

HB2205 HD1

Measure Title: RELATING TO CHARTER SCHOOLS.

Report Title: Charter Schools; Rules; Fees

Description: Establishes requirements for public charter school board meetings. Exempts public charter school commission from certain public meeting requirements. Authorizes charter schools to assess fees and charges for co-curricular activities. (HB2205 HD1)

Companion: [SB2780](#)

Package: None

Current Referral: EDU, WAM

Introducer(s): TAKUMI, OHNO

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Education

From: Cheryl Kakazu Park, Director

Date: March 14, 2016, 1:25 p.m.
State Capitol, Conference Room 229

Re: Testimony on H.B. No. 2205, H.D. 1
Relating to Charter Schools

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) has concerns about proposed amendments to section 92-6(a)(2), HRS, set out at bill section 7 (beginning at page 9, line 13). OIP takes no position on the remainder of the bill.

The H.D. 1 version of this bill would add the Charter School Commission to a nonexclusive list of Sunshine Law boards that are recognized to perform some adjudicatory functions, and thus are exempt from the Sunshine Law’s requirements while exercising those adjudicatory functions, but only as to matters the Commission has already decided. **This is contradictory, and will lead to problems with interpretation.**

Section 92-6(a)(2), HRS, does not set out an all-purpose exemption to the Sunshine Law for the listed boards; rather, it provides that boards holding contested case hearings or similar adjudications subject to either chapter 91’s contested case standards or another set of statutory standards applicable to their adjudications are not required to also follow the Sunshine Law when going through

the contested case (or similar) process. Such boards are still subject to the Sunshine Law for everything else they do.

Because the list of boards recognized to have an adjudicatory function is non-exclusive, an unlisted board that holds contested case hearings or is subject to similar procedural and due process requirements when performing its adjudicatory functions can still take advantage of this exemption; in other words, **assuming that the Commission does in fact hold contested case hearings or follows a similar statutory scheme in its adjudications, adding the Commission to the list of boards that perform adjudicatory functions doesn't change anything.**

However, what the H.D. 1 version of this bill would do is to specify that the Commission performs an adjudicatory function **only** with regard to “matter[s] on which the commission has already rendered a decision in a public meeting.” In other words, **under the proposed language, the Legislature is declaring that the Commission cannot claim to be exercising its adjudicatory function when it is actually holding hearings on and deciding a contested case, but only when it discusses matters it has already rendered a decision on, which by definition are no longer in need of its adjudication.** OIP would be at a loss to interpret the effect of that language, although **a logical reading would seem to be that the Commission cannot ever claim to be exercising an adjudicatory function.**

If the Commission decides matters for which it must follow contested case standards or a similar statutory scheme and it is the Legislature's intent to recognize that the Commission has “adjudicatory functions” subject to section 92-6, OIP would recommend that this Committee amend the language at lines 8-10 to remove the limitation “as

Senate Committee on Education
March 14, 2016
Page 3 of 3

to a matter on which the commission already has rendered a decision in a public meeting.” If, on the other hand, the Legislature does not find that the Commission holds contested cases or follows a similar statutory scheme when deciding matters before it, OIP would recommend that bill section 7 be deleted in its entirety.

Thank you for the opportunity to testify.



**STATE OF HAWAII
BOARD OF EDUCATION**
P.O. BOX 2360
HONOLULU, HAWAII 96804

Senate Committee on Education

Monday, March 14, 2016
1:25 P.M.
Hawaii State Capitol, Room 229

House Bill 2205, HD1, Relating to Charter Schools

Dear Chair Kidani, Vice Chair Harimoto, and Members of the Committee:

The Board of Education ("Board") is testifying in opposition of House Bill 2205 HD1, which would, among other things, establish additional requirements for charter school governing board meetings and exempt the State Public Charter School Commission ("Commission") from certain public meeting requirements.

The Board believes the interests of the public and charter school students would best be served by this Committee indefinitely deferring this measure. An earlier draft of this measure would have allowed the Commission to adopt interim rules for 18 months and forego the formal promulgation of administrative rules. While the Board appreciates the removal of that provision, the remaining provisions range from unnecessary to unacceptable.

Section 1 would clarify that authorizers should not provide technical support to charter school applicants. While the Board does not object to this provision, the Board believes the provision is not necessary, and it should not be used as a justification for keeping this measure alive.

Section 2 would place additional requirements on charter school governing boards for posting of meeting documents. The current requirements are sufficient to protect the interests of charter school stakeholders and the public. The Board believes it is unnecessary to impose additional requirements. The Commission should focus its efforts on the current statutory requirements.

Section 3 would provide protections to some applicant governing boards. Applicant governing boards are not government entities until their applications are approved by the Commission and they execute charter contracts. This provision seems contrary to wise public policy.

Section 4 would essentially exempt the Commission's decision-making process regarding revocation and nonrenewal of charter contracts from Chapter 91, Hawaii Revised Statutes. Revocation and nonrenewal are the most significant and high stakes decisions the Commission can make. Transparency and due process are especially important for all concerned during Commission decision-making on these and related decisions. The Board urges this Committee to refrain from approving this provision in any form.

Section 5 would clarify that charter schools are permitted to charge certain fees. This provision is unnecessary as charter schools already have the ability to collect fees for co-curricular activities, and this proposal should not be used as a reason to keep this measure alive.

Section 6 would exempt conversion charter schools from the Department of Education's geographic exceptions procedures and allow them to establish enrollment preferences for students not located within the respective school's geographic service area. The Board is not aware of problems with the current provision that would warrant a change in the statute.

Section 7 would explicitly include the Commission as a board that exercises adjudicatory functions in matters it has already decided upon in a public meeting. The Board objects to this provision and notes that the Board itself is not explicitly included on the list to which this measure would add the Commission. This provision would potentially allow the Commission to claim that it was making certain high stakes decisions about charter schools in private due to its "adjudicatory functions."

In summary, the Board believes there is no reason for this measure to move forward and respectfully requests that this Committee defer HB 2205 HD1 indefinitely.

Thank you for this opportunity to testify on behalf of the Board.

Very truly yours,

A handwritten signature in cursive script that reads "Lance A. Mizumoto". The signature is written in black ink and is positioned above the printed name and title.

Lance A. Mizumoto
Chairperson



KAMEHAMEHA SCHOOLS®

Senate Committee on Education

Time: 1:25 p.m.

Date: March 14, 2016

Where: State Capitol Room 229

TESTIMONY

By Ka'ano'i Walk
Kamehameha Schools

TO: Chair Kidani, Vice Chair Harimoto and Members of the Committee

RE: **HB 2205 HD1 Relating to Charter Schools**

E ka Luna Ho'omalua Kidani, ka Hope Luna Ho'omalua Harimoto a me nā Lālā o ke Kōmike Ho'ona'auao o ka 'Aha Kenekoa, aloha! My name is Ka'ano'i Walk and I serve as the Senior Policy Analyst of the Kūamahi Community Education Group of Kamehameha Schools. House Bill 2205 HD1 relating to charter schools establishes requirements for public charter school board meetings and exempts the public charter school commission from certain public meeting requirements.

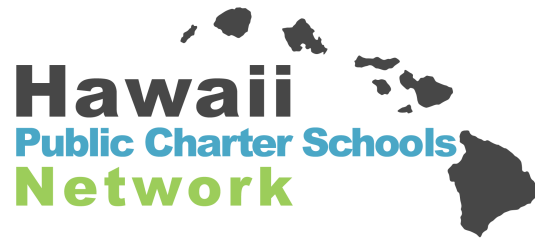
We are writing to respectfully **oppose** this bill in its current form.

Act 130, Session Laws of Hawai'i 2011, established a Charter School Governance, Accountability, and Authority Task Force to provide clarity to the relationships, responsibilities, and lines of accountability and authority among stakeholders of Hawai'i's charter school system. The following year, in Act 130, Session Laws of Hawai'i 2012, the State legislature established a new Hawai'i Revised Statutes chapter, 302D, governing charter schools based on the recommendations of the Task Force. The new Chapter vested significant oversight authority and responsibility in a new Charter School Commission.

Kamehameha Schools advocates for and supports the achievement of Hawai'i's Native Hawaiian public school students. This bill now seeks to make changes with respect to school renewal and revocation hearings and other adjudicatory proceedings. We are concerned that there could be unintended consequences counter to the principles of accountability and transparency.

Kamehameha Schools has been a collaborator with the Hawai'i public charter schools for over a decade. Through our work with Hawaiian-focused public charter schools, we hope to significantly impact more children and their families through education. We believe that Hawaiian-focused charter schools provide quality educational choices for all families and ultimately enhance both academic achievement and engagement for students.

Founded in 1887, Kamehameha Schools is a statewide educational system supported by a trust endowed by Princess Bernice Pauahi Bishop, whose mission is to improve the capability and well-being of Native Hawaiian learners. We believe that by continuing to engage in dialog around these charter school policies and proposals, we can contribute in a positive and meaningful way. Mahalo nui for your consideration.



March 11, 2016

To: Honorable Michelle Kidani, Chair
Honorable Breene Harimoto, Vice Chair
House Finance Committee

From: Jeannine Souki, Executive Director
Hawaii Public Charter Schools Network

Re: **HB 2205 HD1 – RELATING TO PUBLIC SCHOOLS – OPPOSE**
Conference Room 224 – Hawaii State Capitol – Mar. 14, 2016 1:25 P.M.

On behalf of the Hawaii Public Charter School Network (HPCSN), we are writing to express opposition to HB 2205, HD1, Relating to Charter Schools and ask that the bill be deferred to allow collaboration between the Commission and charter schools to work out suggested policy changes that may be revisited the next session.

Act 130, Session Laws of Hawaii 2011, established a task force to address issues on charter school governance, accountability, and authority. In 2012, the legislature repealed previous charter school laws and adopted recommendations made by the Charter School Governance, Accountability, and Authority Task Force which provided a new Charter School Commission significant oversight authority and responsibility to ensure compliance of charter schools with applicable state and federal laws and also gave Charter School Governing Boards significant powers and duties to oversee the management and operations of charter schools. This effort was intended to establish clear roles and responsibilities for the charter schools sector and to balance accountability with providing innovative learning opportunities and creative educational approaches to improve the education of students.

In Section 1, the Commission is seeking to prohibit providing technical support to prospective charter applicants or applicant governing boards, except if required by federal law. The Commission has provided information and an RFP orientation for prospective applicants in the past. It would be unfortunate if this prohibition would extend to this practice as there no other avenue to get such information.

In Section 2, the Commission is adding reporting requirements for charter school governor boards notifications of agendas, minutes and membership. HPCSN believes the current statute is sufficient and should not be amended.

In Section 3, the Commission is seeking to provide protections to applicant governing boards. It's not clear why this provision is required for applicant governing boards to operate.

In Section 4, the Commission is seeking an amendment to HRS Section 302D-18, to be exempted from the contested case proceedings under HRS Chapter 91. HPCSN disagrees with this amendment as HRS Chapter 91 contested case proceedings are designed to provide due process to affected parties of agency decisions. For high stakes decisions like the revocation or non-renewal of a charter school, HRS Chapter 91 assures fair and due process for all affected parties.

In Section 5, the Commission is seeking clarification of school fees. Charter schools already have the ability to assess and collect special fees and charges from students for co-curricular activities. HPCSN believes the current statute is sufficient and no change is required.

In Section 6, the Commission is requesting an exemption for conversion charter schools from the Department of Education's geographic exemptions requirements to establish enrollment preferences. HPCSN is not aware of any schools seeking this amendment.

In Section 7, the Commission seeks to gain exemptions from HRS Chapter 92, from the Sunshine Law when engaged in adjudicatory functions. HPCSN respectfully disagrees with this provision as HRS Section 92-4, -5, allows the Commission to discuss personal or confidential matters in executive sessions. We respectfully request that this section be stricken from the bill.

HPCSN works to support public charter schools in Hawaii and to be a voice for children and families that seek choice in an independent public school setting.

Thank you for consideration of our request to defer this bill indefinitely. We appreciate the opportunity to provide testimony on behalf of HPCSN.



HB2205 HD1
RELATING TO CHARTER SCHOOLS
Senate Committee on Education

March 14, 2016

1:25 PM

Room 229

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB2205 HD1, which, among other provisions, exempts charter school revocation and nonrenewal processes from the agency hearing requirements under Hawai‘i Revised Statutes (HRS) Chapter 91, and exempts the State Public Charter School Commission (Commission) from the Sunshine Law requirements of HRS Chapter 92 for certain matters.

Given the Commission’s potential to significantly impact the education of our public charter school students, including those enrolled in Hawaiian-focused or Hawaiian language charter schools, HB2205 HD1 continues to raise due process and procedural concerns. **OHA respectfully requests that Sections 4 and 7 of this measure be deleted, or that this measure be deferred to allow outreach between the Commission, charter schools, and the State Board of Education as appropriate.**

There are several reasons for this request. The State Board of Education (“BOE”) conducted a Listening Tour in November and December 2015, attended by charter school principals, governing board members, and stakeholders, related to concerns raised about the Commission. Subsequently, on January 19, 2016, the BOE unanimously approved a motion to assign three BOE members to an investigative committee to determine if a special review of the State Public Charter School Commission is warranted and, if so, to develop the process and procedures for such a review using nationally recognized principles and standards for quality charter authorizing, pursuant to Hawai‘i Revised Statutes Section 302D-11(c). OHA respectfully submits that this measure may be premature, in light of the BOE’s recent actions and ongoing investigation.

Further, Section 4 of this measure exempts charter revocation and nonrenewal proceedings from contested case procedures and due process protections provided under Chapter 91. Chapter 91 contested case proceedings, which include a number of procedural requirements such as recorded findings of fact and conclusions of law, are designed to provide fair and adequate due process to affected parties of agency decisions. In the case of charter revocation and charter nonrenewal, the due process procedures in HRS Chapter 91 may be critical to protecting the rights and interests of charter school students, parents, the 501(c)(3) non-profit arms of charter schools, private funders, and the State itself.

Moreover, Section 7 of this measure exempts the Commission from the open meeting requirements of HRS Chapter 92 when engaged in adjudicatory functions. Such a provision heightens the concerns raised by the contested case hearing exemptions of Section 4, by eliminating any opportunity for public notice or oversight in decisions that may affect the interests of individual public charter schools, as well as their students and stakeholders. The private and public interests in such adjudicatory actions counsel the retention of Chapter 92's open meeting requirements, which OHA notes already contain exceptions for executive sessions and discussions of personal or confidential matters. See HRS §§ 92-4, -5.

In addition, OHA notes that this measure's companion bill, SB2780, was heard by the Senate Education Committee on February 1, 2016. In response to opposition by public charter schools and stakeholders, the Senate Education Committee deferred decision-making to February 12, 2016, and urged the Commission to outreach with public charter schools in the interim. It is OHA's understanding that the requested outreach has still not taken place.

Finally, OHA notes that the Hawai'i State Board of Education, which has oversight over the State Public Charter School Commission, submitted written testimony OPPOSING this measure, stating that the measure's provisions "range from unnecessary to unacceptable," and that "the Board believes there is no reason for this measure to move forward and respectful[ly] requests that this Committee defer HB 2205 HD1 indefinitely."

For the foregoing reasons, OHA urges the Committee to **DELETE SECTIONS 4 and 7** from HB2205 HD1. Mahalo nui for the opportunity to testify on this measure.

From: mailinglist@capitol.hawaii.gov
To: [EDU Testimony](#)
Cc: ekekela@ahapunanaleo.org
Subject: Submitted testimony for HB2205 on Mar 14, 2016 13:25PM
Date: Saturday, March 12, 2016 2:22:02 PM

HB2205

Submitted on: 3/12/2016

Testimony for EDU on Mar 14, 2016 13:25PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Ekekela Aiona	Aha Punana Leo	Oppose	No

Comments: Senator Michelle N. Kidani, Chair Senator Breene Harimoto, Vice Chair Senate Committee on Education Date: Monday, March 14, 2016 Time: 1:25 PM Place: Conference Room 229 Testimony of the 'Aha Punana Leo, Non-Profit Educational Organization Dedicated to the Revitalization of the Hawaiian Language HB 2205, HD1 RELATING TO CHARTER SCHOOLS: STRONGLY OPPOSE Aloha Chair Kidani, Vice Chair Harimoto and Members of the Committee: My name is 'Ekekela Aiona, Executive Director of the 'Aha Punana Leo. The 'Aha Punana Leo is in strong opposition to HB 2205, HD1. The 'Aha Punana Leo strongly opposes Section 7 of this measure that exempts the Commission from the open meeting requirements of HRS Chapter 92 when engaged in adjudicatory functions. This provision will allow the Commission to make decisions about charter schools in private. DELETE < (H) The state public charter school commission, established pursuant to section 302D-3, as to a matter on which the commission has already rendered a decision in a public meeting."> Mahalo nui, M. 'Ekekela Aiona Executive Director, 'Aha Punana Leo 96 Pu'uohonu Place Hilo, HI 96720 (808) 935-4304

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.

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'A'ole pau ka 'ike i ka hualau ko'okahi

Connections Public Charter School

A Community, Business & Education Learning `Ohana

Testimony Strongly Opposing House Bill 2205

Public Hearing on March 14, 2016 at 1:25 pm

John Thatcher, Connections Public Charter School

Chairperson Kidani, Vice-Chairperson Harimoto and Members of the Senate Committee on Education:

Thank you for this opportunity to testify, again, regarding my strong opposition to House Bill 2205. After reading through all of the testimony opposing this bill and the companion Senate Bill 2780, I am extremely perplexed by the fact that this bill is still being discussed. The only testimony supporting this bill has come from the Commission's former executive director, Tom Hutton.

The Director of the Office of Information Practices have raised strong concerns about this bill. The Office of Hawaiian Affairs (OHA) asked that portions be deleted. The Hawaii Educational Policy Center called for a discussion of "how open, transparent, and participatory our State institutions should be." Testimony opposing this bill came from The Counsel for Native Hawaiian Advancement, The League of Women Voters, Common Cause, Kamehameha Schools, 'Aha Punana Leo, the Board of Education, and nine charter schools.

Charter schools are exempt from most of the provisions of §92 (according to §302D-12). By law the Commission is not. This bill would impose the requirements of §92-9 in addition to an additional requirement to include "the views of the participants" in the minutes. The Commission itself does not include "the views of the participants" in their minutes. What purpose is served by this new requirement on charter schools governing boards?

In his testimony for the FIN committee, Jim Shon wrote, "HEPC encourages all policy makers take into consideration these provisions when considering exempting any agency, board or commission from Chapter 91. HEPC also expresses a concern that should any agency receive a new exemption, others may seek the same – which would only diminish the public safeguards embedded in Chapter 91." Is this committee prepared for such unintended consequences? I sincerely hope not.



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Kea'au, HI 96749
(808) 982-4260
(808) 966-7821
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Ka Papa Alaka'i

Kēhaulani 'Aipia-
Peters,
Pelekikena

Kēhaulani Shintani,
Hope Pelekikena

Kaleo Hayashida,
Kākau 'Ōlelo

Leilani Ka'apuni,
Pu'ukū

Kamalei Hayes

Kauanoē Kamanā

Nāmaka Rawlins

Pila Wilson

Pelehonuamea
Harman

No 'Ane'i Ko
Kākou Ola!

Senator Michelle N. Kidani, Chair
Senator Breene Harimoto, Vice Chair
Senate Committee on Education

Date of Hearing: 3-14-2016
Time: 1:25pm
Location: Conference Room 229

*Testimony of Dr. Kēhaulani 'Aipia-Peters, Governing Board Chair
Ke Kula 'O Nāwahīokalani 'ōpu 'u Iki LPCS*

HB2205, HD1 RELATING TO CHARTER SCHOOLS:
STRONG OPPOSITION

Aloha Legislators:

The Governing Board of Ke Kula 'O Nāwahīokalani 'ōpu 'u Iki LPCS is submitting this written testimony in **STRONG OPPOSITION** of **HB2205, HD1**.

We, the governing board, **strongly oppose Section 7** of this measure that exempts the Commission from the open meeting requirements of HRS Chapter 92 when engaged in adjudicatory functions. We ask that you oppose this bill in its present form so as not to jeopardize the integrity of HRS Chapter 92.

Mahalo nui for the opportunity to provide testimony for your consideration

Mahalo,

Dr. Kēhaulani 'Aipia-Peters
Chair, Governing Board
Ke Kula 'O Nāwahīokalani 'ōpu 'u Iki LPCS

Testimony HB2205 HD1
Senate Education Committee
March 14, 2016 Conference Room 229 1:25 pm
Strongly Oppose

Dear Chair Kidani and committee,

The second part of this testimony is my original testimony when the bill went before the House Finance Committee. I sent in similar testimony when SB2780 was before this committee. I submitted testimony when SB2780 went before the Senate WAM committee. I have followed all of the testimonies submitted except when some of the testimonies submitted to WAM was not posted. I inquired about the missing testimonies and was given a response that they would be uploaded when the WAM committee found the time. That was on February 24, 2016. The testimony I submitted two days before the hearing is still not posted. In the original hearing of the bill in your committee there was an overwhelming amount of opposing testimony. Not one offered any support for the bill. The Commission who proposed the changes including being excluded from the Sunshine law did not offer any reasons for the changes. The testimony they submitted only referenced what was contained in the bill, but did not include justification for the changes. Contrary to their testimony was opposition from **Cheryl Kakazu Park, Director of the Office of Information Practices** who receives complaints about deviations from the Sunshine Law and **Lance Mizumoto, Chairman of the State Board of Education** who is the head of the State Educational Agency that oversees all public education in the State. I cannot believe that the legislature would not rely on the advice of the two most influential people in the State when it comes to this issue. If you don't listen to them, then you might as well stop reading my testimony because my position is insignificant compared to theirs.

I strongly oppose the general intent of this bill to allow the State Public Charter School Commission to operate with less transparency and accountability as to statutes involving administrative rules and the sunshine law. If you browse the past testimonies of this bill, you will discover that 90% or more has been in opposition. The proponents of the bill offer no valid testimony as to why these changes to existing statute are needed. We desperately need public transparency in charter school oversight.

Section 1. This section prohibits the Commission from providing technical support for charter school applicants as well as existing charter governing boards. Technical support comes in many forms and this lack of support from the authorizer has created functional and operational problems for existing charter schools, so I would imagine that it would have an even larger impact on those applicants who don't know how the system works. I would say with emphasis that charter schools, existing and proposed, need more technical support not less. With the statute change from 302B to 302D, the central administrative support went from "okay but not great" to "non-existent". Imagine if all 260 traditional public schools had an overstaffed BOE with no support from a DOE. That's how it is in charters.

Section 2. Minor changes to 302D-12 (3) (D) states: "Keep written minutes of all public meetings that shall include (D) The views of the participants; (E) A record, by individual member, of any votes taken." Written minutes kept at Governing Board meetings should not have to include the views of the participants. This often times is not related to the business part of the meetings. This requirement will discourage open and informal discussion by stakeholders in the public meeting. The records of individual member votes are kept only in the case of a roll call where there is a 2/3 vote necessary to pass a motion which in some cases may be amendments to the Governing Board by-laws. There is no need to record every vote and keep a log of the voting record of each member. I don't even understand why this restrictions on board meetings are even proposed.

Section 4. This part of the bill is by far, the most objectionable. The change to 302 D-18 states: "(3) Provide charter contract holders with an opportunity to submit documents and give testimony challenging the rationale for closure and supporting the continuation of the school at an orderly proceeding held for that purpose;

provided that the proceeding shall not be subject to chapter 91.” This is probably the most critical meeting for Charter school staff and board members facing school closure. Why should this important hearing be out of the public eye and limit their participation. This eliminates contested cases hearings and denies the charter school due process.

Section 5 This addition to Section 92-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows: (a) This part shall not apply: (H) The state public charter school commission, 2 established pursuant to section 302D-3, 3 notwithstanding any other law to the contrary." The Commission has responsibility over 34 charter schools, 10,500 students and their families, and their staff and board members. If you refer to the minutes of the recent BOE “listening tour” you will find evidence that the Commission has already not complied with the open meetings law and to exempt them would put the charter school public in jeopardy of hidden agendas.

On behalf of the 10,500 public charter school students, I thank you in advance for supporting their education by holding all parties to the highest levels of transparency and accountability.

Steve Hirakami, Director, Hawaii Academy of Arts & Science PCS

From: mailinglist@capitol.hawaii.gov
To: [EDU Testimony](#)
Cc: wilsonwi@hawaii.edu
Subject: Submitted testimony for HB2205 on Mar 14, 2016 13:25PM
Date: Sunday, March 13, 2016 9:28:42 AM

HB2205

Submitted on: 3/13/2016

Testimony for EDU on Mar 14, 2016 13:25PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Dr. William H. Wilson	Individual	Oppose	No

Comments: I strongly oppose Section 7. The Commission should not be exempt from the open meeting requirements of HRS Chapter 92.

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.

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OPPOSE HB2205

THANK YOU FOR THE OPPORTUNIT TO TESTIFY.

Aloha, my name is Taffi Wise from Kanu o ka Aina on the Big Island of Hawaii. As a founding member of one of Hawaii's first start-up Charter Schools I have been involved in developing and refining the charter movement for the last 16 years. Kanu and its nonprofit partner KALO have brought in over \$90 million dollars to Hawaii and supported over 22 educational communities since 2000. I have worked on every charter task force and want to thank you so much for all the many empowerments the State Legislature has provided over the past decade.

For clarity, Charter Schools already have the right to charge fees, see the excerpt below of current contract provision: "8.9. Fees. **This language is a diversion, in efforts to make this Bill appear charter friendly - undermining the true intent to dilute the due process rights of Governing Boards and circumvent the current BOE Permitted Interaction Group Investigation and Administrative Rule Making process that is formally underway as of January 19, 2016,** as well as the current complaints against the Commission filed with the Office of Information Practices.

A BOE Listening tour took place in November-December 2015, on three islands. Despite the inconvenient holiday timing approximately, 28 of 35 or 80% of the school communities took time and testified against the commission. That is a group representing approximately 8338 families. A clip from the conclusion presented to the BOE and public on January 19, 2016, reads as follows: "**The concerns that have been expressed during this listening tour are of such significant breadth and depth that more formal investigation by the Board is warranted....**" the full report is attached. Subsequently, the **BOE took unanimous action designating a formal Permitted Interaction Group** (pursuant to Hawaii Revised Statutes Section 92-2.5(b)), to investigate the allegations and complaints against the commission and concerning Board responsibilities under Hawaii Revised Statutes Section 302D-11, Oversight of public charter school authorizers and review of proposed charter school legislation.

Many concerns expressed during the listening tour were a result of the last two external financial audits of the charter school commission office. On page 17 of the most recent Charter School Office External Audit done by CW Associates (attached) the financials clarified, in 2014 there was an **excess of expenses over revenue of \$(656,709); in 2015 \$(485,306) resulting in a net financial deficit of \$(367,592)**. Additionally the financials in the audits DO NOT match the last two annual reports done by the charter commission and presented to the BOE and Legislature.

STATE PUBLIC CHARTER SCHOOL COMMISSION
(An agency of the State of Hawaii)

STATEMENT OF ACTIVITIES

For the Year Ended June 30, 2015
(With Prior Year Comparative Information)

Functions/Programs	2015			2014		
	Expenses	Operating Grants Revenues	Net (Expenses) Revenues and Changes in Net Position	Expenses	Operating Grants Revenues	Net (Expenses) Revenues and Changes in Net Position
Governmental activities						
Support and administrative services	\$ 1,526,889	\$ -	\$ (1,526,889)	\$ 1,924,637	\$ -	\$ (1,924,637)
Instructional enhancement	<u>2,030,615</u>	<u>2,030,615</u>	<u>-</u>	<u>2,218,815</u>	<u>2,218,815</u>	<u>-</u>
Total governmental activities	<u>\$ 3,557,504</u>	<u>\$ 2,030,615</u>	<u>(1,526,889)</u>	<u>\$ 4,143,452</u>	<u>\$ 2,218,815</u>	<u>(1,924,637)</u>
General revenues						
Administrative fees charged to schools			967,558			1,235,363
Other grants and income			<u>74,025</u>			<u>32,565</u>
Total general revenues			<u>1,041,583</u>			<u>1,267,928</u>
Excess of expenses over revenues			(485,306)			(656,709)
Net position – beginning of year			<u>117,714</u>			<u>774,423</u>
Net position (deficit) – end of year			<u>\$ (367,592)</u>			<u>\$ 117,714</u>

See accompanying notes to the financial statements

Other formal documents raising concern, The State Auditors Study of Public Charter Schools’ Report Number 15-14, December 2015, page 10, found, “the financial data schools must currently submit to the State Public Charter School Commission do provide indications of possible financial stress. However, **human error and inexperience among commission staff contributed to their inability to recognize and interpret the information....**”

Lastly, For the first time in Hawaii’s history **in 2015, the per-pupil funding allocated by the State legislature WAS NOT disbursed appropriately by the commission office and in accordance with HRS 302-D28.** There is also a current investigation by the USDOE AAPI Commission into the distribution or lack thereof, of the federal titled funds under the control of the Commission office since 2012.

It is imperative that there be oversight of the Commission office by the BOE, due process NOT be undermined and public accountability and transparency be maintained. The safeguards the Legislature put in place are currently working please allow them to remain.

Please **DO NOT SUPPORT THIS BILL.**

With humility,



Taffi Wise

For your easy reference:

[§302D-11] Oversight of public charter school authorizers. (c) Persistently unsatisfactory performance of an authorizer's portfolio of public charter schools, a pattern of well-founded complaints about the authorizer or its public charter schools, or other objective circumstances may trigger a special review by the board. In reviewing or evaluating the performance of authorizers the board shall apply nationally recognized principles and standards for quality charter authorizing.

Excerpt of current contract provision: “8.9. Fees. The School may charge reasonable fees, to the extent permitted by law, for summer school programs, after school programs, student activities, and any other service, materials, or equipment for which other state public schools may charge a fee.”

[§302D-28] Funding and finance:

(d) Charter schools shall be eligible for all federal financial support to the same extent as department schools. The department shall provide all authorizers with all state-level federal grant proposals submitted by the department that include charter schools as potential recipients and timely reports on state-level federal grants received for which charter schools may apply or are entitled to receive. Federal funds received by the department for charter schools shall be transferred to authorizers for distribution to the charter schools they authorize in accordance with the federal requirements. If administrative services related to federal grants are provided to the charter school by the department, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that shall not exceed six per cent of the charter school's federal grants.

Any charter school shall be eligible to receive any supplemental federal grant or award for which any department school may submit a proposal, or any supplemental federal grants limited to charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to these supplemental grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that shall not exceed six per cent of the supplemental grant for which the services are used.

All additional funds generated by the governing boards, that are not from a supplemental grant, shall be held separate from allotted funds and may be expended at the discretion of the governing boards.

(e) Authorizers shall calculate a general fund per-pupil amount based upon the amount of general funds appropriated by the legislature and released by the governor and the projected enrollment amount used to calculate the general funds appropriated pursuant to subsection (a).

Authorizers shall submit a report to the legislature no later than twenty days prior to the convening of each regular session that contains each charter school's current school year

projection that is used to submit the budget request, the updated May 15 enrollment projection, the actual October 15 enrollment count, the authorizer's reviewed and verified enrollment count, and the November 15 enrollment count.

(f) To enable charter schools to access state funding prior to the start of each school year, foster their fiscal planning, enhance their accountability, and avoid over-allocating general funds to charter schools based on self-reported enrollment projections, authorizers shall:

- (1) Provide sixty per cent of a charter school's per-pupil allocation based on the charter school's projected student enrollment no later than July 20 of each fiscal year; provided that the charter school shall have submitted to its authorizer a projected student enrollment no later than May 15 of each year;
- (2) Provide an additional thirty per cent of a charter school's per-pupil allocation no later than December 1 of each year, based on the October 15 student enrollment, as reviewed and verified by the authorizer, only to schools in compliance with all financial reporting requirements; and
- (3) Retain no more than the balance of the remaining ten per cent of a charter school's per-pupil allocation, as a contingency balance to ensure fiscal accountability and compliance, no later than June 30 of each year;

Attachments:

BOE Report 1/19/2016

CW Associates Commission Audit

DAVID Y. IGE
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: (808) 586-3775 Fax: (808) 586-3776

FOR: HB 2205 HD1 Relating to Charter Schools
DATE: Monday, March 14, 2016
TIME: 1:25 PM
COMMITTEE(S): Senate Committee on Education
ROOM: Conference Room 229
FROM: Yvonne Lau, Interim Executive Director
State Public Charter School Commission

Testimony in support of HB 2205 HD1

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

The State Public Charter School Commission appreciates the opportunity to submit this testimony in support of Senate Bill 2780, "Relating to Charter Schools," which makes clarifying and conforming amendments to the statutory provisions governing charter schools. We are grateful to Chair Kidani, Senators Chun-Oakland, Keith-Agaran, and Shimabukuro for their sponsorship of this bill.

The proposed measure as amended would:

- Prohibit the Commission from providing technical support to prospective charter applicants that would directly and substantially impact its decision related to the approval or denial of the charter applications, similar to the statutory admonition to the Commission regarding its oversight role as to current charter schools;
- Provide charter school governing boards more flexibility regarding the deadline for the posting of meeting agendas, minutes, and membership, as well as some minimal guidance regarding the quality of such disclosures to better ensure greater public transparency;

- Provide the same protections to a nonprofit organization that serves as a charter school’s governing board as are afforded to other governing boards;
- Specify that the procedural requirements for Commission hearings are those already set forth in the charter school statute, including the right to legal representation, to present witnesses, etc., and not other requirements for contested case hearings set forth in Chapter 91, Hawaii Revised Statutes, or in other sources of law not specific to charter schools and charter school authorizers;
- Expressly allow charter schools to assess special fees and charges for co-curricular activities, to parallel the department of education’s statute;
- Allow conversion charter schools (*i.e.*, former DOE schools, which remain the default neighborhood public school for their assigned attendance districts) to apply enrollment preferences, if they have any, to those enrollment seats remaining available after all students from within the school’s attendance district have been admitted; and
- Expressly add the Commission to the non-exhaustive list of state agencies that are excluded from open meeting requirements of sections 91-8 and 91-9, HRS, when exercise a purely adjudicatory function, but, unlike for other agencies, limit this authority to matters on which the Commission already has made the decision in a public meeting.

With respect to the last provision, due to concerns voiced by the Office of Information practices about confusion created by the qualifying language, we respectfully request the deletion of this portion of the bill and instead propose to add the following language to section 302D-25(h), HRS: “The commission in exercising its adjudicatory functions, like those boards cited to in section 92-6(2), shall be exempt from the requirements of section 92, HRS, provided that the exemption be applicable to matters on which the commission has already rendered a decision in a public meeting.” A copy of the amendment is attached to this testimony.

These proposed provisions represent incremental but important refinements to the statutory framework governing Hawaii’s public charter school sector.

Thank you for your consideration of this testimony.

A BILL FOR AN ACT

RELATING TO CHARTER SCHOOLS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. Section 302D-5, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) An authorizer shall not provide technical support to a prospective charter school applicant, an applicant governing board, or a charter school it authorizes in cases where the technical support will directly and substantially impact any authorizer decision related to the [~~authorization,~~] approval or denial of the charter application or the renewal, revocation, or nonrenewal of the charter [school.] contract. This subsection shall not apply to technical support that an authorizer is required to provide to a charter school pursuant to federal law."

SECTION 2. Section 302D-12, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) Charter schools and their governing boards shall be exempt from the requirements of chapters 91 and 92. The governing boards shall:

- (1) Hold meetings open to the public;

- (2) [~~Make available~~] Post the notices and agendas of public meetings:
- (A) At a publicly accessible area in the charter school's office so [~~as to be~~] they are available for review during regular business hours; and
 - (B) On the charter school's internet website, not less than six calendar days prior to the public meeting, unless a waiver is granted by the authorizer or authorizer's designee in the case of an emergency; [~~and~~]
- (3) Keep written minutes of all public meetings that shall include:
- (A) The date, time, and place of the meeting;
 - (B) The members of the board recorded as either present or absent;
 - (C) The substance of all matters proposed, discussed, and decided;
 - (D) The views of the participants;
 - (E) A record, by individual member, of any votes taken; and
 - (F) Any other information that any member of the board requests be included or reflected in the minutes;

(4) Not be required to produce a full transcript or audio or video recording of any public meeting, unless otherwise required by law;

~~[(3)]~~ (5) [Make available] Post the written minutes from public meetings:

(A) At a publicly accessible area in the charter school's office so the minutes are available for review during regular business hours; and

(B) On the charter school's internet website, within ~~[thirty days and maintain]~~ sixty calendar days after the public meeting or five calendar days after the next public meeting, whichever is sooner; and

(6) Maintain a list of the current names and contact information of the governing board's members and officers:

(A) In the charter school's office so ~~[as to be]~~ it is available for review during regular business hours; and

(B) On the charter school's internet website."

SECTION 3. Section 302D-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any community, department school, school community council, group of teachers, group of teachers and administrators, or nonprofit organization may submit a letter of

intent to an authorizer to form a charter school and establish an applicant governing board. An applicant governing board may develop a charter application pursuant to this section; provided that:

- (1) An applicant governing board established by a community may develop a charter application for a start-up charter school;
- (2) An applicant governing board established by a department school or a school community council may develop a charter application for a conversion charter school;
- (3) An applicant governing board established by a group of teachers or a group of administrators may develop a charter application for a start-up or conversion charter school; and
- (4) A nonprofit organization may:
 - (A) Establish an applicant governing board that is separate from the nonprofit organization and develop a charter application for a start-up or conversion charter school; or
 - (B) Establish an applicant governing board that shall be the board of directors of the nonprofit organization and may develop a charter application for a conversion charter school;

provided that any nonprofit organization that seeks to manage and operate a conversion charter school shall:

- (i) Submit to the authorizer at the time of the charter application bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of potential conflict of interest situations;
- (ii) Have experience in the management and operation of public or private schools or, to the extent necessary, agree to obtain appropriate services from another entity or entities possessing such experience; ~~and~~
- (iii) Not interfere in the operations of the department school to be converted until otherwise authorized by the authorizer in consultation with the department~~[-]~~; and
- (iv) Have the same protections that are afforded to all other governing boards in its role as the conversion charter school governing board."

SECTION 4. Section 302D-18, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) An authorizer shall develop revocation and nonrenewal processes that:

- (1) Provide charter contract holders with a timely notification of the prospect of revocation or non-renewal and the reasons for such possible closure;
- (2) Allow charter contract holders a reasonable amount of time in which to prepare a response;
- (3) Provide charter contract holders with an opportunity to submit documents and give testimony challenging the rationale for closure and supporting the continuation of the school at an orderly proceeding held for that purpose; provided that the proceeding shall be governed by the requirements set forth in this section and not additionally subject to requirements established for an agency hearing under chapter 91;
- (4) Allow charter contract holders access to representation by counsel, subject to section 28-8.3, and to call witnesses on their behalf;
- (5) Permit the recording of proceedings described in paragraph (3); and
- (6) After a reasonable period for deliberation, require a final determination to be made and conveyed in writing to the charter contract holders."

SECTION 5. Section 302D-25, Hawaii Revised Statutes, is amended by adding subsection (h) to read as follows:

"(h) The commission in exercising its adjudicatory function, like those boards enumerated in section 92-6(2), HRS, shall be exempt from the requirements of section 92, HRS, as to matters on which the commission already has rendered a decision in a public meeting."

SECTION 5 6. Section 302D-28, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) No charter school may assess tuition[-]; provided that a charter school may assess and collect special fees and charges from students for co-curricular activities. Any special fees and charges collected pursuant to this subsection shall be deposited into insured checking or savings accounts and expended by each individual charter school."

SECTION 6 7. Section 302D-34, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A conversion charter school shall:

- (1) Enroll any student who resides within the school's former geographic service area pursuant to section 302A-1143, for the grades that were in place when the department school converted to a charter school; provided that the department may consult with a conversion charter school every three years to

determine whether realignment of the charter school's service area is appropriate given population shifts and the department's overall service area reviews;

~~[(2) Follow the department's procedures regarding enrollment, including but not limited to geographic exceptions and enrollment preferences;] and~~

~~[(3)]~~ (2) Be subject to subsection (b) for ~~[grades]~~:

(A) Grades that were not in place when the school converted to a public charter school~~[-]~~; and

(B) For any seats still available at the charter school after the enrollment of all students desiring to attend the charter school who reside within the school's former geographic service area pursuant to section 302A-1143."

PART II

~~SECTION 7. Section 92-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:~~

~~"(a) This part shall not apply:~~

~~(1) To the judicial branch[.]; and~~

~~(2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising~~

~~adjudicatory functions include, but are not limited to, the following:~~

~~(A) Hawaii labor relations board, chapters 89 and 377;~~

~~(B) Labor and industrial relations appeals board,
chapter 371;~~

~~(C) Hawaii paroling authority, chapter 353;~~

~~(D) Civil service commission, chapter 26;~~

~~(E) Board of trustees, employees' retirement system of
the State of Hawaii, chapter 88;~~

~~(F) Crime victim compensation commission, chapter 351;~~

~~{and}~~

~~(G) State ethics commission, chapter 84[.]; and~~

~~(H) The state public charter school commission,
established pursuant to section 302D-3, as to a
matter on which the commission already has
rendered a decision in a public meeting."~~

PART III II

SECTION 9 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10 9. This Act shall take effect on July 1, 2050.