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Recommended Citation

Joseph A. Giambrone, *Advancing the Charter School Movement in Illinois through Charter School Law: The Charter School Quality Law and Multiple Authorizers*, 61 DePaul L. Rev. 1213 (2012)
Available at: <https://via.library.depaul.edu/law-review/vol61/iss4/7>

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ADVANCING THE CHARTER SCHOOL MOVEMENT IN ILLINOIS THROUGH CHARTER SCHOOL LAW: THE CHARTER SCHOOL QUALITY LAW AND MULTIPLE AUTHORIZERS

I. INTRODUCTION

In 2009, President Barack Obama called for an expansion of innovative charter schools as one method of dramatically improving education in the United States.¹ To support this objective, the Obama Administration promised to provide states with unprecedented amounts of federal funding through the federal “Race to the Top” program;² states with favorable charter laws would receive additional points in rubrics used to judge applications submitted in competing for these funds.³ In July 2009, Illinois Governor Pat Quinn, backed by overwhelming bipartisan support, signed into law the Charter Schools Law, which raised the number of charter schools allowed in Illinois.⁴ In an effort to increase its odds of obtaining some of this federal money, the Illinois legislature began working to amend this law.⁵ Unfortunately for Illinois, the state failed in two attempts to receive millions of dollars in federal funding to support education.⁶

1. Libby Quaid, *Obama Education Plan Speech: Stricter Standards, Charter Schools, Merit Pay*, HUFFINGTON POST (Mar. 10, 2009, 9:00 PM), http://www.huffingtonpost.com/2009/03/10/obama-education-plan-speech_n_173405.html.

2. Race to the Top is part of the American Reinvestment and Recovery Act of 2009. The goal of the program was to establish “a competitive grant program designed to encourage and reward States that [were] creating the conditions for education innovation and reform.” U.S. DEP’T OF EDUC., RACE TO THE TOP PROGRAM EXECUTIVE SUMMARY 2 (2009), available at <http://www2.ed.gov/programs/racetothetop/executive-summary.pdf>.

3. See *id.* at 11; see also *Overview of the Recovery Act*, U.S. DEP’T OF EDUC., <http://www2.ed.gov/policy/gen/leg/recovery/programs.html> (last visited Nov. 12, 2010).

4. See Pub. Act No. 96-0105, § 5, 2009 Ill. Laws 2253, 2254 (repealed); see also Press Release, Office of Governor Pat Quinn, Governor Quinn Signs Bill to Expand Charter Schools in Illinois (July 30, 2009) (on file with author).

5. See Memorandum from Christopher A. Koch, Superintendent, Ill. State Bd. of Educ., to Pat Quinn, Governor of Ill. 1 (Mar. 23, 2010), available at http://isbe.net/charter/pdf/final_task_force_report.pdf [hereinafter Koch Memorandum]; see also Interview with Jaime Guzman, former Exec. Officer, Office of New Sch., Chi. Pub. Sch., (Oct. 29, 2010) [hereinafter J. Guzman Interview].

6. Tara Malone & Diana Rado, *State Comes Up Short in Race for U.S. Funds*, CHI. TRIB., Aug. 25, 2010, § 1, at 8.

Despite falling short, Illinois was poised to make progress in the charter school movement after enacting the Charter Schools Law.⁷ In addition to raising the cap on the number of charter schools allowed in the state, the new law required the creation of a task force to assess the need for an independent charter-authorizing body.⁸ In 2010, the task force assembled and submitted a report to Governor Quinn.⁹ Over a year later, in 2011, the Illinois legislature enacted the Charter School Quality Law, which created the State Charter School Commission.¹⁰

While the creation of a statewide commission marks a step forward in Illinois charter school law, it alone is not enough. To further advance the charter school movement and support the growth of quality charter schools throughout the state, the Illinois legislature must ensure quality authorizing by (1) allowing for multiple authorizers within a given jurisdiction,¹¹ (2) holding authorizers to a set of proven standards, and (3) granting exclusive authorizing rights for high-performing authorizers. The Charter School Quality Law addresses the first and second issues, but is silent concerning the third.¹²

Charter schools and charter school laws are fairly recent developments. Once Minnesota established the first charter school in 1992, other states followed suit.¹³ No two states have the same charter school law, and some have described the landscape of charter laws as “an amalgam of authorizer types, characteristics, and powers.”¹⁴ The charter schools themselves are governed by a contract, or charter agreement, between the charter school’s board and a charter school authorizer.¹⁵ As part of the agreement, charter schools receive exemptions from certain state and local laws and policies that govern traditional schools.¹⁶ Each state is free to decide which entities may

7. J. Guzman Interview, *supra* note 5.

8. Koch Memorandum, *supra* note 5, at 1.

9. *See generally id.*

10. *See* Charter School Quality Law, Pub. Act No. 97-152, § 3, 2011 Ill. Legis. Serv. 4905, 4905-07 (West) (codified at 105 ILL. COMP. STAT. 5/27A-3).

11. “Jurisdiction,” for the purpose of this Note, means a school district recognized as such by the Illinois State Board of Education.

12. *See* Ill. Legis. Serv. 4905, 4905-09.

13. *See* INST. OF EDUC. SCIS., U.S. DEP’T OF EDUC., THE EVALUATION OF CHARTER SCHOOL IMPACTS 1 (2010), available at <http://eric.ed.gov/PDFS/ED510573.pdf> [hereinafter CHARTER SCHOOL IMPACTS].

14. NAT’L ASS’N OF CHARTER SCH. AUTHORIZERS, THE STATE OF CHARTER SCHOOL AUTHORIZING 2009, at 7 (2009), available at http://www.qualitycharters.org/images/stories/2009_Facts_Report.pdf [hereinafter STATE OF CHARTER SCHOOL AUTHORIZING].

15. *See* CHARTER SCHOOL IMPACTS, *supra* note 13, at 1.

16. *Id.*

authorize charter schools.¹⁷ A charter school authorizer reviews applications to establish charter schools, approves or rejects the applications, oversees currently operating charter schools, and decides whether or not to renew the charter agreement with those schools.¹⁸ The National Association of Charter School Authorizers (NACSA), a national leader and resource for charter authorizing, identifies three functions of authorizers that lead to quality charter schools: (1) setting high standards for charter applicants and currently operating charter schools, (2) preserving school autonomy, and (3) protecting the public's and students' interests.¹⁹ A multiple-authorizer provision establishes the various means of authorization and enumerates the entities that can serve as authorizers.²⁰

Illinois allows only two types of entities to authorize a charter school: a local school board and the State Charter School Commission.²¹ In 2010, just nine local school boards in Illinois served as charter authorizers.²² Chicago Public Schools (CPS) is one of the nine authorizers, and its charter schools constitute a majority of those in the state.²³ Prior to the enactment of the Charter School Quality Law, the Illinois State Board of Education (State Board) had the authority to serve as an authorizer.²⁴ A charter school applicant that was denied by a local school board could appeal the decision to the State Board.²⁵ In the event that the State Board reversed the local board's decision, the State Board would serve as the charter school's authorizer.²⁶ Since 1996, the State Board authorized three charter schools,

17. *Id.*

18. NAT'L ALLIANCE FOR PUB. CHARTER SCH., A NEW MODEL LAW FOR SUPPORTING THE GROWTH OF HIGH-QUALITY PUBLIC CHARTER SCHOOLS 7 (2009), available at http://www.publiccharters.org/data/files/Publication_docs/ModelLaw_P7-wCVR_20110402T222341.pdf [hereinafter MODEL CHARTER SCHOOL LAW].

19. NAT'L ASS'N OF CHARTER SCH. AUTHORIZERS, INDEX OF ESSENTIAL PRACTICES 8 (2011), available at http://www.qualitycharters.org/images/stories/publications/NACSA_2011_Index_of_Essential_Practices.pdf [hereinafter INDEX OF ESSENTIAL PRACTICES].

20. NAT'L ASS'N OF CHARTER SCH. AUTHORIZERS, MULTIPLE CHARTER AUTHORIZING OPTIONS 6 n.1 (2009), available at http://www.qualitycharters.org/images/stories/Multiple_Authorizers.pdf [hereinafter MULTIPLE CHARTER AUTHORIZING OPTIONS].

21. See Noreen S. Ahmed-Ullah, *State Commission Can Now Approve Charters, Too*, CHI. TRIB. (July 21, 2011), http://articles.chicagotribune.com/2011-07-21/news/ct-met-charter-bill-20110721_1_andrew-broy-charter-schools-illinois-network; see also Charter School Quality Law, Pub. Act No. 97-152, § 5, 2011 Ill. Legis. Serv. 4905, 4911 (West) (codified at 105 ILL. COMP. STAT. 5/27A-9).

22. See *Charter Schools 2009-2010*, ILL. STATE Bd. OF EDUC., http://isbe.net/charter/pdf/charter_schools.pdf (last visited Jan. 18, 2012) (listing all charter schools in Illinois).

23. See *id.*

24. School Construction Law, Pub. Act No. 90-548, § 5-915, 1997 Ill. Laws 5986, 6065-66.

25. *Id.*

26. *Id.*

Thomas Jefferson Charter School, Prairie Crossing Charter School, and Southland College Prep Charter High School.²⁷ However, at the time of this writing, only Prairie Crossing was still in operation.²⁸ With the passage of the Charter School Quality Law, the Commission became the authorizer of Prairie Crossing.²⁹

This Note argues that the Charter School Quality Law advanced the Illinois charter school movement by creating the Commission; however, it failed to take additional steps that would have led to even further gains in the quality of charter school authorizing in Illinois. First, the Charter School Quality Law, while it does provide some parameters for authorizing,³⁰ lacks adequate accountability measures for charter school authorizers. Second, the Charter School Quality Law does not create a way for a charter school authorizer to obtain exclusive authorizing rights.³¹

Part II of this Note provides an overview of the charter school movement, both in Illinois and across the country, and a description of some of the approaches that states have taken regarding their authorization processes.³² Part III provides a detailed examination of the Illinois Charter School Quality Law.³³ Part IV analyzes the Charter School Quality Law by comparing it to other states' laws and the model law developed by the National Alliance for Public Charter Schools (Alliance).³⁴ Finally, Part IV identifies the provisions that will likely lead to gains in the charter school movement and critiques deficiencies in the law.

II. BACKGROUND

To allow for a complete analysis of the Charter School Quality Law, this Part examines Illinois's charter school statute, focusing on portions affecting charter school authorizing, prior to the enactment of the Charter School Quality Law.³⁵ In addition, this Part outlines the current landscape for authorizing charter schools in Illinois and re-

27. See, e.g., Koch Memorandum, *supra* note 5, at 4; Interview with Andrew Broy, President, Ill. Network of Charter Sch. (Oct. 25, 2010) [hereinafter A. Broy Interview].

28. See Koch Memorandum, *supra* note 5, at 4.

29. Charter School Quality Law, Pub. Act No. 97-152, § 5, 2011 Ill. Legis. Serv. 4905, 4907-08 (West) (codified at 105 ILL. COMP. STAT. 5/27A-9(f)).

30. See *id.*

31. See 2011 Ill. Legis. Serv. 4905, 4907-08.

32. See *infra* notes 35-105 and accompanying text.

33. See *infra* notes 106-36 and accompanying text.

34. See *infra* notes 137-262 and accompanying text.

35. The purpose of this Note is to determine the ideal multiple-authorizer provision for the Illinois's charter school law. Therefore, it will assume that having authorizers that serve as alternates to school boards will improve educational outcomes.

views the various authorizing provisions found in other states' charter school laws.

A. *Defining a Charter School*

A charter school is created through a contract, or charter agreement, between an independent school board and a charter school authorizer.³⁶ As part of the contract, charter schools are given exemptions from certain state and local laws and policies governing traditional schools.³⁷ This freedom gives charter schools flexibility in areas involving "staffing, curriculum, and budget decisions."³⁸ In exchange for this increased autonomy, charter schools are held accountable to the educational outcomes outlined in their contracts.³⁹ At the expiration of a charter school's contract, the school goes through a renewal process whereby the charter authorizer determines, through predetermined standards, whether to renew the school's contract.⁴⁰ For example, failure to meet student-achievement benchmarks outlined in the contract is one reason a charter authorizer may decide to close a school or not renew its contract.⁴¹

B. *Charter Authorizing*

Through its charter school law, a state may mandate which entities have the authority to authorize charter schools.⁴² The model charter school law developed by the Alliance defines an authorizer as "an entity authorized . . . to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to renew, not renew, or revoke charter contracts."⁴³ The NACSA outlines three "core responsibilities" of a quality charter authorizer.⁴⁴ First, quality authorizers must set high standards for new charter school applicants and those attempting to renew existing agreements.⁴⁵ Second, quality authorizers must preserve schools' autonomy in order to maximize op-

36. CHARTER SCHOOL IMPACTS, *supra* note 13, at 1. For clarity, the remainder of this Note will refer to these agreements as contracts.

37. *Id.*

38. *Id.*

39. *Id.*

40. See MODEL CHARTER SCHOOL LAW, *supra* note 18, at 17.

41. CHARTER SCHOOL IMPACTS, *supra* note 13, at 1.

42. See *id.*

43. MODEL CHARTER SCHOOL LAW, *supra* note 18, at 7.

44. See NAT'L ASS'N OF CHARTER SCH. AUTHORIZERS, ABOUT NACSA BROCHURE 3 (2009), available at http://www.qualitycharters.org/images/stories/About_NASCA_Brochure-FINAL.pdf [hereinafter NACSA BROCHURE].

45. *Id.*

portunities to excel.⁴⁶ Finally, quality authorizers must ensure that all students are treated fairly and that funds are used appropriately.⁴⁷

There are six main types of authorizers: local school boards, higher education institutions, nonprofit organizations, state education agencies, independent chartering boards, and mayors or municipalities.⁴⁸ In January 2010, the NACSA estimated that there were 872 charter authorizers across the United States.⁴⁹ The schools an authorizer oversees make up its portfolio, which can range from one to hundreds of schools.⁵⁰

The Alliance developed a model charter school law to “help policy-makers strengthen state charter school laws.”⁵¹ The Alliance also compares various aspects of each state’s law to the model law, including the number of available authorizers.⁵² The Alliance rates each provision of a state’s law based on that comparison using a scale from zero to four, with four being the law most closely aligned with the Alliance’s model. Of the forty-one states evaluated, eight received a score of three or more with respect to availability of multiple authorizers; Illinois received a two.⁵³

The Alliance’s analysis also included a rating of each state’s program-accountability system,⁵⁴ which evaluates the states’ ability to create a registration process for school districts interested in authorizing, an application for nondistrict authorizers, and an authorizer-accountability system that includes an “authorizer oversight body.”⁵⁵ Illinois received a score of three.

C. Exclusive Chartering Authority

Some states have created independent or statewide charter commissions that serve as authorizers separate from local school boards.⁵⁶ One such example is the Colorado Charter School Institute (CCSI),

46. *Id.*

47. *Id.*

48. See STATE OF CHARTER SCHOOL AUTHORIZING, *supra* note 14, at 3.

49. *Id.* at 7.

50. See *id.* at 11.

51. Press Release, Nat’l Alliance for Public Charter Sch., New Model Law for Supporting the Growth of Public Charter Schools: A Guide to Strengthening State Charter Legislation (June 22, 2009), available at <http://dashboard.publiccharters.org/node/987>.

52. See *State Charter Law Rankings Database*, NAT’L ALLIANCE FOR PUB. CHARTER SCHS., <http://www.publiccharters.org/charterlaws> (last visited Feb. 11, 2012) [hereinafter *Rankings Database*].

53. See *id.*

54. See *id.*

55. *Id.*

56. See Koch Memorandum, *supra* note 5, at 10.

which is administered by the state board of education.⁵⁷ The CCSI receives and reviews charter applications, approves or denies applications, aids in converting traditional schools to charter schools, and “[m]onitors the operations of institute charter schools and the academic achievement of students attending institute charter schools.”⁵⁸

Applicants in Colorado can submit charter proposals directly to the CCSI without first applying to the local school board.⁵⁹ However, a local school board may apply to the state board of education for “exclusive authority to authorize charter schools” in its district’s jurisdiction.⁶⁰ To succeed in its application for exclusivity, the local school board must demonstrate “a recent pattern of providing fair and equitable treatment to its charter schools”⁶¹ or show that the total student enrollment in the district is less than 3,000.⁶² Once the state board determines that a local school board is the exclusive chartering entity, the CCSI cannot approve a charter school in that area without the local board’s approval.⁶³

D. Development of Illinois’s Charter Schools Law

In 1996, the Illinois General Assembly passed the Charter Schools Law.⁶⁴ By allowing local school boards to create charter schools, the general assembly provided a means for individuals and groups to create new and innovative education models within the public school system while establishing a platform for developing additional instructional techniques.⁶⁵ While the law was an initial step in the charter school movement, the general assembly capped the number of charter schools that could open.⁶⁶

The Charter Schools Law initially provided just one way to open a new charter school: a group or individual had to submit a proposed contract to a local school board and the State Board.⁶⁷ The law enumerated fourteen items that were required in the proposal, which the local board would use to evaluate the merits of the charter school pro-

57. See COLO. REV. STAT. ANN. § 22-30.5-503 (West 2011).

58. *Id.* § 22-30.5-503(1)(b)(IV).

59. See *id.* § 22-30.5-504(2).

60. See *id.* § 22-30.5-504(5)(a).

61. *Id.*

62. See *id.* § 22-30.5-504(5)(b)(I).

63. See COLO. REV. STAT. ANN. § 22-30.5-504(4)(c).

64. See Charter Schools Law, Pub. Act No. 89-0450, § 5, 1996 Ill. Laws 429, 431 (codified at 105 ILL. COMP. STAT. 5/27A-2).

65. *Id.*

66. See *id.*

67. See *id.*

posals.⁶⁸ Not only did the law provide guidance for charter school applicants, it also gave local school districts some selection criteria for the proposed schools.⁶⁹ Instead of providing a complex evaluation rubric, the law urged local school boards to give preference to applications demonstrating (1) a high level of local support from multiple stakeholders, (2) expectations of rigorous levels of student achievement and a feasible plan to achieve such results, and (3) a design to serve a high percentage of “at-risk” students.⁷⁰ In designing the law, the general assembly included more details about the time line for denying and approving proposals than it did about the criteria local school boards should use in evaluating proposals.⁷¹ The Charter Schools Law created an appeals process whereby applicants wishing to open a charter school in Illinois who were denied by a local school board could appeal to the State Board.⁷² In the event that the State Board reversed the local school board’s decision, the State Board would then act as that particular school’s authorizer.⁷³ Still, an applicant could not bypass the local school board and apply directly to the State Board; it had to first apply locally.⁷⁴

In 1999, the general assembly added another avenue for establishing a charter school. The new provision allowed the State Board to serve as the chartering authority for a charter school through referendum.⁷⁵ If five percent of the voters from a local school district petitioned the State Board, the State Board would have to submit the question of whether a charter proposal should be approved to the district’s voters in the next election, assuming that the proposal met the criteria set forth in the Charter Schools Law.⁷⁶ If a simple majority supported the charter proposal, the State Board would approve the charter school in the school district where the election was held, and the State Board would serve as the authorizer.⁷⁷ Since 1999, the State Board has not approved a single charter school through referendum.⁷⁸

68. *Id.*

69. *See id.*

70. 1996 Ill. Laws 429, 436.

71. *See id.*

72. *See id.*

73. Charter Schools Law, Pub. Act No. 91-0096, § 10, 1999 Ill. Laws 1748, 1774–75 (codified at 105 ILL. COMP. STAT. 5/27A-9(f)).

74. *Id.*; Charter School Quality Law, Pub. Act No. 97-152, § 5, 2011 Ill. Legis. Serv. 4905, 4910 (West) (codified at 105 ILL. COMP. STAT. 5/27A-7.10).

75. Charter Schools Law, Pub. Act No. 91-0407, § 10, 1999 Ill. Laws 5166, 5171 (codified at 105 ILL. COMP. STAT. 5/27A-6.5(e)).

76. *Id.*

77. *Id.*

78. *Carlos Perez Testimony from the February 2 Assembly Education Committee*, N.J. CHARTER SCHS. ASS’N, <http://njcharters.org/index.php/advocate-for-charter-schools/testimony/145-carlos-perez-testimony>.

The Charter School Reform Act of 2009 (Reform Act) came on the heels of the U.S. Department of Education's announcement that states with favorable charter laws would have a better chance at receiving millions of dollars in federal funds through Race to the Top.⁷⁹ One state official who worked with the group that drafted the amendment described it as a law that "no one loves."⁸⁰ Significantly, the reform doubled the number of charter schools permitted in Illinois to 120.⁸¹ While the Reform Act included numerous additions and revisions to the Charter Schools Law, it left the authorizing provisions largely untouched.⁸² The Reform Act did, however, require the State Board to convene a task force to determine the need for a statewide charter authorizer in Illinois that is independent from the State Board.⁸³

Pursuant to the Reform Act, the Independent Charter School Authorizer Task Force (Task Force) assembled for the first time in September 2009.⁸⁴ The Act directed the Task Force to

(i) compile a comparative analysis of charter school authorizing practices across the United States; (ii) conduct an assessment of the capacity of school districts in this State to authorize charter schools; (iii) assess the ability and interest of this State's public universities in serving as charter school authorizers; (iv) analyze the capacity of the State Board as a charter school authorizer; and (v) make recommendations as to the amount of funding necessary to operate an independent authorizer and the system of support, at the State Board or otherwise, necessary for any such independent authorizer to operate successfully.⁸⁵

The Task Force consisted of sixteen individuals from fourteen different organizations.⁸⁶ It met seven times and made its final recommendation to Governor Pat Quinn in March 2010.⁸⁷ The majority of Task Force members supported the creation of a "quasi-independent statewide public charter school commission" that would work closely

los-perez-testimony-from-the-february-2-assembly-education-committee (last visited May 1, 2012).

79. See Azam Ahmed, *More Charter Schools Are on the Way*, CHI. TRIB., July 31, 2009, § 1, at 11.

80. *Id.* (quoting Illinois State Senator Kimberly Lightford).

81. Charter School Reform Act of 2009, Pub. Act No. 96-0105, § 5, 2009 Ill. Laws 2253, 2254 (repealed).

82. See Koch Memorandum, *supra* note 5, at 1 ("The decision was made, though, to keep any final decision regarding the creation of an Independent Charter School Authorizer separate from the other issues being negotiated in the 2009 bill.").

83. 2009 Ill. Laws 2253, 2264.

84. See Koch Memorandum, *supra* note 5, at 2.

85. 2009 Ill. Laws 2253, 2264.

86. See *id.*; see also Koch Memorandum, *supra* note 5, at 2.

87. See Koch Memorandum, *supra* note 5, at 1-2.

with the State Board to review charter applications and act as the chartering entity in certain circumstances.⁸⁸ The majority, focusing on the importance it placed on maintaining local control, preferred that all applicants apply directly to the local school board, which could decide to accept, deny, or refer the proposed school.⁸⁹

E. Illinois Charter Authorizing

Illinois's charter school laws have not led to a widespread growth of charters across the state. During the 2009–2010 school year, there were 39 charter schools operating in Illinois.⁹⁰ Twenty-nine of the charter schools were located in Chicago, and the remaining 10 charter schools were spread across 8 cities.⁹¹ Despite this, Chicago charter school appeals to the State Board accounted for less than one quarter of all appeals from 1996 to 2009, 9 appeals out of 38.⁹² This small proportion of appeals speaks to the thoroughness of Chicago's charter school application process.⁹³ Since 1996, non-Chicago school districts have denied 47 charter proposals, which resulted in 30 appeals to the State Board and 2 reversals.⁹⁴ Conversely, since 1996, CPS has denied 96 charter school proposals, resulting in 10 appeals to the State Board and no reversals.⁹⁵

A minority of Task Force members, satisfied with the above results, put forth arguments for maintaining the status quo and keeping local control in place, rather than establishing a statewide commission.⁹⁶ In support of their argument, the group included a table in the appendix of its report to Governor Pat Quinn.⁹⁷ To address concerns that smaller school districts did not have the capacity to conduct thorough and rigorous evaluations of charter school proposals, the appendix provided four different examples that demonstrated how some school districts determined whether to deny or accept a charter school proposal. The illustrations ranged from a one-step process, whereby the district reviewed the proposal internally with its legal counsel,⁹⁸ to a three-step process consisting of (1) a two-question review by the

88. *See id.* at 10.

89. *See id.* at 11.

90. *See Charter Schools 2009–2010, supra* note 22.

91. *Id.* The eight cities were Beardstown, Bloomington, Decatur, East St. Louis, Grayslake, Pingree Grove, Rockford, and Springfield. *Id.*

92. *See Koch Memorandum, supra* note 5, at 25–29.

93. *See J. Guzman Interview, supra* note 5.

94. *Id.*

95. *Id.*

96. *See Koch Memorandum, supra* note 5, at 18–24.

97. *See id.* at 21–24.

98. *See id.* at 21–22 (describing Belleville THSD 201's review process).

board, (2) questions sent to the applicants, and (3) further review upon receipt of the applicants' responses.⁹⁹

CPS has a different proposal review process than those outlined by the Task Force minority group.¹⁰⁰ Applicants begin by completing a Request for Qualifications (RFQ).¹⁰¹ This RFQ is reviewed by external and internal experts, and only applicants that meet the criteria laid out in a predetermined rubric are invited to submit a Request for Proposals (RFP), a full proposal to establish a charter school.¹⁰² The RFP is similarly reviewed by external and internal experts.¹⁰³ Successful applicants then meet with a panel to discuss any questions or concerns regarding the proposal, and after further review, the panel makes a recommendation to the Chicago Board of Education to either approve or deny the charter school.¹⁰⁴ The board of education reviews the proposal and decides whether to grant the charter, taking the recommendation into consideration.¹⁰⁵

III. THE ILLINOIS CHARTER SCHOOL QUALITY LAW

More than a year after the Task Force submitted its report to Governor Quinn in July 2011, Governor Quinn signed the Charter School Quality Law into law.¹⁰⁶ This amendment has two aims: to improve the quality of charter authorizing and to expand the available charter school options.¹⁰⁷ The Charter School Quality Law includes three changes to the charter school law that concern authorizing charter schools. First, the Charter School Quality Law creates the State Charter School Commission.¹⁰⁸ Second, the law delineates the roles and responsibilities of authorizers and provides an avenue for revocation

99. See *id.* at 22–23 (describing Bremen District 228's review process).

100. Compare *id.* at 21–24, with CHI. PUB. SCH., NEW AND TURNAROUND SCHOOL APPLICANT REQUEST FOR QUALIFICATIONS (2010), available at <http://cps.edu/NewSchools/Documents/RFQ.pdf> [hereinafter CPS RFQ], and CHI. PUB. SCH., REQUEST FOR PROPOSALS (2010), available at <http://cps.edu/NewSchools/Documents/RFPIntroduction.pdf> [hereinafter CPS RFP].

101. CPS RFQ, *supra* note 100, at 2.

102. See *id.* at 2–3.

103. CPS RFP, *supra* note 100, at 3.

104. *Id.* at 3–4.

105. *Id.* at 4.

106. See *Bill Status of SB0079*, ILL. GEN. ASSEMBLY, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=79&GAID=11&DocTypeID=SB&LegId=54707&SessionID=84&GA=97> (last visited Apr. 16, 2012).

107. See Andrew Broy, *Independent Authorizer Will Enhance Charter School Quality*, CATALYST CHICAGO (Apr. 5, 2011), <http://www.catalyst-chicago.org/news/2011/04/05/independent-authorizer-will-enhance-charter-school-quality>.

108. See Charter School Quality Law, Pub. Act No. 97-152, § 5, 2011 Ill. Legis. Serv. 4905, 4907 (West) (codified at 105 ILL. COMP. STAT. 5/27A-7.5(a)).

of an entity's authorizing authority.¹⁰⁹ Third, the law transfers the State Board's power to authorize charter schools through referendum or appeals to the Commission.¹¹⁰

A. *The State Charter School Commission*

In light of the wide variation in charter-authorizing practices, Illinois enacted the Charter School Quality Law with the hope that the newly created Commission would serve, as one commentator put it, as "an independent authorizer with the expertise to approve (and deny) charter applications."¹¹¹ The Commission has the authority and responsibility to authorize high-quality charter schools throughout Illinois.¹¹² Additionally, currently operating charter schools may elect to transfer authorizers to have the Commission act as their authorizer.¹¹³ The Commission must consist of nine individuals with collective "expertise in public and nonprofit governance, management and finance, public school leadership, higher education, assessments, curriculum and instruction, and public education law."¹¹⁴ The State Board chooses the commissioners from a slate of candidates proposed by the Governor.¹¹⁵ Three of the commissioners must have experience in urban education.¹¹⁶

The Commission carries out its responsibilities with funds available through the newly created State Charter School Commission Fund.¹¹⁷ The fund is financed, in part, by fees charged to the schools the Commission authorizes.¹¹⁸ In addition to acting as an authorizer, the Commission provides the State Board and local school boards with a report concerning the best practices in quality authorizing.¹¹⁹

109. *Id.*

110. *Id.*

111. *See* Broy, *supra* note 107.

112. *See* 2011 Ill. Legis. Serv. 4905, 4907; *see also* Press Release, Ill. State Bd. of Educ., Illinois State Board of Education Approves Members of State Charter School Commission (Sept. 30, 2011), available at <http://www.isbe.net/news/2011/sept30.htm>.

113. Charter schools that have the State Board serving as their authorizer have until July 1, 2012, to request a transfer. Schools that have a local school board serving as their authorizer may seek a transfer of authorizer upon approval of the local school board. The charter school can then apply to the Commission at the end of its charter agreement as if it were a new applicant seeking authorization with the Commission. *See* 2011 Ill. Legis. Serv. 4905, 4908.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *See id.*

119. 2011 Ill. Legis. Serv. 4905, 4907.

B. The Roles and Responsibilities of Charter School Authorizers

The Charter School Quality Law delineates the roles, responsibilities, and expectations of all charter authorizers.¹²⁰ It starts by defining authorizer as “an entity authorized under this Article to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee charter schools, and decide whether to renew, not renew, or revoke a charter.”¹²¹ Charter authorizers must execute six enumerated powers and duties:

- (1) Soliciting and evaluating charter applications;
- (2) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices;
- (3) Declining to approve weak or inadequate charter applications;
- (4) Negotiating and executing sound charter contracts with each approved charter school;
- (5) Monitoring, in accordance with charter contract terms, the performance and legal compliance of charter schools;
- (6) Determining whether each charter contract merits renewal, nonrenewal, or revocation.¹²²

The Charter School Quality Law permits authorizers to delegate these duties to others, including “officers, employees, and contractors.”¹²³ In addition to outlining the authorizer’s role, the statute also requires each authorizer, including the Commission, to “develop and maintain chartering policies and practices consistent with recognized principles and standards for quality charter authorizing.”¹²⁴ These policies and practices must include “(1) Organizational capacity and infrastructure; (2) Soliciting and evaluating charter applications; (3) Performance contracting; (4) Ongoing charter school oversight and evaluation; (5) Charter renewal decision-making.”¹²⁵ Additionally, authorizers must carry out their responsibilities consistent with the national best practices for authorizers and in the spirit and intent of the Charter School Quality Law.¹²⁶

The Charter School Quality Law also set up a system whereby the State Board of Education holds authorizers accountable, granting the State Board the authority to revoke an entity’s authorizing authority.¹²⁷ The State Board may do so upon a showing that the authorizer

120. See generally *id.* (discussing the powers, duties, immunity, principles, and standards of authorizers).

121. *Id.*

122. See *id.*

123. *Id.*

124. *Id.*

125. 2011 Ill. Legis. Serv. 4905, 4909.

126. See *id.*

127. *Id.* (describing the process by which the Board evaluates charter authorizers and reports on their performance).

failed to “demonstrate a commitment to high-quality authorization practices.”¹²⁸ The State Board may also revoke the charters of any underperforming charter schools in the subject authorizer’s portfolio of charter schools.¹²⁹ The Charter School Quality Law does not provide a definition of “high-quality authorization practices” and does not describe an appeals process for authorizers that have their authorizing power revoked.¹³⁰ Rather, the law grants the State Board the authority to develop rules necessary to carry out the revocation power.¹³¹

C. *The State Board’s Inability to Authorize Charter Schools*

Under the Charter School Quality Law, the State Board no longer has the ability to authorize charter schools through appeals or through referendum.¹³² Charter school applicants seeking to appeal the denial of their charter applications to the local school board must now bring their appeal to the Commission.¹³³ To ensure that the proposal is consistent with the statute, the State Board must certify any charters approved by the Commission that overturn a local school board’s decision.¹³⁴ Upon certification, the Commission will become the charter school’s authorizer and provide all of the services that the local school board would have.¹³⁵ Similarly, the Commission will serve as the authorizer for charter schools approved through referendum, subject to certification by the State Board.¹³⁶

IV. ANALYSIS

As one researcher lamented, irresponsible charter school authorizers could end up being “the Achilles heel of the charter school movement.”¹³⁷ Charter school authorities agree that having the most authorizing bodies does not necessarily translate into the best out-

128. *Id.*

129. *See id.*

130. *Id.*

131. 2011 Ill. Legis. Serv. 4905, 4912–13.

132. *Id.*

133. *Id.* Both new charter applicants and existing charter schools seeking reversal may appeal a local school board’s denial. *See id.*

134. *See id.*

135. *See id.*

136. *Id.*

137. *See* Robin J. Lake, *Holding Charter Authorizers Accountable: Why It Is Important and How It Might Be Done* 1 (Nat’l Charter Sch. Research Project NCSR White Paper Series No. 1, 2006), available at http://www.crpe.org/cs/crpe/download/csr_files/whp_ncsrp_wp1auth_feb06.pdf.

come for the charter school movement.¹³⁸ While it is important to offer at least two viable options for charter school applicants, it is essential that every applicant has access to a quality authorizer.¹³⁹ Reaching the point of having quality charter authorizers can be achieved with an authorizer-accountability system.¹⁴⁰ If executed properly, quality authorization can also exist where a state grants exclusive authorizing authority to a particular district or local board.

Although some states, by statute, have two charter authorizing bodies, in reality the role of the second authorizer is practically void. Such was the situation in Illinois, where prior to the enactment of the Charter School Quality Law, the State Board and local school boards were the only authorizer options. In practice, some local school boards have neither the desire nor the capacity to approve charter schools, and as shown above, the State Board was not in the business of authorizing charter schools.¹⁴¹ This result hindered the growth of charter schools across the state.¹⁴² The charter authorizer landscape across the state was anything but uniform; successful appeals to the State Board were rare, and charter approval via referendum did not occur. Now, with the adoption of the Charter School Quality Law, Illinois has a statewide commission devoted to expanding quality charter schools across the state.¹⁴³

The first section of this Part discusses the potential gains from the Charter School Quality Law's addition of a statewide commission devoted to authorizing charter schools. The second section argues that the statute leaves unanswered questions regarding Illinois's ability to hold charter authorizers accountable. The final section discusses the Charter School Quality Law's failure to protect existing quality charter school authorizers by allowing those authorizers to achieve exclusive chartering authority.

A. *Increasing Charter Schools Statewide Through Multiple Authorizers*

Having multiple authorizers serves as a "check" on other authorizers in the state, staving off undesirable practices like overly cumber-

138. See Koch Memorandum, *supra* note 5, at 8; see also MULTIPLE CHARTER AUTHORIZING OPTIONS, *supra* note 20, at 3.

139. See MULTIPLE CHARTER AUTHORIZING OPTIONS, *supra* note 20, at 3.

140. See MODEL CHARTER SCHOOL LAW, *supra* note 18, at 12–13.

141. See *supra* notes 27–29 and accompanying text.

142. See *id.*

143. See Charter School Quality Law, Pub. Act No. 97-152, § 5, 2011 Ill. Legis. Serv. 4905, 4907 (West) (codified at 105 ILL. COMP. STAT. 5/27A-7.5(a)).

some application processes and bias due to changes in leadership.¹⁴⁴ An authorizer alternative to a local school board may allow for charter schools in places where local school boards have shown hostility to charter schools.¹⁴⁵ Additionally, having multiple authorizers may attract national charter school providers who prefer not to have a local school district authorizer.¹⁴⁶ National charter school providers are leery of cities like Chicago, where the mayor appoints the local school board and superintendent, because the support of charter schools rests at the mercy of the current mayor.¹⁴⁷ This is especially relevant in Illinois, where very few national charter school providers have chosen to open schools.¹⁴⁸ If enough schools choose to leave an authorizer engaging in “bureaucratic creep”¹⁴⁹ and apply to alternate authorizers, the original authorizer will eventually “go out of business” if it fails to change its practices.¹⁵⁰

There are positive examples of multiple-authorizer provisions that have helped establish a diverse array of authorizers in other states, leading to the opening of charter schools across these states and improvements in the quality of authorizers.¹⁵¹ Before looking at how Illinois’s Charter School Quality Law allows for the spread of charter schools throughout the state and improves the quality of authorizing, it is helpful to look at one state’s gains in the charter school movement after it allowed for multiple authorizers.

1. *Creating Two Authorizers: Michigan Public School Academies*

As part of major reforms to its education system, the Michigan legislature passed its first charter school law in 1993.¹⁵² Michigan’s charter school law permits several entities to authorize charter schools, including intermediate school boards, local school boards, community colleges, and public universities.¹⁵³ The Alliance recognizes Michigan

144. See MULTIPLE CHARTER AUTHORIZING OPTIONS, *supra* note 20, at 2.

145. See *supra* note 21 and accompanying text.

146. A. Broy Interview, *supra* note 27.

147. See *id.*

148. See *id.*

149. One commentator describes “bureaucratic creep” as “top-down requirements to in some ways have charter schools conform to traditional public schools.” *The Creep (Again)*, COLO. CHARTER SCHS. (June 7, 2011), <http://coloradocharters.blogspot.com/2011/06/creep-again.html>.

150. J. Guzman Interview, *supra* note 5.

151. See, e.g., SARA MEAD, EDUC. SECTOR REPORTS, MAINTENANCE REQUIRED: CHARTER SCHOOLING IN MICHIGAN 2–3, 16 (2006), available at http://www.educationsector.org/sites/default/files/publications/Michigan_Charter_Schools.pdf.

152. *Id.* at 1. Michigan’s equivalent of a charter school is a “public school academy.” See MICH. COMP. LAWS ANN. § 380.501 (West 2005). For the purpose of this Note, “charter school” will be synonymous with “public school academy.”

153. MICH. COMP. LAWS ANN. § 380.502(2).

as having one of the strongest multiple-authorizer provisions, giving Michigan four out of four available points for the availability of multiple authorizers in the state.¹⁵⁴ At the time the law was passed, the scope of Michigan's authorizers was unprecedented, allowing for a greater mix of potential authorizers than any other state.¹⁵⁵ And in just six short years, Michigan's public colleges and universities reached the maximum number of charters that were permitted by law (150).¹⁵⁶ By creating multiple viable authorizers, Michigan's charter movement grew without hindrance from local school boards fearful of "competition."¹⁵⁷ While early reports pointed to flaws in the non-traditional authorizers, the charter-authorizing universities made vast improvements in their processes.¹⁵⁸

Michigan's multiple-authorizer provision not only allowed non-local school board authorizers to open up over four times as many charters as Illinois in that same time span,¹⁵⁹ but it also led to practices aimed at increasing the quality of authorizing.¹⁶⁰ For example, the provision led to the development of the Michigan Council of Charter School Authorizers (MCCSA).¹⁶¹ The MCCSA provides resources to authorizers and acts as a forum for sharing best practices.¹⁶² The MCCSA also works with non-post-secondary authorizers in the state, including intermediate school districts.¹⁶³ Michigan's multiple-authorizer provision, while not without flaws, has provided multiple quality authorizer options.¹⁶⁴ In 2011, thirty entities separate from local school boards served as authorizers in Michigan. Furthermore, a study showed that Michigan allowed authorizers to open 240 charter schools in 23 different school districts across the state from 2008 to 2009.¹⁶⁵

154. See *Rankings Database*, *supra* note 52.

155. See MEAD, *supra* note 151, at 16.

156. *Id.* at 4.

157. *Id.* at 16.

158. See *id.* at 17.

159. Compare *id.* at 2-3, 16 (showing that from 1997 to 2006, Michigan authorized over 120 charter schools), with ILL. STATE BD. OF EDUC., 2009-2010 AND 2010-2011 ILLINOIS CHARTER SCHOOL BIENNIAL REPORT 7 (2012), available at http://www.isbe.state.il.us/charter/pdf/biennial_rpt_09-10_10-11.pdf (showing that from 1997 to 2006, Illinois authorized 29 charter schools).

160. See MEAD, *supra* note 151, at 17.

161. *Id.*

162. *Id.* at 17-18.

163. See *id.* at 18.

164. See MICH. DEP'T OF EDUC., 2009 PUBLIC SCHOOL ACADEMY REPORT TO THE LEGISLATURE 3 (2010), available at http://www.michigan.gov/documents/mde/PSA_Legislative_Report_and_Memo_COMBINED_320120_7.pdf; see also MICH. DEP'T OF EDUC., 2011 PUBLIC SCHOOL ACADEMIES AUTHORIZERS LIST (2011), available at http://www.michigan.gov/documents/Auth_Public_Links_Page_1_55352_7.pdf (listing thirty separate entities approved to authorize charter schools).

165. See 2009 PUBLIC SCHOOL ACADEMY REPORT TO THE LEGISLATURE, *supra* note 164, at 3.

2. *The Illinois State Charter School Commission Creates the Possibility of Significantly Increasing the Number of Charter Schools Outside of Chicago*

Illinois's Charter School Quality Law contains provisions that can achieve results similar to Michigan's charter school law. The Alliance's model charter school law recognizes that states' portfolios of charter authorizers will vary due to the dynamics in each state.¹⁶⁶ However, the essential element in the model charter school law is having a law that allows for multiple authorizing entities.¹⁶⁷ Thus, even though Michigan's law permits entities like universities and colleges to authorize charter schools in addition to local school boards,¹⁶⁸ whereas Illinois's Charter School Quality Law allows the Commission to authorize charter schools statewide,¹⁶⁹ both states have laws that grant authorizing power to organizations in addition to local school boards. Illinois's Commission, similar to the approved authorizers in Michigan, has the ability to authorize charter schools in the state.¹⁷⁰

As noted previously, prior to the Charter School Quality Law, growth in charter schools outside of Chicago was minimal.¹⁷¹ In response to the anemic number of charter schools outside of Chicago, proponents of charter schools have been advocating for a multiple-authorizer provision since 2009.¹⁷² The small number of charter schools outside of Chicago prior to the creation of the Commission was not due to a lack of interest.¹⁷³ In fact, the demand for charter schools in non-Chicago locales greatly surpassed the supply of schools.¹⁷⁴ The passage of the Charter School Quality Law provides charter applicants with an avenue to open charter schools in communities thus far ignored by charter school applicants.¹⁷⁵

Also, like Michigan's charter school law, the Charter School Quality Law provides authorizers access to authorizing best practices.¹⁷⁶ The law requires the Commission to provide a report to the State Board and local school districts on best practices in authorizing every two

166. See MODEL CHARTER SCHOOL LAW, *supra* note 18, at 10.

167. See *id.*

168. See *supra* note 153 and accompanying text.

169. See *supra* note 112 and accompanying text.

170. See *id.*

171. See *supra* notes 27–29 and accompanying text.

172. See Collin Hitt & Don Soifer, ILL. POL'Y INST., EDUCATION BRIEF: OPENING THE DOOR TO BETTER SCHOOLS 2 (2009).

173. *Id.* at 2.

174. *Id.* at 2.

175. See Press Release, *supra* note 4.

176. See *supra* note 126 and accompanying text.

years, which will include authorizing topics, such as evaluating applications, oversight of charters, and renewal of charter schools.¹⁷⁷ Such a practice is consistent with the Alliance's model charter school law.¹⁷⁸ The model law recommends having an entity devoted to overseeing authorizers to "model best practices in authorizing charter schools and make those practices available to school districts."¹⁷⁹ Having the Commission set the bar for other authorizers was one goal in enacting the Charter School Quality Law.¹⁸⁰

B. Illinois Must Hold Authorizers Accountable

Low-quality authorizing practices do more than open or keep an unsatisfactory school; they "affect students' lives and sully the charter school movement's overall record."¹⁸¹ A well-drafted multiple-authorizer provision should hold authorizers accountable to a set standard of accepted practices.¹⁸² Charter schools are held accountable to established criteria; there should also be a similar degree of accountability for the entities authorizing charters.¹⁸³ Once the legislature clearly identifies the roles and responsibilities of charter authorizers, an independent body should ensure that authorizers efficiently comply with the law.¹⁸⁴ The Alliance's model law suggests creating an independent entity to act as an authorizer oversight board.¹⁸⁵ It further suggests that states should develop a statewide system of evaluation that requires authorizers to "prove themselves."¹⁸⁶

There are two key ways that an authorizer-accountability system can monitor authorizing practices: (1) require authorizers to report on the actions they took each year and (2) grant an authorizer-oversight body the power to review authorizer practices and, when necessary, revoke an entity's power to authorize and oversee charter schools.¹⁸⁷ The first subsection below demonstrates the negative effects of allowing charter school authorizers to carry out their functions without an accountability structure. The second subsection provides an example on the other end of the spectrum, illustrating a system of rigorous

177. See *supra* note 126 and accompanying text.

178. See MODEL CHARTER SCHOOL LAW, *supra* note 18, at 10.

179. *Id.* (quoting COLO. REV. STAT. ANN. § 22-30.5-501).

180. See Press Release, *supra* note 4.

181. Lake, *supra* note 137, at 2.

182. See MULTIPLE CHARTER AUTHORIZING OPTIONS, *supra* note 20, at 5.

183. *Id.*

184. See *id.* at 3-4.

185. MODEL CHARTER SCHOOL LAW, *supra* note 18, at 3.

186. MULTIPLE CHARTER AUTHORIZING OPTIONS, *supra* note 20, at 5.

187. MODEL CHARTER SCHOOL LAW, *supra* note 18, at 12-13.

authorizer accountability. The final subsection explains how, with the passage of the Charter School Quality Law, Illinois ends up somewhere in the middle.

1. The Negative Effects of Allowing Authorizers to Go Unchecked

In the early stages of Ohio's charter school movement, Ohio's State Board of Education served as the primary authorizer of charter schools and came under intense scrutiny during this time.¹⁸⁸ The Ohio State Board of Education was criticized on two key aspects of its charter-authorizing practices: its review of charter school applications and its monitoring of charter schools.¹⁸⁹ One news source went so far as to claim that Ohio was just "rubber stamping" charter school applications without any substantial review process.¹⁹⁰ As a result of the growing concern regarding the state's ability to properly authorize charter schools, the Ohio legislature amended its charter school law, taking the primary power to authorize charters out of the state's hands and placing it into the hands of state universities and county education centers.¹⁹¹

In 2006, Ohio charter school proponents grappled with the most effective way to consistently deliver positive results across the state with respect to charter school performance.¹⁹² From the 1998–1999 school year to the 2005–2006 school year, Ohio went from 15 charter schools serving more than 2,000 students to just over 300 schools serving over 70,000 students.¹⁹³ A number of the nation's leading charter school authorities came together to analyze Ohio's charter schools and provide policy recommendations to advance Ohio's charter school movement.¹⁹⁴ Of particular significance, the authors recommended a mandatory statewide authorizer-evaluation system.¹⁹⁵ Prior to 2006, seventy-eight percent of authorizers were grandfathered out of the

188. See ALEXANDER RUSSO, PROGRESSIVE POL'Y INST., A TOUGH NUT TO CRACK IN OHIO: CHARTER SCHOOLING IN THE BUCKEYE STATE 9 (2005), available at http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED491215&ERICExtSearch_SearchType_0=NO&accno=ED491215. Some states refer to authorizers as "sponsors." However, for the sake of clarity, this Note will continue to refer to "sponsors" as "authorizers."

189. See *id.*

190. *Id.*

191. *Id.*

192. See THOMAS B. FORDHAM INST. ET AL., TURNING THE CORNER TO QUALITY: POLICY GUIDELINES FOR STRENGTHENING OHIO'S CHARTER SCHOOLS 15 (2006), available at http://www.publiccharters.org/data/files/Publication_docs/file_OhioChartersFINALforprint_20110402T222336.pdf [hereinafter TURNING THE CORNER].

193. See *id.* at 6.

194. See *id.* at 21.

195. *Id.* at 22.

state's authorizer evaluation program, seriously undermining the system.¹⁹⁶ Under the report's recommendation, any authorizer that refused to follow the statewide evaluation system would have their authorization authority revoked.¹⁹⁷ The report's authors thought it essential to create an efficient state-funded system to support quality authorizing.¹⁹⁸ In 2007, the Governor of Ohio, displeased with the failings of the state's charter school movement, announced a proposal to enact a moratorium on all new charters.¹⁹⁹ Governor Ted Strickland expressed, "What I'm not willing to tolerate is more of what we've had—perhaps a successful charter school here and there, but coming at an incredibly high price both in terms of public resources and effect on a lot of children" ²⁰⁰

2. *Independent Authorizer Oversight Bodies: A Path to Quality Authorizing*

In making recommendations for state policymakers concerning multiple-authorizer provisions, the NACSA emphasizes the importance of maintaining authorizer quality.²⁰¹ States should invest in authorizers that have the "commitment and capacity to do the work" and hold them accountable to rigorous standards.²⁰² The Alliance's model law provides an outline for states to follow when establishing an accountability system for charter authorizers.²⁰³ Although the Alliance recognizes that there is no one way to achieve quality authorizing through an accountability system, its model law espouses the creation of a statewide commission that serves as the model authorizer and the gateway through which other authorizers enter.²⁰⁴ By 2009, seven states and Washington, D.C. had some sort of system for approving and monitoring authorizers in place, with several other states exploring the possibility of adopting a similar system.²⁰⁵

A 2008 audit of Minnesota's charter school authorizers revealed considerable shortcomings in the authorizers' practices.²⁰⁶ Prior to an

196. *Id.*

197. *See id.* at 21.

198. TURNING THE CORNER, *supra* note 192, at 22–24.

199. Jennifer Smith Richards, *Critics Want Reprieve for Some Charters*, COLUMBUS DISPATCH, Apr. 9, 2007, at A1.

200. *Id.*

201. *See* MULTIPLE CHARTER AUTHORIZING OPTIONS, *supra* note 20, at 4–5.

202. *Id.*

203. *See* MODEL CHARTER SCHOOL LAW, *supra* note 18, at 12–13.

204. *Id.* at 10.

205. *See id.* at 10 & n.11.

206. Chris Williams & Jerome Christenson, *New State Law Shakes Up Charter School Management, Authorizers*, WINONA DAILY NEWS, Sept. 5, 2010, at A1.

amendment to its charter school laws in 2009, the role of authorizers was murky.²⁰⁷ The old law gave the Minnesota Department of Education (MDE) limited authority over charter authorizing, only allowing the department to “approve the [authorizer’s] intent to authorize the charter school.”²⁰⁸ The 2008 audit report found little commonality in the way authorizers exercised oversight of their charter schools or in the capacity of authorizers to carry out their functions.²⁰⁹ The report documented that “one authorizer did not know the charter school she [authorizes] had not made AYP in the previous year.”²¹⁰ A survey of the state’s authorizers revealed that many authorizers felt their role was not clearly defined; in fact, one authorizer admitted that he did not even know what he was supposed to do as an authorizer.²¹¹ Ninety percent of authorizers surveyed felt that they should be required to meet a set of minimum standards before being allowed to authorize a charter school.²¹² In light of these findings, the auditor recommended that Minnesota clarify the role of authorizers in its law.²¹³ The report called for the legislature to clearly define the relationship between the MDE and charter authorizers,²¹⁴ to create a set of standards for authorizers, and to provide resources to improve authorization efforts.²¹⁵

Many charter school operators in the state felt that the movement and law were poised for change as news reports labeled charter school administrators as “dishonest or incompetent.”²¹⁶ The MDE Commissioner agreed, stating that “the MDE would welcome rulemaking authority to develop rigorous standards for sponsorship should the Legislature choose to grant it.”²¹⁷ With the assistance of the NACSA, the Minnesota legislature passed into law what some have labeled

207. *Id.*

208. See OFFICE OF THE STATE LEGISLATIVE AUDITOR, EVALUATION REPORT SUMMARY: CHARTER SCHOOLS 3 (2008), available at http://www.auditor.leg.state.mn.us/ped/pedrep/charter_schoolsum.pdf [hereinafter MINNESOTA EVALUATION REPORT SUMMARY]; see also 2001 Minn. Laws 1807, 1850.

209. MINNESOTA EVALUATION REPORT SUMMARY, *supra* note 208, at 3.

210. *Id.* Adequate Yearly Progress (AYP) signifies the annual academic performance targets in reading and math that schools, school districts, and states must reach to be considered on track for 100% proficiency by the 2013–2014 school year, pursuant to the No Child Left Behind Act of 2001. *No Child Left Behind/Adequate Yearly Progress*, ILL. STATE BD. OF EDUC., <http://www.isbe.state.il.us/ayp/htmls/faq.htm> (last visited Apr. 30, 2012).

211. MINNESOTA EVALUATION REPORT SUMMARY, *supra* note 208, at 3.

212. *Id.*

213. See *id.* at 1.

214. *Id.*

215. *Id.*

216. See, e.g., Williams & Christenson, *supra* note 206.

217. MINNESOTA EVALUATION REPORT SUMMARY, *supra* note 208, at 4.

“the nation’s toughest” charter school law.²¹⁸ The new law requires authorizers to apply with the state board of education.²¹⁹ MDE conducted one round of applications for authorizers in 2010.²²⁰ Of the over 50 authorizers in the state, 13 applied and only 6 were approved as authorizers.²²¹ This handful of initial authorizers has been very selective in determining which charter schools to authorize.

3. *The Charter School Quality Law Leaves Unanswered Questions Concerning Illinois’s Ability to Hold Authorizers Accountable*

Illinois’s Charter School Quality Law leaves the State Board to delineate the means by which authorizers, including the Commission, will be held accountable.²²² Pursuant to the statute, the State Board has the sole authority to revoke an authorizer’s power.²²³ This is a far cry from the rigorous process established in Minnesota and not completely in line with the Alliance’s model law.²²⁴ While the model law recognizes there is no one-size-fits-all answer to the question of which entity should oversee the state’s charter authorizers, it makes clear that the body “must be committed to the success of public charter schools and authorizers in the state as well as to the successful implementation of chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing.”²²⁵ The model law goes on to explain that where state boards “have a track record of being unsupportive or ambivalent toward public charter schools, lawmakers should designate another entity to serve as the state’s designated authorizer oversight body.”²²⁶ It could be argued that Illinois has such a track record. In 2009, the State Board reported that it devoted the equivalent of one employee working twenty hours per week to all matters related to charter

218. E.g., Beth Hawkins, *Coming Charter-School Contraction Hailed as Positive Step for the Minnesota Movement*, MINNPOST.COM (Aug. 12, 2010), http://www.minnpost.com/stories/2010/08/12/20389/coming_charter-school_contraction_hailed_as_positive_step_for_the_minnesota_movement; see also MINN. STAT. ANN. § 124D.10 (West 2011).

219. Williams & Christenson, *supra* note 206.

220. See Hawkins, *supra* note 218.

221. *Id.*

222. Charter School Quality Law, Pub. Act No. 97-152, § 5, 2011 Ill. Legis. Serv. 4905, 4913 (West) (codified at 105 ILL. COMP. STAT. 5/25A-12).

223. See *id.*

224. See MODEL CHARTER SCHOOL LAW, *supra* note 18, at 13.

225. *Id.*

226. *Id.*

schools across the state.²²⁷ Furthermore, the State Board authorized just two charter schools in 2010.²²⁸

In addition to past evidence of a lack of in-depth commitment to supporting charter schools, questions remain concerning the State Board's ability to provide adequate funding to engage in meaningful oversight of charter school authorizers statewide. Illinois continues to face financial difficulties, with some projecting a deficit in 2012 of \$507 million.²²⁹ In fact, at the time of this writing, the Commission's sole funding was a \$50,000 grant, while the Commission's president projected the Commission needed between \$100,000 and \$200,000 to operate effectively.²³⁰ Moreover, Illinois State Senator Heather Steans, the sponsor of the Charter School Quality Law, acknowledged that the legislation did not provide any funding for the Commission's work because "[i]t was not going to make folks happy."²³¹ These facts echo the model law's concern with having a state agency serving as the statewide authorizer oversight body.

C. *Granting Exclusive Authorization Rights in Certain Jurisdictions*

In 2004, Colorado enacted its charter school law, which required local districts to apply to the Colorado State Board of Education (CSBE) to remain the exclusive authorizer in its jurisdiction.²³² This setup is preferred by those who believe that decisions regarding school openings and oversight should remain in the hands of local authorities.²³³ Granting exclusive authority to the local school board prevents an outside entity, which may be less knowledgeable of community dynamics, from establishing schools in a manner contrary to the local citizens' best interests.²³⁴

227. See Koch Memorandum, *supra* note 5, at 4.

228. *Illinois Charter Authorizers*, NACSA, <http://www.qualitycharters.org/state-by-state-overviews-106> (last visited Jan. 29, 2012).

229. ELIZABETH McNICHOL ET AL., CENTER ON BUDGET & POL'Y PRIORITIES, STATES CONTINUE TO FEEL RECESSION'S IMPACT 9 (2012).

230. Chip Mitchell, *Charter-School Agency's Funding Raises Questions*, WBEZ 91.5 (Dec. 15, 2011), <http://www.wbez.org/story/charter-school-agency%E2%80%99s-funding-raises-questions-94919>.

231. *Id.*

232. See Koch Memorandum, *supra* note 5, at 10.

233. J. Guzman Interview, *supra* note 5.

234. *Id.*

1. *Granting Exclusive Chartering Authority While Maintaining Quality*

Colorado allows school districts to have “exclusive chartering authority” in their given jurisdiction.²³⁵ Under Colorado charter school law, a local school district can petition the CSBE for exclusive chartering authority.²³⁶ The CSBE may grant exclusive authority if the school district can show that it has “been fair and equitable toward charter schools during the previous four years.”²³⁷ This means, essentially, that the local school district has complied with state laws and has not imposed a moratorium on charter school enrollment in its district.²³⁸ Once a district becomes certified as exclusive authorizer, no other entity, including the Colorado Charter School Institute, may authorize a school in that district without the school district’s permission.²³⁹

This system allows local districts that function as quality charter authorizers to maintain a monopoly on charter authorizing in their districts with CSBE approval.²⁴⁰ This can be either a good thing or a bad thing.²⁴¹ This takes away an operator’s choice in selecting an authorizer—a critical element of a multiple-authorizer provision.²⁴² While it is true that a local school district with exclusive authority may choose to accept a charter school authorized by the CCSI, there is nothing to force the district to do so.²⁴³ This means that a quality charter school that chooses to seek authorization through the CCSI, for whatever reason, could be denied access to the district.²⁴⁴ This sort of scenario could discourage national charter school operators like the Knowledge is Power Program (KIPP) from electing to open schools in Colorado because it would prefer to work with the CCSI.²⁴⁵ In practice, Colorado school districts with exclusive charter-authorizing authority do not permit outside entities to authorize schools in their districts

235. See COLO. REV. STAT. ANN. § 22-30.5-504(4)(a) (West 2011).

236. See DICK M. CARPENTER II & KRISTA KAUFER, COLO. DEP’T OF EDUC., THE STATE OF CHARTER SCHOOLS IN COLORADO 27 (2009), available at <http://www.cde.state.co.us/cdechart/download/STATEREPORT.pdf>.

237. *Id.* (internal quotation marks omitted).

238. *Id.*

239. *Id.*

240. See *id.*

241. Telephone Interview with Todd Ziebarth, Vice President, Nat’l Alliance for Pub. Charter Schs. (Nov. 11, 2010) [hereinafter T. Ziebarth Interview].

242. A. Broy Interview, *supra* note 27.

243. T. Ziebarth Interview, *supra* note 241.

244. *Id.*

245. A. Broy Interview, *supra* note 27.

because they want to retain control.²⁴⁶ Overall, requiring authorizers to show that they act fairly and equitably towards charter schools serves as a safety valve to ensure that local districts with exclusive control do not impede the charter movement.²⁴⁷

In considering a provision allowing for exclusive authorizing, the focus must remain on the *quality* of authorizing.²⁴⁸ What entity will guarantee that the exclusive authorizer is of such caliber that another authorizer is unnecessary? What will be the measuring stick used to evaluate an exclusive authorizer and allow the state to take away an exclusive authorizer's authority? These questions emphasize the importance of establishing a charter school law that will create a system whereby authorizers are held to proven standards that will lead to quality authorizing practices.

2. *The Charter School Quality Law Lacks an Option for Quality Authorizers to Apply for Exclusive Authorizing Authority*

In 2010, Task Force explored Colorado's charter law as an option to follow when submitting its recommendation for a multiple-authorizer provision.²⁴⁹ District officials from Chicago Public Schools, joined by others, argued that CPS was a quality authorizer and best understood local dynamics.²⁵⁰ Therefore, CPS felt that an independent board should not have the authority to authorize schools in its locale.²⁵¹ This may make sense on its face, but there was certainly no consensus on this point among members of the Task Force or other groups.²⁵² The Chicago Teacher's Union, a Task Force member,²⁵³ persistently presents a threat to Chicago's charter movement because it "wields enough power to derail change [it] consider[s] distasteful."²⁵⁴ This is especially troublesome in a city where the school district's chief is appointed by a politician, the mayor, and where the teacher's union's leadership has been described as "staunchly anti-reform."²⁵⁵

246. T. Ziebarth Interview, *supra* note 241.

247. *Id.*

248. A. Broy Interview, *supra* note 27.

249. See Koch Memorandum, *supra* note 5, at 10.

250. See J. Guzman Interview, *supra* note 5.

251. *Id.*

252. A. Broy Interview, *supra* note 27; see also J. Guzman Interview, *supra* note 5.

253. See Koch Memorandum, *supra* note 5, at app. A.

254. FREDERICK M. HESS ET AL., THOMAS B. FORDHAM INST., AMERICA'S BEST (AND WORST) CITIES FOR SCHOOL REFORM 29 (2010), http://www.edexcellence.net/doc/201008_SchoolReformCities/Fordham_SchoolReform_Final_Complete.pdf.

255. See *id.*

Most members of the Task Force agreed that CPS is a quality authorizer with knowledge of the district,²⁵⁶ and the Task Force considered Colorado's law with an exclusive authorizer provision.²⁵⁷ The Charter School Quality Law, however, did not create any type of carve out for CPS or any other school district. There is, however, always a real danger that a mayoral election could shift the focus of the CPS to one that is anticharter school.²⁵⁸ For this reason, CPS should not be granted exclusive, unchecked charter-authorizing authority in its district.²⁵⁹ The multiple-authorizer provision should, however, grant a right of exclusivity similar to that of Colorado to ensure that a district does not use its exclusivity to dampen charter growth.²⁶⁰ While a district that meets the clear criteria could gain exclusivity, an independent board would have the power to revoke its exclusive power if it failed to meet the criteria.²⁶¹ It is important that this safety valve operate with little influence from CPS, otherwise the valve is nulled.²⁶²

V. CONCLUSION

A well-drafted multiple-authorizer provision, tailored to the specific charter school atmosphere of a state, is vital to the success of the charter school movement. This conclusion operates under the presumption that quality charter school authorizing leads to quality charter schools, resulting in superior educational options for children. This end result stems from legislation that empowers the charter school movement to succeed.

The Illinois State Charter School Commission is positioned to lead the charge in authorizing quality charter schools in Illinois, where communities have long desired an alternate education option but lacked a viable authorizer. While the Charter School Quality Law provides roles and duties for authorizers, it left open questions concerning the enforcement of these new provisions; namely, whether the State Board has the resources and capabilities, in a continuing state of financial crisis, to oversee the performance of charter authorizers in accord with the Charter School Quality Law. Having clearly defined roles and duties without effective enforcement mechanisms may prove

256. J. Guzman Interview, *supra* note 5.

257. See Koch Memorandum, *supra* note 5, at 10.

258. A. Broy Interview, *supra* note 27.

259. J. Guzman Interview, *supra* note 5.

260. T. Ziebarth Interview, *supra* note 241.

261. *Id.*

262. J. Guzman Interview, *supra* note 5.

meaningless. Finally, the Charter School Quality Law fails to recognize already-existing quality charter school authorizers by establishing a mechanism whereby authorizers could apply for exclusive authorizing rights. While not a devastating blow to the advancement of the charter movement, the absence of such a provision could lead to the authorization of charter schools out of line with a local board's understanding of the needs of its community. Overall, the Charter School Quality Law presents previously unavailable opportunities for advancing the charter school movement in Illinois.

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