



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

February 27, 2013

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
The Honorable Aaron Ling Johanson, Vice Chair
Honorable Members
House Committee on Finance
State Capitol, Room 306
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on HB No. 674, HD 1, Relating to Education**

Hearing: Wednesday, February 27, 2013, 11:30 a.m.
State Capitol, Conference Room 308

Written Testimony From: Hawaii State Ethics Commission

The Honorable Sylvia Luke, Chair; The Honorable Scott Y. Nishimoto, Vice Chair;
The Honorable Aaron Ling Johanson, Vice Chair; and Honorable Members of the
House Committee on Finance:

Thank you for considering the Hawaii State Ethics Commission's testimony on House Bill No. 674, HD 1, Relating to Education. The Commission's comments relate to the bill's proposed amendment to HRS section 302D-12(h), relating to the definition of the term "employee." The Commission strongly supports broadening the definition of charter school "employee" in section 302D-12(h) to include "any person under an employment contract to act as the chief executive officer, chief administrative officer, executive director, or designated head of a charter school," as proposed in HB No. 674, HD 1.¹ The Commission takes no position with respect to the bill's changes to the governance structure for Hawaii's charter schools.

Charter school employees, currently, are subject to and must comply with the standards of conduct established in the State Ethics Code. However, employees of a private entity, including a business contracted by a charter school to provide leadership or managerial-type services for the school, are not "employees" as defined by the State Ethics Code and therefore are not required to comply with the State Ethics Code. That

¹ See page 19, lines 11-13.

The Honorable Sylvia Luke, Chair
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Honorable Members of the House Committee on Finance
February 27, 2013
Page 2

means, for example, someone who is employed by the charter school as its head of school must comply with the conflicts of interest provision, cannot accept certain types of gifts, and is prohibited from misusing his position to give himself or others an unwarranted benefit or advantage. If that same person was employed by a private business under contract with the charter school to provide those services to the school, because the State Ethics Code does not apply to him, he could, for instance, accept lavish gifts from competing vendors and suppliers given to influence or reward his procurement decisions, take action with respect to matters that may financially benefit himself, and misuse his position to give others, including his friends and family, special treatment and unfair advantages.

The Commission does not believe that the head of a public agency, such as a charter school, funded primarily through public monies, should be exempt or otherwise not subject to the standards of conduct that the legislature deemed necessary to foster public confidence in state government. For that reason, the Commission strongly supports the amendment to section 302D-12(h) to include contracted employees in certain managerial positions within the definition of “employee” for purposes of section 302D-12.

Section 302D-12(f) mandates that all charter school employees shall be subject to chapter 84, which is the State Ethics Code. By amending the definition of “employee” to include the contracted employees in certain leadership positions, the Commission believes that those people will be required to follow and abide with the same standards of conduct as other charter school employees.

The Commission, however, notes that the definition of “employee” in the State Ethics Code is not amended by this bill. For that reason, the Commission likely will not have jurisdiction to enforce section 302D-12(f) with respect to those people who are employed by a non-state entity contracted by a charter school to provide leadership or managerial-type services. Enforcement of section 302D-12(f), as it applies to persons “under an employment contract to act as the chief executive officer, chief administrative officer, executive director, or designated head of a charter school” will likely be through the Department of the Attorney General.

Lastly, the Commission notes that the disqualification provision in the portion of the bill amending section 302D-3(j) is more stringent than the State Ethics Code, specifically section 84-14(a). The bill requires members of the Public Charter School Commission, if they are an employee, governing board member, vendor, contractor, agent, or representative of a charter school, to disqualify themselves from voting on or

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
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February 27, 2013
Page 3

participating in matters involving their interests.²

Under the State Ethics Code, an employee cannot take official action directly affecting a business or other undertaking in which he has a substantial financial interest. In interpreting this provision, the Commission has construed the term “business or other undertaking” to be limited to private interests and not to include other governmental agencies. For that reason, generally, a state employee who serves on a state board or holds another state position is not prohibited from taking action that may directly affect his other state agency. Hence, the State Ethics Code would not prohibit a Charter School Commission member, who is employed by a public charter school or serves on a governing board, from taking official action affecting the charter school.

The Commission appreciates your consideration of its testimony relating to HB No. 674, HD 1.

² See, HB No. 674, HD 1, page 15, lines 4-9.

NEIL ABERCROMBIE
GOVERNOR



KAREN STREET
CHAIRPERSON

STATE OF HAWAII
STATE PUBLIC CHARTER SCHOOL COMMISSION
1111 Bishop Street, Suite 516, Honolulu, Hawaii 96813
Tel: 586-3775 Fax: 586-3776

FOR: HB 674 HD1 Relating to Education
DATE: Wednesday, February 27, 2013
TIME: 11:30 a.m.
COMMITTEE(S): House Committee on Finance
ROOM: Conference Room 308
FROM: Thomas E.M. Hutton, Executive Director
State Public Charter School Commission

Testimony in support of HB 674 HD1

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

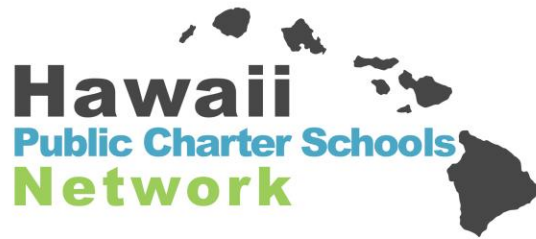
As the newly appointed Executive Director of the State Public Charter School Commission, I am pleased to submit this testimony in support of House Bill 674, House Draft 1.

HB 674 continues the work of Act 130, passed by the Legislature last year, in improving Hawaii's chartering system by amending the new HRS Chapter 302D. The Commission is hard at work preparing to implement the changes set forth in Act 130.

HB 674 incorporates improvements to the statute recommended by the National Association of Charter School Authorizers (NACSA) as reflecting best practices for ensuring charter school success and accountability. As amended by the Committee on Education, the bill further incorporates several of the Commission's recommendations relating to funding, employee criminal background checks, allowable enrollment practices, and conflicts of interest on the Commission.

The Commission believes that by enacting Act 130 and by further improving it with this legislation, Hawaii is well positioned to significantly strengthen its charter school system.

Thank you for the opportunity to provide this testimony.



Hawaii State House of Representatives
Committee on Finance

DATE: Wednesday, February 27, 2013

TIME: 11:30 a.m.

PLACE: Conference Room 308, Hawaii State Capitol

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson and Members of the Committee,

Re: HB244 HD1 – Support w/reservations

Mahalo for the opportunity to testify for HB647 HD1. HPCSN is committed to quality education for all public school students in Hawaii through our work with Hawaii's public charter schools. Hawaii Public Charter Schools Network (HPCSN), in partnership with our member schools, Commission, CSAO, BOE and NACSA, have been hard at work implementing Act 130 of the 2012 legislative session. This has been no easy feat, but certainly an opportunity to put into place fair and consistent "rules of the game" for oversight, monitoring and governance.

The House EDN committee made improvements to this bill with the changes in HD1, however, HPCSN missed the opportunity to share our concerns about language contained in **Section 16, "shall include only those students who fall within the purview of section 302A-1132."**

This language will cut off funding for most, if not all, kindergarten students, SPED students who stay in school until their 20th birthday, other overage students born in states with differing entry dates and those who have been retained at younger ages in charter schools. Hopefully this was an oversight. If the bill is not amended to allow for per pupil payment for these groups of students, HPCSN would have to change its support of this bill.

In conclusion, the Hawaii public charter sector is going through a major transition and for the most part our schools are making every effort to engage and make this an opportunity for, instead of a detriment to, our charter schools. HPCSN applauds these efforts. **Charter schools are under tremendous pressure to achieve more with less funding.** As we continue this tedious and time-consuming work, on behalf of charter schools, **we strongly request some relief by adding facilities support language to this bill.**

Mahalo for your support of Hawaii's public charter schools.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lynn Finnegan", with a long horizontal stroke extending to the right.

Lynn Finnegan
Executive Director

**TO: The Honorable Sylvia Luke, Chair
House Committee on Finance**

FROM: William Haft

DATE: Wednesday, February 27, 2013

RE: TESTIMONY IN SUPPORT OF HOUSE BILL 674, HOUSE DRAFT 1

Chair Luke and Members of the Committee:

I am the Vice-President of Authorizer Development for the National Association of Charter School Authorizers (NACSA) and Director of NACSA's Transition Coordinator work on behalf of the State Public Charter School Commission (Commission). I am pleased to submit this testimony in strong support of House Bill 674, House Draft 1.

NACSA is devoted to improving public education by strengthening the policies and practices of the organizations responsible for authorizing charter schools. Quality authorizing leads to quality charter schools, and NACSA works to create expectations, relationships, practices, policy, and resources for authorizers to excel. NACSA works with local experts to create the conditions needed for quality charter schools to thrive. We push for high standards for authorizers and help to define successful authorizer practices through our *Principles & Standards for Quality Charter School Authorizing*. NACSA believes that genuine reform through charter schools occurs when authorizers adhere to three principles: maintaining high standards for schools, upholding school autonomy, and protecting student and public interests.

NACSA has been contracted by the Board of Education (BOE) pursuant to Act 131, SLH 2012, which authorized the BOE to contract for a transition coordinator to assist with the implementation of Act 130, SLH 2012, and to transition to the new charter school system.

To implement Act 130 and transition to the new charter school system, the following have been accomplished since July 2012:

- BOE appointed the Commission's inaugural members;
- BOE contracted with a transition coordinator (NACSA) to assist with the implementation of Act 130, SLH 2012;
- NACSA conducted a review of functions and developed a draft Commission staffing plan and proposed a Commission operating budget for FB 2013-2015;
- NACSA drafted the charter contract template and developed Hawaii performance frameworks (academic, financial and organizational) with drafts now circulating with the charter schools and other stakeholders to obtain feedback before Commission approval;





- NACSA drafted administrative rules which are now being reviewed;
- NACSA assisted the Commission in implementing a rigorous process to evaluate new charter school applications;
- Commission recently hired its first Executive Director.

With the adoption of Act 130, SLH 2012, the Hawaii charter school law has already moved from 35th in the nation to 14th based on the National Alliance for Public Charters Schools' ranking, but we believe that House Bill 674 includes important improvements that will further strengthen Hawaii's charter sector, including the following:

- Adds annual audit requirement: Audits are a standard assessment of financial operations for any organization and a standard requirement of charter schools across the nation. Audits are used to ensure accountability for public funds as well as to measure a school's financial viability.
- Adds criminal history checks: This amendment will provide charter schools with the same access to criminal background data that other public schools have in order to protect the health and safety of students and staff.
- Adds enrollment language: The proposed language mirrors the model charter law advocated by the National Alliance of Public Charter Schools. This enrollment language aims to ensure charter schools truly operate as public schools in their admission practices.
- Amends contract renewal process: This proposed language will allow for a renewal process that aligns with best practices.
- Makes housekeeping changes: There is much clean-up language that ensures both clarity and enforceability, including provisions that clarify conflict of interest provisions, pre-opening requirements for newly-approved charter schools, and requirements for conversion charter school applicants.

Thank you for the opportunity to testify on this important legislation.



Testimony HB674
House Finance Committee
February 27, 2013 Room 308 11:30am
Support

Dear Chair Luke and committee,

Section 302D-28 needs immediate correction to the addition of: "and shall include only those students who fall within the purview of section 302A-1132." This will mean funding for only those of compulsory education age. If you look carefully at the statute, it will eliminate funding for a part of kindergarten and senior class enrollment.

Charters have been mandated to conduct annual audits for years now. As the costs of the audits increase, so does the time spent on them by administration and office staff. We request that this mandate be funded with additional money (\$20,000 per school) so it does not impact us financially. We do agree that it provides a transparent and accountable view of charter school financing but it should be supported with funding.

A new mandate is that we conduct employee criminal background checks to the same degree as the department. We already have a mechanism in place but this could amount to hundreds of dollars per new employee. Since the department has a process for FBI fingerprinting at the district offices, we request that this service be made available to charters and included in our MOA for services with the department.

We agree and support the insertion that charter school students on a virtual program of a school, may participate in sports in the service area of where they reside. This will even the playing field for access to sports which may lead to access to higher education.

The major omission in this bill is addressing facility financing needs of charters. Ever since falling of the fiscal cliff four years ago, per pupil allocations have diminished by over 35%. This puts a great strain on our educational programs. When we started in 2001, the kilowatt charge was \$.28/kw. Today, it is \$.43/kw. Rent or lease in 2001 was \$1.10/sq. ft. It is up to \$1.85/ sq. ft. or more. These increasing facility costs are a burden to charters without State facilities and detract from the quality of education we offer our children. We need to correct this inequity, which is unconstitutional (Hawaii Constitution, Article X) and borders on a civil rights issue. Please do right by our children and provide some support for facilities.

Steve Hirakami

Director, Hawaii Academy of Arts & Science PCS



West Hawai'i Explorations Academy

A Public Charter School located at the Natural Energy Laboratory Hawai'i, Keahole Point, Kona

73-4460 Queen Ka'ahumanu Highway

Kailua Kona, Hawai'i 96740

Phone: 808.327.4751

Email: explorations@whca.net

Domain: www.whca.net

Facsimile: 808.327.4750

February 26, 2013

Re: HB674 HD1

Position: Support and Comments

Aloha Chair Luke, Vice-Chairs Nishimoto and Johanson, and Esteemed Members of the Committee on Finance:

Thank you for supporting Hawai'i's keiki across all public education, including your public charter school system. We also wish to express gratitude for your Committee's past and ongoing support specific to WHEA.

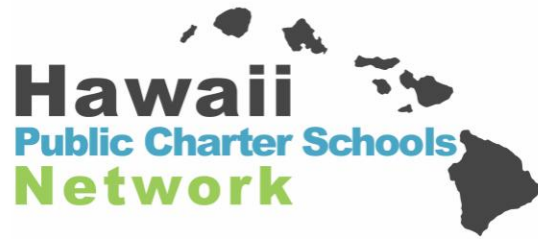
Regarding the five percent carryover issue, we support deleting this notion because it would help maintain frugal practices at WHEA. As you know, there are unintended consequences that arise when budgetary decisions are driven by a "use-it-or-lose-it" dynamic. I further encourage thought in broader public education policy allowing CASs (for example) to hold and pool monies. Perhaps an approach similar to the time-honored "tanomoshi" system could be used to encourage frugality in building up a restricted use fund to tend R&M backlog items at each district level. There exist so many kinds of out-of-sight-out-of-mind, relatively *manini* things that only principals keep track of. It would make sense to empower school-level initiatives toward greater efficiencies.

Specifying that per-pupil funding distributed to charter schools be considered expended is a further support for long-range planning and management.

Thank you again for your work in the service of children.

Sincerely,

Curtis Muraoka, Co-Director
West Hawaii Explorations Academy



Hawaii State House of Representatives
Committee on Finance

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