
A BILL FOR AN ACT

RELATING TO EDUCATION.

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

1 SECTION 1. The legislature finds that article X, section 1
2 of the Hawaii Constitution clearly indicates that the State has
3 a constitutional obligation to support charter school
4 facilities. In relevant part, it states that "[t]he State shall
5 provide for the establishment, support and control of a
6 statewide system of public schools free from sectarian control,
7 a state university, public libraries and such other educational
8 institutions as may be deemed desirable, including physical
9 facilities therefor."

10 Department of education schools that convert to charter
11 school status have pre-existing facilities and remain on the
12 department's regular repair and maintenance and capital
13 improvement program schedules. Furthermore, presently, all of
14 Hawaii 3R's projects must be selected from the department of
15 education repair and maintenance backlog unfunded list, which
16 only includes department of education-operated conversion
17 charter schools. Start-up charter schools, however, receive no



1 such support and only received legislative appropriations for
2 facilities assistance once, after the 2006 session, in the
3 amount of \$660 per pupil.

4 Except for that single occasion, all of the twenty-three
5 currently operating start-up charter schools have always been
6 forced to pay for occupancy costs out of a per-pupil allocation
7 that is already significantly lower than that provided to
8 department of education-operated schools.

9 Although not intended to serve as the exclusive, sole means
10 of meeting the State's constitutional obligation to support
11 charter school facilities, the legislature finds that
12 innovative, cost-effective public-private partnerships are a
13 promising means of addressing this issue. The legislature
14 further finds that a program similar to Hawaii 3R's would
15 provide a mechanism to leverage scarce public resources with
16 private resources and to use state investments to leverage
17 federal funding to provide support to the construction, repair,
18 and maintenance of charter school facilities, which often is
19 unavailable absent state funding.

20 The legislature further finds that:



1 (1) Any charter school in the state may participate in
2 programs of the fund, be they start-up or conversion;
3 and

4 (2) The charter school administrative office may
5 prioritize funding for projects that exhibit best
6 practices in green building or sustainable
7 construction, rehabilitation, repair, and maintenance.

8 Kanu o ka aina learning ohana is in the process of
9 examining the feasibility of establishing a community
10 development financial institution to support charter school
11 facility financing. The legislature may consider transferring
12 the Hawaii charter school facilities fund and related tax credit
13 reporting responsibilities from the department of education to
14 such a community development financial institution upon its
15 establishment.

16 The purpose of this Act is to support the funding of
17 charter school facilities by establishing a program similar to
18 the Hawaii 3R's. This objective is accomplished by creating the
19 Hawaii charter school facilities fund, which will support only
20 charter schools, not-for-profit corporations supporting charter
21 schools, and community development financial institutions



1 supporting charter schools. This program differs from Hawaii
2 3R's in that:

3 (1) It would be expanded to include acquisition,
4 predevelopment, rehabilitation, construction, and
5 other capital improvement projects, in addition to
6 repair and maintenance; and

7 (2) It would accommodate the greater complexity of capital
8 improvement projects.

9 SECTION 2. Chapter 302B, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 **"§302B- Hawaii charter school facilities fund. (a)**

13 There is established in the state treasury the Hawaii charter
14 school facilities fund, into which shall be deposited:

15 (1) Appropriations by the legislature to the Hawaii
16 charter school facilities fund;

17 (2) Contributions, grants, endowments, gifts in cash or
18 otherwise, loans, and bond financing from all sources,
19 including corporations or other businesses,
20 foundations, government, individuals, and other
21 interested parties; and

22 (3) Income and capital gains earned by the fund.



1 (b) The fund shall be administered by the charter school
2 administrative office, and the moneys in the fund shall be used
3 only for the specific purposes for which the fund is
4 established, pursuant to this section.

5 (c) The office shall spend moneys from the fund in the
6 form of grants, loans, or contracts to charter schools,
7 nonprofit corporations that benefit charter schools, or
8 contracts with private vendors for the repair, maintenance,
9 acquisition, predevelopment, rehabilitation, construction, or
10 other capital improvement projects of charter school facilities,
11 or facilities administered, operated, or developed by nonprofit
12 corporations for the support of charter schools in Hawaii in
13 accordance with this section.

14 (d) There is established the Hawaii charter school
15 facilities fund advisory board within the charter school
16 administrative office, for administrative purposes. The board
17 shall consist of the executive director of the office, who shall
18 serve as an ex-officio non-voting member, and five members who
19 shall be appointed without regard to section 26-34. Kanu o ka
20 aina learning ohana shall appoint two members, the Hawaii
21 charter school network shall appoint two members, and the
22 charter school review panel shall appoint one member. The



1 Hawaii charter school facilities fund advisory board shall be
2 responsible for:

3 (1) Soliciting and otherwise raising funds for the Hawaii
4 charter school facilities fund;

5 (2) Establishing criteria for the expenditure of funds;

6 (3) Reviewing grant and loan proposals using criteria
7 established by the board;

8 (4) Making recommendations for grants, loans, and other
9 specific expenditures; and

10 (5) Engaging in other activities necessary to support the
11 prudent and efficient operation of the Hawaii charter
12 school facilities fund.

13 (e) In managing the Hawaii charter school facilities fund,
14 the office shall exercise ordinary business care and prudence,
15 given the facts and circumstances prevailing at the time of
16 action or decision. In so doing, the office shall consider the
17 fund's long- and short-term needs in carrying out its purposes,
18 its present and anticipated financial requirements, the expected
19 total return on its investments, price trends, and general
20 economic conditions.



1 (f) There may be an endowment component of the Hawaii
2 charter school facilities fund, and the office may accumulate
3 net income, which shall be added to the principal.

4 (g) The use of any state moneys may be restricted by the
5 legislature in appropriating moneys to the Hawaii charter school
6 facilities fund.

7 (h) Any organization submitting a proposal to the office
8 for moneys shall meet the following standards at the time of
9 application and:

10 (1) Be:

11 (A) A for-profit organization duly registered under
12 the laws of the State;

13 (B) A nonprofit organization determined by the
14 Internal Revenue Service to be exempt from the
15 federal income tax; or

16 (C) An agency of the State or a county;

17 (2) Have experience with the project or in the program
18 area for which the proposal is being made; and

19 (3) Be licensed and accredited, as applicable, in
20 accordance with the requirements of federal, state,
21 and county governments.



1 (i) Organizations or agencies to which moneys are awarded
2 shall agree to comply with the following conditions prior to
3 receiving the award:

4 (1) Use persons qualified to engage in the activity to be
5 funded;

6 (2) Comply with the applicable federal, state, and county
7 laws; and

8 (3) Comply with any other requirements prescribed by the
9 office to ensure adherence by the recipient of the
10 award with applicable federal, state, and county laws,
11 ordinances, rules, and regulations, and with the
12 purposes of this section.

13 (j) Chapter 103D shall not apply to organizations or
14 agencies that apply for grants or contracts under this section.

15 (k) The Hawaii charter school facilities fund shall be
16 audited annually by an independent auditor. The results of each
17 annual audit shall be submitted to the department of budget and
18 finance not later than thirty days from the date the office
19 receives the audit results. The charter school administrative
20 office shall retain for a period of three years and permit the
21 department of budget and finance, state legislators, and the
22 auditor, or their duly authorized representatives, to inspect



1 and have access to any documents, papers, books, records, and
2 other evidence that is pertinent to the Hawaii charter school
3 facilities fund.

4 (1) For every dollar of state moneys granted by the Hawaii
5 charter school facilities fund to the project, there shall be a
6 minimum of \$1 in value matched by private, federal, or county
7 sources; provided that this matching value may include:

8 (1) The fair market value of contributions of in-kind
9 goods and services;

10 (2) Federal funding intended for charter schools that
11 passes through the department as the federally-
12 designated state education agency or local education
13 agency;

14 (3) Federal funding that passes through any agency, board,
15 panel, or other subdivision of the State for the
16 benefit of charter schools; and

17 (4) Any funding from the office of Hawaiian affairs that
18 did not originate as general revenues appropriated to
19 it by the legislature.

20 (m) The charter school administrative office shall submit
21 an annual report to the legislature on the progress of the fund



1 no later than twenty days prior to the convening of each regular
2 session."

3 SECTION 3. Section 36-27, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§36-27 Transfers from special funds for central service**
6 **expenses.** Except as provided in this section, and
7 notwithstanding any other law to the contrary, from time to
8 time, the director of finance, for the purpose of defraying the
9 prorated estimate of central service expenses of government in
10 relation to all special funds, except the:

- 11 (1) Special out-of-school time instructional program fund
- 12 under section 302A-1310;
- 13 (2) School cafeteria special funds of the department of
- 14 education;
- 15 (3) Special funds of the University of Hawaii;
- 16 (4) State educational facilities improvement special fund;
- 17 (5) Convention center enterprise special fund under
- 18 section 201B-8;
- 19 (6) Special funds established by section 206E-6;
- 20 (7) Housing loan program revenue bond special fund;
- 21 (8) Housing project bond special fund;
- 22 (9) Aloha Tower fund created by section 206J-17;



- 1 (10) Funds of the employees' retirement system created by
- 2 section 88-109;
- 3 (11) Unemployment compensation fund established under
- 4 section 383-121;
- 5 (12) Hawaii hurricane relief fund established under chapter
- 6 431P;
- 7 (13) Hawaii health systems corporation special funds and
- 8 the subaccounts of its regional system boards;
- 9 (14) Tourism special fund established under section
- 10 201B-11;
- 11 (15) Universal service fund established under chapter 269;
- 12 (16) Emergency and budget reserve fund under section
- 13 328L-3;
- 14 (17) Public schools special fees and charges fund under
- 15 section 302A-1130(f);
- 16 (18) Sport fish special fund under section 187A-9.5;
- 17 (19) Neurotrauma special fund under section 321H-4;
- 18 (20) Deposit beverage container deposit special fund under
- 19 section 342G-104;
- 20 (21) Glass advance disposal fee special fund established by
- 21 section 342G-82;



- 1 (22) Center for nursing special fund under section 304A-
- 2 2163;
- 3 (23) Passenger facility charge special fund established by
- 4 section 261-5.5;
- 5 (24) Solicitation of funds for charitable purposes special
- 6 fund established by section 467B-15;
- 7 (25) Land conservation fund established by section 173A-5;
- 8 (26) Court interpreting services revolving fund under
- 9 section 607-1.5;
- 10 (27) Trauma system special fund under section 321-22.5;
- 11 (28) Hawaii cancer research special fund;
- 12 (29) Community health centers special fund; ~~and~~
- 13 (30) Emergency medical services special fund; and
- 14 (31) Hawaii charter school facilities fund established
- 15 under section 302B- ,

16 shall deduct five per cent of all receipts of all other special
17 funds, which deduction shall be transferred to the general fund
18 of the State and become general realizations of the State. All
19 officers of the State and other persons having power to allocate
20 or disburse any special funds shall cooperate with the director
21 in effecting these transfers. To determine the proper revenue
22 base upon which the central service assessment is to be

1 calculated, the director shall adopt rules pursuant to chapter
2 91 for the purpose of suspending or limiting the application of
3 the central service assessment of any fund. No later than
4 twenty days prior to the convening of each regular session of
5 the legislature, the director shall report all central service
6 assessments made during the preceding fiscal year."

7 SECTION 4. There is appropriated out of the general
8 revenues of the State of Hawaii the sum of \$ or so
9 much thereof as may be necessary for fiscal year 2008-2009 for
10 the Hawaii charter school facilities fund.

11 The sum appropriated shall be expended by the department of
12 education for the purposes of this Act.

13 SECTION 5. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect on July 1, 2008.



S.B. NO. 2164
S.D. 3
H.D. 1

Report Title:

Hawaii Charter School Facilities Fund

Description:

Establishes the Hawaii Charter School Facilities Fund for the repair, maintenance, or capital improvement projects of charter school facilities. Appropriates funds. (SB2164 HD1)

SB2164 HD1 HMS 2008-3161

