



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2296, S.D. 1, PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Thursday, February 14, 2008 **TIME:** 10:00 AM

**LOCATION:** State Capitol, Room 016  
*Deliver to: Committee Clerk, Room 219, one copies*

**TESTIFIER(S):** WRITTEN COMMENTS ONLY  
For further information contact  
Brian Aburano, Deputy Attorney General, 586-0618

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Chair Taniguchi and Members of the Committee:

The Attorney General opposes this bill as currently written.

The bill seeks to amend article VII, section 12 of the Hawaii Constitution to authorize the issuance of special purpose revenue bonds to assist charter schools and not-for-profit corporations and community development financial institutions that support charter schools [page 5, lines 19-21].

First, it is questionable whether special purpose revenue bonds may be authorized to directly assist charter schools. Special purpose revenue bonds are designed to assist private non-governmental entities. State governmental entities may be financially assisted through general funds and general obligation bonds. Charter schools as defined in section 302B-1, Hawaii Revised Statutes (HRS), are public schools, not private schools.

In addition, there is a question as to whether charter schools have the necessary revenue to secure and pay for the principal and interest of special purpose revenue bonds. Pursuant to section 302B-12(e), HRS, charter schools cannot charge tuition. Further, charter schools would be unable to use any funds that they receive from the State to secure and pay for the principal and interest of special

purpose revenue bonds. Under article VII, section 12 of the Hawaii Constitution, no special purpose revenue bond "shall be secured directly or indirectly by the general credit of the issuer [the State] or by any revenues or taxes of the issuer other than receipts derived from payments by a person or persons under contract or from any security for such contract or contracts or special purpose revenue bonds and no moneys other than such receipts shall be applied to the payment thereof."

Given the inability of charter schools to charge tuition and the prohibition against using funds from the State to secure special purpose revenue bonds, there is a question as to whether not-for-profit corporations or community development financial institutions that support charter schools would ever have the necessary revenue to secure and pay the principal and interest of special purpose revenue bonds.

Finally, special purpose revenue bonds are generally issued as tax-exempt bonds (bonds that bear interest exempt from federal income taxes) so that the borrower can pay lower interest rates than would have to be paid under taxable bonds or commercial loans. In order for the bonds contemplated by this bill to be tax-exempt, all property that is to be provided by the net proceeds of the bonds would have to be owned by a 501(c)(3) organization or a governmental unit. See 26 U.S.C. § 145. Alternatively, it may be possible for the bonds to be tax exempt under 26 U.S.C. § 142(a)(13) if ninety-five percent or more of the net proceeds of the bonds are used to provide qualified public educational facilities. Qualified public educational facilities are facilities that are part of a public elementary or secondary school, owned by a private for-profit corporation pursuant to a public-private partnership agreement with a state educational agency. The public-private partnership agreement must provide: (1) for the for-profit corporation to construct, rehabilitate, refurbish, or equip a school facility; and (2) at the end of the term of the agreement, to transfer the school facility to the state educational agency for no additional consideration. See 26 U.S.C. § 142(k). Unless the State is planning

on entering into public-private partnership agreements with for-profit corporations that support charter schools, it may be advisable to limit the parties that may be assisted by special purpose revenue bonds to not-for-profit corporations that support charter schools.



**SB 2296 PROSING AMENDMENTS TO THE HAWAII CONSTITUTION  
RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS**

Senate Committee on Judiciary and Labor

February 14, 2008  
Room 016

10:00 am

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The Office of Hawaiian Affairs supports SB 2296, which proposes amendments to the Hawaii Constitution relating to the issuance of special purpose revenue bonds. The Office of Hawaiian Affairs is a supporter of the charter school movement, and has collaborated with Kamehameha Schools and others in assisting the 13 Hawaiian-focused charter schools, where Native Hawaiians make up about 96% of the student population, and up to 40% at the other 15 charter schools in the state. This legislation implements a funding mechanism to help charter schools address their ongoing need for facilities, especially as it relates to start-up charter schools.

To quote from our February 2008 issue of Ka Wai Ola, Dr. Reshela Dupuis, Director of the Charter School Administrative Office, states:

Almost all of the Native Hawaiian charter schools are start-ups, where facilities are a major issue. Start-up schools don't have facilities, and they've never had equitable facilities funding. We have students who are still being educated in tents, in Quonset huts, in very temporary kinds of lodgings and this means that Hawaiian students are being educated without full funding for facilities by the state because they go to a public charter school.

The charter schools have demonstrated their effectiveness in helping our Hawaiian children to be more engaged and make greater gains in the educational process as compared to their peers in conventional schools. And that is in spite of these charter schools being severely under-funded. Our children are succeeding in the Hawaiian-focused charter schools because they are grounded in Hawaiian language, culture and values.

Statutory provisions already authorizes the use of special purpose revenue bonds to finance facilities for health-care, early childhood education, as well as not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities. However, except for D.O.E. conversion charter schools that already have start up facilities, the majority of the state's charter schools must use their per pupil allocation towards facilities rental, maintenance, and upkeep.

Special purpose revenue bond authority will allow charter schools to leverage public investment as well as federal funds to address the facilities needs of charter schools and preserve the per pupil allocation for direct educational purposes. Moreover, the proposed community development financial institution is an ideal model for building Native Hawaiian communities.

It is not enough to make possible the opportunity for our children to attend charter schools. It is incumbent upon us to ensure that the learning

environments we create for our children, and indeed for all children, must be reflective of the promising future that we envision for them and for our society.

The State is the largest stakeholder and is charged with the greatest responsibility or "kuleana" to make this possible. The funding mechanism proposed by this legislation is necessary to resolving the critical lack of funding to help pay for much needed facilities by our charter schools.

OHA urges your support for this bill. Mahalo nui loa for the opportunity to present this testimony.



February 13, 2008

**In strong support of specific sections of SB2296**

Aloha Members of the Senate Committee on Judiciary and Labor,

My name is Keola Nakanishi, Executive Director/Co-Founder Halau Ku Mana New Century Public Charter School. Thank you for the opportunity to testify in support of HB2794.

SB2296 proposes a constitutional amendment to authorize the State to issue special purpose revenue bonds to assist nonprofit corporations supporting one or more charter schools, community development financial institutions benefiting one or more public charter schools, and charter schools.

We believe that 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.

Our message is simple and clear, and it is shared by thousands in the Hawaiian and charter school communities. This message is one that all charter school directors agreed on, and I as a charter school student also agree with.

The bill(s) we support today and throughout this Session have components for positive change in these areas:

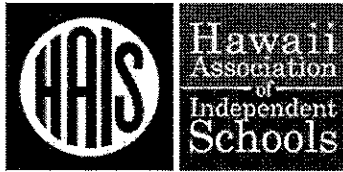
1. Equitable and ample funding for all public schools - Mainstream or charter, city or country, every child is entitled to quality education, their `ohana are taxpayers.
2. Safe, long-term facilities for every public school, including charters. Again, all keiki in public education and all public schools deserve this.
3. A charter school office and executive director that is chosen by the people who make charter schools work, together in one representative body.

We support any part of any bill that supports community, culture, and/or environment-based schools of choice. Because Halau Ku Mana is grounded in Hawaiian community, culture, and `aina, we also support any part of any bill that support the `aina and people of Hawai'i.

Mahalo for your time and consideration and mahalo for your support of SB2296.

Keola Nakanishi

Executive Director



February 14, 2008  
10:00 a.m.  
Conference Room 016

TESTIMONY TO  
THE SENATE COMMITTEE ON JUDICIARY & LABOR

RE: SB 2296 SD1 – Proposing Amendments to the Hawaii Constitution  
Relating to the Issuance of Special Purpose Revenue Bonds

Dear Chair Taniguchi, Vice Chair Hee, and Members of the Committee:

My name is Robert Witt, executive director of the Hawaii Association of Independent Schools (HAIS), which represents approximately 100 private and independent schools and educates over 30,000 students statewide.

Our association supports the intent of SB 2296 SD1, which proposes a constitutional amendment that will authorize the State of Hawaii to issue special purpose revenue bonds to assist nonprofit corporations supporting one or more charter schools, community development financial institutions benefiting one or more public charter schools, and charter schools.

Our association works closely with both charter schools and nonprofit organizations that support them. Particularly in the areas of school governance and finance, we have found that we are able to engage in beneficial dialogue with the many fairly new charter schools here in Hawaii, and share with them a useful body of knowledge regarding our many shared concerns.

In addition, HAIS is familiar with charter schools' need to secure capital funding for campus development, and to such ends we agree that in addition to public funding, additional private funding will likely be required to address the needs of these schools regarding the renovation of existing campuses and the construction of new facilities and 21<sup>st</sup> century learning environments.

HAIS has experience and knowledge concerning campaigning for the approval of constitutional amendments, as well as special purpose revenue bonds, both of which we are prepared to share with charter schools should this measure be approved, which we hope it will be in this session.

Thank you for the opportunity to testify on this measure today.



## KAMEHAMEHA SCHOOLS

Testimony to the Senate Committee on Judiciary and Labor  
Hearing Date: Thursday, February 14, 2008  
10.00 a.m. – Conference Room 016

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

Thursday, February 14, 2008

Re: SB 2296, SD1 – Proposing Amendments to the Hawaii Constitution Relating to the Issuance of Special Purpose Revenue Bonds.

Good morning Chair Taniguchi, Vice Chair Hee and members of the Senate Committee on Judiciary and Labor. My name is Shawn Malia Kana'iaupuni, PhD, Director, Public Education Support (PEdS) Division of Kamehameha Schools. Thank you for this opportunity to testify in support of SB 2296, SD1.

We believe that 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 14 nonprofit tax-exempt organizations, including `Aha Pūnana Leo, OHA, KALO and Ho`okāko`o Corporation, to assist a total of 12 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 on 4 major islands, within the public education system.

In a report released August 2006 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 SB 2296, SD1 which is to provide a greater measure of support for charter schools.

We appreciate this opportunity to submit comments on SB 2296, SD1 and support the initiatives of the legislature to further enhance charter schools.



**testimony**

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**From:** Ka'ohi Ward [kaohi@kalo.org]  
**Sent:** Wednesday, February 13, 2008 8:33 AM  
**To:** testimony  
**Subject:** Testimony in strong support of SB 2296 SD1 PROPOSING

February 13, 2008

Senate Committee on Judiciary and Labor  
Thursday, February 14, 2008 at 10 a.m. in room 016

Testimony in strong support of SB 2296 SD1 PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS

Chair Taniguchi and members of the committee:

Thank you for agreeing to hear this measure.

Facility financing is one of the most important challenges facing charter schools in Hawaii. Except for 2006 when charters received a one-time per pupil facilities appropriation of \$660, charters don't receive any state funding for facilities (except for the five conversions). Instead, they are forced to pay for their occupancy costs out of a per pupil allocation that is already significantly lower than that provided to Department of Education-operated schools.

Having said that (and in spite of a clear obligation under Article X, section 1 of the State Constitution to provide equitable funding for charter school facilities), let's focus on what is achievable and what we can do now to support the big-ticket repair, maintenance and capital improvement needs of all charter schools without partiality by developing the fiscal, administrative and statutory infrastructure needed to facilitate innovative public-private partnerships that can attract robust, diverse and sustainable resource streams from a wide variety of state and national players.

The Hawaii Association of Independent Schools and experienced bond counsel stand ready to provide any assistance they may be needed to implement this source of funding for charter schools, their affiliated non-profits, and community development financial institutions that support charter schools.

Thank you for the opportunity to testify. I would be happy to answer any questions the committee may have at the appropriate time.

Aloha,

Vera Ka'ohi Ward  
Accounts Payables  
(808) 887-1117

Kanu o ka 'Āina Learning 'Ohana  
Grows womb-to-tomb models of education that advance Hawaiian culture for a sustainable Hawai'i  
P.O. Box 6511, Kamuela (Waimea), Hawaii 96743

2/13/2008

## testimony

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**From:** Jason Ward [jward@keck.hawaii.edu]  
**Sent:** Wednesday, February 13, 2008 10:51 AM  
**To:** testimony  
**Subject:** SB 2296 SD1 PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS

February 13, 2008

Senate Committee on Judiciary and Labor  
Thursday, February 14, 2008 at 10 a.m. in room 016

Testimony in strong support of SB 2296 SD1 PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS

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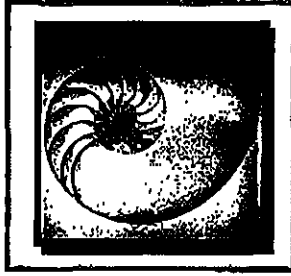
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Thank you for the opportunity to testify. I would be happy to answer any questions the committee may have at the appropriate time.

Mahalo....

Jason Ward  
Systems Administrator  
W.M. Keck Observatory  
65-1120 Mamalahoa Hwy.  
Kamuela, HI. 96743  
☎ (808) 885-7887 x3881  
✉ [jward@keck.hawaii.edu](mailto:jward@keck.hawaii.edu)



## West Hawai'i Explorations Academy

A Public Charter School

Located near the Natural Energy Laboratory-Hawaii, Keshole-Kona, Island of Hawaii

73-4460 Queen Ka'ahumanu Hwy #105, Kailua-Kona, HI 96740

Phone: (808)327-4751 Facsimile: (808)327-4750 Email: [explorations@whea.net](mailto:explorations@whea.net)

February 13, 2008

Senate Committee on Judiciary and Labor  
Thursday, February 14, 2008 at 10 a.m. in room 016

Testimony in strong support of:  
SB 2296 SD1 PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION  
RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS

Dear Senator Taniguchi and Honorable Members of the Committee:

I am gratified to see this effort in creating opportunities for schools to access revenue bonds to finance CIP and facilities.

West Hawaii Explorations Academy provides a case in point illustration of how large bond access could benefit charter schools immediately.

WHEA has been located on the same 4 acre site in the Natural Energy Laboratory since 1994. Initially, the state provided a (now obsolete) "portable", a perimeter fence, and the legislature's yearly "per pupil" allocation which started at less than \$3000 (we are very grateful for the yearly increases since!).

With these limited resources, the school literally built itself from the bare ground through donations and sweat of students, parents, teachers and community. We now have a functional (albeit not very aesthetic) outdoor environmental education center with an innovative curricular model that has won several national awards and other notable recognition.

Over time, we have managed to accumulate a small "war chest" toward relocation and building of a "green-school" model campus. We estimate that with a bond float of as little as \$5 million dollars, we could manage our design phase and relocation. However, at the current rate of frugal accumulation, we would not be able to break ground for another 10 years.

WHEA would be 25 years old by then.

Many of you have parents or grandparents who financed their homes through "tanomoshi" and "hui". In Hawaii's plantation days, people banded together to pool money in order to survive. Charters are faced with the very same predicament that our forebears faced. We are able to live within our means year-to-year, but we are unable to move ahead with suitable quarters. For schools like WHEA, SPRBs would be one viable path toward the future.

Thank you for your thoughtful consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Curtis Muraoka', written in a cursive style.

Curtis Muraoka, Co-Director  
WHEAPCS

## Testimony in strong support of SB 2296 SD1

**LATE**

### PROPOSING AMENDMENTS TO THE HAWAII CONSTITUTION RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS

Chairman Senator Taniguchi  
Senate Committee on Judiciary and Labor

Gene Zarro  
Chair, Kihei Charter School  
808 385 1197

Thursday, February 14, 2008 10 a.m. room 016

Aloha Chair Taniguchi and members of the committee:

I would first like to thank you for hearing this Senate Bill.

Charter Schools are in need of some assistance in meeting the educational facility needs of our communities. This bill will go a long way in meeting that need. I am willing to take on the challenge of getting the investors or donors but without the ability to off the Special Purpose Revenue Bonds as an investment option the reality of our building being built seriously diminishes.

We ask that you pass this bill on to the next committee and give us a chance to help ourselves do more for our families.

Kihei Charter School is in its 7<sup>th</sup> year of operation. The South Maui Learning Ohana, Inc. (the founder's organization) has been an established 501c3 non profit for years longer.

We are a WASC accredited school with a student enrollment that grows by 15% or more per year. We have a waiting list and the only reason we cannot take more students is the facility challenge.

The passage of this bill will be a great help.

Sincerely

Gene Zarro