



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2164, RELATING TO EDUCATION.

BEFORE THE:

SENATE COMMITTEE ON EDUCATION.

LATE

DATE: Monday, January 28, 2008 **TIME:** 1:15 PM

LOCATION: State Capitol, Room 225

Deliver to: Conference, Room 225, 1 copy

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

Chair Sakamoto 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.

Third, 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.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON EDUCATION
ON
SENATE BILL NO. 2164

January 28, 2008

RELATING TO EDUCATION

Senate Bill No. 2164, 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.

LAFFERTY
TESTIMONY