

# **CLARIFYING STATUTORY REFERENCES TO PUBLIC SCHOOLS AS THEY RELATE TO NEW CENTURY CHARTER SCHOOLS**

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## FOREWORD

This study was prepared in response to Act 51, Session Laws of Hawaii 2004 (Senate Bill No. 3238, S.D. 2, H.D. 2, C.D. 1). The Act directed the Legislative Reference Bureau to "conduct a study to determine conforming amendments to the Hawaii Revised Statutes that may be necessary as a result of the amended definition of 'public school' in section 5, [of Act 51] to effectuate the purposes of this Act without altering either the effect or intent of existing statutory language."

The Bureau extends its appreciation to Mr. Keith Fukumoto and Mr. Charles Higgins of the Department of Education and Mr. James T. Shon of the Charter School Administrative Office for their assistance in the preparation of this study.

Ken H. Takayama  
Acting Director

January 2005

# FACT SHEET

## I. Highlights

- A. The purpose of Act 51, Session Laws of Hawaii (S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1 (2004), was to implement comprehensive education reform in Hawaii's public schools that included clarifying the role of charter schools in public education.
- B. The Legislature, under Act 51 (which was later amended by Act 221, Session Laws of Hawaii 2004), added new century charter schools to the definition of "public schools" in section 302A-101, HRS, and requested the Bureau to study the ramifications of this change, which is scheduled to take effect on July 1, 2005.
- C. Changing the definition of "public schools" to include new century charter schools, in effect, makes all sections in chapter 302A containing the term "public schools," necessarily applicable to new century charter schools. This change, in some instances, is not only contrary to section 302A-1184, HRS, which relates to the application of chapter 302A, HRS, to new century charter schools, but is also contrary, in part, to the applicability lists prepared by the Department of Education (DOE) and the Charter School Administrative Office (CSAO). Other terms in chapter 302A, HRS, that are used synonymously with the term "public schools," such as "schools," "high schools," and "public high schools," as well as sections that do not use any of these terms, also present problems for the amendment.
- D. The Legislature has four options available to address the "public schools" amendment: (1) Leave the law the way it is without changing the definition of "public schools"; (2) Adopt the definition change; (3) Amend section 302A-1184, HRS, by identifying specific sections in chapter 302A that apply to new century charter schools; and/or (4) Amend all sections in chapter 302A that apply to new century charter schools to indicate their applicability.

## II. Anticipated Questions

- A. What is the impact of including new century charter schools in the definition of "public schools"?

*Answer:* As explained above, the amendment causes the misapplication of sections in chapter 302A to new century charter schools.

- B. What options are available to the Legislature based on the study's findings?

*Answer:* The Legislature can respond in one of four ways, or a combination thereof. First, the Legislature can repeal section 5 of Act 51, Session Laws of Hawaii 2004, to leave the law the way it currently exists, without changing the definition of "public schools." Second, the Legislature can do nothing, thereby allowing the amendment changing the definition of "public schools" to take effect. Third, the Legislature can amend section 302A-1184, HRS, relating to new century charter school exemptions to state law to clarify which specific sections of chapter 302A apply to charter schools. Fourth, the Legislature can amend appropriate sections of chapter 302A, HRS, to indicate their applicability to new century charter schools.

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# Chapter 1

## INTRODUCTION

Pursuant to Act 51, Session Laws of Hawaii 2004 (Senate Bill No. 3238, S.D. 2, H.D. 2, C.D. 1), the Legislative Reference Bureau was requested to "conduct a study to determine conforming amendments to the Hawaii Revised Statutes [(HRS)] that may be necessary as a result of the amended definition of 'public school' in section 5, [of Act 51] to effectuate the purposes of this Act without altering either the effect or intent of existing statutory language" in chapter 302A, HRS.<sup>1</sup>

The purpose of Act 51, SLH 2004, was to implement comprehensive education reform in Hawaii's public schools. Act 51, as well as Act 221, Session Laws of Hawaii 2004 (which amended Act 51), included amendments relating to new century charter schools.

### **Legislative Intent and Background Information**

The legislative intent behind the amendment to the definition of "public schools" and its relationship to new century charter schools was not readily apparent to the people interviewed for this study. Based upon their responses, however, it appears the Legislature encountered drafting problems with Act 51 concerning the application of certain sections of chapter 302A, HRS (especially those related to the new sections on weighted student formula), to new century charter schools.<sup>2</sup> Additionally, there were other legislative concerns that are discussed in the next chapter.

Apparently to address these concerns, the Legislature added charter schools to the definition of "public schools" under section 302A-101, HRS. As a result of this amendment, all sections under chapter 302A, HRS, that used the term "public schools", would then apply to new century charter schools. To ensure this amendment had no unintended consequences, the Legislature delayed the Act's effective date for one year and requested the Bureau to conduct this study.

The purpose of this study is to first determine the ramifications of this amendment to chapter 302A, HRS (which relates exclusively to public education), and propose necessary conforming legislation.

### **Methodology**

To determine the ramifications of including new century charter schools in the definition of "public schools" in chapter 302A, HRS, the Department of Education and the Charter School Administrative Office were asked to assist in identifying which sections in chapter 302A, HRS, that use the term "public schools" should or should not



apply to new century charter schools. A listing of the sections in chapter 302A identified by both agencies as applicable to charter schools follows in the next chapter.

### **Organization of this Study**

This study is organized into the following three parts:

- (1) A discussion of the Act 51 amendment that changed the definition of "public schools" to include new century charter schools;
- (2) Possible alternatives available to the Legislature in response to this report's findings; and
- (3) Suggested legislation.

### **Endnotes**

1. Act 51, Session Laws of Hawaii 2004, see Appendix A.
2. See sections 4 and 6 of Act 51, Session Laws of Hawaii 2004.

## Chapter 2

### AMENDING THE DEFINITION OF "PUBLIC SCHOOLS"

As noted in chapter 1, the purpose of Act 51, Session Laws of Hawaii 2004, was to implement comprehensive education reform in Hawaii's public schools. Act 51, as well as Act 221, Session Laws of Hawaii 2004 (which amended Act 51), included amendments relating to new century charter schools. Section 5 of Act 51 added new century charter schools to the definition of "public schools" under section 302A-101, Hawaii Revised Statutes (HRS). As a result of the amendment, all sections under chapter 302A, HRS, that use the term "public schools" will apply to new century charter schools after July 1, 2005.

#### **The Law Prior to the Act 51 Amendment**

Under present law, (i.e., prior to the "public schools" amendment under Act 51 taking effect on July 1, 2005) chapter 302A, HRS, applies to new century charter schools only pursuant to section 302A-1184, HRS, which exempts new century charter schools from all state law with a few exceptions. Section 302A-1184, HRS, exempts new century charter schools from all state law, except in the following areas:

- (1) Collective bargaining under chapter 89, HRS, subject to certain provisos;
- (2) Discriminatory employment practices under section 378-2, HRS;
- (3) Health and safety requirements; and
- (4) The procurement code under chapter 103D, HRS, subject to certain provisos.

Thus, all sections in chapter 302A, HRS, that fall outside of these four exceptions are considered not applicable to new century charter schools.

#### **The Law with the Act 51 Amendment**

By expanding the definition of "public schools" to include new century charter schools, Act 51 expands the applicability of chapter 302A, HRS, to include sections in chapter 302A that were previously (because of section 302A-1184, HRS) not applicable to new century charter schools. Thus, parts of chapter 302A, HRS, that were formerly not applicable to new century charter schools will become applicable as a result of the definition change in "public schools." It is questionable whether this is intended by the Legislature.

The effect of Act 51 to make these sections applicable to new century charter schools is also inconsistent with the findings provided by the Department of Education (DOE) and the Charter School Administrative Office (CSAO) that identified sections of chapter 302A, HRS, applicable to new century charter schools. According to the findings of the DOE and CSAO, the Act 51 amendment appears to have unintentionally broadened the applicability of chapter 302A to new century charter schools with sections that should not apply.

Finally, the use of the term "public schools" in chapter 302A, HRS, is also problematic because its use as a means to apply chapter 302A, HRS, to new century charter schools is negated by its inherent limited application to all of chapter 302A, HRS. That is, many sections under chapter 302A, HRS, do not use the term "public schools" and instead use terms such as "schools," "high schools," and "public high schools." These terms are not similarly amended to include charter schools. Furthermore, in a number of chapter 302A sections, neither the term "public schools" nor any of its derivatives is used at all. Thus, amending the definition of "public schools" is an ineffective means of applying chapter 302A, HRS, to new century charter schools.

### **The Lists Prepared by the DOE and CSAO that Identify Sections in Chapter 302A that Apply to New Century Charter Schools**

The following lists represent sections in chapter 302A that were identified by both the DOE and CSAO as applicable to new century charter schools:

302A-461, 302A-482, 302A-601.5, 302A-612, 302A-1002, 302A-1132, 302A-1133, 302A-1148.5, 302A-1154, 302A-1155, 302A-1159, and 302A-1161.

The following are chapter 302A sections that were included in the list prepared by the DOE, but not by the CSAO:

302A-102, 302A-201, 302A-417, 302A-436, 302A-462, 302A-463, 302A-464, 302A-465, 302A-901, 302A-1004, 302A-1134, 302A-1134.6, 302A-1135, 302A-1138, 302A-1139, 302A-1140, 302A-1141, 302A-1144, 302A-1145, 302A-1152, 302A-1160, and 302A-1502.

Only those chapter 302A sections that were included in both DOE's and CSAO's lists appear in the suggested legislation in Appendices B and C. The DOE and CSAO have not completed reviewing all chapter 302A sections for this study. Thus, the lists do not represent all of the chapter 302A sections. Should the Legislature decide to pursue the suggested legislation, complete lists will be provided at that time.

## **Other Considerations Related to the Amendment**

**The Weighted Student Formula.** A concern raised during the preparation of this study related to the weighted student formula in Acts 51 and 221 and the "public schools" amendment. The weighted student formula is a new system of allocating funds to public school students. The concern was that sections 4 and 6 of Act 51 and the amendment of those sections in Act 221 (sections 7 and 8), could result in problems if the definition of the "public schools" was not amended to include charter schools.

Act 221 clearly provides in sections 4 and 5 of the Act that new century charter schools will have the option of utilizing the weighted student formula. Despite any language that might give a contrary impression, the specificity of these sections leaves no doubt as to the Legislature's intent to provide this option to new century charter schools.

**The Validity of Acts 51 and 221.** There may also have been a concern that, since Act 51 was vetoed during the 2004 legislative session, Act 221 might be invalid because it was based on vetoed legislation. To the contrary, although Act 51 was vetoed, the veto was subsequently overridden by the Legislature, which effectively enacted that legislation on May 3, 2004. Thus, both Act 51 and Act 221 were legally enrolled and enacted pursuant to law.

## Chapter 3

### ALTERNATIVES

Based on the Bureau's findings in chapter 2, the Bureau suggests the Legislature consider the following options with respect to the disposition of the "charter schools" amendment.

- (1) Leave the law the way it currently is without changing the definition of "public schools;"
- (2) Allow the change to the definition of "public schools" to include new century charter schools (as contemplated by Act 51, SLH 2004);
- (3) Amend section 302A-1184, HRS, by adding a list of all sections under chapter 302A, HRS, that apply to new century charter schools; and/or
- (4) Amend appropriate sections in chapter 302A, HRS, to indicate their applicability to new century charter schools.

#### **Leave the Law the Way It Currently Is**

By repealing section 5 of Act 51 to leave the law the way it currently is (i.e. not amending the definition of "public schools"), the determination as to which chapter 302A sections apply to new century charter schools is made pursuant to section 302A-1184, HRS, relating to exempting new century charter schools from state law. This section generally exempts new century charter schools from all state law, except in the areas of collective bargaining, discriminatory employment practices, health and safety requirements, and the procurement code. The effectiveness of section 302A-1184, HRS, to identify laws that apply to new century charter schools has apparently never been a point of contention in the past. Appendix D represents legislation for this purpose.

Other issues regarding the weighted student formula and the validity of Act 221, discussed previously, do not appear to warrant a change in the current law.

#### **Change the Definition of "Public Schools"**

The amendment to the definition of "public schools" will take effect on July 1, 2005, unless further action is taken by the Legislature. As mentioned in chapter 2, changing the definition of "public schools" to include new century charter schools, in effect, will make all chapter 302A sections with the term "public schools," necessarily applicable to new century charter schools. This change, in some instances, is not only

contrary to section 302A-1184, HRS, but is also contrary, in part, to the applicability lists prepared by the Department of Education (DOE) and the Charter School Administrative Office (CSAO). Moreover, other terms used in chapter 302A, HRS, that are synonymous with the term "public schools," such as "schools," "high schools," and "public high schools," but are not similarly amended, also present problems.

### **Amend Section 302A-1184, HRS, to Add a List of Sections in Chapter 302A that Apply to New Century Charter Schools**

The Legislature could amend section 302A-1184, HRS, to identify any sections in chapter 302A that apply to new century charter schools. This approach ensures accuracy and leaves no doubt as to the Legislature's intent. Furthermore, given that the number of sections in chapter 302A that have been deemed applicable to charter schools by either the DOE or the CSAO is far less than those considered not applicable, this approach or the one that follows would seem a reasonable approach to making the necessary conforming amendments requested by Act 51.

Any such list should be developed with a consensus between the DOE and the CSAO, with the approval of the Legislature, as to which sections in chapter 302A should be included under section 302A-1184, HRS. Although there is general consensus between the agencies as to a tentative list, currently the list is incomplete, as previously noted, and requires more time for both agencies to further study this issue. Appendix B represents legislation for this purpose.

Although this alternative should complement the exemptions presently under section 302A-1184, HRS, it does, however, require the list to be updated every time new century charter school legislation is enacted. The failure to update this list (a scenario that is not unrealistic) may have the contrary effect of a section that is intended by the Legislature to apply to new century charter schools being inapplicable because section 302A-1184 was not amended to include it.

The use of a list should not be a problem for relatively sophisticated readers and legislative staffers, but the general public may not realize the need to locate a particular statutory section that serves as a "key to the puzzle." This could cause the general reader to miss the point of whether a particular section really applies to charter schools.

Conversely, there is no guarantee that the list in section 302A-1184 (or, for that matter, any other section that might be designated to house the list) will always remain as the sole repository of sections applicable to charter school. For example, there is nothing to prevent subsequently enacted bills from including statements in a particular section that the section applies to charter schools. The problem here would be if a person familiar with the list relied upon it as the sole indication of whether a particular section applied to charter schools and was unaware of the applicability of their sections.

## **Amend Appropriate Sections in Chapter 302A, HRS**

Amending appropriate sections in chapter 302A, HRS, to indicate the applicability of new century charter schools provides a clear and understandable method of identifying chapter 302A sections that apply to new century charter schools. This method is probably the most "user friendly" for HRS users, because it is the most conventionally straightforward approach that uses a clear, plain statement in a particular section that the section either applies or does not apply to charter schools. But like the list approach discussed above, this approach is only as good as the bill drafters who remember to amend future sections added to chapter 302A that are intended to apply to new century charter schools. Also, as with the approach of adding a list of sections to section 302A-1184, any amendments to chapter 302A, HRS, should be done based upon a consensus between the DOE and CSAO, with the approval of the Legislature. Appendix C represents legislation for this purpose.

## Appendix A

### Relevant Excerpts from Senate Bill No. 3238, S.D. 2, H.D. 2, C.D. 1, Regular Session of 2004

SECTION 5. Section 302A-101, Hawaii Revised Statutes, is amended by amending the definition of "public schools" to read as follows:

"Public schools" means all academic and noncollege type schools either established and maintained by the department , or issued a charter by the board of education, in accordance with law. All other academic and noncollege type schools are "private schools", irrespective of the hours during which the sessions take place."

SECTION 65. The legislative reference bureau shall conduct a study to determine conforming amendments to the Hawaii Revised Statutes that may be necessary as a result of the amended definition of "public school" in section 5, to effectuate the purposes of this Act without altering either the effect or intent of existing statutory language.

The legislative reference bureau shall submit its findings, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2005.



## Appendix B

**Report Title:**

Education; New Century Charter Schools

**Description:**

Adds specific additional exemptions to the New Century Charter Schools exemption law.

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**A BILL FOR AN ACT**

RELATING TO NEW CENTURY CHARTER SCHOOLS.

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

1           SECTION 1. Section 302A-1184, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3           "(a) Schools designated as new century charter schools  
4 shall be exempt from all applicable state laws, except those  
5 regarding:

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

7                 (A) The exclusive representatives defined in chapter  
8                         89 may enter into agreements that contain cost  
9                         and noncost items to facilitate decentralized  
10                        decisionmaking;

11                (B) The exclusive representatives and the local  
12                        school board of the new century charter school  
13                        may enter into agreements that contain cost and  
14                        noncost items;

15                (C) The agreements shall be funded from the current  
16                        allocation or other sources of revenue received  
17                        by the new century charter school; and

# .B. NO.

1 (D) These agreements may differ from the master  
2 contracts;

3 (2) Discriminatory practices under section 378-2; [~~and~~]

4 (3) Health and safety requirements[-]; and

5 (4) The following sections under chapter 302A:

6 (A) 302A-461;

7 (B) 302A-482;

8 (C) 302A-601.5;

9 (D) 302A-612;

10 (E) 302A-1002;

11 (F) 302A-1132;

12 (G) 302A-1133;

13 (H) 302A-1148.5;

14 (I) 302A-1154;

15 (J) 302A-1155;

16 (K) 302A-1159; and

17 (L) 302A-1161.

18 New century charter schools shall be exempt from the state  
19 procurement code, chapter 103D, but shall develop internal  
20 policies and procedures for the procurement of goods, services,  
21 and construction, consistent with the goals of public

# .B. NO.

1 accountability and public procurement practices. However, where  
2 possible, the new century charter school is encouraged to use  
3 the provisions of chapter 103D; provided that the use of one or  
4 more provisions of chapter 103D shall not constitute a waiver of  
5 the exemption of chapter 103D and shall not subject the new  
6 century charter school to any other provision of chapter 103D.  
7 New century charter schools shall account for funds expended for  
8 the procurement of goods and services, and this accounting shall  
9 be available to the public. In addition, notwithstanding any  
10 law to the contrary, as public schools and entities of the  
11 State, new century public charter schools shall not bring suit  
12 against any other entity or agency of the State of Hawaii."

13 SECTION 2. Section 302A-101, Hawaii Revised Statutes, is  
14 amended by amending the definition of "public schools" to read  
15 as follows:

16 "Public schools" means all academic and noncollege type  
17 schools either established and maintained by the department[, ~~or~~  
18 ~~issued a charter by the board of education~~], in accordance with  
19 law. All other academic and noncollege type schools are  
20 "private schools", irrespective of the hours during which the  
21 sessions take place."

# .B. NO.

1           SECTION 3. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 4. This Act shall take effect on July 1, 2005.

4

INTRODUCED BY: \_\_\_\_\_

## Appendix C

**Report Title:**

Education; New Century Charter Schools

**Description:**

Clarifies the applicability to new century charter schools of specific sections in chapter 302A, Hawaii Revised Statutes.

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# A BILL FOR AN ACT

RELATING TO NEW CENTURY CHARTER SCHOOLS.

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

1           SECTION 1. Section 302A-461, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~§~~**302A-461**~~§~~ **Gender equity in athletics.** (a) No  
4 person, on the basis of sex, shall be excluded from  
5 participating in, be denied the benefits of, or be subjected to  
6 discrimination in athletics offered by a public high school,  
7 pursuant to Public Law 92-318, Title IX of the federal Education  
8 Amendments of 1972.

9           (b) This section shall apply to new century charter  
10 schools."

11          SECTION 2. Section 302A-482, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13          "(a) Notwithstanding any other law to the contrary, a  
14 caregiver may consent on behalf of a minor to enrollment in  
15 school and to full participation in curricular and co-curricular  
16 school activities, if the caregiver possesses and presents to  
17 the department of education or the new century charter school,

# .B. NO.

1 for inclusion in the minor's file a valid affidavit for  
2 caregiver consent provided by the department of education or the  
3 new century charter school and executed by the caregiver that  
4 shall include but not be limited to the following:

- 5 (1) The caregiver's name and current home address;
- 6 (2) The birthdate of the caregiver;
- 7 (3) The number of the caregiver's Hawaii driver's license  
8 or state identification card;
- 9 (4) The relationship of the caregiver to the minor;
- 10 (5) The name of the minor;
- 11 (6) The birthdate of the minor;
- 12 (7) The length of time the minor has resided with the  
13 caregiver;
- 14 (8) The signature of the caregiver;
- 15 (9) The signature of consent by the minor's parent,  
16 guardian, or legal custodian; provided that the  
17 signature of the minor's parent, guardian, or legal  
18 custodian shall not be necessary if the affidavit  
19 states that the caregiver has been unable to obtain  
20 the signature of the minor's parent, guardian, or  
21 legal custodian; and included a statement by the



# .B. NO.

1 caregiver documenting the attempts to obtain the  
2 signature of the minor's parents, guardian, or legal  
3 custodian;

4 (10) The minor's residency with the caregiver is not for  
5 the purpose of:

6 (A) Attending a particular school;

7 (B) Circumventing the department of education's  
8 district exemption process;

9 (C) Participating in athletics at a particular  
10 school; or

11 (D) Taking advantage of special services or programs  
12 offered at a particular school;

13 (11) Notice has been provided by the caregiver to the child  
14 protective services unit of the department of human  
15 services if the minor covered by this affidavit is  
16 residing with the caregiver due to abuse or neglect  
17 perpetuated by the minor's parent;

18 (12) The following statement:

19 "General Notices:

20 This declaration does not affect the rights of  
21 the minor's parent, guardian, or legal custodian

# .B. NO.

1            regarding the care, custody, and control of the minor,  
2            and does not give the caregiver legal custody of the  
3            minor.

4            The minor's parent or legal custodian may at any  
5            time rescind this affidavit by informing the minor's  
6            school principal in writing that the minor is  
7            attending school under the authority of this affidavit  
8            and that this affidavit has been rescinded.

9            A person who relies on this affidavit has no  
10           obligation to conduct any further inquiry or  
11           investigation.

12           No person who relies in good faith on this  
13           affidavit shall be subject to civil or criminal  
14           liability or to professional disciplinary action  
15           because of that reliance."

16           SECTION 3. Section 302A-601.5, Hawaii Revised Statutes, is  
17           amended by amending subsection (a) to read as follows:

18           "(a) The department of education, including the Hawaii  
19           state public library system[7] and the new century charter  
20           schools shall develop procedures for obtaining verifiable  
21           information regarding the criminal history of persons who are

# .B. NO.

1 employed or seeking employment in any position, including  
2 teacher trainees, that places them in close proximity to  
3 children. These procedures shall include criminal history  
4 record checks in accordance with section 846-2.7.

5 Information obtained pursuant to this subsection shall be  
6 used exclusively by the employer or prospective employer for the  
7 purpose of determining whether a person is suitable for working  
8 in close proximity to children. All such decisions shall be  
9 subject to applicable federal laws and regulations currently or  
10 hereafter in effect."

11 SECTION 4. Section 302A-612, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "[~~§~~§302A-612[~~§~~] **School teachers afflicted with**  
14 **tuberculosis.** No person who has contracted tuberculosis, while  
15 afflicted with the disease, may be allowed to teach in any  
16 public school[ ~~or~~] or new century charter school."

17 SECTION 5. Section 302A-1002, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "[~~§~~§302A-1002[~~§~~] **Reporting of crime-related incidents.**

20 (a) The board shall adopt rules pursuant to chapter 91 to:

# .B. NO.

- 1           (1) Require a report to appropriate authorities from a  
2           teacher, official, or other employee of the department  
3           who knows or has reason to believe that an act has  
4           been committed or will be committed, which:
- 5           (A) Occurred or will occur on school property during  
6           school hours or during activities supervised by  
7           the school; and
- 8           (B) Involves crimes relating to arson, assault,  
9           burglary, disorderly conduct, dangerous weapons,  
10          dangerous drugs, harmful drugs, extortion,  
11          firearms, gambling, harassment, intoxicating  
12          drugs, marijuana or marijuana concentrate,  
13          murder, attempted murder, sexual offenses,  
14          rendering a false alarm, criminal property  
15          damage, robbery, terroristic threatening, theft,  
16          or trespass;
- 17          (2) Establish procedures for disposing of any incident  
18          reported; and
- 19          (3) Impose, in addition to any other powers or authority  
20          the department may have to discipline school  
21          officials, appropriate disciplinary action for failure

# .B. NO.

1 to report these incidents, including probation,  
2 suspension, demotion, and discharge of school  
3 officials.

4 (b) This section shall apply to new century charter  
5 schools."

6 SECTION 6. Section 302A-1132, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) Unless excluded from school or excepted from  
9 attendance, all children who will have arrived at the age of at  
10 least six years, and who will not have arrived at the age of  
11 eighteen years, by January 1 of any school year, shall attend  
12 ~~[either]~~ a public or private school or a new century charter  
13 school for, and during, the school year~~[, and any]~~. Any parent,  
14 guardian, or other person having the responsibility for, or care  
15 of, a child whose attendance at school is obligatory shall send  
16 the child to ~~[either]~~ a public or private school~~[. Attendance~~  
17 ~~at a public or private school shall not be compulsory]~~ or a new  
18 century charter school, except in the following cases:

19 (1) Where the child is physically or mentally unable to  
20 attend school (deafness and blindness excepted), of

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- 1           which fact the certificate of a duly licensed  
2           physician shall be sufficient evidence;
- 3           (2) Where the child, who has reached the fifteenth  
4           anniversary of birth, is suitably employed and has  
5           been excused from school attendance by the  
6           superintendent or the superintendent's authorized  
7           representative, or by a family court judge;
- 8           (3) Where, upon investigation by the family court, it has  
9           been shown that for any other reason the child may  
10          properly remain away from school;
- 11          (4) Where the child has graduated from high school;
- 12          (5) Where the child is enrolled in an appropriate  
13          alternative educational program as approved by the  
14          superintendent or the superintendent's authorized  
15          representative in accordance with the plans and  
16          policies of the department, or notification of intent  
17          to home school has been submitted to the principal of  
18          the public school that the child would otherwise be  
19          required to attend in accordance with department rules  
20          adopted to achieve this result; or
- 21          (6) Where:

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- 1 (A) The child has attained the age of sixteen years;
- 2 (B) The principal has determined that:
- 3 (i) The child has engaged in behavior which is
- 4 disruptive to other students, teachers, or
- 5 staff; or
- 6 (ii) The child's non-attendance is chronic and
- 7 has become a significant factor that hinders
- 8 the child's learning; and
- 9 (C) The principal of the child's school, and the
- 10 child's teacher or counselor, in consultation
- 11 with the child and the child's parent, guardian,
- 12 or other adult having legal responsibility for or
- 13 care of the child, develops an alternative
- 14 educational plan for the child. The alternative
- 15 educational plan shall include a process that
- 16 shall permit the child to resume school.
- 17 The principal of the child's school shall file the
- 18 plan made pursuant to subparagraph (C) with the
- 19 child's school record. If the adult having legal
- 20 responsibility for or care of the child disagrees with
- 21 the plan, then the adult shall be responsible for

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1           obtaining appropriate educational services for the  
2           child."

3           SECTION 7. Section 302A-1133, Hawaii Revised Statutes, is  
4 amended to read as follows:

5           "~~§~~**302A-1133**~~§~~ **Emergency measures.** The department of  
6 health may implement emergency measures to refuse, modify, or  
7 limit attendance at any school in the State, including a new  
8 century charter school, pursuant to section 321-1 if it is  
9 determined that there is imminent danger of an epidemic or  
10 serious outbreak of communicable disease."

11          SECTION 8. Section 302A-1148.5, Hawaii Revised Statutes,  
12 is amended to read as follows:

13          "~~§~~**302A-1148.5**~~§~~ **Use of school grounds; assumption of**  
14 **risk.** (a) Any person who enters school grounds for the purpose  
15 of using the school's grounds, facilities, or equipment for  
16 recreational purposes, and who is not a student or member of the  
17 faculty or administration of that school, is deemed to assume  
18 the risk of liability for any injuries or death resulting from  
19 the use of the grounds, facilities, or equipment. This  
20 assumption of risk shall not apply if:



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1           (1) The person is an invitee or licensee to whom a duty of  
2           care is owed by the school; provided that the person  
3           has received prior written authorization from the  
4           school principal or other responsible person to use  
5           the school's grounds, facilities, or equipment; or

6           (2) The injuries or death were caused by wilful or wanton  
7           misconduct, including but not limited to the wilful or  
8           malicious failure to guard or warn against a dangerous  
9           condition, use, or structure which was knowingly  
10          created or perpetuated, and wilful or malicious  
11          failure to guard or warn against a dangerous activity  
12          which was knowingly perpetuated.

13          (b) This section shall apply to new century charter  
14          schools."

15          SECTION 9. Section 302A-1154, Hawaii Revised Statutes, is  
16          amended to read as follows:

17          "**§302A-1154 Immunization upon entering school;**  
18          **tuberculosis clearance.** (a) No child shall attend any school  
19          in the State unless the child presents to the appropriate school  
20          official documentation satisfactory to the department of health

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1 that the child has received immunizations against communicable  
2 diseases as required by the department of health.

3 (b) No child shall be admitted to attend any school for  
4 the first time in the State unless the child presents to the  
5 appropriate school official documentation satisfactory to the  
6 department of health that the child has been examined and tested  
7 according to the rules of the department, and is free from  
8 tuberculosis in a communicable form.

9 (c) This section shall apply to new century charter  
10 schools."

11 SECTION 10. Section 302A-1155, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§302A-1155 Provisional entrance to school.** (a) A child  
14 may enter school provisionally upon submitting written  
15 documentation from a licensed physician, advanced practice  
16 registered nurse, or an authorized representative of the  
17 department of health stating that the child is in the process of  
18 receiving the required immunizations. Further documentation  
19 showing that the required immunizations have been completed  
20 shall be submitted to the appropriate school official no later  
21 than three months after the child first entered the school. If

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1 all of the required immunizations cannot be completed within  
2 three months due to the length of the minimum intervals between  
3 doses of a particular vaccine required by the department of  
4 health, provisional admission may be extended so long as the  
5 child's parent or guardian provides documentation that  
6 appointments for required immunizations have been made and that  
7 progress toward completing the immunizations continues in  
8 accordance with the requirements of the department of health.

9 (b) Provisional entrance to school may be suspended by the  
10 department of health when there is danger of an epidemic from  
11 any of the communicable diseases for which immunization is  
12 required.

13 (c) This section shall apply to new century charter  
14 schools."

15 SECTION 11. Section 302A-1159, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "**§302A-1159 Physical examination required.** (a) No child  
18 shall be admitted to any school for the first time in the State  
19 unless the child presents to the appropriate school official a  
20 report from a licensed physician or advanced practice registered  
21 nurse of the results of a physical examination performed within

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1 a year of the date of entry into school. A child may enter  
2 school provisionally upon submitting written documentation from  
3 a licensed physician, advanced practice registered nurse, or  
4 other authorized representative of the department of health  
5 stating that the child is in the process of undergoing a  
6 physical examination. Further documentation showing that the  
7 required physical examination has been completed shall be  
8 submitted to the appropriate school official no later than three  
9 months after the child first entered the school.

10 (b) This section shall apply to new century charter  
11 schools."

12 SECTION 12. Section 302A-1161, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§302A-1161 Notification for noncompliance.** (a) If a  
15 child does not complete the immunizations required under section  
16 302A-1154 or the physical examination required under section  
17 302A-1159 within the period provided by section 302A-1155 after  
18 provisional entry into school, the administrator of the school  
19 shall cause a notice to be sent to the parent or guardian of the  
20 child stating that if the required immunizations or physical

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1 examination is not completed within thirty days of the date of  
2 the notice, the child shall not be admitted to school.

3 (b) This section shall apply to new century charter  
4 schools."

5 SECTION 13. Section 302A-101, Hawaii Revised Statutes, is  
6 amended by amending the definition of "public schools" to read  
7 as follows:

8 "Public schools" means all academic and noncollege type  
9 schools either established and maintained by the department[~~, or~~  
10 ~~issued a charter by the board of education~~], in accordance with  
11 law. All other academic and noncollege type schools are  
12 "private schools", irrespective of the hours during which the  
13 sessions take place."

14 SECTION 14. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 15. This Act shall take effect on July 1, 2005.

17

INTRODUCED BY: \_\_\_\_\_

## Appendix D

**Report Title:**

Education; New Century Charter Schools

**Description:**

Repeals the Act 51, SLH 2004, amendment that added new century charter schools to the definition of "public schools".

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# A BILL FOR AN ACT

RELATING TO NEW CENTURY CHARTER SCHOOLS.

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

1           SECTION 1. Section 302A-101, Hawaii Revised Statutes, is  
2 amended by amending the definition of "public schools" to read  
3 as follows:

4            "Public schools" means all academic and noncollege type  
5 schools either established and maintained by the department~~[, or~~  
6 ~~issued a charter by the board of education]~~, in accordance with  
7 law. All other academic and noncollege type schools are  
8 "private schools", irrespective of the hours during which the  
9 sessions take place."

10          SECTION 2. Statutory material to be repealed is bracketed  
11 and stricken.

12          SECTION 3. This Act shall take effect on July 1, 2005.

13

INTRODUCED BY: \_\_\_\_\_