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HOUSE COMMITTEE ON EDUCATION

TESTIMONY REGARDING HB 2561 RELATING TO EDUCATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: FEBRUARY 1, 2008

TIME: 2:15PM

ROOM: 309

This legislation provides a tax credit for persons that make contributions to charter school repairs, maintenance, or development.

The Department of Taxation (Department) **provides comments** on this legislation.

I. THE DEPARTMENT SUPPORTS CHARTER SCHOOL FACILITIES IMPROVEMENTS

Encouraging the development of charter schools is an important public policy. As the Administration has stated time and again, charter schools are a vibrant, vital, and successful alternative to traditional public schools. Legislation such as this, which seeks to direct support to the charter school movement, are important measures that deserve consideration.

II. A CHARITABLE DEDUCTION CAN ALREADY BE CLAIMED FOR GOODS.

The Department points out that a charitable tax deduction is already allowed for donations of goods to qualifying educational institutions. This legislation would result in a double tax benefit. No deduction is allowed for services. Correspondingly, however, no income tax is paid by the donor.

III. DONORS OF SERVICES WILL BE CHARGED INCOME TAX.

Under this bill, persons that donate services will be entitled to a credit for services performed. This credit will be considered income for their services and will be subject to income tax. The Department questions the attractiveness of such credits where the benefit will be diluted because income tax will have to be paid.

IV. THE DEPARTMENT POINTS OUT ADMINISTRATIVE CONCERNS

The Department's primary concern with this legislation is the administrative difficulty that may arise based upon how the credit is currently drafted.

CONCERN OVER INFLATED IN-KIND SERVICES—The Department recognizes that this legislation requires that the in-kind services must be certified by the Department of Accounting & General Services. However, the concern that in-kind services will not be grossly over-inflated for purposes of claiming the credit may not be sufficiently tempered as written. The Department suggests the Committee further discern the issue of potential fraud and abuse. The Department is also concerned about the level of resources necessary to administer this component of the credit.

DETERMINATION OF DELINQUENT TAXES—The Department is also concerned about administering the delinquency status of taxpayers. The number of taxpayers that may seek to claim the credit may overwhelm the determination of delinquent status. The Department is concerned about the level of resources that will be necessary to administer this component of the credit.

OTHER AGENCY INVOLVEMENT—The Department very much appreciates that this legislation delegates determination matters to the experts involved, namely the Department of Accounting & General Services and Kanu o ka 'aina learning Ohana.

V. REVENUE ESTIMATE

This legislation will result in a revenue loss of \$250,000 based upon the cap of credits that can be issued.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON EDUCATION
ON
HOUSE BILL NO. 2561

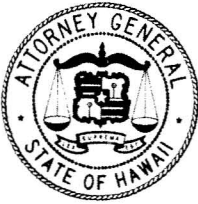
February 1, 2008

RELATING TO EDUCATION

House Bill No. 2561, among other provisions, establishes a Hawaii charter school facilities fund to be administered by Kanu O Ka Aina Learning Ohana to provide grants, loans or contracts to charter schools, nonprofit corporations, or private vendors for the purpose of providing facilities for charter schools. Further, the bill provides tax credits for taxpayers who contribute in-kind services to charter schools and appropriates \$2,500,000 in general funds for FY 08-09 for deposit into the Hawaii charter school facilities fund.

We do not support this bill. Kanu O Ka Aina Learning Ohana is not a State agency and, as such, should not be a recipient of State funds without undergoing the appropriate procedures. Also, as a matter of general policy, this department does not support the creation of any special or revolving fund which does not meet the requirements of Section 37-52.3 of the Hawaii Revised Statutes. Special or revolving funds should:

1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine whether the fund will be self-sustaining.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.B. NO. 2561, RELATING TO EDUCATION.

BEFORE THE:

HOUSE COMMITTEE ON EDUCATION

DATE: Friday, February 1, 2008 **TIME:** 2:15 PM

LOCATION: State Capitol, Room 309
Deliver to: Committee Clerk, Room 324, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Holly T. Shikada, Deputy Attorney General
or Melissa W. Chee, Deputy Attorney General

Chair Takumi and Members of the Committee:

The Department of the Attorney General takes no position on what the bill is trying to accomplish, but testifies to suggest several revisions to address the legal problems contained in the bill.

The purpose of this bill is to augment state funding for public charter school facilities by providing a tax credit to encourage private individuals to provide goods and services to build, repair, and maintain charter school facilities, and establishing a fund that is to be administered by a private nonprofit corporation to receive and distribute the donations that the tax credit generates to the charter schools. In its present form, the bill has several legal problems that would affect its implementation.

First, section 2 of the bill, on page 6, line 1, creates "a tax credit for charter school repair, maintenance, acquisition, predevelopment, rehabilitation, construction, and other capital improvements" is ambiguous. Subsection (a), on page 6 line 3, and subsection (b), on page 7, line 6, state that qualified contributions in the form of services and goods qualify for the credit and subsection (c), on page 7, line 17, states how to calculate the tax credit. In explaining how to calculate the tax

credit, subsection (c) states, "[t]he amount of the tax credit established under this section shall be equal to ten per cent of the value of the contributions of in-kind goods and services to Hawaii charter school facilities fund for that taxable year. . . ." However, the "Hawaii charter school facilities fund," as established in section 3, on page 11, line 18, can generally accept money, not services or goods. Therefore, a taxpayer would not be able to claim a credit for contribution of goods and services, as the fund is only allowed to accept only money. Furthermore, even if the fund was able to accept goods and services, section 3 of the bill is silent as to how these items will be accepted, allocated, distributed, or stored.

Second, section 3, at line 18 on page 11 of the bill, adds a new section in chapter 302B, Hawaii Revised Statutes, creating a "Hawaii charter school facilities fund" as a separate fund to be controlled and used for Kanu o ka aina, a private nonprofit organization. Section 4 on page 17 appropriates \$2,500,000 to the "Hawaii charter school facilities fund." This appears to be a violation of article VII, section 4 of the State Constitution, which prohibits appropriations for private purposes or grants made without complying with standards provided by law.

The Attorney General respectfully requests that if this bill is passed, it be revised in accordance with the above.



KAMEHAMEHA SCHOOLS

Testimony to the House Committee on Education
Hearing Date: Friday, February 1, 2008
2:15p.m. – Conference Room 309

Shawn Malia Kana'iaupuni, PhD
Director, Public Education Support (PEdS) Division

Thursday, January 31, 2008

Re: HB 2561 – Relating to Education

Good afternoon Chair Takumi, Vice Chair Berg and members of the House Committee on Education. My name is Shawn Malia Kana'iaupuni, PhD, Director, Public Education Support (PEdS) Division of Kamehameha Schools. Thank you for this opportunity to testify on HB 2561.

We believe that facility funding for charter schools is critically important for their success and that charter schools serve an essential role in the education of Hawaii's children.

Kamehameha Schools has been a collaborator in the charter school movement for more than six years now. As part of our Education Strategic plan, KS hopes to significantly impact more Hawaiian children ages 0-8 and grades 4-16+, and their families/ caregivers over the next five years, in collaboration with others whenever possible.

Currently, Kamehameha Schools collaborates with nonprofit tax-exempt organizations, including `Aha Pūnana Leo, OHA, KALO and Ho`okāko`o Corporation, to assist a total of 14 start-up and 3 conversion charters. Kamehameha Schools believes that this collaboration provides more positive educational choices and ultimately academic achievement for Hawaiian students. Through these collaborations, Kamehameha Schools currently assists more than 3,000 students in 13 communities statewide within the public education system.

In a recent report entitled, "Longitudinal Outcomes for Hawaiian-focused charter schools," the Kamehameha Schools research team concluded that Hawaiian-focused charter schools are implementing viable educational strategies, making significant gains over time for the lowest-achieving students. Supporting and replicating the successful strategies found in Hawaiian-focused charter schools may generate a promising return on investment for Hawaiian education throughout the public school system.

Kamehameha Schools supports the intent of HB 2561 which is to provide a greater measure of support for charter schools.

We appreciate this opportunity to submit comments on HB 2561 and support the initiatives of the legislature to further enhance charter schools.

berg1-Liz

From: Ryan Shigetani [ryan@hawaii3rs.com]
Sent: Tuesday, January 29, 2008 7:16 PM
To: EDNtestimony
Subject: Testimony on HB2561 - House Education Committee - 2/1/08 - 2:15 p.m.
Attachments: Testimony HB2561 - 02-01-08.doc

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TESTIMONY TO THE HOUSE COMMITTEE ON EDUCATION

Friday, February 1, 2008

2:15 p.m.

State Capitol Conf. Rm. 309

S.B. 2561 – RELATING TO EDUCATION

Chair Takumi, Vice Chair Berg, and members of the committee:

I am sorry I am unable to provide testimony in person, but thank you for the opportunity to provide written testimony. As a private, nonprofit organization, Hawaii 3R's is not allowed to take an official position on any issue that is not directly related to the program. However, since Hawaii 3R's is the stated model for this proposed initiative, I would like to provide information that you may find helpful in your discussion and/or decision making.

Most of the advantages, similarities, and differences between the Hawaii 3R's School Repair and Maintenance Fund and the Hawaii Charter Schools Facilities Fund have already been identified and discussed in this well thought out measure. Therefore, I would just like to bring to your attention two issues that I am sure you are aware of, but that may merit further discussion:

- 1) Hawaii 3R's grant applications and awards are based on projects that are on the DOE's official R&M backlog list. This means that a DOE Inspector (or DAGS Engineer on the neighbor island) has reviewed the project's scope and has calculated an official estimate. This official estimate is then used as the baseline in the application process to determine if the appropriate level of leveraging or savings is being achieved. Also, the review by the DOE or DAGS staff ensures that the proper technical specifications, safety measures, maintenance issues, etc. are taken into consideration. Thus, the expertise provided by the DOE and DAGS is invaluable to ensuring that our grants are fiscally prudent and our projects meet State standards.

While this issue is made more complex because this measure also allows CIP projects, I believe it would be worthwhile to create a similar function with a facilities review panel made up of industry experts that would be independent of the advisory board. This panel would be responsible to review plans and designs prior to approval and funding to ensure that project scopes and costs are not excessive, and that all required laws, codes, and regulations are taken into account.

- 2) In the State tax credit portion of this measure, it appears that DAGS will determine and certify the fair market value of contributions and that Kanu O Ka Aina Learning Center will provide the overall certification. While I believe that the inclusion of "DAGS" was an oversight based on copying prior legislation, I believe that it would be fiscally prudent to have a government agency provide the certification instead of the program itself because of the potential impact of up to \$250,000 per year of State tax dollars. The certification of the State tax credit for Hawaii 3R's projects is done through the DOE, which again ensures an independent review of the contributions and contributors.

Lastly, I would be willing to meet with your committee or program representative to further discuss the experiences of Hawaii 3R's. Thank you for the opportunity to provide testimony.

Ryan T. Shigetani
Executive Director
Hawaii 3R's

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SUBJECT: INCOME, Credit for charter school repair and maintenance

BILL NUMBER: SB 2164; HB 2561 (Identical)

INTRODUCED BY: SB by Sakamoto; HB by Takumi, Berg, Chang, Sonson & 1 Democrat

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow a taxpayer subject to HRS chapter 235 and: (1) licensed under HRS chapters 444, 448E, 454, 460J, 464, 466K, or 467; (2) is a member of the Hawaii state bar association; (3) is an employee of entities regulated under title 22; or (4) provides environmentally sustainable goods or services; to claim a tax credit for contributions of in-kind services for the repair, maintenance, acquisition, predevelopment, rehabilitation, construction, and other capital improvements of charter schools provided by the licensed taxpayer in Hawaii or facilities administered, operated, or developed by nonprofit corporations for the benefit of charter schools. The credit shall be 10% of the value of contributions of in-kind goods and services to the Hawaii charter school facilities fund for that taxable year up to an annual maximum of \$40,000.

Credits in excess of tax liability may be applied to subsequent tax liability until exhausted. Requires claims, including any amended claims, to be filed on or before the end of the twelfth month following the taxable year for which the credit may be claimed.

Directs the Kanu o ka aina learning ohana to maintain records of taxpayers eligible for the credit and the total value of in-kind goods and services contributed by eligible taxpayers. Delineates the provisions relating to the verification of contributions, issuance of a certificate to qualified taxpayers to be filed with the department of taxation. When the total amount of certified contributions reaches \$2.5 million, the Kanu o ka aina learning ohana shall cease the issuance of certificates.

Directs the director of taxation to prepare the necessary forms to claim the credit, may require proof to claim the credit, and adopt rules pursuant to HRS chapter 91 to carry out this section.

Adds a new section to HRS chapter 302B to establish the Hawaii charter school facilities fund as a separate fund of the kanu o ka aina learning ohana, a Hawaii nonprofit corporation.

Appropriates \$2.5 million for fiscal 2009 for the Hawaii charter school facilities fund, effective July 1, 2008.

EFFECTIVE DATE: Tax years beginning after December 31, 2007

STAFF COMMENTS: This measure proposes to allow contractors, electricians, plumbers, pest control operators, architects, surveyors, engineers, mortgage brokers and solicitors, real estate brokers and

salesman, and real estate appraisers to claim a credit for contributions of in-kind goods and services made for the benefit of charter schools.

SB 2164; HB 2561 - Continued

It should be recognized that the tax system is not an efficient means to accomplish this goal. It should also be noted that since contributions to agencies of the federal, state or county governments under both state and federal income tax laws are deductible against gross income, it would appear that the adoption of this measure is unnecessary.

Care should be exercised in this area. Note well that there is no standard for determining the value of the "in-kind" contributions. While there is a cap on the amount of the credit set at \$40,000 per year per taxpayer, how much work that represents is not clear. At a rate of 10%, the maximum credit would represent \$400,000 of in-kind services contributed to this program. Does that represent one hundred hours of work or ten hours of work? It will all depend on what the taxpayer estimates as the value of his in-kind services. That time may represent very much in the scheme of things.

On the other hand, inasmuch as the proposed credit would be granted only for contributions to public charter schools in the state, it discriminates against non-public institutions of learning. Since the current allowance for deduction of contributions made to educational institutions does not differentiate between public or private entities, the deduction is more equitable.

One of the complaints filed by charter schools is the allocation of resources from the department to run such schools does not take into account the capital necessary for facilities. As a result, the allocation of public funds merely recognizes operating costs and, as a result, what funds are available must cover both the cost of programs and facilities. This is the advantage enjoyed by the traditional public school. All of the public school facilities were built with public funds, usually debt financed and generally are charged against operating costs. One alternative to addressing this disparity is to allow charter schools to use public facilities. Many of the educational facilities in the Honolulu urban core and East Honolulu go vacant or are occupied by education administrators because of declining enrollment as the center of the population moves out west or to Central Oahu. Consideration might be given to allowing charter schools to utilize these facilities as an alternative to renting or building their own facilities. Since these are students who would otherwise have been in the traditional public school, it only makes sense to utilize these facilities and ease the burden on charter schools operating costs.

The irony of this proposal is that it proposes to reward some, but not others, for volunteering of their time and skills. The spirit of the bill is based on "volunteerism" with all parties coming together to solve this problem that is the case, it is questionable why some who participate will get a tax credit while others will not be compensated in a similar manner. If indeed this bill represents an effort from the community, then there is no reason to provide a tax credit for some and not others who are giving of their time, talents and materials to improve the schools and the community as a whole. Why are only these professionals singled out? Is it because they want to be paid while others volunteer? At the crux of it all, that is what the credit represents, is payment for contributions of "in-kind services." Obviously volunteerism no longer comes from the heart, but rather it comes from the pocketbook.

berg1-Liz

From: Shawn A James-Leavey [leavey@hawaii.edu]
Sent: Thursday, January 31, 2008 5:58 PM
To: EDNtestimony
Subject: Support for HB 2561, Hawai'i Charter Schools Facilities Fund

EDN, Friday, 02-01-08, 2:15 pm, RM 309

IN SUPPORT OF HB 2561, ESTABLISHING THE HAWAI`I CHARTER SCHOOLS FACILITIES FUND

Honorable Chair Takumi, Vice Chair Berg and members of the House Education Committee:

I wholeheartedly support the creation of a community development fund to support charter school facility financing. Setting up this type of fund to attract capital from public and private sources and channel investment into the development of our charter schools is an excellent example of the innovative problem-solving and resourceful action that these schools not only teach, but strive to practice, as well.

I also support tax credits for in-kind contributions to charter schools facilities development. This is another great idea that will encourage more charitable giving to the schools and will give a positive incentive for more of the community support that allows these schools to truly thrive.

mahalo for your consideration,
Shawn James Leavey
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