

LATE TESTIMONY

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. 2494

January 30, 2008

RELATING TO EDUCATION

Senate Bill No. 2494, 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 an unspecified amount of 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.

LATE TESTIMONY

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

SENATE COMMITTEE ON EDUCATION

TESTIMONY REGARDING SB 2494 RELATING TO EDUCATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: JANUARY 30, 2008
TIME: 1:15PM
ROOM: 225

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. The Department points out that this legislation is identical to SB 2164, considered by this committee earlier this session.

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.



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

ON THE FOLLOWING MEASURE:
S.B. NO. 2494, RELATING TO EDUCATION.

BEFORE THE:
SENATE COMMITTEE ON EDUCATION.

DATE: Wednesday, January 30, 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 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.



TESTIMONY TO THE SENATE COMMITTEE ON EDUCATION

Wednesday, January 30, 2008

1:15 p.m.

State Capitol Conf. Rm. 225

S.B. 2494 – RELATING TO EDUCATION

Chair Sakamoto, Vice Chair Tokuda, 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:

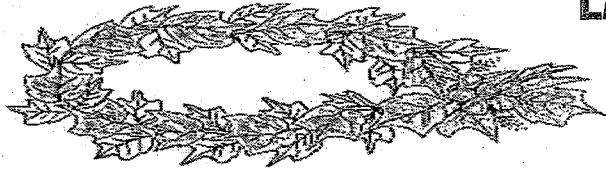
- 1) Hawaii 3R's grant applications and awards are based on projects that are on the DOE's official R&M backlog list. This means that a DOE Inspector (or DAGS Engineer on the neighbor island) has reviewed the project's scope and has calculated an official estimate. This official estimate is then used 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



'A'ole pau ka 'ike i ka hualau hio'okali

Connections Public Charter School

A Community, Business & Education Learning 'Ohana

Testimony in Support of SB 2296, 2494, and 3254
John Thatcher, Principal, Connections PCS

Senators Sakamoto, Tokuda and members of the Committee on Education:

I want to speak strongly in support of all legislation that will help our charter schools with one of our most difficult problems: facilities. Specifically, I'd like to ask for your support of SB 2296, SB 2494 and SB 3254. A coordinated, multi-pronged approach is needed to create long-term solutions. These bills provide hope for defining potential solution strategies and a vehicle for overseeing implementation. They also provide a means for addressing some of the "myths" associated with charter school facilities.

In a report titled Debunking the Real Estate Risk of Charter Schools the Ewing Marion Kauffman Foundation found that landlords and real estate lenders who are wary of dealing with charter schools may perceive the schools as much riskier clients than they actually are. The foundation found that of all charter schools that have ever opened in this country, 5.95% have closed in a way that impacted their landlords or real estate financiers. And, even when charter schools actually failed, the re-use rate of facilities is very high (96%). State education officials reported that landlords faced no loss in nearly all of these cases and were able to re-lease the facilities at equal or higher rates to the new tenants. Having a long-term facility solution was found to reduce the risk of charter schools failing. However, their survey sample (804 of 1,703) had only short-term leases. These schools had adequate spaces but did not have homes assured for the future.

Recognizing the importance of ensuring sound financing for charter schools, the U.S. Department of Education has established a "Credit Enhancement for Charter School Facilities Program" that channels funds, on a competitive basis, to other organizations to "credit enhance" charter school loans or leases. A key advantage of the program is that it uses federal money to leverage federal support with private money. Our school has benefited from this program. Our associated non-profit worked with the Raza Development Fund to secure a loan to purchase our facilities. The acquisition has provided our school with a sense of stability and enables our ability to realistically focus on long-term planning. It also provides a "case study" that can be used to help other charter schools develop strategies for solving their specific facilities-related problems. One of the defining characteristics of charter schools, in Hawaii and nationally, is that every school is different. Every charter school in Hawaii has a unique program with unique needs. Together we embrace the right of individual families to choose a school that they feel will best meet the needs of their children. And those children have a

constitutionally guaranteed right to attend a public school with the State supporting the physical facilities therefor.

Mahalo!