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# 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 remain on the  
12 department's regular repair and maintenance and capital  
13 improvement program schedules. Furthermore, presently, all  
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 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 charter  
17          schools, non-for-profit corporations supporting charter schools,  
18          and community development financial institutions supporting  
19          charter schools.

20          The purpose of this Act is to support the funding of  
21          charter school facilities by creating the Hawaii charter school  
22          facilities fund, a program comparable to Hawaii 3R's, except



1 that the fund would only support charter schools, not-for-profit  
2 corporations supporting charter schools, and community  
3 development financial institutions supporting charter schools.

4 This program shall also differ from Hawaii 3R's in that:

- 5 (1) It would be expanded to include acquisition,
- 6 predevelopment, rehabilitation, construction, and
- 7 other capital improvement projects, in addition to
- 8 repair and maintenance; and
- 9 (2) It would accommodate the greater complexity of capital
- 10 improvement projects.

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

14 **"§302B- Hawaii charter school facilities fund. (a)**  
 15 There is established the Hawaii charter school facilities fund  
 16 as a separate fund of kanu o ka aina learning ohana, a Hawaii  
 17 nonprofit corporation. Moneys received from the State, county,  
 18 or federal government, private contributions of cash or other  
 19 property, and the income and capital gains earned by the fund  
 20 shall constitute its assets.

21 (b) Kanu o ka aina learning ohana shall spend moneys from  
 22 the fund in the form of either grants, loans, or contracts to



1 charter schools, nonprofit corporations that benefit charter  
 2 schools, or contracts with private vendors for the repair,  
 3 maintenance, acquisition, predevelopment, rehabilitation,  
 4 construction, or other capital improvement projects of charter  
 5 school facilities, or facilities administered, operated, or  
 6 developed by nonprofit corporations for the support of charter  
 7 schools in Hawaii in accordance with this section.

8 (c) The fund may receive contributions, grants,  
 9 endowments, gifts in cash or otherwise, loans, and bond  
 10 financing from all sources, including corporations or other  
 11 businesses, foundations, government, individuals, and other  
 12 interested parties. The State may appropriate moneys to the  
 13 fund.

14 (d) There is established the Hawaii charter school  
 15 facilities fund advisory board, which shall consist of five  
 16 members who shall be appointed without regard to section 26-34.  
 17 Kanu o ka aina learning ohana shall appoint two members, the  
 18 Hawaii charter school network shall appoint two members, and the  
 19 office shall appoint one member to the Hawaii charter school  
 20 facilities fund advisory board. The Hawaii charter school  
 21 facilities fund advisory board shall be responsible for:



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

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

4       (3) Reviewing grant and loan proposals using criteria  
5       established by kanu o ka aina learning ohana;

6       (4) Making recommendations for grants, loans, and other  
7       specific expenditures; and

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

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

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



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

4       (h) Kanu o ka aina learning ohana may expend principal  
5 from the Hawaii charter school facilities fund for the purposes  
6 of the fund.

7       (i) Any organization submitting a proposal to kanu o ka  
8 aina learning ohana for moneys shall meet the following  
9 standards at the time of 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        (j) 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 kanu  
9 o ka aina learning ohana to ensure adherence by the  
10 recipient of the award with applicable federal, state,  
11 and county laws, ordinances, rules, and regulations,  
12 and with the purposes of this section.

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

17        (l) The Hawaii charter school facilities fund shall be  
18 audited annually by an independent auditor. The results of each  
19 annual audit shall be submitted to the department of budget and  
20 finance not later than thirty days from the date kanu o ka aina  
21 learning ohana receives the audit results. Kanu o ka aina  
22 learning ohana shall retain for a period of three years and





1 permit the department of budget and finance, state legislators,  
 2 and the auditor, or their duly authorized representatives, to  
 3 inspect and have access to any documents, papers, books,  
 4 records, and other evidence that is pertinent to the Hawaii  
 5 charter school facilities fund.

6 (m) The fund shall not be placed in the state treasury,  
 7 and the State shall not administer the fund, nor shall the State  
 8 be liable for the operation or solvency of the fund or kanu o ka  
 9 aina learning ohana.

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

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

17 (2) Federal funding intended for charter schools that  
 18 passes through the department as the federally-  
 19 designated state education agency or local education  
 20 agency;



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

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

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

11       SECTION 3. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$2,500,000 or so much  
13 thereof as may be necessary for fiscal year 2008-2009 for the  
14 Hawaii charter school facilities fund.

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

17       SECTION 4. New statutory material is underscored.

18       SECTION 5. This Act shall take effect on July 1, 2008.



**Report Title:**

Charter School Facilities Fund; Appropriation

**Description:**

Establishes the Hawaii charter school facilities fund for funding the repair, maintenance, and other facilities needs of charter schools. Appropriates funds for the Hawaii charter school facilities fund. (SD2)

