

TESTIMONY OF TOM MACDONALD ON SB496SD2 AT HOUSE EDUCATION
COMMITTEE March-18-09 At 2:00 PM

My name is Tom Macdonald and I am testifying on behalf of the Charter School Review Panel. Thank you for the chance to have input on these bills that are so critical to the continued health of our 31 public charter schools.

On SB496 SD2, the omnibus charter school bill that is based on the omnibus bill that died in last year's legislature, there are three major provisions and one minor provisions that the Panel suggests amending.

First of all, the Panel and the Board of Education have reached an agreement on compromise language calling for charter schools to comply with certain BOE/DOE directives, subject to review of the language by the Attorney General's office. The words ***Public charter schools shall comply with board and department directives made in the board's and department's role as SEA, as agreed upon in a separate Memorandum of Agreement between the board and the panel identifying those directives*** should replace language in sections:

- * 302B-1 definition of local school board (2)
- * " " definition of organizational viability (12) and (13)
- * 302B-12 (a)(3)(d)(3)

The second major provisions of SB496 that we request be amended are the financial provisions in Section 302B-8 and 302B-12:

Section 302B-8(b)(1)(B) provides a new per pupil appropriation for facilities based upon the amount the DOE pays for debt service on their school facilities. (However, debt service has been removed from the basic per pupil formula, so this is not an increase in funding)

The current language in SB496 calls for an indeterminate "***portion of***" that debt service to be used in the formula. Such vague language will lead to disagreements about what "***portion***" is appropriately included. We request that the words ***a portion of*** be deleted, so that the ***full amount*** of DOE debt service is used in the facilities calculation.

Using full DOE debt service would have resulted in a per pupil facilities appropriation for the past year of approximately \$1150. This is at best a barely adequate sum for schools that are not provided a school building to pay for rent, maintenance, and utilities for classroom and administration space.

The current wording of 302B-8 (1)(b)(2) deducts the amount of facilities funding from the base which the CSAO uses to calculate the 2% operating funds for the office. This would cause a reduction in the amount the office can receive. We request that the words *general fund* be deleted from that section to return it to its original language..

We would also suggest that the provisions for facilities funding be move from Section 302B-8 to Section 302B-12, where the basic funding provisions are located.

Section 302B-12(a)(2)(A) and (B) would reduce the general per pupil funding formula in the current statute by including only DOE *general fund* regular educations cost categories rather than *all* regular education cost categories, and limiting the means of financing to only *general funds* instead of *all means of funding except fringe benefit costs, debt service, and federal funds*. We request that these changes be eliminated and the language in the original draft of SB496 continue to be used.

We also request that language deleted by Ways and Means in 302B-12 (a)(2)(b) eliminating reimbursement of fringe benefit costs to those schools using a private payroll service be reinstated. Otherwise, the provisions of that section will conflict with provisions requiring that charter school fringe benefit costs *regardless of payroll system utilized* shall be included in B&F's annual budget request.

Our third major concern is a modification of the provisions authorizing the panel to put a school on probation or revoke a charter. Currently 302B-14 (d) (4), (5), and (6) set out mandatory periods of one year or two years for probation, depending on the cause. The Panel would like to have the the flexibility to impose shorter or longer periods of probation, depending on the particular school situation. Changing the word *shall* to *may* in (4) and (5) and inserting the words *up to* in (4),(5), and (6) would provide the needed flexibility.

And the panel requests that this sentence be added to the text at the end of 302B-14 (d):
A school's failure to comply with terms of probation shall be grounds for revocation of its charter prior to the end of the probationary period.

Finally, one minor suggested change. 302B-12 (a)(3)(d)(3) requires the CSAO to hold the final 10% of a school's appropriation until June 30, when the school year is over. This presents cash flow problems to several of the schools who need those funds for payroll and other costs in the final month of the year. We request that the date for the final payment be changed back to the original January first.

I will be happy to answer any questions the Committee members may have. And I would also be pleased to work directly with committee staff as they rewrite any of these complex provisions .

Testimony to the House Committee on Education
Hearing Date: Wednesday, March 18, 2009
2:00p.m. – Conference Room 309

Testimony on SB496

Steve Hirakami

Director, Hawaii Academy of Arts and Science

Committee: EDN
Room: 309
Hearing Date: 3/18/2009 3:00:00 PM
Bill: SB496
Position: General Support

To the honorable Representatives Roy Takumi, Lyla Berg, and other members of the EDN: I am in “general” support of this bill because it separates out facilities financing by a calculation of a “portion” of department debt service. I realize the importance of somehow dealing with the facilities issue in the law but I still hold reservations about portions of the bill, specifically:

- Section 2. Section 302B-1 HRS “Local school board” means the autonomous governing body of a charter school that... (2)Possesses the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with board policies made in the board’s capacity as the state education agency, department directives made in the department’s capacity as the state education agency, and applicable federal and state laws *Being held in compliance with every board policy or department directive directly usurps the autonomy of local schools boards and the founding concepts of charter schools.*
- 302B-3 Charter school review panel; establishment; powers and duties. (e) Notwithstanding the terms of members, the board may add panel members at any time and replace panel members at any time when their positions become vacant through resignation, through non-participation, ~~[or]~~ upon request of a majority of panel members ~~[.]~~, or upon termination by the board for cause. *The board appoints panel members and should leave it up to the panel to remove members by a majority vote and send it to the board for ratification as already provided by this law.*
- 302B-8(1)(B) A calculation showing the per-pupil funding based on a portion of the department’s debt service appropriation divided by the department’s actual enrollment that school year: *If the word “portion” were defined and a bottom line percentage such as in “no less than 80% of the department’s debt service” it would make it less subjective.*
- 302B-12 Funding and finance (a) Beginning with fiscal year ~~[2006-2007]~~ 2008-2009, and each fiscal year thereafter, ~~[the office shall submit a request for general fund appropriations for each charter school based upon.]~~ the per pupil funding amount for charter school students shall not be less than the total per-pupil amount in the same year to the department; provided that: (2) [A] The per-pupil amount [for each regular education and special education student, which shall be equivalent to the total per-pupil cost based upon average enrollment in] shall include, but not be limited to, all regular education cost categories, including comprehensive school support services,...
Charter school leaders strongly object to the deletion of the term “special education student”. This was deliberately added to the law in July 2003 after two years in which the department and the legislative auditor neglected to fund roughly 250 special education students in SY 2001-02 and 2002-2003. The total funds not allocated for those two years equate to nearly \$1.9 million.

different budget periods of multi-year awards. Grantees in specific programs with legislation containing “supplement-not-supplant” (like Title I) provisions are subject to applying a “restricted” rate to the grants. The restricted rate is lower than the usual negotiated indirect cost rate because the calculation excludes certain items of general management and fixed costs from the indirect cost rate charged to a grant. Sections 75.563 and 76.564-569 in EDGAR discuss restricted rates in more detail.

- 302B-12 (d) (3) Retain the remaining ten per cent of a charter school’s per-pupil allocation no later than ~~[January 1]~~ June 30 of each year as a contingency balance to ensure fiscal accountability ~~[.]~~ and compliance; provided that the panel may make adjustments in allocations based on noncompliance with ~~[federal and state reporting requirements,]~~ board policies made in the board’s capacity as the state education agency, department directives made in the department’s capacity as the state education agency, the office’s administrative procedures, and board approved accountability requirements.

Changing the allocation date to after the last day of school and the last day of the fiscal period makes absolutely no sense and shows a lack of fiscal responsibility to the charter school children in the State. Since the creation of EDN 600 in July 2004, 50% of a school’s allocation based on the projected enrollment in May of that year was allocated on July 20, 40% of the allocation based on the final enrollment count on October 15 of each year was allocated on Nov 15, and the remaining 10% was distributed on January 1st. This is the only acceptable (and reasonable) allocation schedule that charters can work with.

I think that the part of this bill that recognizes the specific need of charter schools to get some facility support is important. As you can see from my above testimony there are parts that are not in the best interests of charter school students, but in an effort to keep a funding mechanism alive, I hope that you will see a compromise position or at least bring this up for discussion with the office, panel, and charter administrators and boards.

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§ -2 **State council.** There is established within the board of education for administrative purposes the state council on educational opportunity for military children. The board of education shall establish the state council, as required by Article VIII of the compact. The membership of the state council shall include, at a minimum, the superintendent of education or the superintendent's designee; the complex area superintendents of the administrative districts that contain the Leilehua, Radford/Moanalua, and Kalaheo school complexes; a complex area superintendent from the Leeward District; the military liaison from the department of education; one military representative each from the United States Pacific Command, a representative from the Air Force, Army, Marine Corps, Navy, and Coast Guard; a representative of the executive branch of government; the chairperson of the senate education committee or the chairperson's designee; the chairperson of the house education committee or the chairperson's designee; and other offices and stakeholder groups the state council deems necessary. Members of the state council may delegate voting authority to another person for a specified meeting or meetings. The state council shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact. The compact commissioner and the military family

education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.

The council shall establish policies and procedures governing its operations without regard to the public notice, public hearing, and the gubernatorial approval requirements of chapter 91, but subject to the open meeting requirements of chapter 92.

SECTION 2. This Act shall take effect on July 1, 2009, and shall be repealed on July 1, 2011.