

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 2518, S.D. 1

February 19, 2014

RELATING TO EDUCATION

Senate Bill No. 2518, S.D. 1, authorizes the State Public Charter School Commission to assess fees through the promulgation of administrative rules to help offset its operating costs and makes various other amendments to clarify the existing public charter school statute.

While the Department of Budget and Finance does not take any position on this bill, the Legislature should consider: 1) the broad language which allows the assessment of fees for unspecified purposes; and 2) the need to assess fees for the State Public Charter School Commission's operations, as it seems to circumvent the budget review process.

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: tabalos@hsta.org
Subject: *Submitted testimony for SB2518 on Feb 19, 2014 09:10AM*
Date: Tuesday, February 18, 2014 9:37:44 AM

SB2518

Submitted on: 2/18/2014

Testimony for WAM on Feb 19, 2014 09:10AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Tanya Abalos-Arceneaux	HSTA	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

NEIL ABERCROMBIE
GOVERNOR



CATHERINE PAYNE
CHAIRPERSON

STATE OF HAWAII
STATE PUBLIC CHARTER SCHOOL COMMISSION
(‘AHA KULA HO‘ĀMANA)

<http://CharterCommission.Hawaii.Gov>
1111 Bishop Street, Suite 516, Honolulu, Hawaii 96813
Tel: 586-3775 Fax: 586-3776

FOR: SB 2518 SD1, Relating to Education
DATE: Wednesday, February 19, 2014
TIME: 9:10 a.m.
COMMITTEE(S): Senate Committee on Ways and Means
ROOM: Conference Room 211
FROM: Tom Hutton, Executive Director
State Public Charter School Commission

Written testimony in support

Chair Ige, Vice Chair Kidani, and members of the Committee:

The State Public Charter School Commission (“Commission”) supports this bill, which incorporates the Commission’s request to the Legislature for various revisions to Hawaii’s charter school statute, Hawaii Revised Statutes (“HRS”) Chapter 302D.

Among other changes, this bill would:

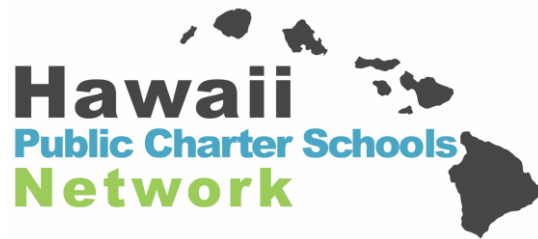
- Clarify that the Commission’s budget shall be appropriated separately from, and in addition to, appropriations made to charter schools—this was the expectation when the new charter school law, Act 130 of 2012, was enacted and replaced the previous formula under which the Charter School Administrative Office (“CSAO”) had been funded with two percent of the per-pupil funds appropriated for schools, but at the end of the 2013 legislative session the Commission’s budget was unexpectedly deducted from out of the schools’ funding;
- Expressly allow the Commission to reconstitute a charter school’s governing board under certain exigent circumstances, including unlawful or unethical conduct by

governing board members or school personnel or other circumstances that raise serious doubts about the current board's ability to fulfill its statutory, contractual, or fiduciary duties;

- Authorize the Commission to assess fees of non-state entities as may help cover operating costs; and
- Strengthen certain provisions relating to potential conflicts of interest on charter school governing boards, including by providing for "cooling off" periods and addressing vendors and contractors that provide goods or services to the school.

As to the last point on conflicts of interest, the Commission wishes to clarify that the intent was include vendors and contractors in the protections of HRS § 302D-12 related to the composition of a charter school's governing board, but not to subject vendors and contractors to the state Ethics Code. The Commission will be pleased to work with Committee staff to effectuate this clarification in the bill or, if more appropriate, to pursue this amendment with the subject committee or committees assuming this bill and/or its House companion measure advance.

Thank you for the opportunity to provide this testimony.



Hawaii State Senate
Committee on Ways and Means

DATE: Tuesday, February 19, 2014
TIME: 9:10 a.m.
PLACE: Conference Room 211, Hawaii State Capitol

Chair Ige, Vice Chair Kidani and members of the Senate Ways and Means Committee,

Re: SB2518 – Comments in Support

Hawaii Public Charter Schools Network (HPCSN) is committed to quality education for all public school students in Hawaii through our work with Hawaii's public charter schools. This bill proposes a variety of changes to 302D, the charter school statute.

HPCSN is in STRONG SUPPORT of Section 4, Subsection (k) - Funds the commission separate from, and in addition to, the charter school per pupil calculation. The legislature partnered with the charter school community to recodify the charter school law in 2012. The changes were focused on governance, authority and accountability. The charter school governance system is very different in that charter schools are accountable to their governing boards. The Governance, Accountability and Authority Legislative Task Force of 2011 anticipated additional costs that would be associated with their proposal for sweeping changes to the charter school law. The addition of this section will help to provide the needed funding to assist schools with the many added responsibilities and obligations charter schools are now subject to since the passing of Act 130 of 2012.

Mahalo for your support of Hawaii's public students, their families and public charter schools.

Sincerely,

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

Lynn Finnegan
Executive Director



HAWAII STATE ETHICS COMMISSION

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

February 19, 2014

The Honorable, David Y. Ige, Chair
The Honorable, Michelle N. Kidani, Vice Chair
Senate Committee on Ways and Means
Hawaii State Capitol, Room 208
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on S.B. No. 2518, S.D. 1, Relating to Education**

Hearing: February 19, 2014, 9:10 a.m.
State Capitol, Conference Room 211

Written Testimony From: Hawaii State Ethics Commission

The Honorable David Y. Ige, Chair; The Honorable Michelle N. Kidani, Vice Chair;
and The Honorable Members of the Senate Committee on Ways and Means:

Thank you for this opportunity to testify on S.B. No. 2518, S.D. 1, Relating to Education. This bill makes a number of amendments to Hawaii Revised Statutes (“HRS”) chapter 302D, the charter school law. The Hawaii State Ethics Commission (“Commission”) takes no position as to the majority of these amendments. The Commission, however, opposes an amendment located in Section 7 of the bill which amends the current law to require that any vendor or contractor providing goods or services to a charter school shall be subject to HRS chapter 84, the State Ethics Code.

The State Ethics Code is applicable to every nominated, appointed, or elected officer or employee of the State, excluding justices and judges.¹ The term “employee” is broadly defined by the State Ethics Code as including, among others, any nominated, appointed, or elected officer or employee of the State, including members of boards,

¹ HRS section 84-2 reads:

Applicability. This chapter shall apply to every nominated, appointed, or elected officer, employee, and candidate to elected office of the State and for election to the constitutional convention, but excluding justices and judges; provided that in the case of elected delegates and employees of the constitutional convention, this chapter shall apply only to the enforcement and administration of the code of ethics adopted by the constitutional convention.

The Honorable David Y. Ige, Chair
The Honorable Michelle N. Kidani, Vice Chair
February 19, 2014
Page 2

commissions, and committees.² Employees of charter schools are subject to the State Ethics Code. Section 7 of S.B. No. 2518, S.D. 1, would greatly expand the jurisdiction of the Commission and require that private sector vendors and contractors also be subject to the State Ethics Code. The Commission believes that this is inappropriate and unnecessary.

As it currently reads, Section 7 of this bill would require any vendor or contractor of a charter school to be fully subject to the provisions of the State Ethics Code. These provisions include restrictions on the acceptance of gifts and provisions on conflicts of interests. Thus, any private sector vendor who sold goods to a public charter school and who also, for example, received a gift from a client, would be subject to the State Ethics Code's gifts law. The Commission believes that placing such restrictions on private sector entities is not appropriate.

Further, the Commission is unclear as to the situation this amendment is intended to address. If the concern is that a charter school employee may enter into a contract where the employee has a conflict of interest, then this is already addressed by current law. Charter school employees are subject to the State Ethics Code and its conflicts provisions would prohibit this situation. Similarly, State Ethics Code provisions concerning misuse of position and contracting also apply to employees of the charter schools.

We appreciate the opportunity to testify on S.B. 2518, S.D. 1, Relating to Education. We would like to thank the Committee for its consideration of our testimony.

² In relevant part, HRS section 84-3 reads:

“Employee” means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices and judges.



HAWAI‘I EDUCATIONAL POLICY CENTER TESTIMONY

Presented by Jim Shon, Director
Hawaii Educational Policy Center
February 19, 2014

COMMITTEE: WAM

DATE: Wednesday, February 14, 2014

TIME: 9:10 a.m.

PLACE: Conference Room 211

SB 2518 RELATING TO EDUCATION HEPC supports this bill in general, but has serious reservations for two sections of this bill as written. Specifically

SECTION 1 – Fees, and

SECTION 7. (j)

"§302D-12 Charter school governing boards; powers and duties. [(h)] (j) For purposes of this section:

"Employees" shall include but not be limited to ~~the~~:

(1) The chief executive officer, chief administrative officer, executive director, or otherwise designated head of a charter school ~~[and shall include any]~~;

(2) Any person under an employment contract to serve as the chief executive officer, chief administrative officer, executive director, or designated head of a charter school[-];
and

(3) Any vendor or contractor providing goods or services to a charter school.

1. HEPC Comments on SECTION 1. It is the obligation of the Legislature to adequately and equitably fund the Charter School Commission and all public schools by providing sustainable financial resources to serve all public school students.

This provision invites the legislature to further underfund charter schools and the Commission. HEPC urges this committee to consider the temptation for a future Commission to raise fees if legislative appropriations fall short of the Commission's perceived operational needs; and a future legislature's temptation to deny such appropriations with the knowledge that the Commission can just raise the fees. It is HEPC's understanding that this provision is intended to be imposed only on future applicants. Some worthy future applicants may find high fees prohibitive. The combined two sources of Commission funding (Legislative appropriations and Commission fees) could follow the same pattern as with University of Hawaii tuition. Once the UH had the ability to retain tuition, tuition steadily increased as Legislative appropriations either failed to keep up with UH needs, or were actually reduced. Today, UH Manoa must fund over 50% of its operations by shifting the burden from all state taxpayers to students, and has one of the highest five-year percentage tuition increases among similar institutions.

HAWAI‘I EDUCATIONAL POLICY CENTER

1776 University Avenue, Castle Memorial Hall 133 • Honolulu, Hawai‘i 96822

Dr. Jim Shon, Director Phone (808) 282-1509 • jshon@hawaii.edu

<http://manoa.hawaii.edu/hepc/>

2. HEPC COMMENTS ON Section j on p. 14, defining contractors as employees. The implications of defining private contractors as employees may not be fully understood. There are many obligations and restrictions involving employees, including the ability to lobby the legislature. This provision appears to be an over-reaction to a recent dispute with the Ethics Commission. If the Ethics Commission desires to amend their section of the law to define all contractors with state agencies as employees, let them make that case in another bill. One impact of this provision may be to discourage vendors from doing business with schools or the Commission.

Here is the section of the bill in question:

[(h)] (i) For purposes of this section:

"Employees" shall include but not be limited to ~~the~~:

(1) The chief executive officer, chief administrative officer, executive director, or otherwise designated head of a charter school ~~[and shall include any]~~;

(2) Any person under an employment contract to serve as the chief executive officer, chief administrative officer, executive director, or designated head of a charter school~~[-]~~; and

(3) Any vendor or contractor providing goods or services to a charter school.

Here is the section of Chapter 84 that raises a concern:

§84-14 Conflicts of interests. (a) No **employee** shall take any official action directly affecting:

(1) A business or other undertaking in which the employee has a substantial financial interest; or

(2) A private undertaking in which **the employee** is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned. This subsection shall not apply to any contract that is awarded in accordance with subsection (a) with a person or business represented or assisted by a person who was a member of a task force or served as the designee or representative of a task force member.

The Concern: If all charter school vendors, contractors, or consultants are considered employees, once a contract for services is complete, they may be prohibited from doing business again for two years. Vendors and contractors often operate with short

HAWAI'I EDUCATIONAL POLICY CENTER

1776 University Avenue, Castle Memorial Hall 133 • Honolulu, Hawai'i 96822

Dr. Jim Shon, Director Phone (808) 282-1509 • jshon@hawaii.edu

<http://manoa.hawaii.edu/hepc/>

contracts, and are inappropriately categorized as employees. Even if a contract is renewed, could this present a problem under the two year rule?

Another provisions of our State Ethics law that may come into play is the following:

(d) No legislator **or employee** shall assist any person or business or act in a representative capacity **for a fee or other compensation** to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the legislator or employee has participated or will participate as a legislator or employee, nor shall the legislator or employee assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which the legislator or employee is an employee or legislator.

One plausible interpretation might be that if one or more charter schools should contract with either an individual consultant or the Hawaii Charter School Network for board training, or anything else, the consultant or Network would not be allowed to assist in the legislative process, or even to assist a charter in preparing or providing information to the Commission.

One of the major elements of the Task Force that resulted in ACT 130 was to encourage and facilitate charters to use their funding to purchase services. It would appear that the provisions of this bill under SECTION 7 run counter to that purpose.

Thank you for the opportunity to offer this testimony.

Chapter 84: Ch 84 Standards of Conduct

<http://hawaii.gov/ethics/constitution/chap84>

HAWAI‘I EDUCATIONAL POLICY CENTER

1776 University Avenue, Castle Memorial Hall 133 • Honolulu, Hawai‘i 96822

Dr. Jim Shon, Director Phone (808) 282-1509 • jshon@hawaii.edu

<http://manoa.hawaii.edu/hepc/>