate the applicant's capacities to execute the proposed vision and plans, and provide the authorizer a clear basis for assessing the applicant's plans and capacities, not to specifically define the roles, powers, responsibilities, and performance expectations for the school and its authorizer. To make clear that schools and authorizers must enter into such contracts as separate documents from charter applications, the model law provides the following provision:

- “An approved charter application shall not serve as the school's charter contract.”

Lastly, most state laws are still silent on the virtual public charter schools issue. While we believe most state law provisions relevant for bricks-and-mortar public charter schools are equally relevant to virtual public charter schools, we know state laws must account for the unique environments of virtual public charter schools in a few places, including the charter contracts section. The model law includes the following language about virtual public charter school contracts:

- “The charter contract for a virtual public charter school shall include description and agreement regarding the methods by which the school will:
  - Monitor and verify full-time student enrollment, student participation in a full course load, credit accrual, and course completion;
  - Monitor and verify student progress and performance in each course through regular, proctored assessments and submissions of coursework;

- Conduct parent-teacher conferences; and
- Administer state-required assessments to all students in a proctored setting.”

## Accountability

The model law also breaks new ground in the section on accountability, particularly by requiring authorizers to develop performance frameworks as tools to hold public charter schools accountable. We discuss four areas from this section below.

### Performance Framework

Most of the best accountability work being done across the country has been created in practice by charter authorizers rather than in state law.<sup>17</sup> Notable examples include the work of the Chicago Public Schools, the District of Columbia Public Charter School Board, the Indianapolis Mayor's Office, and the State University of New York.<sup>18</sup> These entities and others have developed clear academic and operational performance goals and objectives with each of their public charter schools that serve as the basis for holding their schools accountable.

Up to now, charter supporters have struggled in translating such effective practices into state law to ensure wide adoption by authorizers throughout a state. Some charter supporters are understandably concerned about over-regulating the charter accountability process in state law, taking away authorizer discretion over complex decisions about school renewals, revocations, and non-renewals. Others are concerned that

<sup>17</sup> See U.S. Department of Education, Office of Innovation and Improvement, *Supporting Charter School Excellence Through Quality Authorizing*, Washington, D.C.: Author, 2007.

<sup>18</sup> See Robin J. Lake and Lydia Rainey, *Chasing the Blues Away: Charter Schools Scale Up in Chicago*, Washington, D.C.: Progressive Policy Institute, 2005; Government Accountability Office, *Charter Schools: Oversight Practices in the District of Columbia*, Washington, D.C.: Author, 2005; Government Accountability Office, *D.C. Charter Schools: Strengthening Monitoring and Process When Schools Close Could Improve Accountability and Ease Student Transitions*, Washington, D.C.: Author, 2005; Bryan C. Hassel, *Fast Break in Indianapolis: A New Approach to Charter Schooling*, Washington, D.C.: Progressive Policy Institute, 2004; Robin J. Lake, *Seeds of Change in the Big Apple: Charter Schooling in New York City*, Washington, D.C.: Progressive Policy Institute, 2004.

district authorizers would abuse any such accountability requirements in a manner to squash their public charter school. Notwithstanding these concerns, it is safe to say that the lack of a sound state law performance framework has allowed too many authorizers to take a pass on creating fair and rigorous accountability systems for their public charter schools.

The model law plows some new ground by including a section regarding performance frameworks that provides some specifics about certain items, but also makes clear that the authorizer has discretion to make the appropriate call about charter applications within the bounds of certain principles and standards. The key aspects of the model law's approach include:<sup>19</sup>

- Authorizers are required to base the performance provisions of the charter contract on a performance framework that includes at a minimum:
  - Student academic proficiency;
  - Student academic growth;
  - Achievement gaps in both proficiency and growth between major student subgroups;
  - Attendance;
  - Recurrent enrollment from year to year;
  - Postsecondary readiness (for high schools);
  - Financial performance and sustainability; and
  - Board performance and stewardship, including compliance with all applicable laws, regulations, and terms of the charter contract.
- Public charter schools are required to set annual performance targets in conjunction with their authorizers.
- All student performance data must be disaggregated by major student subgroups.
- Multiple schools operating under a single charter

contract or overseen by a single governing board must report their performance as separate, individual schools, and each school must be held independently accountable for its performance.

### Ongoing Oversight and Corrective Actions

It is important that authorizers provide adequate oversight of their public charter schools and have the authority to sanction public charter schools that are not performing well but do not merit immediate closure. Most state laws are relatively silent on these matters. As a result, authorizers may provide inadequate oversight of their schools or take inappropriate steps that encroach on their schools' operational autonomy.<sup>20</sup> Furthermore, authorizers are sometimes hesitant to sanction low-performing charters because they claim not to have the clear authority to do so. To ensure that authorizers provide adequate oversight and have the ability to sanction low-performing public charter schools, the model law provides the following provisions:

- “An authorizer shall continually monitor the performance and legal compliance of the public charter school it oversees, including collecting and analyzing data to support ongoing evaluation according to the charter contract. Every authorizer shall have the authority to conduct or require oversight activities that enable the authorizer to fulfill its responsibilities under this Act, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this Act, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to public charter schools.”
- “Each authorizer shall annually publish and provide, as part of its annual report to the state's designated authorizer oversight body, a performance report for each public charter school it oversees, in accordance with the

<sup>19</sup> The model law's performance framework and minimum data elements are drawn from the recommendations of the Charter School Quality Consortium, a national leadership project funded by the U.S. Department of Education. This project convened two national Consensus Panels to develop a two-part performance framework to inform and improve evaluation of charter school academic and operational quality across the states. The complete framework and recommendations of the Quality Consortium and Consensus Panels are available in two reports, *A Framework for Academic Quality* and *A Framework for Operational Quality*, available at [www.publiccharters.org](http://www.publiccharters.org).

<sup>20</sup> See Louann Bierlein Palmer and Rebecca Gau, *Charter School Authorizing: Are States Making the Grade?*, Washington, D.C.: Thomas B. Fordham Institute, 2003; Rebecca Gau, *Trends in Charter School Authorizing*, Washington, D.C.: Thomas B. Fordham Institute, 2006.

performance framework set forth in the charter contract and Section V, (7) of this Act. The authorizer may require each public charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the performance framework.”

- “In the event that a public charter school’s performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify the public charter school of the perceived problem and provide reasonable opportunity for the school to remedy the problem, unless the problem warrants revocation in which case the revocation timeframes will apply.”
- “Every authorizer shall have the authority to take appropriate corrective actions or exercise sanctions short of revocation in response to apparent deficiencies in public charter school performance or legal compliance. Such actions or sanctions may include, if warranted, requiring a school to develop and execute a corrective action plan within a specified timeframe.”

### **Renewals, Revocations, and Non-renewals**

Often overlooked in state laws are charter renewals, revocations, and non-renewals. Similar to the model law’s language for the application process, its language for renewals, revocations, and non-renewals provides some specifics about certain items, but also makes clear that the authorizer has discretion to make the appropriate call about charter applications within the bounds of certain principles and standards. The key aspects of the model law’s approach include:

- A charter contract may be renewed for successive five-year terms, although authorizers may vary the term based on the performance, demonstrated capacities, and particular circumstances of each public charter school and may grant renewal with specific conditions for necessary improvements to a public charter school.
- Authorizers must issue a public charter school performance report and charter renewal application guidance to eligible public charter schools.
- In making charter renewal decisions, authorizers must ground their decisions in evidence of the school’s performance, ensure that data used in making renewal decisions are available to the school and the public, and provide a public report summarizing the evidence basis for each decision.
- Authorizers may revoke or not renew a charter contract if a school does any of the following or otherwise fails to comply with the provisions of this Act:
  - Commits a material and substantial violation of any of the terms, conditions, standards, or procedures required under this Act or the charter contract;
  - Fails to meet or make sufficient progress toward the performance expectations set forth in the charter contract;
  - Fails to meet generally accepted standards of fiscal management; or,
  - Substantially violates any material provision of law from which the public charter school was not exempted.
- Authorizers must develop revocation and non-renewal processes that:
  - Provide the charter holders with a timely notification of the prospect of revocation or non-renewal and of the reasons for such possible closure;
  - Allow the charter holders a reasonable amount of time in which to prepare a response;
  - Provide the charter holders with an opportunity to submit documents and give testimony challenging the rationale for closure and in support of the continuation of the school at an orderly proceeding held for that purpose;
  - Allow the charter holders access to representation by counsel and to call witnesses on their behalf;
  - Permit the recording of such proceedings; and
  - After a reasonable period for deliberation, require a final determination be made and conveyed in writing to the charter holders.

- Authorizers must develop a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets in accordance with the requirements of this Act.

### Transfers

In some situations, it makes sense for a public charter school to transfer its contract from one authorizer to another before the expiration of its term, especially when its current authorizer has decided that it no longer has the commitment or capacity to effectively perform its authorizing duties. However, there are other situations in which it should be impermissible – for example, when a low-performing public charter school facing probation or closure from a high-quality authorizer seeks to transfer its charter to a less-exacting authorizer that will not place it on probation or close the school. Understanding that it is difficult to make hard-and-fast rules about when transfers should be allowed, the model law addresses the transfer issue in the following way:

- “Transfer of a charter contract, and of oversight of that public charter school, from one authorizer to another before the expiration of the charter term shall not be permitted except by special petition to the [INSERT NAME OF STATE’S AUTHORIZER OVERSIGHT BODY] by a public charter school or its authorizer. The [INSERT NAME OF STATE’S AUTHORIZER OVERSIGHT BODY] shall review such petitions on a case-by-case basis and may grant transfer requests in response to special circumstances and evidence that such a transfer would serve the best interests of the public charter school’s students.”

## Operations and Autonomy

The model law’s “Operations and Autonomy” section addresses several issues critical to the daily functioning of public charter schools. We highlight nine issues that merit particular attention.

### Automatic Waivers

School-level flexibility is one of the core principles of public charter schooling. To provide public charter schools with needed autonomy, states and districts waive many of the state and local laws, rules, and regulations that burden traditional public schools. Generally, there are two approaches that state charter laws take to waivers. In 16 states, public charter schools apply to their local school boards or state boards of education for waivers of state and local laws, rules, and regulations. This approach is typically onerous for the schools, and makes it difficult for public charter schools to obtain the type of flexibility that is needed to develop unique and innovative programs.

A far better approach is found in 24 states and D.C., where the charter statute provides an automatic waiver from most state and local laws, rules, and regulations. Such an approach allows for greater flexibility within public charter schools and invites a greater number of charter applications with more innovative programs. The model law provides an automatic waiver to public charter schools via the following language:

- “Except as provided in this Act, a public charter school shall not be subject to the state’s education statutes or any state or local rule, regulation, policy, or procedure relating to non-charter public schools within an applicable local school district regardless of whether such rule, regulation, policy, or procedure is established by the local school board, the state board of education, or the state department of education.”

### Multiple Schools on One Charter Contract and Multiple Charter Contracts for One Board

The charter movement has created a major opportunity for rapid improvement in the performance of public schooling by scaling up successful models launched at a single school. While replication is challenging, it has proven to be a more effective and efficient way of increasing the number of high-quality public school options available in a community as

compared to imposing “effective practices” on a school that is chronically failing.

When states first enacted charter laws, they envisioned organizations opening and operating individual schools, not multiple schools. To better support the significant amount of replication activity in the charter sector, the model law contains provisions allowing for the creation of multiple schools under a single charter contract, and also allows an effective governing board to hold multiple charter contracts:

- “A charter contract may consist of one or more schools, to the extent approved by the authorizer and consistent with applicable law. Each public charter school that is part of a charter contract shall be separate and distinct from any others.”
- “A single governing board may hold one or more charter contracts. Each public charter school that is part of a charter contract shall be separate and distinct from any others.”

Such arrangements provide a high degree of flexibility and minimize administrative restrictions on the expansion of successful programs. It is important to note that authorizers must play a strong role in these cases to ensure that only effective governance models and high performing programs are rewarded with replication.

### Local Educational Agency Status

The term “local educational agency” or “LEA” is a creation of federal law. LEA status is particularly significant in relation to federal (and state) categorical funding streams, such as Title I and the Individuals with Disabilities Education Act.

#### *Charters as Their Own LEAs*

Some states treat public charter schools as their own LEAs. There are two primary advantages to this approach:

- State and federal categorical funding flows directly from the state department of education to public charter schools. There is no middleman,

such as a state charter authorizer or a local school district, to take a chunk of the funding or slow down the funding flow.

- Public charter schools retain significant autonomy over resource allocation. Because there is no middleman for state and federal categorical dollars, charters have maximum control over how such funding is spent.

The two major disadvantages to this approach are:

- Being an LEA can be hugely burdensome and costly. Individual public charter schools are responsible for applying to the various categorical programs and for detailed reporting about how they spend their program funds. These are not small, simple programs, but are actually some of the most heavily regulated and complex programs in public education. Furthermore, public charter schools that are their own LEAs are responsible for covering the costs of special education services to eligible students without the economies of scale that resides in school district LEAs.
- Public charter schools are often isolated from existing state and local expertise in navigating application, delivery, and reporting requirements for categorical programs.

One variation on this approach is for schools that are their own LEAs to join in special education cooperatives and other arrangements that mitigate the burden of paperwork and staffing on individual schools.

#### *Charters as Part of Other LEAs*

Some states treat public charter schools as part of other LEAs, such as school district LEAs or statewide LEAs. There are two primary advantages to this approach:

- Public charter schools are able to focus their energies on their core work. In this arrangement, the school district or statewide LEA focuses on ensuring that charters are receiving the state and federal funds to which they are entitled, while the charters focus on using those funds to deliver a high-quality education.

- Local districts have experience as an LEA and have developed expertise in navigating state and federal bureaucracies. Such experience and expertise could benefit public charter schools with many issues on their plate, particularly in their start-up phase.

The two major disadvantages to this approach are:

- This approach adds another layer between the flow of dollars from SEAs to public charter schools. In this situation, the dollars must flow from the SEA to the school district or statewide LEA, which then distributes them to individual public charter schools. Too often, these dollars do not flow to public charter schools in a timely way, resulting in significant problems for charters.
- There is the potential of impinging on public charter schools' autonomy, especially for school district LEAs that focus on creating more bureaucratic mechanisms to carry out its work. While local districts have experience and expertise as an LEA, their funding procedures, services, and reporting processes are usually designed for schools that do not have the unique mixture of autonomy and accountability found in charters – and often are uneven in terms of quality. It may be tough for districts to fit charters into their existing procedures in a way that is respectful of the charter concept.

The model law does not take a position on whether it is preferable for a public charter school to serve as its own LEA or not because there is no widely accepted best practice in this area. The model law does offer alternative provisions for states that elect to designate public charter schools as their own LEAs and those that make them part of school district or statewide LEAs. Whichever approach a state takes, it is essential that the ramifications of LEA status of charter schools are understood well by those creating or revising a state public charter school law and that LEA status is clearly stated and factored in throughout the law.

### Special Education

Public charter school responsibilities with regard to special education depend to a great extent on their LEA status. Because the model law offers two options for LEA status (charters as their own LEAs vs. charters as part of school district or statewide LEAs), the model law also offers two options for how special education is handled by public charter schools in a state. The following language is applicable in states where *public charter schools are their own LEAs*:

- “A public charter school shall function as a Local Educational Agency (“LEA”). A public charter school shall be responsible for meeting the requirements of LEAs under applicable federal, state, and local laws, including those relating to special education. LEA status shall not preclude a public charter school from developing partnerships with districts for services, resources, and programs by mutual agreement or formal contract.”
- “A public charter school shall have primary responsibility for special education at the school, including identification and service provision. It shall be responsible for meeting the needs of enrolled students with disabilities. In instances where a student’s individualized education program team determines that a student’s needs are so profound that they cannot be met in the public charter school and that the public charter school cannot provide a free, appropriate public education to that student, the student’s district of residence shall place the student in a more appropriate setting.”<sup>21</sup>

The following language is applicable in states where *public charter schools are part of school district or statewide LEAs*:

- “The [INSERT NAME OF ENTITY] of a public charter school is the public charter school’s Local Educational Agency (“LEA”). A public charter school is a school within that LEA.”

<sup>21</sup> For state examples of this approach, see MA 603 CMR 28.03(4)(i)(1)-(i-iii) and NJ Rev Stat § 18A:36A-11(b).



- “The [INSERT NAME OF ENTITY] retains responsibility for special education and shall serve students in public charter schools in a manner consistent with LEA obligations under applicable federal, state, and local law.”

### Contracting with Education Service Providers

In addition to addressing education service providers in the “Definitions” and “Application Process” sections, the model law also includes a provision in the “Operations and Autonomy” section that makes it clear that public charter schools may contract with education service providers so long as the school’s governing board retains oversight authority over the school. The model law states that a public charter school has the power:

- “To contract with an education service provider for the management and operation of the public charter school so long as the school’s governing board retains oversight authority over the school.”

### Teacher Qualifications

Public charter schools are required to comply with the No Child Left Behind (NCLB) Act’s “highly qualified” teacher requirements, which are as follows:

- Teachers must hold a bachelor’s degree;
- Teachers must obtain full state certification, which can be “alternative certification”; and,
- Teachers must demonstrate subject-matter competency in the core academic subjects taught.

NCLB explicitly defers to state charter law regarding certification requirements. If a state does not require any charter teachers to be certified, NCLB does not impose that additional mandate. Even in these situations, though, the other two aspects of NCLB’s highly qualified requirements apply.

Because of the lack of a strong empirical connection between teacher certification and student achievement,<sup>22</sup> the model law holds public

charter schools accountable for compliance with NCLB’s highly qualified teacher obligations, but it takes advantage of the flexibilities in the federal law regarding state teacher certification:

- “Public charter schools shall comply with applicable federal laws, rules, and regulations regarding the qualification of teachers and other instructional staff. In accordance with Section VIII, (1), (d), teachers in public charter schools shall be exempt from state teacher certification requirements.”

### Collective Bargaining

Eighteen states currently require some or all public charter schools to be bound by the district collective bargaining agreements or personnel policies. These agreements and policies are often a significant constraint on school autonomy, and usually fly in the face of the core charter principle of school level flexibility. In order to promote autonomy of school leaders and teachers, the model law provides an automatic collective bargaining exemption whereby public charter school employees cannot be required to be members of any existing collective bargaining agreement, while prohibiting school leaders from interfering with laws or the rights of public charter school employees to organize:

- “Public charter school employees cannot be required to be members of any existing collective bargaining agreement between a school district and its employees. A public charter school may not interfere, however, with laws and rules protecting the rights of employees to organize and be free from discrimination.”

### Access to State Retirement and Other Benefits Programs

State laws vary in how they address public charter school employee access to state retirement and other benefits programs. Some states allow charter employee access to these systems, but don’t require them to participate. Others require charter employees to participate. Still others prohibit charter employees

22 Education Commission of the States, *Eight Questions on Teacher Licensure*

and *Effectiveness: What Does the Research Say?*, Denver, CO: Author, 2005.

from accessing these systems.

Although some public charter schools will choose to provide these benefits through other mechanisms for cost or other reasons, it is important that charters, as public schools, have the same access to these systems as other public schools. To create a level playing field in terms of retirement and other benefits programs, the model law allows public charter schools to participate in state retirement and benefits programs:

- “Employees in public charter schools are eligible for participation in retirement and other benefits programs of the state, if the public charter school chooses to participate.”

### **Extra-Curricular and Interscholastic Activities Eligibility and Access**

Most state laws are silent regarding extra-curricular and interscholastic activities eligibility and access for public charter school students and employees. To provide some clarity in this area, the model law states that public charter school students and employees are eligible for state- or district-sponsored interscholastic leagues, competitions, awards, scholarships, and recognition programs to the same extent as traditional public schools. The model also provides that students at charters that do not provide extra-curricular and interscholastic activities have access to those activities at traditional public schools for a fee via a mutual agreement.

## **Funding**

The 41 jurisdictions with public charter school laws vary greatly in how they fund public charter schools. While their approaches vary, most states share one commonality: They usually provide significantly less funding to public charter schools as compared to traditional public schools. In fact, a 2005 study found that public charter schools receive 78% of the dollars that flow to traditional public schools.<sup>23</sup>

The model law provides three options for how states should fund public charter schools based upon the flow of funds for public charter schools:

- In the first option, funding flows from the *state to school districts to public charter schools*. This option is modeled on the approach in New York with some variations. The advantage of this approach is that it is relatively easy to integrate charters into the existing funding system. By sending the money through school districts, however, states are providing a tangible reminder of the movement of dollars from districts to public charter schools, which can be problematic – particularly when the charters are authorized by non-district entities.
- In the second option, funding flows from the *state directly to public charter schools*. This option is modeled on the approach in Minnesota with some variations. The main advantage of this option is that it eliminates the middle man between states and schools. As a result, schools will likely receive their funds in a timely manner. With this approach, however, it can be more challenging for the state to figure out how to fold charters into the existing funding system for school districts.
- In the third option, funding flows from the *state to authorizers to public charter schools*. This option is modeled on the approach in Colorado with some variations. While it is relatively easy to integrate district-authorized charters into the existing funding system, it can be more of a challenge for charters authorized by non-district entities.

The key principles shaping the statutory language for each option in the model law are as follows:

- **Operational Funding.** Operational funding for public charter schools should be statutorily driven, clear, free from interference or an annual, separate line item appropriation, and in the same amount to district schools.

<sup>23</sup> Thomas B. Fordham Institute, *Charter School Funding: Inequity's Next Frontier*, Washington, D.C.: Author, 2005.

It is important to note that the model law provides different sources of operational funding among the three options for funding flow. For the option where the funds flow through districts, the operational funding amount is composed of state and local dollars in the same amount to district schools.

In the options where the funding flows either directly to schools or through authorizers, the funding sources differ by authorizer. For schools authorized by districts, the operational funding amount is composed of state and local dollars in the same amount to district schools. For schools authorized by non-district entities, though, the operational funding amount is composed of state dollars in the same amount to district schools. To ensure that there is no fiscal impact on state budgets, the model law provides that the state withhold from the state equalization payments for each school district with students attending the public charter school an amount equal to one hundred percent of the amount calculated pursuant to the state's funding formula for each student in the school district multiplied by the number of students enrolled in the public charter school from the school district.

- **Timely Flow of Funds.** Public charter schools should receive funds in a timely manner. If district or non-district authorizers fail to send funds to public charter schools in a timely manner, the state should be able to sanction them by intercepting funds until the obligation is satisfied.
- **Categorical Funding.** Public charter schools should have equal access to categorical funding streams, including pre-kindergarten and adult education, and state laws should provide clear guidance on the pass-through of federal and state categorical funding streams.
- **Special Education.** State laws should explicitly address how federal and state special education funds will flow to the entities serving as LEAs for public charter school special education purposes.

- **Financial Accountability.** Public charter schools should be held financially accountable in the following ways:
  - They should adhere to Generally Accepted Accounting Principles.
  - They should annually engage an external auditor to do an independent audit of the school's finances. They should file a copy of each audit report and accompanying management letter to its authorizer by a certain date.
- **Transportation Funding.** Public charter schools should receive funding for transportation similar to school districts.

## Facilities

One of the biggest challenges facing public charter schools is finding and financing school facilities. The 41 jurisdictions with public charter school laws vary greatly in how they provide facility support to public charter schools. What is clear from the first 18 years of the public charter school movement is that there is not a “silver bullet” to resolving charters’ facilities challenges. Instead, states will likely have to implement several “silver bullets” in order to slay the facility beast.

In the model law, we provide a menu of approaches for supporting public charter school facility needs. The key components of the menu are as follows:

- **Per-Pupil Facilities Allowance.** The model law provides a per-pupil facilities allowance to each public charter school that is calculated via a rolling formula that is based on total facilities costs in a state over the past five years. While 11 states currently provide some type of a per-pupil facilities allowance to charters, the model law's language is modeled on the approach in the District of Columbia.<sup>24</sup>

<sup>24</sup> See DC ST § 38-2908.

- **Public Charter School Facility Grant Program.** The model law provides a public charter school facility grant program funded by a bond authorization. Although five states provide some type of a grant program, the model law's language is modeled on the approach in Connecticut.<sup>25</sup>
- **Public Charter School Facility Revolving Loan Program.** The model law provides a public charter school facility revolving loan program funded by state appropriations. If state appropriations are unavailable, we recommend the state use monies from the federal Charter Schools Program (CSP). According to federal law, states can use up to 10% of their grants from the CSP to establish a revolving loan fund. Although four states provide some type of loan program, the model law's language is modeled on the approach in California.<sup>26</sup>
- **Bonding Authority.** Public charter schools should have equal access to all of the relevant tax-exempt bonding authorities in a state or have their own bonding authority. For the first option, a state must amend the appropriate section of the law (e.g., state health and educational facility authority section) to clarify that public charter schools are eligible to obtain tax-exempt financing from the relevant authority. For the second option, a state must create a new section of state law establishing the authority.
- **Moral Obligation.** The model law creates a mechanism for the legislature to provide limited credit enhancement for eligible highly-rated bond transactions for public charter schools. Although two states provide such a mechanism, the model law's language is modeled on the approach in Colorado.<sup>27</sup>
- **Credit Enhancement Fund.** The model law creates a credit enhancement fund for public charter school facilities. Such a fund provides grants to eligible nonprofit organizations to carry out the following activities:
  - Obtaining financing to acquire interests in real property (including by purchase, lease, or donation), including financing to cover planning, development, and other incidental costs;
  - Obtaining financing for construction of facilities or the renovation, repair, or alteration of existing property or facilities (including the purchase or replacement of fixtures and equipment), including financing to cover planning, development, and other incidental costs;
  - Enhancing the availability of loans (including mortgages) and bonds; and
  - Obtaining lease guarantees.
- **Existing State Facilities Programs.** Public charter schools should have equal access to all of the existing state facilities programs for traditional public schools in a state. Examples include the Public School Capital Construction Assistance Fund in Colorado and the Public School Capital Outlay Fund in New Mexico. To clarify that public charter schools are eligible to obtain funding from the relevant program, a state must amend the relevant section of the law (e.g., public school capital construction assistance fund section).
- **Access to District Facilities and Land.** Public charter schools should have the right of first refusal to purchase or lease at or below fair market value a closed or unused public school facility or property.
- **Facility-Related Requirements.** The model law provides language that no state or local entity may impose any facility-related requirements that are stricter than those applied to traditional public schools.

<sup>25</sup> See CT Gen Stat § 10-66jj.

<sup>26</sup> See Education Code § 47614.5.

<sup>27</sup> See CO Rev Stat § 22-40.5-407.

# A NEW MODEL LAW FOR SUPPORTING THE GROWTH OF HIGH-QUALITY PUBLIC CHARTER SCHOOLS

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## I. Short Title

This act shall be known and may be cited as the “Public Charter Schools Act,” (the “Act”).

## II. Legislative Declarations

- (1) The general assembly hereby finds and declares the following:
  - (a) It is in the best interests of the people of the state to provide all children with public schools that reflect high expectations and to create conditions in all schools where these expectations can be met;
  - (b) Education reform is necessary to strengthen the performance of elementary and secondary public school students;
  - (c) Those who know students best – their parents and educators – make the best education decisions regarding the students;
  - (e) Parents and educators have a right and a responsibility to participate in the education institutions which serve them;
  - (f) Different students learn differently and public school programs should be customized to fit the needs of individual students; and
  - (g) There are parents, educators, and other citizens in the state who are willing and able to offer educational programs but who lack a channel through which they can direct their efforts.
- (2) The general assembly finds and declares that the purposes of the state’s public charter schools as a whole are:
  - (a) To improve student learning by creating high-quality schools with high standards for student performance;
  - (b) To close achievement gaps between high-performing and low-performing groups of public school students;
  - (c) To increase high-quality educational opportunities within the public education system for all students, especially those at risk of academic failure;
  - (d) To create new professional opportunities for teachers, school administrators, and other

school personnel that allow them to have a direct voice in the operation of their schools;

- (e) To encourage the use of different, high-quality models of teaching, governing, scheduling, or other aspects of schooling that meet a variety of student needs;
  - (f) To allow public schools freedom and flexibility in exchange for exceptional levels of results-driven accountability;
  - (g) To provide students, parents, community members, and local entities with expanded opportunities for involvement in the public education system; and
  - (h) To encourage the replication of successful public charter schools.
- (3) All public charter schools in the state established under this Act are public schools and are part of the state’s public education system. The provisions of this Act should be interpreted liberally to support the findings and purposes of this section and to advance a renewed commitment by the state to the mission, goals, and diversity of public education.

## III. Definitions

As used in this Act:

- (1) An “applicant” means any person or group that develops and submits an application for a public charter school to an authorizer.
- (2) An “application” means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status.
- (3) An “at-risk student” means a student who has an economic or academic disadvantage that requires special services and assistance to succeed in educational programs. The term includes, but is not necessarily limited to, students who are members of economically disadvantaged families, students who are identified as having special educational needs, students who are limited in English proficiency,

students who are at risk of dropping out of high school, and students who do not meet minimum standards of academic proficiency.

- (4) An “authorizer” means an entity authorized under this Act to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to renew, not renew, or revoke charter contracts.
- (5) A “charter contract” means a fixed-term, renewable contract between a public charter school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.
- (6) A “conversion public charter school” means a charter school that existed as a non-charter public school before becoming a public charter school.
- (7) An “education service provider” means a for-profit education management organization, non-profit charter management organization, school design provider, or any other partner entity with which a public charter school intends to contract for educational design, implementation, or comprehensive management.
- (8) A “governing board” means the independent board of a public charter school that is party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the school’s application.
- (9) A “local school board” means a school board exercising management and control of a local school district pursuant to the state constitution and state statutes.
- (10) A “local school district” means a public agency that establishes and supervises one or more public schools within its geographical limits pursuant to the state constitution and state statutes.
- (11) A “non-charter public school” means a public school that is under the direct management, governance, and control of a local school board or the state.
- (12) A “parent” means a parent, guardian, or other person or entity having legal custody of a child.
- (13) A “public charter school” means a public school that:
- (a) Has autonomy over decisions including, but not limited to, matters concerning finance, personnel, scheduling, curriculum, and instruction;
  - (b) Is governed by an independent governing board;
  - (c) Is established and operating under the terms of a charter contract between the school’s board and its authorizer;
  - (d) Is a school to which parents choose to send their children;
  - (e) Is a school that admits students on the basis of a lottery if more students apply for admission than can be accommodated;
  - (f) Provides a program of education that includes one or more of the following: pre-school, pre-kindergarten, any grade or grades from kindergarten through 12<sup>th</sup> grade, and adult community, continuing, and vocational education programs;
  - (g) Operates in pursuit of a specific set of educational objectives as defined in its charter contract; and
  - (h) Operates under the oversight of its authorizer in accordance with its charter contract.
- (14) A “start-up public charter school” means a public charter school that did not exist as a non-charter public school prior to becoming a public charter school.
- (15) A “student” means any child who is eligible for attendance in public schools in the state.
- (16) A “virtual public charter school” means a public charter school that offers educational services predominantly through an on-line program.



## IV. Enrollment

- (1) Open Enrollment and Lottery Requirements
  - (a) A public charter school shall be open to any student residing in the state.
  - (b) A school district shall not require any student enrolled in the school district to attend a public charter school.
  - (c) A public charter school shall not limit admission based on ethnicity, national origin, religion, gender, income level, disabling condition, proficiency in the English language, or academic or athletic ability.
  - (d) A public charter school may limit admission 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 school's application.
  - (e) A public charter school shall enroll all students who wish to attend the school, unless the number of students exceeds the capacity of a program, class, grade level, or building.
  - (f) If capacity is insufficient to enroll all students who wish to attend the school, the public charter school shall select students through a lottery.
- (2) Enrollment Preferences
  - (a) Any non-charter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.
  - (b) A public charter school shall give enrollment preference to students enrolled in the public charter school the previous school year and to siblings of students already enrolled in the public charter school. An enrollment preference for returning students excludes those students from entering into a lottery.
  - (c) A public charter school may give enrollment preference to children of a public charter school's founders, governing board members, and full-time employees, so long as they constitute no more than 10% of the school's total student population.
  - (d) This section does not preclude the formation of a public charter school whose mission is focused on serving students with disabilities, students of the same gender, students who pose such severe disciplinary problems that they warrant a specific educational program, or students who are at risk of academic failure. If capacity is insufficient to enroll all students who wish to attend such school, the public charter school shall select students through a lottery.
- (3) Credit Transferability
  - (a) If a student who was previously enrolled in a public charter school enrolls in another public school in this state, the student's new school shall accept credits earned by the student in courses or instructional programs at the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic credits from other public schools.
- (4) Information to Parents and the General Public
  - (a) A school district shall provide or publicize to parents and the general public information about public charter schools authorized by the district as an enrollment option within the district to the same extent and through the same means that the district provides and publicizes information about non-charter public schools in the district.
- (5) Determination of Student Capacity of Public Charter Schools
  - (a) An authorizer may not restrict the number of students a public charter school may enroll. The capacity of the public charter school shall be determined annually by the governing board of the public charter school in conjunction with the authorizer and in consideration of the public charter school's ability to facilitate the academic success of its students, to achieve the other objectives specified in the charter contract, and to ensure that its student enrollment does not exceed the capacity of its facility or site.

## V. Authorizers

### (1) Eligible Authorizing Entities

- (a) The state public charter school commission created under Section V, (2) of this Act may authorize public charter schools anywhere in the state, provided that the commission fulfills requirements of all public charter school authorizers under this Act.
- (b) A local school board may register with the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY], pursuant to Section V, (3) of this Act, for chartering authority within the boundaries of the school district overseen by the local school board.
- (c) Governing boards of accredited public or private postsecondary institutions, including community colleges, technical colleges, tribal colleges, and four-year colleges and universities, may apply to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY], pursuant to Section V, (4) of this Act, for statewide, regional, or local chartering authority, in accordance with each institution's regular operating jurisdiction.
- (d) A mayor may apply to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY], pursuant to Section V, (4) of this Act, for chartering authority within the mayor's jurisdiction.
- (e) A city council may apply to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY], pursuant to Section V, (4) of this Act, for chartering authority within the city council's jurisdiction.
- (f) Governing boards of non-profit or charitable organizations, which are exempt from federal taxes under sections 501(c) (3) or 501(c) (6) of the Internal Revenue Code, may apply to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY], pursuant to Section V, (4) of this Act, and may be granted statewide, regional, or local chartering authority. Nonpublic sectarian or religious organizations, and any other charitable organization which in their federal IRS Form 1023, Part IV, describe activities

indicating a religious purpose, are not eligible to apply to become an authorizer.

### (2) State Public Charter School Commission

- (a) This Act establishes a state public charter school commission (the "Commission") as an independent state agency with statewide chartering jurisdiction and authority.
- (b) The mission of the Commission shall be to authorize high-quality public charter schools throughout the state, particularly schools designed to expand opportunities for at-risk students, consistent with the purposes of this Act.
- (c) The Commission shall consist of nine members, no more than five of whom shall be members of the same political party. Three members shall be appointed by the Governor; three members shall be appointed by the President of the Senate; and three members shall be appointed by the Speaker of the House of Representatives. In making the appointments, the Governor, the President of the Senate, and the Speaker of the House of Representatives shall ensure statewide geographic diversity among Commission members.
- (d) Members appointed to the Commission shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, public school leadership, assessment, and curriculum and instruction, and public education law. All members of the Commission shall have demonstrated understanding of and commitment to charter schooling as a strategy for strengthening public education.
- (e) To establish staggered terms of office, the initial term of office for three Commission members shall be four years and thereafter shall be three years; the initial term of office for another three members shall be three years and thereafter shall be three years; and the initial term of office for the last three members shall be two years and thereafter shall be two years. No member shall serve more than seven consecutive years. The

initial appointments shall be made no later than [INSERT DATE].

- (f) A member of the Commission may be removed for any cause that renders the member incapable or unfit to discharge the duties of the office. Whenever a vacancy on the Commission exists, the original appointing authority shall appoint a member for the remaining portion of the term.
  - (g) To commence operations, the Commission shall be funded initially by a one-time state appropriation of \$250,000. The Commission is authorized to receive and expend gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of this Act, subject to the terms and conditions under which they are given, provided that all such terms and conditions are permissible under law.
  - (h) The Commission shall operate with dedicated resources and staff qualified to execute the day-to-day responsibilities of public charter school authorizing in accordance with this Act.
- (3) Chartering Authority Registration of Local School Boards
- (a) The [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall publicize to all local school boards the opportunity to register with the state for chartering authority within the school districts they oversee. By [INSERT DATE] of each year, the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall provide information about the opportunity, including a registration deadline, to all local school boards. To register as a charter authorizer in its school district, each interested local school board shall submit the following information in a format to be established by the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY]:
    - (i) Written notification of intent to serve as a charter authorizer in accordance with this Act;
    - (ii) An explanation of the local school board's strategic vision for chartering;
    - (iii) An explanation of the local school board's budget and personnel capacity and commitment to execute the duties of quality charter authorizing, in accordance with this Act;
    - (iv) An explanation of how the local school board will solicit public charter school applicants, in accordance with this Act;
    - (v) A description or outline of the performance framework the local school board will use to guide the establishment of a charter contract and for ongoing oversight and evaluation of public charter schools, consistent with the requirements of this Act; and
    - (vi) A draft of the local school board's renewal, revocation, and non-renewal processes, consistent with Section VII, (3).
    - (vii) A statement of assurance that the local school board commits to serving as a charter authorizer in fulfillment of the expectations, spirit, and intent of this Act, and will fully participate in any authorizer training provided or required by the state.
  - (b) Within [INSERT NUMBER OF DAYS] of receipt of a local school board's duly submitted registration materials, the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall register the local school board as a charter authorizer within the local board's school district, and shall provide the local board a letter confirming its registration as a charter authorizer. No local school board shall engage in any charter-authorizing functions without current registration as a charter authorizer with the state. Once registered, the local school board's registration as a charter authorizer shall continue from year to year, provided that the local school board fulfills all charter-authorizing duties and expectations set forth in this Act and remains an authorizer in good standing with the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY].

- (4) Chartering Authority Application for Eligible Entities
- (a) The [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall establish the annual application and approval process, including cycles and deadlines during the fiscal year, for all entities eligible to apply for chartering authority, as set forth in Section V, (1) of this Act. By [INSERT DATE] of each year, the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall make available information and guidelines for all eligible entities concerning the opportunity to apply for chartering authority under this Act. The application process shall require each interested eligible entity to submit an application that clearly explains or presents the following elements:
- (i) Written notification of intent to serve as a charter authorizer in accordance with this Act;
  - (ii) The applicant entity's strategic vision for chartering;
  - (iii) A plan to support the vision presented, including explanation and evidence of the applicant entity's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing, in accordance with this Act;
  - (iv) A draft or preliminary outline of the request for proposals that the applicant entity would, if approved as a charter authorizer, issue to solicit public charter school applicants, consistent with Section VI, (1) of this Act;
  - (v) A draft of the performance framework that the applicant entity would, if approved as a charter authorizer, use to guide the establishment of a charter contract and for ongoing oversight and evaluation of public charter schools, consistent with the requirements of this Act;
  - (vi) A draft of the applicant entity's renewal, revocation, and non-renewal processes, consistent with Section VII, (3) of this Act;
  - (vii) A statement of assurance that the applicant entity seeks to serve as a charter authorizer in fulfillment of the expectations, spirit, and intent of this Act, and that if approved as a charter authorizer, the entity will fully participate in any authorizer training provided or required by the state; and
  - (viii) A statement of assurance that the applicant will ensure public accountability and transparency in all matters concerning their charter-authorizing practices, decisions, and expenditures.
- (b) By [INSERT DATE] of each year, the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall decide whether to grant or deny chartering authority to each applicant. The [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall make its decisions on the merits of each applicant's proposal and plans.
- (c) Within [INSERT NUMBER OF DAYS] of the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY]'s decision, the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall execute a renewable authorizing contract with each entity it has approved for chartering authority. The initial term of each authorizing contract shall be six years. The authorizing contract shall specify each approved entity's agreement to serve as a charter authorizer in accordance with the expectations of this Act, and shall specify additional performance terms based on the applicant's proposal and plan for chartering. No approved entity shall commence charter authorizing without an authorizing contract in effect.
- (5) Authorizer Powers, Duties, and Liabilities
- (a) Authorizers are responsible for executing, in accordance with this Act, the following essential powers and duties:

- (i) Soliciting and evaluating charter applications;
  - (ii) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices;
  - (iii) Declining to approve weak or inadequate charter applications;
  - (iv) Negotiating and executing sound charter contracts with each approved public charter school;
  - (v) Monitoring, in accordance with charter contract terms, the performance and legal compliance of public charter schools; and
  - (vi) Determining whether each charter contract merits renewal, nonrenewal, or revocation.
- (b) An authorizing entity may delegate its duties to offices, employees, and contractors.
- (c) Regulation by authorizers shall be limited to these powers and duties, and consistent with the spirit and intent of this Act.
- (d) An authorizing entity, members of the board of an authorizer in their official capacity, and employees of an authorizer are immune from civil and criminal liability with respect to all activities related to a public charter school they authorize.
- (6) Principles and Standards for Charter Authorizing
- (a) All authorizers shall be required to develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing responsibility including: organizational capacity and infrastructure; soliciting and evaluating charter applications; performance contracting; ongoing public charter school oversight and evaluation; and charter renewal decision-making. Authorizers shall carry out all their duties under this Act in a manner consistent with such nationally recognized principles and standards and with the spirit and intent of this Act. Evidence of material or persistent failure to do so shall constitute grounds for losing charter authorizing powers.
- (7) Authorizer Reporting
- (a) Every authorizer shall be required to submit to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] and the general assembly an annual report summarizing:
    - (i) The authorizer's strategic vision for chartering and progress toward achieving that vision;
    - (ii) The academic and financial performance of all operating public charter schools overseen by the authorizer, according to the performance expectations for public charter schools set forth in this Act;
    - (iii) The status of the authorizer's public charter school portfolio, identifying all public charter schools in each of the following categories: approved (but not yet open), operating, renewed, transferred, revoked, not renewed, voluntarily closed, or never opened;
    - (iv) The authorizing functions provided by the authorizer to the public charter schools under its purview, including the authorizer's operating costs and expenses detailed in annual audited financial statements that conform with Generally Accepted Accounting Principles; and
    - (v) The services purchased from the authorizer by the public charter schools under its purview, including an itemized accounting of the actual costs of these services, as required in Section V, (11).
- (8) Authorizer Funding
- (a) To cover authorizer costs for overseeing public charter schools in accordance with this Act, the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall remit to each authorizer an oversight fee for each public charter school it authorizes.

- The oversight fee shall be drawn from and calculated as a uniform percentage of the per-student operational funding allocated to each public charter school under Section IX, (2) of this Act, not to exceed three percent of each public charter school's per-student funding in a single school year. The [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] may establish a sliding scale for authorizer funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of years of authorizing or after a certain number of schools has been authorized.
- (b) An authorizer's oversight fee shall not include any costs incurred in delivering services that a public charter school may purchase at its discretion from the authorizer. The authorizer shall use its funding provided under this section exclusively for the purpose of fulfilling authorizing obligations in accordance with this Act.
- (c) The [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall annually review the effectiveness of the state formula for authorizer funding, and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this Act.
- (9) Conflicts of Interest
- (a) No employee, trustee, agent, or representative of an authorizer may simultaneously serve as an employee, trustee, agent, representative, vendor, or contractor of a public charter school authorized by that entity.
- (10) Exclusivity of Authorizing Functions and Rights
- (a) No governmental or other entity, other than those expressly granted chartering authority as set forth in this Act, may assume any charter authorizing function or duty in any form, unless expressly allowed by law.
- (11) Services Purchased from Authorizer – Itemized Accounting
- (a) With the exception of oversight services as required by Section IV, (8), no public charter school shall be required to purchase services from its authorizer as a condition of charter approval or of executing a charter contract, nor may any such condition be implied.
- (b) A public charter school may, at its discretion, choose to purchase services from its authorizer. In such event, the public charter school and authorizer shall execute an annual service contract, separate from the charter contract, stating the parties' mutual agreement concerning any services to be provided by the authorizer and any service fees to be charged to the public charter school. An authorizer may not charge more than market rates for services provided to a public charter school.
- (c) Within [INSERT NUMBER OF DAYS] after the end of each fiscal year, each authorizer shall provide to each public charter school it oversees an itemized accounting of the actual costs of services purchased by the public charter school from the authorizer. Any difference between the amount initially charged to the public charter school and the actual cost shall be reconciled and paid to the owed party. If either party disputes the itemized accounting, any charges included in such accounting, or charges to either party, the disputing party is entitled to request a third-party review at its own expense. The review shall be conducted by [INSERT NAME OF STATE'S AUTHORIZER of authorizers] whose determination shall be final.
- (12) Oversight of Public Charter School Authorizers
- (a) The [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall be responsible for overseeing the performance and effectiveness of all authorizers established under this Act.

- (b) In accordance with Section V, (7), every authorizer shall be required to submit to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] and the general assembly an annual report. The [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall, by [INSERT DATE] of each year, communicate to every authorizer the requirements for the format, content, and submission of the annual report.
- (c) Persistently unsatisfactory performance of an authorizer's portfolio of public charter schools, a pattern of well-founded complaints about the authorizer or its public charter schools, or other objective circumstances may trigger a special review by the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY]. In reviewing or evaluating the performance of authorizers [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall apply nationally recognized principles and standards for quality charter authorizing. If at any time the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] finds that an authorizer is not in compliance with an existing charter contract, its authorizing contract with the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY], or the requirements of all authorizers under this Act, the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall notify the authorizer in writing of the identified problems, and the authorizer shall have reasonable opportunity to respond and remedy the problems.
- (d) If a local school board registered as an authorizer under Section V, (3) of this Act persists in violating a material provision of a charter contract or fails to remedy other authorizing problems after due notice from the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY], the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall notify the local school board, within a reasonable amount of time under the circumstances, that it intends to terminate the local board's chartering authority unless the local board demonstrates a timely and satisfactory remedy for the violation or deficiencies.
- (e) If an authorizer granted chartering authority under Section V, (4) of this Act persists, after due notice from the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY], in violating a material provision of a charter contract or its authorizing contract with the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY], or fails to remedy other identified authorizing problems, the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall notify the authorizer, within a reasonable amount of time under the circumstances, that it intends to revoke the authorizer's chartering authority unless the authorizer demonstrates a timely and satisfactory remedy for the violation or deficiencies.
- (f) In the event of revocation of any authorizer's chartering authority, the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall manage the timely and orderly transfer of each charter contract held by that authorizer to another authorizer in the state, with the mutual agreement of each affected public charter school and proposed new authorizer. The new authorizer shall assume the existing charter contract for the remainder of the charter term.

## VI. Application Process

- (1) Request for Proposals
- (a) To solicit, encourage, and guide the development of quality public charter school applications, every authorizer operating under this Act shall issue and broadly publicize a request for proposals by [INSERT DATE]. The content and dissemination of the request for proposals shall be consistent with the purposes and requirements of this Act.
- (b) Charter applicants may submit a proposal for a particular public charter school to no more than one authorizer at a time.
- (c) The [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall annually establish and disseminate a statewide timeline for charter approval or

- denial decisions, which shall apply to all authorizers in the state.
- (d) Each authorizer's request for proposals shall present the authorizer's strategic vision for chartering, including a clear statement of any preferences the authorizer wishes to grant to applications that help at-risk students.
  - (e) The request for proposals shall include or otherwise direct applicants to the performance framework that the authorizer has developed for public charter school oversight and evaluation in accordance with Section VII, (1) of this Act.
  - (f) The request for proposals shall include the criteria that will guide the authorizer's decision to approve or deny a charter application.
  - (g) The request for proposals shall state clear, appropriately detailed questions as well as guidelines concerning the format and content essential for applicants to demonstrate the capacities necessary to establish and operate a successful public charter school.
  - (h) The request for proposals shall require charter applications to provide or describe thoroughly, and each charter application shall provide or describe thoroughly, all of the following essential elements of the proposed school plan:
    - (i) An executive summary;
    - (ii) The mission and vision of the proposed public charter school, including identification of the targeted student population and the community the school hopes to serve;
    - (iii) The location or geographic area proposed for the school;
    - (iv) The grades to be served each year for the full term of the charter contract;
    - (v) Minimum, planned, and maximum enrollment per grade per year for the term of the charter contract;
    - (vi) Evidence of need and community support for the proposed public charter school;
    - (vii) Background information on the proposed founding governing board members and, if identified, the proposed school leadership and management team;
    - (viii) The school's proposed calendar and sample daily schedule;
    - (ix) A description of the academic program aligned with state standards;
    - (x) A description of the school's instructional design, including the type of learning environment (such as classroom-based or independent study), class size and structure, curriculum overview, and teaching methods;
    - (xi) The school's plan for using internal and external assessments to measure and report student progress on the performance framework developed by the authorizer in accordance with Section VII, (1) of this Act;
    - (xii) The school's plans for identifying and successfully serving students with disabilities, students who are English language learners, students who are academically behind, and gifted students, including but not limited to compliance with applicable laws and regulations;
    - (xiii) A description of co-curricular or extracurricular programs and how they will be funded and delivered;
    - (xiv) Plans and timelines for student recruitment and enrollment, including lottery procedures;
    - (xv) The school's student discipline policies, including those for special education students;
    - (xvi) An organization chart that clearly presents the school's organizational structure, including lines of authority and reporting between the governing board, staff, any related bodies (such as advisory bodies or parent and teacher councils), and any external organizations that will play a role in managing the school;



- (xvii) A clear description of the roles and responsibilities for the governing board, the school's leadership and management team, and any other entities shown in the organization chart;
  - (xviii) A staffing chart for the school's first year, and a staffing plan for the term of the charter;
  - (xix) Plans for recruiting and developing school leadership and staff;
  - (xx) The school's leadership and teacher employment policies, including performance evaluation plans;
  - (xxi) Proposed governing bylaws;
  - (xxii) Explanations of any partnerships or contractual relationships central to the school's operations or mission;
  - (xxiii) The school's plans for providing transportation, food service, and all other significant operational or ancillary services;
  - (xxiv) Opportunities and expectations for parent involvement;
  - (xxv) A detailed school start-up plan, identifying tasks, timelines and responsible individuals;
  - (xxvi) Description of the school's financial plan and policies, including financial controls and audit requirements;
  - (xxvii) A description of the insurance coverage the school will obtain;
  - (xxix) Start-up and five-year budgets with clearly stated assumptions;
  - (xxix) Start-up and first-year cash-flow projections with clearly stated assumptions;
  - (xxx) Evidence of anticipated fundraising contributions, if claimed in the application; and,
  - (xxxi) A sound facilities plan, including backup or contingency plans if appropriate.
- (i) In the case of an application to establish a public charter school by converting an existing non-charter public school to public charter school status, the request for proposals shall additionally require the applicants to demonstrate support for the proposed public charter school conversion by a petition signed by a majority of teachers and a petition signed by a majority of parents of students in the existing non-charter public school.
- (j) In the case of a proposal to establish a virtual public charter school, the request for proposals shall additionally require the applicants to describe the proposed school's system of course credits and how the school will:
- (i) Monitor and verify full-time student enrollment, student participation in a full course load, credit accrual, and course completion;
  - (ii) Monitor and verify student progress and performance in each course through regular, proctored assessments and submissions of coursework;
  - (iii) Conduct parent-teacher conferences; and
  - (iv) Administer state-required assessments to all students in a proctored setting.
- (k) In the case of a proposed public charter school that intends to contract with an education service provider for substantial educational services, management services, or both types of services, the request for proposals shall additionally require the applicants to:
- (i) Provide evidence of the education service provider's success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of non-academic school functions if applicable;
  - (ii) Provide a term sheet setting forth the proposed duration of the service contract; roles and responsibilities of the governing board, the school staff, and the service provider; scope of

- services and resources to be provided by the service provider; performance evaluation measures and timelines; compensation structure, including clear identification of all fees to be paid to the service provider; methods of contract oversight and enforcement; investment disclosure; and conditions for renewal and termination of the contract; and
- (iii) Disclose and explain any existing or potential conflicts of interest between the school governing board and proposed service provider or any affiliated business entities.
- (l) In the case of a public charter school proposal from an applicant that currently operates one or more schools in any state or nation, the request for proposals shall additionally require the applicant to provide evidence of past performance and current capacity for growth.
- (2) Application Decision-making Process
- (a) In reviewing and evaluating charter applications, authorizers shall employ procedures, practices, and criteria consistent with nationally recognized principles and standards for quality charter authorizing. The application review process shall include thorough evaluation of each written charter application, an in-person interview with the applicant group, and an opportunity in a public forum for local residents to learn about and provide input on each application.
  - (b) In deciding whether to approve charter applications, authorizers shall:
    - (i) Grant charters only to applicants that have demonstrated competence in each element of the authorizer's published approval criteria and are likely to open and operate a successful public charter school;
    - (ii) Base decisions on documented evidence collected through the application review process;
    - (iii) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest or any appearance thereof.
  - (c) No later than [INSERT NUMBER OF DAYS] after the filing of a charter application, the authorizer shall decide to approve or deny the charter application. The authorizer shall adopt by resolution all charter approval or denial decisions in an open meeting of the authorizer's governing board.
  - (d) An approval decision may include, if appropriate, reasonable conditions that the charter applicant must meet before a charter contract may be executed pursuant to Section VI, (5) of this Act.
  - (e) For any charter denial, the authorizer shall clearly state, for public record, its reasons for denial. A denied applicant may subsequently re-apply to that authorizer or apply to any other authorizer in the state.
  - (f) Within [INSERT NUMBER OF DAYS] of taking action to approve or deny a charter application, the authorizer shall report to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] the action it has taken. The authorizer shall provide a copy of the report to the charter applicant at the same time that the report is submitted to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY]. The report shall include a copy of the authorizer governing board's resolution setting forth the action taken and reasons for the decision and assurances as to compliance with all of the procedural requirements and application elements set forth in Section VI of this Act.
- (3) Purposes and Limitations of Charter Applications
- (a) The purposes of the charter application are to present the proposed public charter school's academic and operational vision and plans, demonstrate the applicant's capacities to execute the proposed vision and plans, and provide the authorizer a clear basis for assessing the applicant's plans and capacities.

An approved charter application shall not serve as the school's charter contract.

(4) Initial Charter Term

- (a) An initial charter shall be granted for a term of five operating years. The charter term shall commence on the public charter school's first day of operation. An approved public charter school may delay its opening for one school year in order to plan and prepare for the school's opening. If the school requires an opening delay of more than one school year, the school must request an extension from its authorizer. The authorizer may grant or deny the extension depending on the particular school's circumstances.

(5) Charter Contracts

- (a) Within [INSERT NUMBER OF DAYS] of approval of a charter application, the authorizer and the governing board of the approved public charter school shall execute a charter contract that clearly sets forth the academic and operational performance expectations and measures by which the public charter school will be judged and the administrative relationship between the authorizer and public charter school, including each party's rights and duties. The performance expectations and measures set forth in the charter contract shall include but need not be limited to applicable federal and state accountability requirements. The performance provisions may be refined or amended by mutual agreement after the public charter school is operating and has collected baseline achievement data for its enrolled students.
- (b) The charter contract for a virtual public charter school shall include description and agreement regarding the methods by which the school will:

- (i) Monitor and verify full-time student enrollment, student participation in a full course load, credit accrual, and course completion;

- (ii) Monitor and verify student progress and performance in each course through regular, proctored assessments and submissions of coursework;
- (iii) Conduct parent-teacher conferences; and
- (iv) Administer state-required assessments to all students in a proctored setting.

- (c) The charter contract shall be signed by the president of the authorizer's governing board and the president of the public charter school's governing body. Within [INSERT NUMBER OF DAYS] of executing a charter contract, the authorizer shall submit to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] written notification of the charter contract execution, including a copy of the executed charter contract and any attachments.

- (d) No public charter school may commence operations without a charter contract executed in accordance with this provision and approved in an open meeting of the authorizer's governing board.

(5) Pre-Opening Requirements or Conditions

- (a) Authorizers may establish reasonable pre-opening requirements or conditions to monitor the start-up progress of newly approved public charter schools and ensure that they are prepared to open smoothly on the date agreed, and to ensure that each school meets all building, health, safety, insurance, and other legal requirements for school opening.

## VII. Accountability

(1) Performance Framework

- (a) The performance provisions within the charter contract shall be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures and metrics that will guide the authorizer's evaluations of each public charter school. The performance

framework shall include indicators, measures and metrics for, at a minimum:

- (i) Student academic proficiency;
  - (ii) Student academic growth;
  - (iii) Achievement gaps in both proficiency and growth between major student subgroups;
  - (iv) Attendance;
  - (v) Recurrent enrollment from year to year;
  - (vi) Postsecondary readiness (for high schools);
  - (vii) Financial performance and sustainability; and
  - (viii) Board performance and stewardship, including compliance with all applicable laws, regulations, and terms of the charter contract.
- (b) Annual performance targets shall be set by each public charter school in conjunction with its authorizer, and shall be designed to help each school meet applicable federal, state, and authorizer expectations.
  - (c) The performance framework shall allow the inclusion of additional rigorous, valid, and reliable indicators proposed by a public charter school to augment external evaluations of its performance, provided that the authorizer approves the quality and rigor of such school-proposed indicators, and they are consistent with the purposes of this Act.
  - (d) The performance framework shall require the disaggregation of all student performance data by major student subgroups (gender, race, poverty status, special education status, English Learner status, and gifted status).
  - (e) For each public charter school it oversees, the authorizer shall be responsible for collecting, analyzing, and reporting all data from state assessments in accordance with the performance framework.
  - (f) Multiple schools operating under a single charter contract or overseen by a single governing board shall be required to report their performance as separate, individual schools,

and each school shall be held independently accountable for its performance.

- (2) Ongoing Oversight and Corrective Actions
  - (a) An authorizer shall continually monitor the performance and legal compliance of the public charter schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the charter contract. Every authorizer shall have the authority to conduct or require oversight activities that enable the authorizer to fulfill its responsibilities under this Act, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this Act, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to public charter schools.
  - (b) Each authorizer shall annually publish and provide, as part of its annual report to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] and the general assembly, a performance report for each public charter school it oversees, in accordance with the performance framework set forth in the charter contract and Section V, (7) of this Act. The authorizer may require each public charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the performance framework.
  - (c) In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify the public charter school of the perceived problem and provide reasonable opportunity for the school to remedy the problem, unless the problem warrants revocation in which case the revocation timeframes will apply.
  - (d) Every authorizer shall have the authority to take appropriate corrective actions or exercise sanctions short of revocation in response to apparent deficiencies in public charter school performance or legal compliance. Such actions or sanctions may

include, if warranted, requiring a school to develop and execute a corrective action plan within a specified timeframe.

(3) Renewals, Revocations, and Non-renewals

- (a) A charter may be renewed for successive five-year terms of duration, although the authorizer may vary the term based on the performance, demonstrated capacities, and particular circumstances of each public charter school. An authorizer may grant renewal with specific conditions for necessary improvements to a public charter school.
- (b) No later than [INSERT DATE], the authorizer shall issue a public charter school performance report and charter renewal application guidance to any public charter school whose charter will expire the following year. The performance report shall summarize the public charter school's performance record to date, based on the data required by this Act and the charter contract, and shall provide notice of any weaknesses or concerns perceived by the authorizer concerning the public charter school that may jeopardize its position in seeking renewal if not timely rectified. The public charter school shall have [INSERT NUMBER OF DAYS] to respond to the performance report and submit any corrections or clarifications for the report.
- (c) The renewal application guidance shall, at a minimum, provide an opportunity for the public charter school to:
  - (i) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;
  - (ii) Describe improvements undertaken or planned for the school; and
  - (iii) Detail the school's plans for the next charter term.
- (d) The renewal application guidance shall include or refer explicitly to the criteria that will guide the authorizer's renewal decisions, which shall be based on the performance

framework set forth in the charter contract and consistent with this Act.

- (e) No later than [INSERT DATE], the governing board of a public charter school seeking renewal shall submit a renewal application to the charter authorizer pursuant to the renewal application guidance issued by the authorizer. The authorizer shall rule by resolution on the renewal application no later than [INSERT NUMBER OF DAYS] after the filing of the renewal application.
- (f) In making charter renewal decisions, every authorizer shall:
  - (i) Ground its decisions in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;
  - (ii) Ensure that data used in making renewal decisions are available to the school and the public; and
  - (iii) Provide a public report summarizing the evidence basis for each decision.
- (g) A charter contract may be revoked at any time or not renewed if the authorizer determines that the public charter school did any of the following or otherwise failed to comply with the provisions of this Act:
  - (i) Commits a material and substantial violation of any of the terms, conditions, standards, or procedures required under this Act or the charter contract;
  - (ii) Fails to meet or make sufficient progress toward the performance expectations set forth in the charter contract;
  - (iii) Fails to meet generally accepted standards of fiscal management; or
  - (iv) Substantially violates any material provision of law from which the public charter school was not exempted.
- (h) An authorizer must develop revocation and non-renewal processes that:

- (i) Provide the charter holders with a timely notification of the prospect of revocation or non-renewal and of the reasons for such possible closure;
  - (ii) Allow the charter holders a reasonable amount of time in which to prepare a response;
  - (iii) Provide the charter holders with an opportunity to submit documents and give testimony challenging the rationale for closure and in support of the continuation of the school at an orderly proceeding held for that purpose;
  - (iv) Allow the charter holders access to representation by counsel and to call witnesses on their behalf;
  - (v) Permit the recording of such proceedings; and
  - (vi) After a reasonable period for deliberation, require a final determination be made and conveyed in writing to the charter holders.
- (i) If an authorizer revokes or does not renew a charter, the authorizer shall clearly state, in a resolution of its governing board, the reasons for the revocation or nonrenewal.
- (j) Within [INSERT NUMBER OF DAYS] of taking action to renew, not renew, or revoke a charter, the authorizer shall report to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] the action taken, and shall provide a copy of the report to the public charter school at the same time that the report is submitted to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY]. The report shall include a copy of the authorizer governing board's resolution setting forth the action taken and reasons for the decision and assurances as to compliance with all of the requirements set forth in this Act.
- (4) School Closure and Dissolution
- (a) Prior to any public charter school closure decision, an authorizer shall have developed a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets in accordance with the requirements of this Act. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the school and the authorizer. In the event of a public charter school closure for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol.
  - (b) In the event of a public charter school closure for any reason, the assets of the school shall be distributed first to satisfy outstanding payroll obligations for employees of the school, then to creditors of the school, and then to the state treasury to the credit of the general revenue fund. If the assets of the school are insufficient to pay all parties to whom the school owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.
- (5) Charter Transfers
- (a) Transfer of a charter contract, and of oversight of that public charter school, from one authorizer to another before the expiration of the charter term shall not be permitted except by special petition to the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] by a public charter school or its authorizer. The [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall review such petitions on a case-by-case basis and may grant transfer requests in response to special circumstances and evidence that such a transfer would serve the best interests of the public charter school's students.

## (6) Annual Report

- (a) On or before [INSERT DATE] of each year beginning in the first year after the state will have had public charter schools operating for a full school year, the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY] shall issue to the governor, the general assembly, and the public at large, 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 [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY], for the school year ending in the preceding calendar year. The annual report shall include a comparison of the performance of public charter school students with the performance of academically, ethnically, and economically comparable groups of students in non-charter public schools. In addition, the annual report shall include the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY]'s assessment of the successes, challenges, and areas for improvement in meeting the purposes of this Act, including the [INSERT NAME OF STATE'S AUTHORIZER OVERSIGHT BODY]'s assessment of the sufficiency of funding for public charter schools, the efficacy of the state formula for authorizer funding, and any suggested changes in state law or policy necessary to strengthen the state's public charter schools.

## VIII. Operations and Autonomy

## (1) Legal Status of Public Charter School

- (a) Notwithstanding any provision of law to the contrary, to the extent that any provision of this Act is inconsistent with any other state or local law, rule, or regulation, the provisions of this Act shall govern and be controlling.
- (b) A public charter school shall be a non-profit education organization.
- (c) A public charter school shall be subject to all federal laws and authorities enumerated herein or arranged by charter contract

with the school's authorizer, where such contracting is consistent with applicable laws, rules, and regulations.

- (d) Except as provided in this Act, a public charter school shall not be subject to the state's education statutes or any state or local rule, regulation, policy, or procedure relating to non-charter public schools within an applicable local school district regardless of whether such rule, regulation, policy, or procedure is established by the local school board, the state board of education, or the state department of education.
- (e) A charter contract may consist of one or more schools, to the extent approved by the authorizer and consistent with applicable law. Each public charter school that is part of a charter contract shall be separate and distinct from any others.
- (f) A single governing board may hold one or more charter contracts. Each public charter school that is part of a charter contract shall be separate and distinct from any others.
- (2) Local Educational Agency Status *[The 41 jurisdictions with public charter school laws vary greatly in how they address the local educational agency (LEA) status of public charter schools. In this model law, we provide two options for handling this issue in state law.]*

### OPTION 1: A PUBLIC CHARTER SCHOOL IS A LOCAL EDUCATIONAL AGENCY

- (a) A public charter school shall function as a Local Educational Agency ("LEA"). A public charter school shall be responsible for meeting the requirements of LEAs under applicable federal, state, and local laws, including those relating to special education. LEA status shall not preclude a public charter school from developing partnerships with districts for services, resources, and programs by mutual agreement or formal contract.
- (b) A public charter school shall have primary responsibility for special education at the school, including identification and service provision. It shall be responsible for meeting

the needs of enrolled students with disabilities. In instances where a student's individualized education program team determines that a student's needs are so profound that they cannot be met in the public charter school and that the public charter school cannot provide a free, appropriate public education to that student, the student's district of residence shall place the student in a more appropriate setting.

***OPTION 2: A PUBLIC CHARTER SCHOOL IS NOT A LOCAL EDUCATIONAL AGENCY***

- (a) The [INSERT NAME OF ENTITY] of a public charter school is the public charter school's Local Educational Agency ("LEA"). A public charter school is a school with that LEA.
  - (b) The [INSERT NAME OF ENTITY] retains responsibility for special education and shall serve students in public charter schools in a manner consistent with LEA obligations under applicable federal, state, and local law.
- (3) Powers of Public Charter School
- (a) A public charter school shall have all the powers necessary for carrying out the terms of its charter contract including the following powers:
    - (i) To receive and disburse funds for school purposes;
    - (ii) To secure appropriate insurance and to enter into contracts and leases, free from prevailing wage laws;
    - (iii) To contract with an education service provider for the management and operation of the public charter school so long as the school's governing board retains oversight authority over the school;
    - (iv) To incur debt in reasonable anticipation of the receipt of public or private funds;
    - (v) To pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;
    - (vi) To solicit and accept any gifts or grants for school purposes subject to applicable laws and the terms of its charter contract;
- (vii) To acquire real property for use as its facility or facilities, from public or private sources; and,
  - (viii) To sue and be sued in its own name.
- (4) General Requirements
- (a) A public charter school shall not discriminate against any person on the basis of race, creed, color, sex, disability, or national origin or any other category that would be unlawful if done by a non-charter public school.
  - (b) No public charter school may engage in any sectarian practices in its educational program, admissions or employment policies, or operations.
  - (c) A public charter school shall not discriminate against any student on the basis of national-origin minority status or limited proficiency in English. Consistent with federal civil rights laws, public charter schools shall provide limited English proficient students with appropriate services designed to teach them English and the general curriculum.
  - (d) A public charter school shall not charge tuition and may only charge such fees as may be imposed on other public schools in the state.
  - (e) The powers, obligations, and responsibilities set forth in the charter contract cannot be delegated or assigned by either party.
- (5) Applicability of Other Laws, Rules, and Regulations
- (a) Public charter schools shall be subject to the same civil rights, health, and safety requirements applicable to other public schools in the state, except as otherwise specifically provided in this Act.
  - (b) Public charter schools shall be subject to the student assessment and accountability requirements applicable to other public schools in the state, but nothing herein shall preclude a public charter school from establishing additional student assessment measures that go beyond state requirements if the school's authorizer approves such measures.
  - (c) Public charter school governing boards shall be subject to and comply with state open meetings and freedom of information laws.



- (6) Public Charter School Employees
- (a) Public charter schools shall comply with applicable federal laws, rules, and regulations regarding the qualification of teachers and other instructional staff. In accordance with Section VIII, (1), (d), teachers in public charter schools shall be exempt from state teacher certification requirements.
  - (b) Employees in public charter schools shall have the same rights and privileges as other public school employees except as otherwise stated herein.
  - (c) Employees in public charter schools are eligible for participation in retirement and other benefits programs of the state, if the public charter school chooses to participate.
  - (d) Teachers and other school personnel, as well as governing board trustees, shall be subject to criminal history record checks and fingerprinting requirements applicable to other public schools.
  - (e) Public charter school employees cannot be required to be members of any existing collective bargaining agreement between a school district and its employees. A public charter school may not interfere, however, with laws and other applicable rules protecting the rights of employees to organize and be free from discrimination.
- (7) Access to Extra-Curricular and Interscholastic Activities
- (a) A public charter school shall be eligible for state-sponsored or district-sponsored interscholastic leagues, competitions, awards, scholarships, and recognition programs for students, educators, administrators, and schools to the same extent as non-charter public schools.
  - (b) A public charter school student is eligible to participate in extracurricular activities not offered by the student's school at:
    - (i) The school within whose attendance boundaries the student's custodial parent or legal guardian resides; or
    - (ii) The non-charter public school from which the student withdrew for the purpose of attending a public charter school.
  - (c) A public charter school student is eligible for extracurricular activities at a non-charter public school consistent with eligibility standards as applied to full-time students of the non-charter public school.
  - (d) A school district or non-charter public school may not impose additional requirements on a public charter school student to participate in extracurricular activities that are not imposed on full-time students of the non-charter public school.
  - (e) When selection to participate in an extracurricular activity at a non-charter public school is made on a competitive basis, a public charter school student is eligible to try out for and participate in the activity as provided in this section.
  - (f) The state board of education shall make rules establishing fees for public charter school students' participation in extracurricular activities at non-charter public schools. The rules shall provide that:
    - (i) Public charter school students pay the same fees as other students to participate in extracurricular activities;
    - (ii) Public charter school students are eligible for fee waivers similar to other students;
    - (iii) For each public charter school student who participates in an extracurricular activity at a non-charter public school, the public charter school shall pay a share of the non-charter public school's costs for the extracurricular activity; and
    - (iv) A public charter school's share of the costs of having one or more students participate in an extracurricular activity at non-charter public schools shall reflect state and local tax revenues expended, except capital facilities expenditures, for such extracurricular

activities in a non-charter public school divided by total student enrollment of the non-charter public school.

- (g) In determining a public charter school's share of the costs of an extracurricular activity under Subsections (f)(iii) and (iv), the state board of education may establish uniform fees statewide based on average costs statewide or average costs within a sample of school districts.

## IX. Funding

*[The 41 jurisdictions with public charter school laws vary greatly in how they fund public charter schools. In this model law, we provide three options for handling this issue in state law. In the first option, funding flows from the state to school districts to public charter schools. In the second option, funding flows from the state directly to public charter schools. In the third option, funding flows from the state to authorizers to public charter schools.]*

### **OPTION 1: FUNDING FLOWS FROM THE STATE TO SCHOOL DISTRICTS TO PUBLIC CHARTER SCHOOLS**

- (1) Enrollment
- (a) The enrollment of students attending public charter schools shall be included in the enrollment, attendance, and, if applicable, count of students with disabilities of the school district in which the student resides. The public charter school shall report all such data to the school districts of residence in a timely manner. Each school district shall report such enrollment, attendance, and count of students with disabilities to the state department of education.
- (2) Operational Funding
- (a) The school district of residence shall pay directly to the public charter school for each student enrolled in the public charter school who resides in the school district an amount for that student equal to one hundred percent

of the amount calculated pursuant to the state's funding formula for school districts, notwithstanding the oversight fee reductions pursuant to Section V, (8) of this Act.

- (3) Payment Schedule
- (a) Payments made pursuant to this section shall be made by school districts in twelve substantially equal installments each year beginning on the first business day of July and every month thereafter. Amounts payable under this section shall be determined by the state department of education. Amounts payable to a public charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter contract. Such projections shall be reconciled with the actual enrollment at the end of the school's first year of operation, and any necessary adjustments shall be made to payments during the school's second year of operation.
- (4) Sanctions for Failure to Make Payments
- (a) In the event of the failure of a school district to make payments required by this section, the state treasurer shall deduct from any state funds which become due to such school district an amount equal to the unpaid obligation. The treasurer shall pay over such sum to the public charter school upon certification of the state department of education. The state department of education shall or delegation promulgate regulations to implement the provisions of this section.
- (5) Categorical Funding
- (a) A school district shall direct the proportionate share of moneys generated under federal and state categorical aid programs to public charter schools serving students eligible for such aid. A school district shall ensure that public charter schools with rapidly expanding enrollments are treated equitably in the calculation and disbursement of all federal and state categorical aid program dollars.

Each public charter school that serves students who may be eligible to receive services provided through such programs shall comply with all reporting requirements to receive the aid.

(6) Special Education Funding

***FOR PUBLIC CHARTER SCHOOLS THAT ARE THEIR OWN LEAS FOR SPECIAL EDUCATION PURPOSES:***

- (a) A school district shall pay directly to a public charter school any federal or state aid attributable to a student with a disability attending the school.
- (b) At either party's request, a public charter school and its authorizer may negotiate and include in the charter contract alternate arrangements for the provision of and payment for special education services.

***FOR PUBLIC CHARTER SCHOOLS THAT ARE PART OF NON-DISTRICT AUTHORIZER LEAS FOR SPECIAL EDUCATION PURPOSES:***

- (a) A school district shall pay directly to a public charter school any federal or state aid attributable to a student with a disability attending the school.
- (b) A public charter school shall pay to its authorizer any federal or state aid attributable to a student with a disability attending a public charter school in proportion to the level of services for such student that the authorizer provides directly or indirectly.
- (c) At either party's request, a public charter school and its authorizer may negotiate and include in the charter contract alternate arrangements for the provision of and payment for special education services, including, but not necessarily limited to, a reasonable reserve not to exceed five percent of the authorizer's total budget for providing special education services. The reserve shall only be used by the authorizer to offset excess costs of providing services to students with disabilities enrolled in one of its public charter schools.

***FOR PUBLIC CHARTER SCHOOLS THAT ARE PART OF SCHOOL DISTRICT LEAS FOR SPECIAL EDUCATION PURPOSES:***

- (a) The school district shall provide special education services to students enrolled in public charter schools on the same basis as such services are provided to students enrolled in other public schools of the school district.
  - (b) The school district shall retain any federal or state aid attributable to a student with a disability attending a public charter school in proportion to the level of services for such student with a disability that the school district provides directly or indirectly.
  - (c) At either party's request, however, the public charter school and the school district may negotiate and include in a contract alternate arrangements for the provision of and payment for special education services. If the public charter school and the school district have negotiated to allow the public charter school to provide special education services, the proportionate share of state and federal resources generated by such students shall be directed by the school district to the public charter school enrolling such students.
- (7) Generally Accepted Accounting Principles – Independent Audit
- (a) A public charter school shall adhere to Generally Accepted Accounting Principles.
  - (b) A public charter school shall annually engage an external auditor to do an independent audit of the school's finances. A public charter school shall file a copy of each audit report and accompanying management letter to its authorizer by [INSERT DATE].
- (8) Transportation Funding
- (a) The state department of education shall disburse state transportation funding to a school district for each of the public charter school students residing in the school district on the same basis and in the same manner as it is paid to school districts. A school district shall disburse

state transportation funding to a public charter school in proportion to the amount generated by the school's students who reside in the school district.

- (b) A public charter school may enter into a contract with a school district or private provider to provide transportation to the school's students.
- (9) Budget Reserves
- (a) Any monies received by a public charter school from any source and remaining in the public charter school's accounts at the end of any budget year shall remain in the public charter school's accounts for use by the public charter school during subsequent budget years.
- (10) Ability to Accept Gifts, Donations, and Grants
- (a) Nothing in this article shall be construed to prohibit any person or organization from providing funding or other assistance to the establishment or operation of a public charter school. The governing board of a public charter school is authorized to accept gifts, donations, and grants of any kind made to the public charter school and to expend or use such gifts, donations, and grants in accordance with the conditions prescribed by the donor; provided, however, that no gift, donation, or grant may be accepted if subject to a condition that is contrary to any provision of law or term of the charter contract.

***OPTION 2: FUNDING FLOWS FROM THE STATE DIRECTLY TO PUBLIC CHARTER SCHOOLS***

- (1) Enrollment
- (a) Each public charter school shall certify to the state department of education its student enrollment in the same manner as school districts.
- (2) Operational Funding
- (a) For a public charter school authorized by a school district, the state shall pay directly to the public charter school for each student enrolled in the public charter school an

amount for that student equal to one hundred percent of the amount calculated pursuant to the state's funding formula for the student's resident school district, notwithstanding the oversight fee reductions pursuant to Section V, (8) of this Act.

- (b) For a public charter school authorized by an entity other than a school district, the state department of education shall withhold from the state equalization payments for each school district with students residing in the school district and attending the public charter school an amount equal to one hundred percent of the amount calculated pursuant to the state's funding formula for each student in the resident school district multiplied by the number of students enrolled in the public charter school from the resident school district. The state department of education shall send the sum of these withholdings to the public charter school, notwithstanding the oversight fee reductions pursuant to Section V, (8) of this Act.
- (3) Payment Schedule
- (a) Payments made pursuant to this section shall be made by the state in twelve substantially equal installments each year beginning on the first business day of July and every month thereafter. Amounts payable under this section shall be determined by the state department of education. Amounts payable to a public charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter contract. Such projections shall be reconciled with the actual enrollment at the end of the school's first year of operation, and any necessary adjustments shall be made to payments during the school's second year of operation.
- (4) Categorical Funding
- (a) The state shall direct the proportionate share of moneys generated under federal and state categorical aid programs to public charter schools serving students eligible for such aid. The state shall ensure that public

charter schools with rapidly expanding enrollments are treated equitably in the calculation and disbursement of all federal and state categorical aid program dollars. Each public charter school that serves students who may be eligible to receive services provided through such programs shall comply with all reporting requirements to receive the aid.

(5) Special Education Funding

***FOR PUBLIC CHARTER SCHOOLS THAT ARE THEIR OWN LEAS FOR SPECIAL EDUCATION PURPOSES:***

- (a) The state shall pay directly to a public charter school any federal or state aid attributable to a student with a disability attending the school.
- (b) At either party's request, a public charter school and its authorizer may negotiate and include in the charter contract alternate arrangements for the provision of and payment for special education services.

***FOR PUBLIC CHARTER SCHOOLS THAT ARE PART OF NON-DISTRICT AUTHORIZER LEAS FOR SPECIAL EDUCATION PURPOSES:***

- (a) The state shall pay directly to a public charter school any federal or state aid attributable to a student with a disability attending the school.
- (b) A public charter school shall pay to its authorizer any federal or state aid attributable to a student with a disability attending a public charter school in proportion to the level of services for such student that the authorizer provides directly or indirectly.
- (c) At either party's request, a public charter school and its authorizer may negotiate and include in the charter contract alternate arrangements for the provision of and payment for special education services, including, but not necessarily limited to, a reasonable reserve not to exceed five percent of the authorizer's total budget for providing special education services. The reserve shall only be used by the authorizer to offset excess costs of providing services to students with disabilities enrolled in one of its public charter schools.

***FOR PUBLIC CHARTER SCHOOLS THAT ARE PART OF SCHOOL DISTRICT LEAS FOR SPECIAL EDUCATION PURPOSES:***

- (a) The school district shall provide special education services to students enrolled in public charter schools on the same basis as such services are provided to students enrolled in other public schools of the school district.
  - (b) The school district shall retain any federal or state aid attributable to a student with a disability attending a public charter school in proportion to the level of services for such student with a disability that the school district provides directly or indirectly.
  - (c) At either party's request, however, the public charter school and the school district may negotiate and include in a contract alternate arrangements for the provision of and payment for special education services. If the public charter school and the school district have negotiated to allow the public charter school to provide special education services, the proportionate share of state and federal resources generated by such students shall be directed by the school district to the public charter school enrolling such students.
- (6) Generally Accepted Accounting Principles – Independent Audit
- (a) A public charter school shall adhere to Generally Accepted Accounting Principles.
  - (b) A public charter school shall annually engage an external auditor to do an independent audit of the school's finances. A public charter school shall file a copy of each audit report and accompanying management letter to its authorizer by [INSERT DATE].
- (7) Transportation Funding
- (a) The state department of education shall disburse state transportation funding to a public charter school on the same basis and in the same manner as it is paid to school districts.
  - (b) A public charter school may enter into a contract with a school district or private

provider to provide transportation to the school's students.

- (8) Budget Reserves
- (a) Any monies received by a public charter school from any source and remaining in the public charter school's accounts at the end of any budget year shall remain in the public charter school's accounts for use by the public charter school during subsequent budget years.
- (9) Ability to Accept Gifts, Donations, and Grants
- (a) Nothing in this article shall be construed to prohibit any person or organization from providing funding or other assistance to the establishment or operation of a public charter school. The governing board of a public charter school is authorized to accept gifts, donations, and grants of any kind made to the public charter school and to expend or use such gifts, donations, and grants in accordance with the conditions prescribed by the donor; provided, however, that no gift, donation, or grant may be accepted if subject to a condition that is contrary to any provision of law or term of the charter contract.

***OPTION 3: FUNDING FLOWS FROM THE STATE TO AUTHORIZERS TO PUBLIC CHARTER SCHOOLS***

- (1) Enrollment
- (a) Each authorizer shall certify to the state department of education the student enrollment for that year for each of its public charter schools in the same manner as school districts.
- (2) Operational Funding
- (a) For a public charter school authorized by a school district, the school district shall pay directly to the public charter school for each student enrolled in the school an amount for that student equal to one hundred percent of the amount calculated pursuant to the state's funding formula for the student's resident school district,

notwithstanding the oversight fee reductions pursuant to Section V, (8) of this Act.

- (b) For a public charter school authorized by an entity other than a school district, the state department of education shall withhold from the state equalization payments for each school district with students residing in the school district and attending the public charter school an amount equal to one hundred percent of the amount calculated pursuant to the state's funding formula for each student in the resident school district multiplied by the number of students enrolled in the public charter school from the resident school district. The state department of education shall send the sum of these withholdings to the authorizer. The authorizer shall forward the sum of these withholdings to each public charter school, notwithstanding the oversight fee reductions pursuant to Section V, (8) of this Act.
- (3) Payment Schedule
- (a) Payments made pursuant to this section shall be made by an authorizer in twelve substantially equal installments each year beginning on the first business day of July and every month thereafter. Amounts payable under this section shall be determined by the state department of education. Amounts payable to a public charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter contract. Such projections shall be reconciled with the actual enrollment at the end of the school's first year of operation, and any necessary adjustments shall be made to payments during the school's second year of operation.
- (4) Sanctions for Failure to Make Payments
- (a) In the event of the failure of an authorizer to make payments required by this section, the state treasurer shall deduct from any state funds which become due to such an authorizer an amount equal to the unpaid obligation. The treasurer shall pay over such

sum to the public charter school upon certification of the state department of education. The state department of education shall promulgate regulations to implement the provisions of this section.

(5) Categorical Funding

- (a) An authorizer shall direct the proportionate share of moneys generated under federal and state categorical aid programs to public charter schools serving students eligible for such aid. The state shall ensure that public charter schools with rapidly expanding enrollment are treated equitably in the calculation and disbursement of all federal and state categorical aid program dollars. Each public charter school that receives such aid shall comply with all reporting requirements to receive the aid.

(6) Special Education Funding

***FOR PUBLIC CHARTER SCHOOLS THAT ARE THEIR OWN LEAS FOR SPECIAL EDUCATION PURPOSES:***

- (a) An authorizer shall pay directly to the public charter school any federal or state aid attributable to a student with a disability attending the school.
- (b) At either party's request, a public charter school and its authorizer may negotiate and include in the charter contract alternate arrangements for the provision of and payment for special education services.

***FOR PUBLIC CHARTER SCHOOLS THAT ARE PART OF NON-DISTRICT AUTHORIZER LEAS FOR SPECIAL EDUCATION PURPOSES:***

- (a) The authorizer shall pay directly to a public charter school any federal or state aid attributable to a student with a disability attending the school.
- (b) A public charter school shall pay to its authorizer any federal or state aid attributable to a student with a disability attending a public charter school in proportion to the level of services for such student that the authorizer provides directly or indirectly.

- (c) At either party's request, a public charter school and its authorizer may negotiate and include in the charter contract alternate arrangements for the provision of and payment for special education services, including, but not necessarily limited to, a reasonable reserve not to exceed five percent of the authorizer's total budget for providing special education services. The reserve shall only be used by the authorizer to offset excess costs of providing services to students with disabilities enrolled in one of its public charter schools.

***FOR PUBLIC CHARTER SCHOOLS THAT ARE PART OF SCHOOL DISTRICT LEAS FOR SPECIAL EDUCATION PURPOSES:***

- (a) The school district shall provide special education services to students enrolled in public charter schools on the same basis as such services are provided to students enrolled in other public schools of the school district.
- (b) The state shall disburse to a school district any federal or state aid attributable to a student with a disability attending a public charter school in proportion to the level of services for such student with a disability that the school district provides directly or indirectly.
- (c) At either party's request, however, the public charter school and the school district may negotiate and include in a contract alternate arrangements for the provision of and payment for special education services. If the public charter school and the school district have negotiated to allow the public charter school to provide special education services, the proportionate share of state and federal resources generated by such students shall be directed by the school district to the public charter school enrolling such students.
- (7) Generally Accepted Accounting Principles – Independent Audit
- (a) A public charter school shall adhere to Generally Accepted Accounting Principles.

- (b) A public charter school shall annually engage an external auditor to do an independent audit of the school's finances. A public charter school shall file a copy of each audit report and accompanying management letter to its authorizer by [INSERT DATE].
- (8) Transportation Funding
    - (a) The state department of education shall disburse state transportation funding to an authorizer for each of its public charter school students on the same basis and in the same manner as it is paid to school districts. An authorizer shall disburse state transportation funding to a public charter school in proportion to the amount generated by the school's students.
    - (b) A public charter school may enter into a contract with a school district or private provider to provide transportation to the school's students.
  - (9) Budget Reserves
    - (a) Any monies received by a public charter school from any source and remaining in the public charter school's accounts at the end of any budget year shall remain in the public charter school's accounts for use by the public charter school during subsequent budget years.
  - (10) Ability to Accept Gifts, Donations, and Grants
    - (a) Nothing in this article shall be construed to prohibit any person or organization from providing funding or other assistance to the establishment or operation of a public charter school. The governing board of a public charter school is authorized to accept gifts, donations, and grants of any kind made to the public charter school and to expend or use such gifts, donations, and grants in accordance with the conditions prescribed by the donor; provided, however, that no gift, donation, or grant may be accepted if subject to a condition that is contrary to any provision of law or term of the charter contract.

## X. Facilities

*[In this model law, we provide a menu of approaches for handling this issue in state law, most of which should be included in a given state's law.]*

- (1) Per-Student Facility Allowance
  - (a) The per-student facility allowance for public charter schools shall be determined as follows: the total capital costs for public schools in the state over the past five years shall be divided by the total student count in the state over the past five years.
  - (b) The actual facility allowance payments to be received by each public charter school shall be determined as follows: the per-student facility allowance shall be multiplied by the number of students estimated to be attending each public charter school.
- (2) Public Charter School Facility Grant Program
  - (a) The state board of education shall establish, within available bond authorizations, a grant program to assist public charter schools in financing school building projects, general improvements to school buildings, and repayment of debt for school building projects. Public charter schools may apply for such grants to the state board of education at such time and in such manner as the state board of education prescribes. The state board of education shall give preference to applications that provide for matching funds from non-state sources.
  - (b) For the purposes described in subsection (c) of this section, the [INSERT NAME OF APPROPRIATE STATE BONDING AUTHORITY] shall have the power, from time to time, to authorize the issuance of bonds of the state in one or more series and in principal amounts not exceeding in the aggregate [INSERT DOLLAR AMOUNT] provided [INSERT DOLLAR AMOUNT] of said authorization shall be effective [INSERT DATE].
  - (c) The proceeds of the sale of said bonds, to the extent of the amount stated in subsection



- (b) of this section, shall be used by the state board of education for the purpose of grants pursuant to subsection (a).
- (d) Bonds issued pursuant to this section shall be general obligations of the state and the full faith and credit of the state are pledged for the payment of the principal of and interest on said bonds as the same become due, and accordingly and as part of the contract of the state with the holders of said bonds, appropriation of all amounts necessary for punctual payment of such principal and interest is hereby made, and the state treasurer shall pay such principal and interest as the same become due.
- (3) Public Charter School Facility Revolving Loan Program
- (a) The public charter school facility revolving loan program is hereby created in the state treasury. The public charter school facility revolving loan program shall be comprised of federal funds obtained by the state for public charter schools and any other funds appropriated or transferred to the fund by the state. Funds appropriated to the public charter school facility revolving loan program shall remain available for the purposes of the program until re-appropriated or reverted by the general assembly.
- (b) Loans may be made from moneys in the public charter school facility revolving loan program to a public charter school, upon application by a public charter school and approval by the state board of education or its designee. Money loaned to a public charter school pursuant to this section shall be for construction, purchase, renovation, and maintenance of public charter school facilities. No loan to a public charter school shall exceed [INSERT DOLLAR AMOUNT] over [INSERT NUMBER OF YEARS]. A public charter school may receive multiple loans from the public charter school facility revolving loan program, as long as the total amount received from the program over [INSERT NUMBER OF YEARS] does not exceed [INSERT DOLLAR AMOUNT].
- (c) The state board of education or its designee may consider all of the following when making a determination as to the approval of a public charter school's loan application:
- (i) Soundness of the financial business plans of the applicant public charter school.
  - (ii) Availability to the public charter school of other sources of funding.
  - (iii) Geographic distribution of loans made from the public charter school facility revolving loan program.
  - (iv) The impact that loans received pursuant to this section will have on the public charter school's receipt of other private and public financing.
  - (v) Plans for innovatively enhancing or leveraging funds received pursuant to this section, such as loan guarantees or other types of credit enhancements.
  - (vi) The financial needs of the public charter school.
- (d) Commencing with the first fiscal year following the fiscal year the public charter school receives the loan, the [INSERT NAME OF APPROPRIATE STATE AGENCY] shall deduct from apportionments made to the public charter school, as appropriate, an amount equal to the annual repayment of the amount loaned to the public charter school under this section and pay the same amount into the public charter school facility revolving loan program in the state treasury. Repayment of the full amount loaned to the public charter school shall be deducted by the [INSERT NAME OF APPROPRIATE STATE AGENCY] in equal annual amounts over a number of years agreed upon between the public charter school and the state board of education or its designee, not to exceed [INSERT NUMBER OF YEARS] for any loan.
- (e) Notwithstanding other provisions of law, a loan may be made to a public charter school pursuant to this section only in the case of a public charter school that is incorporated.

- (f) Notwithstanding other provisions of law, in the case of default of a loan made directly to a public charter school pursuant to this section, the public charter school shall be solely liable for repayment of the loan.

(4) Bonding Authority

*[Public charter schools should either have equal access to all of the relevant bonding authorities in a state or have their own bonding authority. For the first option, a state must amend the appropriate section of the law (e.g., state health and educational facility authority section) to clarify that public charter schools are eligible to obtain tax-exempt financing from the relevant authority. For the second option, see language below.]*

- (a) As used in this section:

- (i) “Authority” means the state public charter school finance authority created by this section.
- (ii) “Obligations” mean any notes, debentures, revenue bonds, or other evidences of financial indebtedness, except general obligation bonds.
- (iii) “Project” means:
  - (A) Any building, structure, or property owned, or to be acquired, by a public charter school for any of its educational purposes and the related appurtenances, easements, rights-of-way, improvements, paving, utilities, landscaping, parking facilities, and lands; or
  - (B) Any capital equipment owned, or to be acquired, by a public charter school for any of its educational purposes, interests in land, and grounds, together with the personal property necessary, convenient, or appurtenant to them.

- (b) There is created a body politic and corporate known as the state public charter school finance authority. The authority is created to provide an efficient and cost-effective method of financing public charter school facilities.
- (c) The governing board of the authority shall be composed of:
  - (i) The governor or the governor’s designee;
  - (ii) The state treasurer; and
  - (iii) The state superintendent of public instruction or the state superintendent’s designee.
- (d) Upon request, the state board of education shall provide staff support to the authority.
- (e) The authority shall have perpetual succession as a body politic and corporate.
- (f) The authority may:
  - (i) Sue and be sued in its own name;
  - (ii) Have, and alter at will, an official seal;
  - (iii) Receive and accept aid or contributions from any source, including the United States or this state, in the form of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this part, subject to the conditions upon which the aid and contributions are made, for any purpose consistent with this part;
  - (iv) Exercise the power to borrow money and issue obligations, except the authority may only exercise powers to finance a project as defined in state law;
  - (v) Employ advisers, consultants, and agents, including financial experts, independent legal counsel, and any advisers, consultants, and agents as may be necessary in its judgment and fix their compensation;
  - (vi) Make and execute contracts and other instruments necessary or convenient for the performance of its duties

and the exercise of its powers and functions; and

- (vii) Have and exercise any other powers or duties that are necessary or appropriate to carry out and effectuate the purposes of this chapter.
  - (g) If the authority is dissolved at any time, for any reason, all funds, property, rights, and interests of the authority, following the satisfaction of the authority's obligations, shall immediately vest in and become the property of the state, which shall succeed to all rights of the authority subject to any encumbrances which may then exist on any particular properties.
  - (h) None of the net earnings of the authority shall inure to the benefit of any private person.
- (5) Moral Obligation of the State
- (a) The general assembly hereby finds and declares that its intent in enacting this section is to support public charter schools and public charter school capital construction by helping qualified public charter schools that choose to have the [INSERT NAME OF BONDING AUTHORITY] issue bonds on their behalf obtain more favorable financing terms for the bonds.
  - (b) If the [INSERT NAME OF BONDING AUTHORITY] has issued bonds on behalf of a public charter school that defaults on its debt service payment obligations, the board of directors of the authority shall submit to the governor a certificate certifying any amount of moneys required to fulfill the school's debt service payment obligations. The governor shall submit a request for appropriations in an amount sufficient to fulfill the school's debt service payment obligations and the general assembly may, but shall not be required to, appropriate moneys for said purpose. If, in its sole discretion, the general assembly appropriates any moneys for said purpose, the aggregate outstanding principal amount of bonds for which moneys may

be appropriated for said purpose shall not exceed [INSERT DOLLAR AMOUNT].

- (6) Access to State Facilities Programs for Non-Charter Public Schools  
*[Public charter schools should have equal access to all of the existing state facilities programs for traditional public schools in a state. To implement this item, a state must amend the relevant section of the law (e.g., public school capital construction assistance fund section) to clarify that public charter schools are eligible to obtain funding from the relevant program.]*
- (7) Credit Enhancement Fund
  - (a) [INSERT DOLLAR AMOUNT] shall be set aside for a credit enhancement fund for public charter schools to be administered by the state board of education.
  - (b) Using the amounts described in paragraph (a), the state board of education shall make and disburse grants to eligible nonprofit corporations to carry out the purposes described in paragraph (c).
  - (c) The recipient of a grant under this fund shall use the monies provided under the grant to carry out activities to assist public charter schools in:
    - (i) Obtaining financing to acquire interests in real property (including by purchase, lease, or donation), including financing to cover planning, development, and other incidental costs;
    - (ii) Obtaining financing for construction of facilities or the renovation, repair, or alteration of existing property or facilities (including the purchase or replacement of fixtures and equipment), including financing to cover planning, development, and other incidental costs;
    - (iii) Enhancing the availability of loans (including mortgages) and bonds; and
    - (iv) Obtaining lease guarantees.

- (d) Funds provided under a grant under this subparagraph may not be used by a recipient to make direct loans or grants to public charter schools.
- (8) Access to District Facilities and Land
- (a) A public charter school shall have a right of first refusal to purchase or lease at or below fair market value a closed public school facility or property or unused portions of a public school facility or property located in a school district from which it draws its students if the school district decides to sell or lease the public school facility or property.
- (9) Contracting for Use of Facilities
- (a) A public charter school may negotiate and contract at or below fair market value with a school district, the governing body of a state college or university or public community college, or any other public or for-profit or nonprofit private entity for the use of facility for a school building.
- (10) Use of Other Facilities under Preexisting Zoning and Land Use Designations
- (a) Library, community service, museum, performing arts, theatre, cinema, church, community college, college, and university facilities may provide space to public charter schools within their facilities under their preexisting zoning and land use designations.
- (11) Exemptions from Ad Valorem Taxes and Certain Fees
- (a) Any facility, or portion thereof, used to house a public charter school shall be exempt from ad valorem taxes.
  - (b) Public charter school facilities are exempt from assessments of fees for building permits, fees for building and occupational licenses, impact fees, service availability fees, and assessments for special benefits.

The model law provides a menu of approaches for the charter school facilities issue, most of which should be included in a given state's law.

## APPENDIX A

### Resources

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The National Alliance for Public Charter Schools ([www.publiccharters.org](http://www.publiccharters.org)) is the national nonprofit organization committed to advancing the charter school movement. The Alliance provides assistance to state charter school associations and resource centers, develops and advocates for improved public policies, and serves as the united voice for this large and diverse movement. Currently, more than 1.4 million students attend 4,600 public charter schools in 40 states and the District of Columbia. The first charter school opened in Minnesota in 1992.

