

JAN 17 2008

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

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



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

4 Except for that single occasion, all of the twenty-three
5 start-up charter schools have always been forced to pay for
6 occupancy costs out of a per pupil allocation that is already
7 significantly lower than that provided to the department of
8 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
13 promising means of addressing this issue. The legislature
14 further finds that this program would provide a mechanism to
15 leverage scarce public resources with private resources and to
16 use state investments to leverage federal funding for charter
17 school facilities, which often is unavailable absent state
18 funding.

19 The legislature further finds that:

- 20 (1) Any charter school in the State may participate in
21 programs of the fund, be they start-up or conversion;
22 and



1 (2) Kanu o ka aina learning ohana may prioritize funding
2 for projects that exhibit best practices in green
3 building or sustainable construction, rehabilitation,
4 repair, and maintenance.

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

13 The legislature further finds that this program aligns well
14 with another measure under consideration this legislative
15 session to authorize the State to issue special purpose revenue
16 bonds, and use the proceeds from those bonds, to assist
17 nonprofit corporations benefiting one or more charter schools,
18 community development financial institutions benefiting one or
19 more charter schools, or charter schools.

20 The legislature hopes that as all of these related
21 initiatives mature, they will result in the establishment of an
22 administratively and financially sophisticated new system of



1 charter school facility financing that will effectively leverage
2 public investment for the benefit of all charter schools in
3 Hawaii.

4 A provision in this Act, regarding a state income tax
5 credit for environmentally sustainable goods and services,
6 parallels those of section 235-12.5, Hawaii Revised Statutes.
7 However, it is the intent of the legislature that these state
8 tax credits for environmentally-sustainable goods and services
9 shall not be limited to those defined in this Act, but shall be
10 construed broadly to include a wide variety of good and services
11 consistent with prevailing industry standards in green building
12 or sustainable construction, rehabilitation, repair, and
13 maintenance.

14 The purpose of this Act is to support the funding of
15 charter school facilities by creating the Hawaii charter school
16 facilities fund, a program comparable to Hawaii 3R's, except
17 that the fund would only support charter schools and nonprofit
18 organizations that support charter schools. This program shall
19 also differ from Hawaii 3R's in that:

20 (1) It would be expanded to include acquisition,
21 predevelopment, rehabilitation, construction, and



1 other capital improvement projects, in addition to
2 repair and maintenance; and
3 (2) It would accommodate the greater complexity of capital
4 improvement projects, as opposed to repair and
5 maintenance projects, the state tax credit provision
6 for the contributions of in-kind services by members
7 of certain professions and occupations would be
8 expanded to include:

9 (A) A broader group of professions and occupations
10 (including those regulated under title 25, Hawaii
11 Revised Statutes, including electricians and
12 plumbers, mortgage brokers and solicitors, real
13 estate appraisers, real estate brokers and
14 salespersons, attorneys, employees of financial
15 institutions regulated under title 22, Hawaii
16 Revised Statutes, and those who provide
17 environmentally-sustainable services; and

18 (B) Goods, including but not limited to
19 environmentally friendly ones.

20 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
21 amended by adding a new section to be appropriately designated
22 and to read as follows:



1 "§235- Tax Credit for charter school repair,
2 maintenance, acquisition, predevelopment, rehabilitation,
3 construction, and other capital improvements. (a) There shall
4 be allowed to each taxpayer who is subject to the tax imposed by
5 this chapter, and does not owe the State delinquent taxes,
6 penalties, or interest and who:

7 (1) Is licensed under chapter 444, 448E, 454, 460J, 464,
8 466K, or 467;

9 (2) Is a member of Hawaii state bar association;

10 (3) Is an employee of entities regulated under title 22;

11 or

12 (4) Provides environmentally-sustainable goods or services
13 including, but not limited to, the sale, installation,
14 and service of renewable energy technology systems,
15 solar or wind energy systems, and other goods and
16 services consistent with prevailing industry standards
17 in green building or sustainable construction,
18 rehabilitation, repair, and maintenance,

19 a tax credit for contributions of in-kind services for the
20 repair, maintenance, acquisition, predevelopment,
21 rehabilitation, construction, and other capital improvements of
22 charter schools provided by the licensed taxpayer in Hawaii, or

1 facilities administered, operated, or developed by nonprofit
2 corporations for the benefit of charter schools. The tax credit
3 shall be deductible from the taxpayer's net income tax
4 liability, if any, imposed by this chapter for the taxable year
5 in which the credit is properly claimed.

6 (b) There shall be allowed to each taxpayer who is subject
7 to the tax imposed by this chapter, and does not owe the State
8 delinquent taxes, penalties, or interest, a tax credit for
9 contributions of goods for the repair, maintenance, acquisition,
10 predevelopment, rehabilitation, construction, and other capital
11 improvements of charter schools provided by the licensed
12 taxpayer in Hawaii, or facilities administered, operated, or
13 developed by nonprofit corporations for the benefit of charter
14 schools. The tax credit shall be deductible from the taxpayer's
15 net income tax liability, if any, imposed by this chapter for
16 the taxable year in which the credit is properly claimed.

17 (c) The amount of the tax credit established under this
18 section shall be equal to ten per cent of the value of
19 contributions of in-kind goods and services to the Hawaii
20 charter school facilities fund for that taxable year; provided
21 that the aggregate value of the contributions of in-kind



1 services claimed by a taxpayer shall not exceed \$40,000 in a
2 given taxable year.

3 (d) For purposes of this section:

4 "Charter schools" has the same meaning as defined in
5 section 302A-101.

6 "Renewable energy technology system" means a new system
7 that captures and converts a renewable source of energy, such as
8 wind, heat (solar thermal), or light (photovoltaic) from the sun
9 into:

10 (1) A usable source of thermal or mechanical energy;

11 (2) Electricity; or

12 (3) Fuel.

13 "Solar or wind energy system" means any identifiable
14 facility, equipment, apparatus, or the like that converts
15 insolation or wind energy to useful thermal or electrical energy
16 for heating, cooling, or reducing the use of other types of
17 energy that are dependent upon fossil fuel for their generation.

18 "Value of contributions of in-kind goods and services"
19 means the fair market value of uncompensated services or labor
20 as determined and certified by the department of accounting and
21 general services.



1 (e) The tax credit allowed under this section shall be
2 claimed against net income tax liability for the taxable year.
3 A tax credit under this section that exceeds the taxpayer's
4 income tax liability may be used as a credit against the
5 taxpayer's income tax liability in subsequent years until
6 exhausted.

7 (f) All claims for tax credits under this section,
8 including any amended claims, shall be filed on or before the
9 end of the twelfth month following the close of the taxable year
10 for which the credits may be claimed. Failure to comply with
11 the foregoing provision shall constitute a waiver of the right
12 to claim the credit.

13 (g) Kanu o ka aina learning ohana shall maintain records
14 of the names of taxpayers eligible for the credit and the total
15 value of in-kind goods and services contributed for the repair,
16 maintenance, acquisition, predevelopment, rehabilitation,
17 construction, and other capital improvements of charter schools
18 provided by the licensed taxpayer in Hawaii, or facilities
19 administered, operated, or developed by nonprofit corporations
20 for the benefit of charter schools for the taxable year;
21 provided that the taxpayer has expressed interest to kanu o ka
22 aina learning ohana in receiving the tax credit. All



1 contributions shall be verified by kanu o ka aina learning
2 ohana. Kanu o ka aina learning ohana shall keep an accurate
3 total of all contributions that they verify. Upon each
4 determination, kanu o ka aina learning ohana shall issue a
5 certificate to the taxpayer certifying:

6 (1) The amount of the contribution;

7 (2) That the taxpayer:

8 (A) Is licensed under chapter 444, 448E, 454, 460J,
9 464, 466K, or 467;

10 (B) Is a member of the Hawaii state bar association;

11 (C) Is an employee of entities regulated under Title
12 22; or

13 (D) Provides environmentally-sustainable goods or
14 services, including but not limited to the sale,
15 installation, and service of renewable energy
16 technology systems and solar or wind energy
17 systems, and other goods and services consistent
18 with prevailing industry standards in green
19 building or sustainable construction,
20 rehabilitation, repair, and maintenance; and

21 (3) That the taxpayer has obtained a current and valid
22 certificate signed by the director of taxation,



1 showing that the taxpayer does not owe the State any
2 delinquent taxes, penalties, or interest.

3 The taxpayer shall file the certificate from kanu o ka aina
4 learning ohana with the taxpayer's tax return with the
5 department of taxation. When the total amount of certified
6 contributions for each taxable year reaches \$2,500,000, kanu o
7 ka aina learning ohana shall immediately discontinue certifying
8 contributions and notify the department of taxation. In no
9 instance shall the total amount of certified contributions
10 exceed \$2,500,000 for each taxable year.

11 (h) The State shall provide not more than \$250,000 in tax
12 credits for contributions of in-kind goods and services in
13 Hawaii for the repair and maintenance of charter schools.

14 (i) The director of taxation shall prepare any forms that
15 may be necessary to allow a credit to be claimed under this
16 section, may require proof of the claim for the tax credit, and
17 may adopt rules pursuant to chapter 91."

18 SECTION 3. Chapter 302B, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:

21 "**§302B- Hawaii charter school facilities fund.** (a)

22 There is established the Hawaii charter school facilities fund



1 as a separate fund of kanu o ka aina learning ohana, a Hawaii
2 nonprofit corporation. Moneys received from the State, county,
3 or federal government, private contributions of cash or other
4 property, and the income and capital gains earned by the fund
5 shall constitute its assets.

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

15 (c) The fund may receive contributions, grants,
16 endowments, gifts in cash or otherwise, loans, and bond
17 financing from all sources, including corporations or other
18 businesses, foundations, government, individuals, and other
19 interested parties. The State may appropriate moneys to the
20 fund.

21 (d) There is established the Hawaii charter school
22 facilities fund advisory board, which shall consist of five



1 members who shall be appointed without regard to section 26-34.
2 Kanu o ka aina learning ohana shall appoint two members, the
3 Hawaii charter school network shall appoint two members, and the
4 office shall appoint one member of the Hawaii charter school
5 facilities fund advisory board. The Hawaii charter school
6 facilities fund advisory board shall be responsible for:

- 7 (1) Soliciting and otherwise raising funds for the Hawaii
8 charter school facilities fund;
9 (2) Establishing criteria for the expenditure of funds;
10 (3) Reviewing grant and loan proposals using criteria
11 established by kanu o ka aina learning ohana;
12 (4) Making recommendations for grants, loans, and other
13 specific expenditures; and
14 (5) Engaging in other activities necessary to support the
15 prudent and efficient operation of the Hawaii charter
16 school facilities fund.

17 (e) In managing the Hawaii charter school facilities fund,
18 the kanu o ka aina learning ohana shall exercise ordinary
19 business care and prudence, given the facts and circumstances
20 prevailing at the time of action or decision. In so doing, kanu
21 o ka aina learning ohana shall consider the fund's long- and
22 short-term needs in carrying out its purposes, its present and



1 anticipated financial requirements, expected total return on its
2 investments, price trends, and general economic conditions.

3 (f) There may be an endowment component of the Hawaii
4 charter school facilities fund, and kanu o ka aina learning
5 ohana may accumulate net income and add the same to the
6 principal.

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

10 (h) Kanu o ka aina learning ohana may expend principal
11 from the Hawaii charter school facilities fund for the purposes
12 of the fund.

13 (i) Any organization submitting a proposal to kanu o ka
14 aina learning ohana for moneys shall meet the following
15 standards at the time of application and:

16 (1) Be:

17 (A) A for-profit organization duly registered under
18 the laws of the State;

19 (B) A nonprofit organization determined by the
20 Internal Revenue Service to be exempt from the
21 federal income tax; or

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



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

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

6 (j) Organizations or agencies to which moneys are awarded
7 shall agree to comply with the following conditions prior to
8 receiving the award:

9 (1) Use persons qualified to engage in the activity to be
10 funded;

11 (2) Comply with the applicable federal, state, and county
12 laws; and

13 (3) Comply with any other requirements prescribed by kanu
14 o ka aina learning ohana to ensure adherence by the
15 recipient of the award with applicable federal, state,
16 and county laws, and with the purposes of this
17 section.

18 (k) Chapter 103D shall not apply to organizations or
19 agencies that apply for grants or contracts under this section;
20 provided that kanu o ka aina learning ohana shall be held
21 accountable for the use of the funds.



1 (l) The Hawaii charter school facilities fund shall be
2 audited annually by an independent auditor. The results of each
3 annual audit shall be submitted to the department of budget and
4 finance not later than thirty days from the date kanu o ka aina
5 learning ohana receives the audit results. Kanu o ka aina
6 learning ohana shall retain for a period of three years and
7 permit the department of budget and finance, state legislators,
8 and the auditor, or their duly authorized representatives, to
9 inspect and have access to any documents, papers, books,
10 records, and other evidence that is pertinent to the Hawaii
11 charter school facilities fund.

12 (m) The fund shall not be placed in the state treasury,
13 and the State shall not administer the fund, nor shall the State
14 be liable for the operation or solvency of the fund or kanu o ka
15 aina learning ohana.

16 (n) For every dollar of state moneys granted by the Hawaii
17 charter school facilities fund to the project, there shall be a
18 minimum of \$1 in value matched by kanu o ka aina learning ohana
19 from private, federal, or county sources; provided that this
20 matching value may include:

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



1 (2) Federal funding intended for charter schools that
2 passes through the department of education as the
3 federally-designated state education agency or local
4 education agency;

5 (3) Federal funding that passes through any agency, board,
6 or panel of the State; and

7 (4) Any funding from the office of Hawaiian affairs, as a
8 quasi-state agency, that did not originate as general
9 revenues appropriated to it by the legislature.

10 (o) Kanu o ka aina learning ohana shall submit an annual
11 report to the legislature on the progress of the fund no later
12 than twenty days prior to the convening of each regular
13 session."

14 SECTION 4. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$2,500,000 or so much
16 thereof as may be necessary for fiscal year 2008-2009 for the
17 Hawaii charter school facilities fund.

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

20 SECTION 5. New statutory material is underscored.

21 SECTION 6. This Act shall take effect upon its approval
22 and shall apply to taxable years beginning after December 31,



S.B. NO. 2164

1 2007; provided that section 4 of this Act shall take effect on
2 July 1, 2008.

3

INTRODUCED BY:

Norman Sabendo



Report Title:

Charter School Facilities Fund; Tax Credit; Appropriation

Description:

Establishes the Hawaii charter school facilities fund for funding the repair, maintenance, and other facilities needs of charter schools. Establishes a tax credit for certain individuals who make contributions to charter school repairs, maintenance, or development. Appropriates funds for the Hawaii charter school facilities fund.

