

# MODEL LEGISLATION FOR STATES

GROUNDED ON  
EXPERIENCE AND PRACTICE

the  
CENTER FOR EDUCATION REFORM



Editors:  
Jeanne Allen  
Alison Consoletti  
Kara Kerwin

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# INTRODUCTION

BY ALISON CONSOLETTI, VICE PRESIDENT OF RESEARCH

Forty-one states and Washington, DC, currently have charter school laws. The first law was passed in Minnesota in 1991. Most recently, Maine passed its charter school law in 2011. Since its inception, The Center for Education Reform (CER) has worked with charter schools, choice advocates and policymakers to figure out what works and what doesn't in a charter school law. What are the components of a strong charter school law that will allow for the creation of high-quality and a significant quantity of charter schools?

A strong charter law, it turns out, is harder to create than the number of schools across the country - currently over 5,700 - would suggest. As CER's annual publication, [Charter School Laws Across the States](#) shows, most charter school laws that have passed are mediocre at best. In 2012, only five states received an A grade, and a majority of states received a C or below. Even among the A's, no state was close to perfect. The total amount of points a state could receive was 55, and yet DC, which has the strongest law, only scored 46 points, leaving a lot of room for improvement. While the A and B state laws perform at a much higher level than the other states' laws on the critical components, each state's charter law presents issues that must be corrected.

Twenty years into the charter school movement, the question isn't whether or not a state has a charter law and some charter schools. The question is whether the charter law has strong permanent authorizing structures and can withstand political elections or partisan whims with regard to funding, operations and accountability. Unfortunately, based on our thorough, longitudinal analysis of the 42 charter laws, the answer is that these laws, as currently written, have a long way to go.

The model legislation prepared by The Center is more than just a model charter law that should be copied and pasted into a legislative bill. First, this is not model legislation only for the nine states without a charter law on the books. This is charter legislation for all states to use to amend the parts of their law that contain weaknesses, including the need to create an independent authorizer, to grant charters a blanket waiver from rules and regulations, and to ensure more equitable funding.

CER's model law is broken up into four main categories -- the same four categories that we use when analyzing and grading the current charter laws. They are Independent Authorizers, Number of Schools Allowed, Operations and Equity. Within each section there is a brief definition and an explanation of why the category is important in a strong law. Next, please find the draft legislation. Finally, there are examples of states that we consider to be strong in that category with a brief explanation of why and references to their specific charter law. This makes clear the link between strong written legislation and a strong charter school community statewide.

In addition to the four main components of the model charter law, there is a final category titled "additional sections," which addresses some of the other crucial components of a successful law: application process, accountability, and renewal and revocation.

Good work has been done by other organizations, such as the National Alliance for Public Charter Schools (NAPCS), on some of the other aspects of charter law and you may want to consult their document for additional, less essential elements such as extra-curricular activities, pre-enrollment ideas, accounting principles, and more. However, we recommend relying on The Center’s model charter law for the key components and only relying on NACPS’s document to supplement our work.

It is CER’s framework of laws and regulations that must guide the creation and amendment of existing charter school law. It is important to know what works in actual practice and what does not, in order to encourage the development of strong charter school laws.

We hope that you take the time to read our model law, and learn from states that are doing a good job implementing key components. These real world examples can act as a guide for any state looking to bolster its education system by creating high-quality, innovative, autonomous charter schools that will serve their students well.

# MODEL LANGUAGE

## SUMMARY:

The state of [insert name] recognizes establishment of charter schools as necessary to improving the opportunities of all families to choose the public school that meets the needs of their children, and believes that charter schools serve a distinct purpose in supporting innovations and best practices that can be adopted among all public schools. Further, the state of [insert name] recognizes that there must be a variety of public institutions that can authorize the establishment of charter schools as defined by law, and recognizes that independent but publicly accountable multiple authorizing authorities, such as independent state entities or universities, contribute to the health and growth of strong public charter schools. Therefore, the purpose of this act is to establish that existing or new public entities may be created to approve and monitor charter schools in addition to public school district boards. This act also removes procedural and funding barriers to charter school success.

## SECTION 1: TITLE

This article will be entitled “The [State] Charter Schools Act”.

## SECTION 2: DECLARATION OF PURPOSE

(A) The [State General Assembly] hereby finds and declares that:

- (i) The [State] Charter Schools Act of [year] as approved by this body will provide students in [state] with high-quality public school choices while advancing overall academic excellence and helping to close the achievement gap;
- (ii) Will provide parents flexibility to choose among diverse educational opportunities within the state’s public school system;
- (iii) Charter schools will promote enhanced academic success and financial efficiency, and will be allowed freedom and flexibility in exchange for exceptional levels of accountability;
- (iv) The demand for quality public school choices in our state consistently outstrips the supply; and
- (v) National research and accumulated experience have documented that quality public charter schools best fulfill their potential when they have the resources, autonomy and accountability they need to succeed.

## INTRODUCTORY BILL LANGUAGE

Strong charter school laws aim to create high-quality schools that provide choices for children and improve their educational outcomes. It therefore is critical, when drafting the introduction to a good charter school bill or amendment, that the Summary, Declaration of Purpose and Definitions are extremely clear. Nothing must be left open to interpretation by legislators, local and state boards or the courts.

(B) The [State General Assembly] further finds and declares that the provisions established in this article update and improve our Charter Schools Act to meet our state's educational needs.

### SECTION 3: DEFINITIONS

(A) "Charter school" means:

(i) Any new school, including online schools, which is not currently being operated as a public or private school that is approved by a charter authorizer to operate as a public school under the Charter Schools Act; and

(ii) Any school converted from an existing school and approved by a charter authorizer to operate as a public charter school under the Charter Schools Act.

(B) "Authorizer" as used in this article means an entity or body established in Section 4 to approve and oversee public charter schools.

(C) "Board of directors" means the governing body of a public charter school.

(D) "Public Charter School Board" means the independent, state-level entity created pursuant to Section 4(C) as a charter authorizer.

(E) "Charter applicant" means an eligible person(s), organization or entity as defined by the Charter Schools Act that seeks approval from a charter authorizer to found a charter school.

(F) "Department of Education" means the State Department of Education as established under [insert statute].

(G) "School district" means each school district now or hereafter legally organized as a body corporate pursuant to [insert statute].

(H) "State Board" means the State Board of Education appointed pursuant to [insert statute].

States with weak charter laws are those that have failed to emphasize the intent of their law. This failure then opens the door to legal challenges. Often times the language has focused too heavily on creating alternatives for existing systems. This language leaves room for local school boards and the state to conclude that their system of schools would not be enhanced by the creation of charter schools. Unless it is made very clear in the purpose and definitions, opponents can point to fuzzy intent language as a basis for blocking or denying charter schools in their communities.

## SECTION 4: CHARTER AUTHORIZERS

*Note: There is no appeals language in CER's model law. Appeals should only occur in states with no independent or multiple authorizers, or states with only local approval. Appeals processes seek to prevent local boards from rejecting applications based on fear and not on merit.*

(A) Upon the effective date of this article and thereafter, a charter applicant seeking to establish a public charter school may submit the charter petition to one of several charter authorizers:

- (i) The elected governing authority of a county or municipality [define limitations, if any] and/or;
- (ii) The mayor of a city [define limitations, if any] and/or;
- (iii) The State Board of Education and/or;
- (iv) The Public Charter School Board established in Section 4(C); and
- (v) The board of trustees of a two or four year public institution of higher learning as defined by [insert statute], as described in Section 4(B) .

(B) Establishment. - University Authorizer

- (i) In general, there is established within the state public university authorizers;
- (ii) The ultimate responsibility for choosing to authorize a charter school and responsibilities for maintaining sponsorship shall rest with the university's board of trustees;
- (iii) Notwithstanding subsection (ii), the university's board of trustees may vote to assign sponsorship authority and sponsorship responsibilities to another person or entity that functions under the direction of the university's board. Any decisions made under this subsection shall be communicated in writing to the Department of Education and the university's board; and
- (iv) Before a university may authorize a charter school, the university must conduct a public meeting with public notice in the county where the charter school will be located.

(C) Establishment. - Public Charter School Board

- (i) There is established within the state a Public Charter School Board (in this section referred to as the "Board").

## COMPONENT ONE: Independent and Multiple Authorizers

### DEFINITION

Does the state permit entities other than traditional school boards to create and manage charter schools independently, and does the existence of such a provision actually lead to the active practice of independent authorizing? Independent authorizers - entities separate from state or local education agencies - may vary in scope and degree of independence from pre-existing government school structures. The term "multiple authorizers" is used to describe a component in law that permits authorizing by entities that include but are not limited to universities, new independent state boards, and/or mayors.

Permitting the creation of independent authorizers is one of the most important components of a strong charter law. The data show that states with multiple chartering authorities have almost three and a half times more charter schools than states that only allow local school board approval. About 80 percent of the nation's charter schools are in states with multiple authorizers or a strong appeals process. These states also are home to the highest quality charter schools, as evidenced by state test scores, numerous credible research studies, and ongoing observation.

Independent authorizers are better able to hold charter schools accountable because they have full control over how they evaluate charter schools, and they have their own staff, management team, and funding streams. A strong charter authorizer must be vigilant in monitoring its charter school portfolio, without becoming an over-bureaucratic policing agent.

(ii) Membership. – The Governor shall solicit from the Speaker of the House and the President of the Senate a list of 15 individuals they determine are qualified to serve on the Board. The Governor shall appoint seven individuals from the list to serve on the Board. The Governor shall choose members to serve on the Board so that knowledge of each of the following areas is represented on the Board:

(a) Research about and experience in student learning, quality teaching, and evaluation of and accountability in successful schools;

(b) The operation of a financially sound enterprise, including leadership and management techniques, as well as the budgeting and accounting skills critical to the startup of a successful enterprise;

(c) The educational, social, and economic development needs of the state; and

(d) The needs and interests of students and parents in the state, as well as methods of involving parents and other members of the community in individual schools.

(iii) Vacancies. –

(a) Other than from expiration of term. – Where a vacancy occurs in the membership of the Board for reasons other than the expiration of the term of a member of the Board, the Governor, not later than 30 days after the vacancy occurs, shall request from the leaders of the [State General Assembly] a list of three people they determine are qualified to serve on the Board. The Governor shall appoint one person from the list to serve on the Board. The [State General Assembly] shall recommend, and the Governor shall appoint, such member of the Board taking into consideration the criteria described in paragraph (ii) of this Section 4(C). Any member appointed to fill a vacancy occurring prior to the expiration of the term of a predecessor shall be appointed only for the remainder of the term.

(b) Expiration of term. – Not later than the date that is 60 days before the expiration of the term of a member of the Board, the Governor shall appoint one person from a list of three people that the leadership of the [State General Assembly] determines are qualified to serve on the Board. The Speaker of the House and President of the Senate shall recommend, and the Governor shall appoint, any member of the Board taking into consideration the criteria described in paragraph (ii) of Section 4(C).

(iv) Time limit for appointments. – If, at any time, the Governor does not appoint members to the Board sufficient to bring the Board's membership to seven within 30 days after receiving a recommendation from the legislative leadership under paragraph (ii) or (iii) of this subsection, the Speaker, not later than ten days after the final date for such an appointment, shall make such appointments as are necessary to bring the membership of the Board to seven.



(v) Terms of members. -

(a) In general. - Members of the Board shall serve for terms of four years, except that, of the initial appointments made under paragraph (ii) of this subsection, the Governor shall designate:

(i) Two members to serve terms of three years;

(ii) Two members to serve terms of two years; and

(iii) One member to serve a term of one year.

(b) Reappointment. - Members of the Board shall be eligible to be reappointed for one four-year term beyond their initial term of appointment.

(c) Independence. - No person employed by the state's public schools or a public charter school shall be eligible to be a Member of the Board or to be employed by the Board.

(vi) Operations of the Board. -

(a) Chair. - The Members of the Board shall elect from among their membership one individual to serve as Chair. Such election shall be held each year after members of the Board have been appointed to fill any vacancies caused by the regular expiration of previous members' terms, or when requested by a majority vote of the Members of the Board.

(b) Quorum. - A majority of the Members of the Board, not including any positions that may be vacant, shall constitute a quorum sufficient for conducting the business of the Board.

(c) Meetings. - The Board shall meet at the call of the Chair, subject to the hearing requirements of [cite statute here].

(vii) No compensation for service. - Members of the Board shall serve without pay, but may receive reimbursement for any reasonable and necessary expenses incurred by reason of service on the Board.

(viii) Personnel and resources. -

(a) In general. - Subject to such rules as may be made by the Board, the Chair shall have the power to appoint, terminate, and fix the pay of an Executive Director and such other personnel of the Board as the Chair considers necessary.

(b) Special rule. - The Board is authorized to use the services, personnel, and facilities of the state of [insert state].

States that do not have multiple authorizers create hostile environments for charters because school boards often view charter schools as competition and reject applications not based on merit, but on politics. Without objective oversight from multiple authorizers, charter schools have no alternatives for approval, and quality growth in a state is severely stunted. School board hostility has prevented certain states, such as Maryland, Wyoming, and Rhode Island, from meeting growing demand for school choice.

Independent authorizers consist of staff and boards that create and supervise the process by which charter applications are taken, reviewed, approved and, once schools are running, how they are monitored. While held to standards by the state, these staff members are independent of the traditional district education system and can make decisions for their charter schools without the interference of the state or local school boards.

Most of the time the processes for operations are written either into the law or into regulations adopted by state boards of education. The more detailed the law is, the more effective the authorizer will be. Not all are created equal, however. Those that are more likely to have high numbers of accountable, high quality charter schools tend to have more independence from conventional education bureaucracies, while still adhering to high standards and following clear rules and regulations.

(ix) Authorization of appropriations. - For the purpose of carrying out the provisions of this section and conducting the Board's functions required by this subchapter, there are authorized to be appropriated to the Board \$300,000 for fiscal year [XXXX] and such sums as may be necessary for each of the 3 succeeding fiscal years.

(x) Startup funds. - Startup funds necessary to establish and operate the Board may be received through private contributions and federal and other institutional grants in addition to funds provided in paragraph (ix) of this subsection. The Department of Education shall assist in securing federal and other institutional grant funds to establish the Board.

(xi) Expenses of Board. - Any start-up expenses of the Board shall be paid from such funds as may be available to the State Department of Education; provided, that within 45 days of [implementation date], the State Department of Education shall make available not less than [insert amount of money] to the Board.

(xii) Audit. - The Board shall provide for an audit of the financial statements of the Board by an independent certified public accountant in accordance with Government auditing standards for financial audits issued by the Comptroller General of the United States.

(xiii) Fees. - For the purposes of approval and oversight of charter schools, the Board may charge fees not to exceed 3 percent of per pupil enrollment revenues for each student in each school approved by the Board.

(xiv) Charter school authorizers shall report annually to the Governor, the President of the Senate, and the Speaker of the House the following information:

(a) The number, distribution, and a brief description of new charter schools established during the preceding year;

(b) The academic progress of students attending charter schools, as measured against comparable public and nonpublic schools wherever practicable; and

(c) Any other information regarding charter schools that the charter school authorizer deems necessary.

(d) Each year, the chair of the Public Charter School Board shall appear before the State Board of Education and submit a report regarding the academic performance and fiscal responsibility of all charter schools and cosponsors approved under this section.

(D) Applications of Existing Charter Schools.—

(i) An application may be submitted pursuant to this section by an existing charter school approved by a school district board provided that the obligations of its charter contract with the school district board will expire prior to entering into a new charter contract with the Public Charter School Board or university authorizer. A school district board may agree to rescind or waive the obligations of a current charter contract to allow an application to be submitted by an existing charter school pursuant to this subsection. A charter school that changes authorizers pursuant to this subsection shall be allowed to continue the use of all facilities, equipment, and other assets it owned or leased prior to the expiration or rescission of its contract with a school district board.

(E) Charter School Authorizer Accountability. -

(i) Notwithstanding any other provision of this division or section, no authorizer may authorize any additional community schools if 30 percent or more of the schools that the entity authorizes have failed to meet defined state proficiency targets for three consecutive years and/or fail to receive an unqualified opinion from the Auditor of State or its designee as a part of the school's annual audit.

This last point is extremely important. The CER model legislation includes language to show how best to hold authorizers accountable. One piece of legislation that has been effective was first adopted in Ohio. It provides that an authorizer can lose its job if a certain percentage of its schools are failing. If a large number of schools are not performing up to state standards, then those schools should close, and the authorizer needs to be held responsible. Accountability doesn't mean additional bureaucracy; it means ensuring that everyone is doing his or her defined job.

In some states, there is a perceived constitutional barrier to allowing an entity other than a school district or the state board of education to authorize public schools. States with multiple charter authorizers have established case law that can be useful for policy-makers in establishing the constitutionality of multiple charter school authorizers. The Center for Education Reform can provide you with this documentation.

## EXEMPLARY STATES

WASHINGTON,  
DC

The independent [DC Public Charter School Board](#) (DC PCSB) is the only charter school authorizer in Washington, DC, after the DC Board of Education transferred all charter school authorizing power to it in 2006. While it is the only authorizer, it is a model to the nation for its effective oversight. It has created performance management tools that hold schools accountable, and the DC PCSB schools consistently outpace conventional public school achievement. Forty-one percent of DC public school students now attend a charter school.

There have been many recent attempts by states (FL, GA, ME) to create state charter commissions that are much more directly linked to the state department of education. Because of this link, these commissions often unintentionally create legal burdens on staff and resources. Unlike other commissions and boards, this one is truly independent - there is no direct legal connection between this board and the state-run education agency, because of Washington, DC's unique governmental structure.

DC PCSB has a staff of 25 and an executive director that runs the charter board just like any other nonprofit organization. The ED makes decisions about organizational structure, budget and overall mission. In addition to staff members working on communications, personnel, and finances, there are 12 staff members in the School Performance Department, which is in charge of holding the charter schools accountable to their charter. The charter applicants are approved or rejected annually by the DC PCSB's board, which consists of six members appointed by the Mayor.

*The PCSB regularly evaluates DC public charter schools for academic results, compliance with applicable local and federal laws, and fiscal management, and holds them accountable for results. The PCSB can close charter schools that fail to meet the goals established in the charter agreement between the PCSB and the school.*

Please refer to [DC ST § 38-1802.11](#) and [DC ST § 38-1802.14](#) for language on the DC Public Charter School Board, its role and responsibilities.

NEW YORK

[The State University of New York](#) was given the authority in 1998 to open a charter school institute, where up to 230 charter school applications can be approved. That office, housed in the Chancellor's office and paid separately by legislative appropriations, is responsible for the highest quality charter schools in New York. Sixteen staff members, including an executive director, are responsible for evaluating all charter school applications, continually monitoring charter academic performance and overall operations, and recommending action on whether to approve, renew or deny charter applications to the State University Trustees.

It is clear that the accountability models and performance management tools used by SUNY are working. At SUNY-authorized schools throughout New York, charter students are performing better than their non-charter peers. Eighty percent of students in grades three through eight scored at or above proficiency in ELA in SUNY schools, compared with 77 percent of all public school students. In math, 92 percent of students scored at or above proficiency compared with 86 percent of all public school students.

Even the SUNY Charter Schools Institute understands the importance of holding charter schools accountable while not overburdening individual schools:

*Striking that delicate, difficult and seemingly always changing balance between giving schools autonomy and providing responsible oversight, and between treating schools as independent institutions while still assuring accountability, is the hard work that the Board of Trustees has committed to, and the foundation of the work of the Charter Schools Institute.*

Please refer to [NY Article 56, Section 2851.3](#) for language on the state's multiple authorizers.

## EXEMPLARY STATES

### MICHIGAN

In Michigan, school boards and any state public university, including community colleges, can authorize charter schools. This led to nine major universities opening up charter school offices, which are responsible for the majority of the state's over 300 charter schools. These offices focus on quality applicants, and monitor state and federal accountability measures. Michigan's former governor, John Engler, designed the state's charter law to include authorizing entities besides local districts because, as he said, "[The superintendents were far more defensive about and married to the status quo than anybody else we were dealing with....](#)" He believed that authorizing needed to be outside of the traditional K-12 public school system, so in 1994 he created Michigan's charter law with that distinction.

Today, Central Michigan University stands out as one of the top charter school authorizers in the country. They currently sponsor 60 schools serving 29,000 students across the state. [The Governor John Engler Center for Charter Schools](#) within CMU was created to monitor their sponsored schools and make sure they are compliant academically, fiscally and operationally. Similar to DC PCSB, there is an executive leadership team that manages the daily operations of the organization. The charter school applications are reviewed and approved or denied by the CMU Board of Trustees.

The charter contract is performance-based and clearly outlines specific requirements that must be met. An automated web-based tool helps to streamline oversight and monitoring. This tool is so effective that it has become a model used by other authorizers across the country.

Please refer to [MI 380.502](#) for language on the types of authorizers and authorizer funding in Michigan.

### COMPONENT TWO: Number of Schools Allowed

#### DEFINITION

How many charter schools are allowed to open, whether annually, in total throughout the state, or on a local level? How do such numbers compare to the overall population of a state? Is enrollment restricted at a community, school or even on a particular grade level? Are funding limits permitted

to "cap" a school's creation or growth? Do the caps imposed through charter law hinder the growth and development of the charter school movement in the state?

We know that not having a cap doesn't necessarily mean there will be many schools, but caps are simply an artificial mechanism to impede growth. The best charter laws do not limit the number of charter schools that can operate throughout the state. They also do not limit the number

of students that can attend charter schools. Poorly written laws set restrictions on the types of charter schools allowed to operate (new starts, conversions, online schools), hindering parents' ability to choose among numerous public schools. Poorly written laws also set restrictions on the number of students that can attend charter schools, both as a percentage of the total number of students in a district or by limiting enrollment for each individual charter school. Independent authorizers may

## SECTION 5: CAPS

(A) This article hereby removes the limit [of XXX] as established in the Charter Schools Act on the number of approved charter schools as of the effective date in Section 17.

(B) This article hereby removes the limit [of XXX] as established in the Charter Schools Act on the number of students in a district who can enroll in a charter school as of the effective date in Section 17.

(C) Any child who is qualified under the laws of this state for admission to a public school is qualified for admission to a charter school. The school shall enroll each eligible student who submits a timely application, unless the number of applications exceeds the capacity of the grade level or building. In such cases, students shall be accepted from among applicants by a random selection process, provided, however that an enrollment preference shall be provided to pupils returning to the charter school in the second or any subsequent year of operation and pupils residing in the school in which the charter school is located, and siblings of pupils already enrolled in the charter school.

only be allowed to open a certain number of schools per year or in total. Any type of limit on what type of charter schools can open and where or limiting the number of students who can attend them is unnecessary and an arbitrary restraint.

Over the last three or four years, there has been a lot of discussion about smart caps, or compromises in states with prohibitive caps to allow, for example, charters with strong academic results

to be exempt, or to raise or remove a cap in districts or cities with low-performing conventional public schools. Laws have been amended in Michigan and Massachusetts using this system. It is seen as a political strategy, but it is not recommended by CER. The problem with a smart cap is once the new limit is reached (as happens every few years in New York), a new political battle must begin to increase the cap. This problem is eliminated by not having any cap in the charter law.

When writing a new charter law, no language is required to signify that there is no cap on the number of schools or students. Above is simple language to remove an existing cap by amending a current charter law. It is also important to outline enrollment policies within charter schools, explaining any types of preference students may receive if they are a sibling or district resident, and the random selection process.

### EXEMPLARY STATES

- Minnesota
- Florida
- Indiana removed its final cap in the city of Indianapolis in 2011.

## SECTION 6: PUBLIC CHARTER SCHOOL REQUIREMENTS AND AUTHORITY

(A) A charter school shall be a public nonsectarian, nonreligious school and is part of the state's system of public education. Tuition shall not be charged by a charter school.

(B) A charter school is a public school and shall be accountable to the charter authorizer for purposes of ensuring compliance with applicable laws and charter provisions and the requirements of the state constitution.

(C) A charter school must be open to any student who resides in [state].

(i) Except as provided in this chapter, a charter school may not establish admission policies or limit student admissions in any manner in which a public school is not permitted to establish admission policies or limit student admissions; and

(ii) Notwithstanding paragraph (i) of this subsection, a charter school may operate as a single gender school if approved to do so by the authorizer. A single gender charter school must be open to any student of the gender the school serves who resides in [state].

(D) A charter school is subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services. Enrollment decisions shall be made in a nondiscriminatory manner specified by the charter school applicant in the charter school application. Enrollment decisions shall not discriminate against at-risk students or special program students.

(E) A charter school is administered and governed by a board of directors in a manner agreed to by the charter school applicant and the charter authorizer. A charter school may organize as a nonprofit corporation, which shall not affect its status as a public school for any purposes under state law.

(F) A charter school, as a public school, is a governmental entity. Direct leases and financial obligations of a charter school shall not constitute debt or financial obligations of the school district unless the school district board expressly assumes such obligations in writing.

(G) A charter school must comply with all statewide accountability requirements, governing standards, and administer all required assessments.

## COMPONENT THREE: Operations

### DEFINITION

How much independence from state and district operational rules and procedures is codified in law? How much of any promised independence do charters actually experience? Early charter laws pioneered a provision known as the “blanket waiver” which ensures that once opened, charter schools may set their own processes and rules for operations (extending school days, years, using different educational resources and curricula, and having independent teacher policies, for example) while still adhering to critical standards concerning academic outcomes, financial integrity, health, safety and civil rights. Indeed it should be noted that no charter school is exempt from these important safeguards. Instead, the freedom to operate educationally, combined with the freedom to make determinations regarding union-driven contracts or collective bargaining agreements are considered essential elements of success.

There are a variety of components that make up the category of operations.

These include:

- Blanket waiver from rules and regulations;
- Fiscal autonomy, giving the charter school the freedom to manage its own budget;
- Teacher freedom, including collective bargaining;
- Role of education service providers in the charter sector, and;
- Allowing all types of charter schools (public, conversion and virtual).

A key component of operational autonomy is whether or not a charter school is considered its own Local Education Agency or LEA. Many states allow charter schools authorized by independent authorizers to be LEA's, and those authorized by a school district or the state will not be their own agency.

## SECTION 7: BLANKET WAIVER

(A) Exemption from Statutes and Rules. -

(i) A charter school is exempt from all statutes and rules applicable to a school, school board, or school district unless a statute or rule is made specifically applicable to a charter school. However, a charter school shall be in compliance with the following statutes included in this section:

(a) Those statutes pertaining to the student assessment program and school grading system;

(b) Those statutes pertaining to the provision of services to students with disabilities;

(c) Those statutes pertaining to civil rights;

(d) Those statutes pertaining to student health, safety, and welfare; and

(e) Those statutes relating to public meetings and records, public inspection, and criminal and civil penalties.

## SECTION 8: LOCAL EDUCATION AGENCY (LEA) STATUS

(A) A charter school may declare itself to be a local educational agency, in which case it shall receive, from the Department of Education, an annual amount equal to the charter school's average daily attendance, plus local tax revenues per average daily attendance. If a charter school declares itself as a local educational agency, the Department of Education shall deduct the amount specified from the payment made to the resident school district and pay directly to the charter school the annual amount reduced from the school district's payment.



## SECTION 9: TEACHER FREEDOM

### (A) Employees of charter schools. –

(i) A charter school shall select its own employees. A charter school may contract with its authorizer for the services of personnel employed by the authorizer;

(ii) Charter school employees shall have the option to bargain collectively. Employees may collectively bargain as a separate unit or as part of the existing district collective bargaining unit as determined by the structure of the charter school; and

(iii) The employees of a conversion charter school as defined in Section 14 of this article shall remain public employees for all purposes, unless such employees choose not to do so.

### (B) Participation of employees in retirement fund. –

(i) A charter school may participate in any of the following:

(a) The [state] teachers' retirement fund;

(b) The public employees' retirement fund; or

(c) Another employee pension or retirement fund.

If a charter school is an LEA, they are responsible for their own direct compliance with federal law regarding funding, special education and any other federal regulations. They are also responsible for collecting and reporting their own school data to the State Education Agency (SEA). Charter schools that are independent LEA's are more fiscally and legally autonomous from state and local rules and regulations and receive more money than charters in states where they are not.

Teacher freedom is another important component of operational autonomy. Whether or not a charter school has the ability to hire and fire its own personnel, and whether or not they have the ability to negotiate their own pay scale, is critical to a charter school's success. There are many examples of schools in states where teachers must remain covered by the district's collective bargaining agreement – meaning same pay scale, the same hours per day, days per year, etc. – and charter schools have had to fight to stay open or retain their teachers.

## SECTION 10: EDUCATION SERVICE PROVIDERS AND CONTRACTS

(A) A board of directors of a charter school may enter into or renew a management agreement with an educational management organization to carry out the operations of the public charter school.

(i) As used in this section:

(a) “Educational management organization” means an entity that enters into a management agreement with a public school;

(b) “Entity” means a partnership, nonprofit or business corporation, or any other association, corporation, trust, or other legal entity; and

(c) “Management agreement” means an agreement to provide comprehensive educational, administrative, management, or instructional services or staff to a public charter school.

Even though the teachers choose to teach at a charter school and understand that they may work two or three hours more per day, the teachers union often will try to control the situation and force the charter school to make concessions. When this happens, it has the potential to change the school culture and learning environment.

Over the last twenty years, education management organizations and charter school networks have become an important, vital part of the

sector. Over time, there has been a growth of nonprofit and for-profit providers eager to demonstrate that they can improve student performance with rigorous programs and efficient delivery systems. Assembling teams of education experts, curriculum developers, financial managers and researchers, the new breed of education providers known as “educational management organizations” (EMO’s) challenged the public education system on its own turf. The for-profit management companies, in

particular, have encountered opposition, mostly from teachers unions and other sectors of the entrenched education bureaucracy fearful of competition.

The first wave of charter school laws did not create limits on what aspects of a charter school EMO’s could manage. Laws are being written today, however, with constraints on how involved an education management organization can be in the day-to-day life of a charter school. The new Maine law,

for example, is very limiting in regards to which aspects of a charter school’s operations can be controlled by an EMO. If strong, independent authorizers are already in place in a state, then charter schools and their EMO’s will be held responsible and accountable for their actions. The law should not restrict whether for-profits or non-profit groups should be allowed, or restrict how or what they manage within charter schools.

## EXEMPLARY STATES

MISSOURI	<p>Missouri is one of the states, like Washington, DC and Minnesota that allows charter schools to be their own Local Education Agency (LEA). This means that Missouri charter schools are responsible for their own compliance with federal and state regulations. It also means that they receive federal funding directly for categorical grants, and programs such as special education or Title I. In addition to having more autonomy, this also means that charter schools generally receive more equitable funding because they have more direct control over their funds.</p> <p>Please refer to <a href="#">MO 160.405.5(1-3)</a> for specific language on charter schools as LEA's.</p>
WASHINGTON, DC	<p>The District of Columbia's charter school law, passed in 1996, is a model in many different categories for the freedoms that the law gives charter schools. According to CER, it has been the number one law in the country for the last three years. DC provides its charter schools with a blanket waiver and gives them full control over their own day-to-day operations including curriculum, budgeting and personnel. They have the power to incur their own debt, to sue and be sued, and acquire property just like other non-profit organizations in the District. DC charter schools also are their own local education agencies. In return for this autonomy, the charter law specifies how the charters will be held accountable to their authorizer, the DC Public Charter School Board, in the form of annual reports on finances, budget and academics.</p> <p>Please refer to the <a href="#">DC Official Code § 38-1802.04</a> for language on creating autonomous, but accountable charter schools.</p>
ARIZONA	<p>Arizona's charter law was passed in 1994 and gives its charter schools some of the highest levels of autonomy in the country. Arizona accomplished this by explicitly giving charters a blanket waiver from nearly every regulation, except for those regarding civil rights. Virtual schools are allowed, and ESP management contracts are not restricted in any way. In addition, teachers are not bound by collective bargaining agreements and even participating in the state retirement system is optional. Arizona's charter law is a model for autonomy.</p> <p>Please refer to <a href="#">AZ 15-183</a> for language on blanket waiver and other operational freedoms.</p>

## COMPONENT FOUR: Equity

### DEFINITION

Fiscal equity requires that not only are the amounts of money allotted for each charter student identical to what is provided for all other public school students, but also that charter schools receive monies from identical streams of income as other public schools. If the law guarantees that charter schools receive money in the same amount and in the same manner as traditional public schools, then they will have the same standing as public schools in law and in practice. However, after reading each state charter law and seeing how it is applied on the ground, it is apparent that only a handful of states fund these schools close to equitably. Nationally, charters are funded at only 72 percent of their district counterparts, according to [CER's Annual Survey of America's Charter Schools](#).

## SECTION 11: EQUITABLE FUNDING

(A) A charter school is a public school and is part of the state's system of public education. A charter school shall receive funding for each of its pupils from federal, state and local sources that is equal to the amount that a traditional public school would receive for that same pupil.

(B) Other state, local, and school district funds shall be distributed to a school by using the same formulas and allocation processes as are used to distribute funds to any other school under its authority. All state and local funding shall be distributed monthly by the local board to the school beginning July 1 following the approval of the charter school's application. The school district board shall continue to disburse funds to the school for the duration of its contract and for the duration of any subsequent renewals.

(C) The general education funds to be dispensed directly to the charter school by the Department of Education shall be calculated by multiplying the per-pupil allowance of the resident public school district by the number of students attending the charter school, including a per-pupil allocated portion of applicable transportation, facilities, and start-up funds. This amount shall be deducted from the Department of Education's payments to the resident district.

(D) The distribution to charter schools authorized by the school district board of a pro rata share of federal and state grants received by the school district board, except for any grant received for a particular purpose which, by its express terms, is intended to benefit a student population not able to be served by, or a program not able to be offered at, a charter school that did not receive a proportionate share of such grant proceeds.

(E) A charter school shall be eligible for federal and state competitive grants and shall not be excluded from opportunity to participate as an independent educational entity as long as the available grants align with the grade levels included in the charter school and the other criteria established for the respective grants.

(F) All awards, grants, or gifts collected by a charter school shall be retained by the school.

## SECTION 12: FACILITIES

(A) Facility funds for a charter school shall be calculated by taking the average facility funds for the resident school district in the last fiscal year, divided by the number of students in the school district to obtain a per-pupil facilities funding average. This average shall be multiplied by the number of students attending the charter school. The facilities payment from the Department of Education will be included in the first yearly general funds installment to the charter school.

(B) The entire annual payment for facilities shall be included in the first payment of the fiscal year and any payment for new charter schools shall also be included in the first payment of the fiscal year.

A charter school needs to have control of its own finances to run efficiently. The charter school's operators know the best way to spend funds, and charter law should reflect this need. Similarly, charter schools, as public schools, are entitled to receive the same amount of funds as all other conventional public schools. Many states and districts withhold money from individual charter schools due to fees and "administrative costs," but the best laws provide full and equal funding for all public schools.

The sources of this charter school funding gap fall into two broad categories: poorly drafted charter schools laws and other public school

funding laws that have a negative (often unintended) impact on charter schools. When laws are vague and use words that do not specify precisely how much money is supposed to flow to charters – such as "commensurate" or "equitable" – the law is often re-interpreted to suit a district or is simply ignored until a charter can legally or politically challenge it. When charter schools are their own LEA, these problems of districts withholding money unfairly are mitigated because the funds will pass directly from the state to the charter school.

All categories of funding also must be specified in the law. It is not enough to say "per pupil

funds" and expect all funding to be sent to charter schools. Depending on the state public school funding system, different formulas, weights for different types of students, funding for transportation, or other categories must be spelled out within the law to ensure that it is acted on.

States with stronger charter funding use statutory language that says a state and local district "must/shall pay X" as opposed to "may/ought to pay X". The data show that language that requires states and districts to pay has a positive effect on the percentage of funding that charter schools receive.

In addition to per-pupil funding, charter schools also should, but rarely do, receive facilities funding to cover the cost of securing and maintaining a facility, as conventional schools do. The majority of states do not give true facilities assistance, in the form of per pupil dollars. The amount of funding these schools do receive only averages seven percent of their total budgets, not nearly enough for the high costs of renting, purchasing, or maintaining proper school facilities. More states need to specify in law that charter schools will receive per pupil facilities assistance on par with conventional public schools.

## EXEMPLARY STATES

<p>MICHIGAN</p>	<p>In Michigan, the State School Aid Act guarantees that the charter school receives funding in the same manner as conventional public schools. It is done in a fairly short paragraph, but it is clear and concise, ensuring that districts cannot misinterpret the statement. In addition, authorizer fees for university sponsors, such as CMU, are capped at three percent of a charter’s state aid. Funds pass from state to the authorizing body acting as fiscal agent to the charter school.</p> <p>Please refer to <a href="#">MI Act 1979 PA 94 388.1620(6)</a> for Michigan funding language.</p>
<p>MISSOURI</p>	<p>As noted in the Operations category, because charter schools in Missouri are their own LEA, all funding, federal and state, passes directly to the charter school, ensuring that funding is nearly comparable to that of conventional public schools. Charters receive all of the funding streams and categorical funding required by state law. Funds pass through the state for LEA’s and through the district for others.</p> <p>Please refer to <a href="#">§160.415.4 R.S.Mo.</a> for Missouri funding language and LEA language.</p>
<p>WASHINGTON, DC</p>	<p>The Washington, DC, charter school funding is based on a variety of formulas depending on the type of students a charter school, or conventional school, is serving. Funds pass through the district directly to the charter schools because they are LEA’s. Public charter schools are funded through the same formula and from the same streams that fund the traditional public school system in the District. Operating funds are commensurate with funds received by the public schools; however the District has withheld some categorical grants. In addition, Washington, DC, is one of the only states that gives charter schools a per-pupil facilities allowance, nearly comparable with what the conventional public schools receive.</p> <p>Please refer to <a href="#">D.C. Official Code §38-2901 to 2912</a> for Washington, DC, funding and facilities assistance language.</p>

## SECTION 13: APPLICATION PROCESS

(A) Each charter authorizer must establish a charter petition process and timeline that conform to the requirements of the Charter Schools Act while optimizing effective review of its proposed charter schools and oversight of its approved charter schools.

(B) An applicant seeking to establish a charter school shall submit a written application to a proposed authorizer. The information provided on the application shall be consistent with the provisions of this article and other applicable laws, rules and regulations. Such information shall include:

(i) A mission statement for the charter school and a description of an educational program that implements one or more of the purposes described in Section 2;

(ii) A description of student achievement goals for the charter school's educational program and the chosen methods of evaluating that students have attained the skills and knowledge specified for those goals. Such educational program shall meet or exceed the student performance standards adopted by the state board of education for all other public schools;

(iii) The proposed governance structure of the school, including a list of members of the initial board of directors, a description of the qualifications, terms and method of appointment or election of directors, the organizational structure of the school, and the processes to be followed by the school to promote parental and staff involvement in school governance;

(iv) Admission policies and procedures for the charter school, which shall be consistent with Section 6 of this article;

(v) A proposed budget and fiscal plan for the charter school, including supporting evidence that the fiscal plan is sound and that sufficient start-up funds will be available to the charter school;

(vi) Requirements and procedures for programmatic and independent fiscal audits at least once annually, with such audits being comparable in scope to those required of all other public schools;

(vii) The hiring and personnel policies and procedures of the charter school, including the qualifications to be used in the hiring of teachers, school administrators and other school employees, and a description of staff responsibilities;

## ADDITIONAL SECTIONS

In addition to the four core components, it is critical that bill text ensures that both the application process and terms for possible revocation are clear and transparent to ensure the integrity of performance-based accountability. A good bill also includes a process for parents and/or teachers to convert existing district public schools to charter schools.

(viii) The rules and procedures by which students may be disciplined, including but not limited to expulsion or suspension from the school, which shall be consistent with the requirements of due process and with federal laws and regulations governing the placement of students with disabilities;

(ix) Information regarding the facilities to be used by the charter school, including the location of the school, if known, and the means by which pupils will be transported to and from the school. If the facilities to be used by the proposed school are not known at the time the application is submitted, the applicant shall notify the charter authorizer within ten business days of acquiring facilities for such school; provided, however, that the charter school must obtain a certificate of occupancy for such facilities prior to the date on which instruction is to commence at the school;

(x) A description of the ages and grade levels to be served by the charter school;

(xi) Identification and background information on all applicants and proposed members of the board of directors;

(xii) The school calendar and school day schedule, which shall total at least the number of days or their equivalent as provided in [state statute] of instruction time during a school year as required of other public schools;

(xiii) Types and amounts of insurance coverage to be obtained by the charter school, which shall include adequate insurance for liability, property loss and the personal injury of students. The state superintendent of education (or other applicable state department of education) may jointly promulgate regulations to implement the provisions of this paragraph;

(xiv) The term of the proposed charter school, which shall not exceed five years;

(xv) Evidence of adequate community support for and interest in the charter school sufficient to allow the school to reach its anticipated enrollment, and an assessment of the projected programmatic and fiscal impact of the school on other public and nonpublic schools in the area;

(xvi) A description of the health and food services to be provided to students attending the school;

(xvii) Methods and strategies for serving students with disabilities in compliance with all federal laws and regulations relating thereto;

(xviii) Procedures to be followed in the case of the closure or dissolution of the charter school, including provisions for the transfer of students and student records to the school district in which the charter school is located and for the disposition of the school's assets to the school district in which the charter school is located or another charter school located within the school district;

(xiv) Requirements for the grant of a diploma, if the school serves the twelfth grade;

(xx) A code of ethics for the charter school, setting forth for the guidance of its trustees, officers and employees the standards of conduct expected of them;

(xxi) A description of the residential facilities, if any, provided by the charter school; and



(xxii) Any other information relevant to the issuance of a charter required by the charter authorizer.

(C) A charter authorizer that receives an application for approval of a charter school shall act on each request received prior to October 1 of a calendar year on or before January 1 of the succeeding calendar year, and a proposed charter school agreement between the applicant and the charter authorizer resulting from such application shall be executed on or before February 1 of such succeeding year. Nothing in this subsection shall be construed to prevent a charter authorizer from receiving or acting upon an application at any time.

(D) A charter authorizer is not required to approve a charter and may require an applicant to modify or supplement an application as a condition of approval.

(E) Upon approval of an application by a charter authorizer, the applicant and charter school shall enter into a proposed agreement allowing the applicant to organize and operate a charter school.

## SECTION 14: CONVERSION OF EXISTING SCHOOLS

(A) A board of a school district may convert one or more of its existing public schools to charter schools under this section if a majority (51 percent) of the full-time teachers and a majority (51 percent) of parents of students enrolled or a combination of parents of enrolled students and parents whose children will matriculate into a traditional public school sign a petition seeking conversion. The conversion must occur at the beginning of the academic year immediately following the school district board's receipt of the petition.

## SECTION 15: CHARTER SCHOOL PERFORMANCE BASED ACCOUNTABILITY

(A) Charter schools may be renewed, upon application, for a term of up to five years in accordance with the provisions of this article for the issuance of such charters; provided, however, that a renewal application shall include:

(i) A report of the progress of the charter school in achieving the educational objectives set forth in the charter;

(ii) A detailed financial statement that discloses the cost of administration, instruction and other spending categories for the charter school that will allow a comparison of such costs to other schools, both public and private. Such statement shall be in a form prescribed by the Department of Education;

(iii) Copies of each of the annual reports of the charter school required by Sections 6 and 13 of the Charter Schools Act], including the charter school report cards and the certified financial statements; and

(iv) Indications of parent and student satisfaction.

(B) Such renewal application shall be submitted to the charter authorizer no later than six months prior to the expiration of the charter; provided, however, that the charter authorizer may waive such deadline for good cause shown. The authorizer will make a decision within 30 days to accept or deny the charter school renewal. Inaction will result in approval.

## SECTION 16: CAUSES FOR NONRENEWAL, REVOCATION OR TERMINATION

(A) The charter authorizer may terminate a charter upon any of the following grounds:

- (i) Poor academic performance;
- (ii) Serious violations of law;
- (iii) Material and substantial violation of the charter, including fiscal mismanagement; or
- (iv) When the charter school authorizer makes a determination that the charter school demonstrates a practice and pattern of egregious and intentional violations of the civil service law involving interference with or discrimination against employee rights.

(B) Notice of intent to revoke a charter shall be provided to the board of directors of a charter school at least 30 days prior to the effective date of the proposed revocation. Such notice shall include a statement of reasons for the proposed revocation. The charter school shall be allowed at least 30 days to correct the problems associated with the proposed revocation. Prior to revocation of the charter, a charter school shall be provided an opportunity to be heard, consistent with the requirements of due process. Upon the termination of a charter, the charter school shall proceed with dissolution pursuant to the procedures of the charter and direction of the charter authorizer and the state Board of Education.

(C) In addition, the charter authorizer may place a charter school on probationary status to allow the implementation of a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan may result in summary revocation of the school's charter.

(D) The regulatory power of the State Board of Education and the State Superintendent shall not extend to charter schools except as otherwise specifically provided in this article.

(E) If a charter is not renewed or is terminated, the charter school is responsible for all debts of the charter school. The school district may not assume the debt from any contract made between the governing body of the school and a third party, except for a debt that is previously detailed and agreed upon in writing by both the school district and the charter school board of directors and that may not reasonably be assumed to have been satisfied by the district.

## SECTION 17: EFFECTIVE DATE

The [State] Charter Schools Act will be in effect beginning no later than [XXXX].

# RESOURCES

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CENTER FOR EDUCATION REFORM

910 Seventeenth Street, NW, 11th Floor  
Washington, DC 20006  
[www.edreform.com](http://www.edreform.com)  
Toll-free: (800) 521-2118  
Fax: (301) 986-1826

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