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STATE OF HAWAII
STATE PUBLIC CHARTER SCHOOL COMMISSION
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FOR: HB674 Relating to Education
DATE: Wednesday, February 6, 2013
TIME: 2:10 p.m.
COMMITTEE(S): House Committee on Education
ROOM: Conference Room 309
FROM: Roger Takabayashi
State Public Charter School Commission

Testimony in support with reservations of HB674

Chair Takumi, Vice Chair Ohno, and Members of the Committee:

Aloha, I am Roger Takabayashi, member of the State Public Charter School Commission.

HB674 continues the work of Act 130, passed by the Legislature last year, in improving the charter school system by amending newly created Chapter 302D. The Commission supports HB674 with reservations as there are portions that raise concern. Our comments on HB674 are below.

Section 1 (page 1, line 1 to page 2, line 8), Carryover of funds

The CSAO opposes restricting the amounts a charter school can carry over from one fiscal year to the next. The restriction severely undermines the autonomy of the schools as many charter schools use reserves to advance their educational programs. Some examples of purposes that schools intentionally set aside funds for are:

- Changes in curriculum and/or curriculum providers;
- School/program expansion and/or addition of grades;
- Upgrades in educational technology;
- Other large educational purchases such as bulk orders of books and supplies; and
- Infrastructure improvements.

Further, charter schools use carryover reserves as contingency “rainy day” funds. For example, if a school’s enrollment is lower than anticipated, there could be a significant impact to the school’s budget and programs without a reserve. Reserves are also used to maintain cash flow to allow a school to cover expenses, including salaries, at the beginning of a fiscal year prior to receiving its first allocation of the year. Having a healthy reserve is sound business practice.

In addition to the annual financial audits that HB674 requires charter schools to submit, the performance frameworks of the charter contracts that will be executed between the State Public Charter School Commission and each charter school contain financial performance measures. Therefore, the funds at each school are accounted for and financial viability measured.

As a replacement for Section 1 of HB674, we propose inserting language from recently repealed Chapter 302B that states "Funds distributed to charter schools shall be considered expended."

§302D-A Annual audit (page 2, lines 12-14)

While we agree that annual independent financial audits are necessary for ensuring financial viability of charter schools, the users of these audit reports are generally external to the schools (Commission, DOE, DAGS, etc.). Therefore, it seems unfair to require schools to use per-pupil operational funds to cover the high cost of financial audits. We ask the legislature to consider alternate means of funding audits.

§302D-B Criminal history record checks (pages 2-4)

We support enabling charter schools to conduct criminal history checks. We have a few suggestions for amendments:

1. In subsection (b), page 3, line 9, change it to state "...if the person has been convicted of a crime..."
2. Also in subsection (b), page 3, line 18, remove "any administrative rule of the commission." The Commission does not have rulemaking authority.
3. Referring to subsection (c) (page 3, lines 19-22), no charter school was in existence prior to July 1, 1990.

§302D-C Enrollment (pages 4-6)

We support adding the nondiscriminatory admission section to Chapter 302D. We recommend two amendments to subsection (b):

1. Change paragraph (4) (page 5, lines 1-5) to state "May give an enrollment preference to students within a given age group or grade level and may be organized around a special emphasis, theme, or concept as stated in the charter contract."
2. Change paragraph (5) (page 5, lines 6-9) to state "May give an enrollment preference to students enrolled in the charter school during the previous school year, to siblings of students already enrolled at the charter school, and to children of employees of the charter school."

§302D-3(j) Commission conflict of interest (page 15, line 19 to page 16, line 5)

Even in its amended version within HB674, §302D-3(j) is inconsistent with §302D-8 pertaining to conflicts of interest of authorizers. If it is the Legislature's intent to allow charter school employees, governing board members, vendors, contractors, agents, or representatives to serve on the Commission, we recommend amending §302D-8 for consistency. If it is the Legislature's intent to not allow charter school employees, governing board members, vendors, contractors, agents, or

representatives to serve on the Commission, we recommend amending §302D-3 by removing subsection (j).

Section 14, page 40, lines 16-18

We oppose the amendment to §302D-28 that limits funding to only those students that fall under the purview of §302A-1132. It would eliminate junior kindergarten and kindergarten from charter schools, instantly changing the programs of 27 of the 32 charter schools currently operating and one of two approved charter applicants. One school, Kualapu‘u Elementary, has a pre-kindergarten program which has contributed to their success. Kualapu‘u Elementary converted to a charter school after falling into restructuring and has since raised itself into good standing.

The Commission rigorously reviews charter applications and should continue to be allowed to determine which programs have a high chance of success in accordance to the state accountability system, and those programs that are authorized should be fully funded. Conversely, the Commission will monitor and, if necessary, close those schools whose programs are not delivering.

§302D-31 Sports (page 41, lines 7-21)

We support the clarifying this section. We recommend including language that allows charter school students to participate in other extracurricular activities that are not available at their charter school as well. We suggest amending §302D-31 as follows:

“[+] §302D-31 [+] Sports and extracurricular activities. (a) The department shall provide students at charter schools, including students enrolled at charter schools whose curriculum incorporates virtual education, with the same opportunity to participate in athletics or extracurricular activities as is provided to students at other public schools. If a student at [a] any charter school wishes to participate in a sport or extracurricular activity for which there is no program at the charter school, the department shall allow that student to participate in a comparable program of any public school in the complex in which the charter is located [-] or at the public school in the service area in which the student resides. All charter school students participating in athletics shall abide by all rules, regulations, and policies of the athletic league, association, and program applicable to the public school in whose athletic program the student is participating. All charter school students participating in an extracurricular activity shall meet the participation requirements and restrictions for that activity, including paying appropriate fees.

(b) As used in this section, “extracurricular activity” means a school-authorized or education-related activity occurring during or outside the regular instructional school day, including cheerleading, clubs, and other programs. The department may adopt rules setting forth which programs qualify as extracurricular activities under this section.”

Thank you for this opportunity to testify.



HAWAII STATE ETHICS COMMISSION

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

February 6, 2013

The Honorable Roy M. Takumi, Chair
The Honorable Takashi Ohno, Vice Chair
House Committee on Education
Hawaii State Capitol, Room 332
415 South Beretania Street
Honolulu, Hawaii 96813

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

Hearing: Wednesday, February 6, 2013, 2:10 p.m.
State Capitol, Conference Room 309

Written Testimony From: Hawaii State Ethics Commission

The Honorable Roy M. Takumi, Chair; The Honorable Takashi Ohno, Vice Chair; and Honorable Members of the House Committee on Education

Thank you for considering the Hawaii State Ethics Commission's testimony on House Bill No. 674, 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. 674.¹ 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 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

¹ See page 18, lines 20-22, through page 19, lines 1-4.

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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 participating in matters involving their interests.²

² See, HB No. 674 page 15, lines 19-22, through page 16, lines 1-5.

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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 H.B. No. 674.

**TO: The Honorable Roy M. Takumi, Chair
House Committee on Education**

FROM: William Haft

DATE: Wednesday, February 6, 2013

RE: TESTIMONY IN SUPPORT OF HOUSE BILL 674

Chair Takumi 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.

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 is now recruiting for 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.

We also note that House Bill 674 adds a provision for charter schools to carry over funds. NACSA supports the clarification that schools are able to carry over funds. In most sectors in which NACSA works, charter schools, as not-for-profit organizations, have the flexibility to carry over 100% of their funds. Like any organization that has a long term mission and commitment to the public good, the ability for charter schools to conduct long-term financial planning is critical for things like maintaining an emergency fund, saving to pay for facilities and other infrastructure investments, and planning for long-term growth. This is especially true for the majority of charter schools that build their grade structure and size gradually over time.

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

