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

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FOR: HB 2205 Relating to Charter Schools
DATE: Monday, February 08, 2016
TIME: 2:00 PM
COMMITTEE(S): House Committee on Education
ROOM: Conference Room 309
FROM: Tom Hutton, Executive Director
State Public Charter School Commission

Testimony in support of HB 2205

Chair Takumi, Vice Chair Ohno, 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 Takumi and Vice Chair Ohno for their sponsorship of the bill.

The proposed measure as introduced would:

- Allow the Commission to issue interim administrative rules by Commission directives pending adoption of permanent rules under the formal rulemaking process pursuant to Chapter 91, and limit the interim rules for no more than eighteen months;
- 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 application;
- Provide charter school governing boards some additional flexibility regarding 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 set forth in the charter school statute, not other requirements for contested case hearings set forth in Chapter 91, Hawaii Revised Statutes;
- 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 to apply enrollment preferences, if 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 purely adjudicatory functions.

The Commission respectfully requests several amendments to the bill.

First, we ask that the provision related to interim administrative rules be stricken. It was always the intent of the Commission to adopt any interim rules through the Commission's normal public meeting process, but the model statutory provision we used, Section 103D-202, HRS, confused this point, for which we apologize. We will find work-arounds to address the matters in the nearer-term that we had envisioned addressing through this means and promulgate rules using the normal process.

Second, during legislative redrafting of the draft language we had submitted, the provision regarding a more flexible deadline for governing board minutes was changed from five days after the board's subsequent public meeting to five days before the next meeting. We ask that the bill be revised to reflect the Commission's original intent.

Third, also during legislative redrafting proposed language was deleted that was intended to make extra clear that the procedural requirements for Commission hearings under Chapter 302D, the charter school law, still apply, just not additional requirements for contest case hearings that are found outside charter law. By way of background, this provision is intended to resolve an ambiguity in the law and ensure that any procedural requirements apply are made clear within the charter school statute. We ask that the clarifying language, while perhaps not strictly necessary as a matter of spare statutory drafting, be reinserted.

Finally, we request that the provision specifically adding the Commission to the non-exhaustive list of agencies exercising purely adjudicatory functions be revised to limit this authority to matters on which the Commission already has made the decision in a public meeting. The

proposal was intended to address a situation in which the Commission was asked to issue a written decision in a matter on which it already had voted multiple times in public meetings and was advised that this adjudicatory function need not necessitate yet another public meeting on the same matter. As revised, the language actually would restrict the Commission's authority more than what we have been advised is the status quo, while still addressing the problem.

A proposed markup for a House Draft of the bill is attached.

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-3.5, Hawaii Revised Statutes, is amended to read as follows:~~

~~"~~[[§302D-3.5]]~~ **Rules.** Unless otherwise provided for in this chapter or chapter 302A, the commission may adopt rules pursuant to chapter 91 to administer and implement this chapter; provided that the board shall maintain exclusive [rule making] rulemaking authority over state educational policy[.]; and provided further that the commission may issue interim rules by commission directives that shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91. The interim rules shall not be effective for more than eighteen months."~~

SECTION ~~2~~ 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 ~~3~~ 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 **no less than** five **calendar** days **after** ~~prior to~~ 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 4 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 5-4. 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 not be subject to 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 **6 5**. 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 **7 6**. 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 **8 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 notwithstanding any other law to the contrary."

PART III

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

SECTION 10. This Act shall take effect upon its approval.



HB2205
RELATING TO CHARTER SCHOOLS
House Committee on Education

February 8, 2016

2:00 p.m.

Room 309

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend to the Board of Trustees a position of COMMENT on HB2205. Among other provisions, this measure exempts the Hawai'i State Public Charter School Commission ("Commission") from Chapter 91 rulemaking requirements for "interim" rules; exempts the Commission from Chapter 91 contested case hearing requirements in charter school revocation and nonrenewal proceedings; and exempts the Commission from Chapter 92 open meeting requirements when exercising its adjudicatory functions. Given the Commission's potential to impact the education of our public charter school students, including those enrolled in Hawaiian-focused or Hawaiian language charter schools that OHA has invested over \$15,000,000 in since SY2005-2006, HB2205 raise serious due process and procedural concerns.

Section 1 of this measure authorizes the Commission to issue interim rules by Commission "directives" exempt from the public notice, hearing, and gubernatorial approval requirements of Chapter 91, which may be effective for an 18-month period. Given the lack of statutory standards or any specific description of what such rulemaking may entail, such a provision may eliminate critical opportunities for public oversight or input in policies affecting our state's public charter schools. In contrast, OHA notes that expedited rulemaking is already available to the Commission under Hawai'i Revised Statutes ("HRS") Section 91-3(b), which allows an agency to adopt rules without the public hearing and notice requirements of Chapter 91 only when it finds, in writing, that an imminent peril to public health, safety, or morals exists, which would be effective for a maximum period of only four months.

OHA further notes that the 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). Accordingly, the broad authorities granted under Section 1, which exempt the Commission from public and gubernatorial oversight in its rulemaking over public charter schools, may

also undermine the ongoing work of the BOE in reviewing and guiding the Commission's activities.

Section 5 of this measure amends HRS Section 302D-18 in the charter school law by exempting proceedings related to charter revocation and nonrenewal from contested case procedures 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.

Section 8 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 contested case hearing exemptions of Section 5, 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 open meeting requirements, which OHA notes already contain exceptions for executive sessions and discussions of personal or confidential matters. See HRS §§ 92-4, -5.

Finally, 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 on SB2780, the Senate Education Committee deferred decision-making to February 12, 2016, and urged the Commission to outreach with public charter schools in the meantime. Moreover, a member of the Hawai'i State Board of Education ("BOE") submitted testimony **in opposition to SB2780**, in his individual capacity, as the BOE had not yet taken any positions on proposed legislation. Particularly objectionable to this BOE member was Section 8 of the measure, which in his words, "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.' Unlike the Board of Education (which is NOT on the list to which this bill would add the Commission) the Commission does not handle appeals from agencies not under its direct control. The only appeals heard by the Commission are related to charter school applicants and charter schools. These types of appeals should not be termed "adjudicatory" as they are part of the Commission's core responsibilities." The BOE member concluded that key provisions of SB2780 are highly objectionable and others are unnecessary, and recommended that the Committee hold SB2780.

For the foregoing reasons, OHA therefore urges the Committee to **DELETE SECTIONS 1, 5, AND 8** from HB2205, the companion to SB2780, or hold this measure. Mahalo nui for the opportunity to testify on this measure.

HB2205

Submitted on: 2/3/2016

Testimony for EDN on Feb 8, 2016 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Dr. Jim Shon	Hawaii Educational Policy Center	Oppose	Yes

Comments: In light of the Board of Educations ongoing review of Charter Commission operations, and in support of application of Chapters 91 and 92, this bill raises many issues re transparency and openness and due process.

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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HAWAI‘I EDUCATIONAL POLICY CENTER

Issues of Transparency in Charter School Oversight

A Policy Brief on Transparency in Charter School Commission Oversight

Prepared by Jim Shon, Director, HEPC

February 8, 2016

Background

SB 2780 RELATING TO CHARTER SCHOOLS received a public hearing before the Senate Committee on Education on February 1, 2016. Its House companion bill is HB 2205. The bill was met with much opposition among charter schools and other stakeholders. The content raises a number of important issues relating to transparency and public participation. The fact that the Charter School Commission testified in favor of all aspects of the bill suggests it is time to carefully examine its impacts and precedents.

HEPC sees this proposed bill as part of a trend of other education bills seeking to remove educational decision making from openness and transparency. Determining the balance between functionality and public participation is an important public policy decision. Other bills would require more public access to agendas, documents, and presentations in education and other boards. This brief analysis is intended to highlight some of the debate, and suggest an agenda that favors public transparency and participation.

HEPC initial analysis.

Section 1. of the bill permits the Charter School Commission to be exempt from open and transparent administrative rule making under HRS Chapter 91.

If the Legislature wished to improve the process, participation and transparency, it could amend this section to read:

[§302D-3.5] Rules. Unless otherwise provided for in this chapter or chapter 302A, the commission ~~may~~ **shall** adopt rules pursuant to chapter 91 to administer and implement this chapter; provided that the board shall maintain exclusive rule-making authority over state educational policy. [L 2013, c 159, pt of §1]

Other language proposing amendments to the law in lines 8-13 could be deleted.

If the Legislature wanted to further improve process, participation and transparency, it might *require* that all Commission proposed rules, policies and charter contract provisions be forwarded to the State Board of Education for comments prior to adoption. This would keep the BOE well informed as to the work of the Commission, and assist the Board in formulating its own rules and decisions regarding future authorizers. It would also afford charter schools, their

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board members, parents and students another venue to express views on issues that could directly and significantly affect their education.

Section 2. prohibits the Commission from providing technical support for charter applicants, as well as existing charter governing boards. Although technical assistance is not well defined, it could easily include sharing important information. This existing section appears to allow some technical assistance, but on closer inspection there really is nothing of substance – such as federal requirements requiring an authorizer to provide services.

If the legislature wished to improve the flow of information and assistance to charters by its only state authorizer, it could consider deleting section 302D-5 (g) from the law.

~~(g) An authorizer shall not provide technical support to a charter school it authorizes in cases where the technical support will directly and substantially impact any authorizer decision related to the authorization, renewal, revocation, or nonrenewal of the charter school. This subsection shall not apply to technical support that an authorizer is required to provide to a charter school pursuant to federal law. [L 2012, c 130, pt of §2; am L 2013, c 159, §5; am L 2014, c 99, §5; am L 2015, c 114, §3]~~

An alternative would be to define “technical assistance” and the phrase: “directly and substantially impact any authorizer decision.” If the law is allowed to stand as is, or with the proposed amendments in this bill, interpretations may become arbitrary, capricious, and ever changing. In fact, a recent Board of Education listening initiative found that the constantly changing accountability policies of the Commission were a major issue for charters.

Section 3. imposes reporting requirements on minutes of charter board meetings that might well discourage informal and open discussion and input from the charter school community. It imposes requirements regarding individual votes that are not imposed on other boards. For example, it requires a full transcript of any audio or video recordings. In other words, under the justification of increasing information, it may well be stifling public input and discussion in the school communities. Some generic information required to be available on line does improve the sharing of information and transparency.

If the Legislature wishes to improve open dialogue and discussion at the charter governing board meetings, it could defer this section until a thorough survey is made of how well the boards are operating. In the DOE, the State Board of Education has embarked on a similar effort to learn more about the operations of the School Community Councils before it takes action on this issue.

Section 4. appears to not include transparency issues, and speaks to the role of a nonprofit applying for a charter.

Section 5. exempts Charter deliberations to close a school from the Sunshine law, Chapter 91. This is one of most *un*-transparent proposals of this bill, and the draft offers no justification why the most consequential decisions of a Commission – the closing of a school – should operate from public view and participation.

If the Legislature wished to maintain openness, it could delete section 5 from the bill.

Section 6. relates to the collection of special fees for student activities, and does not appear to impact on transparency.

Section 7. seeks to add outside controls for charter enrollments in conversion schools. It is not clear if this conflicts with other sections of the charter law that explicitly grants the administrative powers to run a school to its governing board.

Section 8 seeks to exempt the Commission from sections of Chapter 92 (administrative rules), placing it in the category of the Judiciary, and a variety of other specialized boards. HEPC agrees with the analysis provided by BOE member Williams:

It 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.” Unlike the Board of Education (which is NOT on the list to which this bill would add the Commission) the Commission does not handle appeals from agencies not under its direct control. The only appeals heard by the Commission are related to charter school applicants and charter schools. These types of appeals should not be termed “adjudicatory” as they are part of the Commission’s core responsibilities.

In Conclusion, analysis and thoughtful examination of SB 2780 & HB 2205 opens an important discussion about how open, transparent, and participatory our State institutions should be.



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TESTIMONY IN **OPPOSITION** TO SB HB2205 RELATING TO CHARTER SCHOOLS

COMMITTEE ON EDUCATION
Monday, February 8, 2016

Chair Takumi, Vice Chair Ohno and members of the Education Committee, on behalf of the Council for Native Hawaiian Advancement (CNHA), I offer testimony in **opposition** to HB2205 relating to charter schools. CNHA opposes this bill in its current form, which would allow the charter school commission to adopt interim rules without providing notice.

The Bill appears to be arbitrary and inconsistent with Chapter 91. Specifically, Chapter 91-3B already allows for emergency rules for a period of four months. Allowing interim administrative rules that exempt the commission from public notice, public hearing and gubernatorial approval requirements of chapter 91 is excessive and lacks transparency. Moreover, interim administrative rules, exempts the commission from contested case proceedings when acting in adjudicatory function, which raises due process concerns.

Founded in 2001, CNHA is a Native Hawaii non-profit membership organization with more than 150 voting members. CNHA's mission is to enhance the well being of Hawaii through the cultural, political, economic, and community development of Native Hawaiians. We convene an annual education caucus and work throughout the year with many educators and leaders from our local charter schools.

After review of this bill, we find the burdens imposed by HB2205 far outweigh the benefits.

Mahalo for the opportunity to provide testimony on this measure.

Michelle Kauhane
President & CEO



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HOUSE COMMITTEE ON EDUCATION
Monday, February 8, 2016, 2 pm, House Conference Room 309
HB 2205 RELATING TO CHARTER SCHOOLS
TESTIMONY
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Takumi, Vice Chair Ohno, and Committee Members:

The League of Women Voters of Hawaii opposes HB 2205 which would exempt the State Public Charter School Commission from:

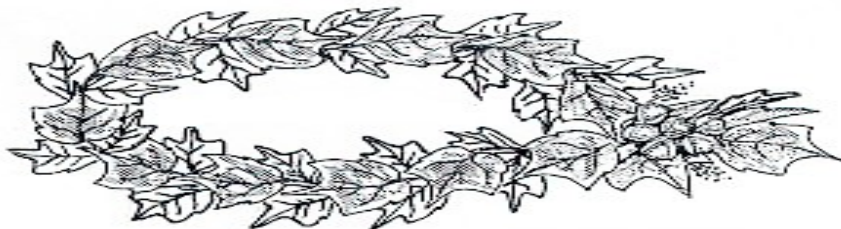
- **Normal rulemaking requirements for “interim” rules;**
- **Normal contested case hearing requirements in charter school revocation and nonrenewal proceedings;**
- **Sunshine Law requirements when exercising adjudicatory functions.**

Section 1 of HB 2205 would authorize the Commission to summarily issue interim rules for up to 18 months, without need to comply with public notice, hearing, and gubernatorial approval requirements for rulemaking under Chapter 91, Hawaii Revised Statutes. Conceivably interim rules could repeal or amend existing rules, and conceivably “new” interim rules could replace lapsing “old” interim rules. In effect HB 2205 would exempt the Commission from the need to adopt and implement rules in a fair and predictable manner like other public agencies. This is a terrible idea.

Section 5 of HB 2205 would always exempt proceedings for charter revocation and nonrenewal from contested case hearing requirements under Chapter 91, Hawaii Revised Statutes. In effect, no one could request a contested case hearing. We believe that an interested party should have a statutory right to request a contested case hearing concerning charter revocation proceedings. Unlike people who testify at a normal board meeting, parties to a contested case hearing gain important procedural rights including the right to subpoena documents and witnesses, the right to cross-examine witnesses, and the right to be provided with the written findings of fact and conclusions of law on which the board based its decision.

Section 8 of HB 2205 would exempt the Commission’s undefined “adjudicatory functions” from Sunshine Law board meeting requirements (e.g. public notice, agenda, minutes). Section 8 is unnecessary because contested case hearings are already excluded from the Sunshine Law. We are concerned that Section 8 might be misinterpreted to exempt routine Commission oversight of charter schools from compliance with Sunshine Law meeting requirements.

Thank you for the opportunity to submit testimony.



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

Connections Public Charter School

A Community, Business & Education Learning `Ohana

Testimony Strongly Opposing House Bill 2205

Public Hearing on February 8, 2016 at 2:00 pm

John Thatcher, Connections Public Charter School

Chairperson Takumi, Vice-Chairperson Ohno and Members of the House Committee on Education:

Thank you for this opportunity to testify regarding my strong opposition to House Bill 2205. This bill is both an assault on the autonomy of our charter schools and another attempt to endow the Commission with powers that undermine our ability to scrutinize and participate in decisions that may ultimately affect the very existence of charter schools in Hawai'i.

There are several provisions in this bill that are especially troubling. The State Public Charter School Commission is seeking exemptions from key provisions of the law that ensure fairness in applications of the law and the public right to participate in the formation of public policy. This bill is coalesced with provisions that appear beneficial to our charter schools in an attempt to conceal the actual intentions. The provisions in this bill pertaining to meetings by the governing boards of charter schools are an attempt to micromanage our charter schools, thus undermining our statutorily guaranteed autonomy. In light of the recent Board of Education scrutiny of the Commission and its staff, this bill appears to be retaliation for the recent Board of Education Listening Tour.

It is unclear why the Commission is seeking the ability to promulgate interim administrative rules. The current statute (§91-3(2)(b)) gives the Commission the authority to enact emergency administrative rules for a period of 120 days. In my testimony regarding the current Commission rules I said, "Proposed rule §8-501-4 infringes on freedom of speech and the equal protection clauses of the U.S. Constitution. The Hawai'i State Legislature declared 'it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible.' The Sunshine Law is designed to allow citizens to have input into decision-making. Hawai'i Intermediate Court of Appeals added further clarification when it wrote, 'the Sunshine Law is intended to foster transparency in the formation and conduct of public policy by opening up the governmental processes to public scrutiny and participation,' and Hawai'i's courts have said repeatedly that the Sunshine Law is to be 'liberally construed,' and that doubts are to be resolved in favor of greater openness." On October 9, 2014, the language contained in the proposed rule §8-501-4 was inserted into the bylaws of the Commission. The Commission conducted meetings in accordance with this rule despite the fact that it had not been approved. I question the Commission's need for a rule-making process exempt from public notice, public hearing, and gubernatorial approval.

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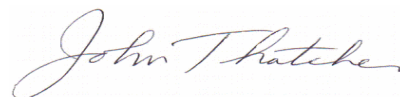
Email: john_thatcher@hawaii.rr.com

The law (§302D-3) says, “Notwithstanding section 302D-25 and any law to the contrary, the commission shall be subject to chapter 92.” The Commission's current administrative rules (§8-501-4) says “All meetings shall be conducted in accordance with chapter 92, Hawaii Revised Statutes.” Again, I question the Commission's need for an exemption to provisions of the law (specifically §92-6). This proposed exemption is especially troubling given the fact that there are at least two active Office of Information Practices (OIP) complaints against the Commission. On May 20, 2015, the Executive Director of the Commission received a letter from the OIP. Their staff attorney wrote, “The Office of Information Practices (OIP) has received an appeal from Mr. John Thatcher, concerning the State Public Charter School Commission (SPCSC) meeting held on May 14, 2015. Specifically, Mr. Thatcher asks whether the SPCSC violated Part I of chapter 92, Hawaii Revised Statutes (Sunshine Law), by considering Connections Public Charter School’s (Connections) 'use of enrollment form 515-IOW or [Connections’s] request for a written decision by the Hawaii State Public Charter School Commission regarding this matter,' even though the item was not on the agenda for the General Business Meeting held on May 14, 2015.”

On July 7, 2015, I received an email from a staff attorney with the State of Hawaii Office of Information Practices. It said, “The Office of Information Practices (OIP) is in receipt of your e-mails dated June 20, 2015 and July 1, 2015, requesting a status update regarding S APPEAL 15-26. On June 5, 2015, OIP received the Department of the Attorney General’s (AG) response, on behalf of the State Public Charter School Commission (Commission), to OIP’s Notice of Appeal of Sunshine Law Complaint. This Response Letter dated June 3, 2015 indicates that the AG also provided you with a copy of the letter. Currently, OIP is experiencing a backlog of cases and is striving to complete work on the oldest appeals first. It could therefore be quite some time before work on these appeals are completed. For your information, any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law, or to determine the applicability of the Sunshine Law to discussions or decisions of a government board. Hawaii Revised Statutes (HRS) §92-12(c) (2012). The court may order payment of reasonable attorney fees and costs to the prevailing party in such a lawsuit. Where a final action of a board was taken in violation of the open meeting and notice requirements of the Sunshine Law, that action may be voided by the court. HRS §92-11 (2012). A suit to void any final action must be commenced within ninety days of the action.”

At the December 10, 2015 Commission general meeting another charter school principal, Steve Hirakami, questioned the chairperson of the Commission concerning a letter he had received regarding the distribution of collective bargaining teacher bonuses and his request that this issue be placed on the agenda for the meeting. The letter was signed by Chairperson Catherine Payne and Executive Director Tom Hutton. Chairperson Payne was asked if she had acted on behalf of the Commission in this correspondence. She stated that she had acted as the Chair of the Commission and that the Commissioners had seen a copy of the letter (despite the fact that this issue was never addressed at a Commission meeting). Mr. Hirakami filed another complaint with the OIP for violations of the Sunshine Law. Is the Commission seeking an exemption from the Sunshine Law to avoid future actions of this sort?

There is nothing in this bill that will have a positive impact our charter schools. We do not need changes in the law to collect special fees and charges from students for co-curricular activities. I strongly urge you to kill this bill and send a clear message to the Hawaii State Public Charter School Commission and its Executive Director.



174 Kamehameha Ave., Hilo, Hawai`i - Phone 1-808-961-3664 FAX 1-808-961-2665
Email: john_thatcher@hawaii.rr.com

Testimony Strongly Opposing Senate HB2205
Submitted by Susie Osborne on behalf of:
Kua o ka La Public Charter School

Aloha Chairperson Takumi, Vice-Chairperson Ohno and Members of the House Committee on Education:

Thank you for this opportunity to testify regarding my strong opposition to House Bill 2205. It is with great concern that I read this proposed bill and strongly urge you to not adopt the proposed changes to HB2205.

Section 1 seeks to authorize the Charter School Commission to issue interim rules at Commission 'directive' with an 18 month cap. This clearly is not in alignment with the current rule making pertaining to emergency rule making, which requires imminent peril to health and safety that has a four month cap. The proposed language is not clear and does not provide an objective standard to limit the commission.

Section 5 seeks exemption to the Commission from Chapter 91 in charter revocation and charter nonrenewal proceedings. This effectively strips our schools of our due process protections, which are addressed through the contested case requirements. We clearly need these protections, which safeguard our students, parents, administrators, our supporting nonprofits, funders and the State itself.

I am sure you are well aware of the recent BOE listening tour conducted on three of Hawai'i Islands and hopefully you have read the report resulting from this tour. Grave areas of concern have been brought forward and the establishment of a permitted interactive group (PIG) is being considered to investigate these concerns by conducting a special review of the Commission.

This proposed bill is a perfect example of the Charter Commissions undermining processes, which ensure fairness in the application of the law including the public right to participate in the formation of public policy.

Is the Hawai'i public school system currently able to collect special fees for co-curricular activities? Does this require a law? The potential damage proposed in this bill must not be masked by this seemingly small benefit, which does not seem to need a law change.

We implore you to please, at this critical juncture of Charter Schools, stop, hear the voices of Charters and allow the important investigation of the Board of Education to occur before enacting such undermining laws that will strip us of our few avenues of protection that currently exist.

With sincere gratitude for your service to Hawai'i and respectfully submitted.

Testimony HB2205
House Education Committee
February 8, 2016 Conference Room 309 2:00 pm
Oppose

Dear Chair Takumi and committee,

I 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. The proposed change to 302 D-3.5 states: "and provided further that the commission may issue interim rules by commission directives that shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91. The interim rules shall not be effective for more than eighteen months." This is giving the Commission too much leeway in making "interim" rules which in 18 months could spell disaster for the process of renegotiating contracts or expose schools to closure without due process.

The change 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. 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.

The change in 302 D-12 states: "(5) 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 sixty days of the public meeting or no less than five days prior to the next public meeting, whichever is sooner." A lot of board meetings start with a review and acceptance of the past meeting. Having the requirement to post five days prior to a meeting would mean the board would have to approve the minutes of the meeting at the same meeting or conduct a review of the minutes between meetings.

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. This eliminates contested cases hearings and denies the charter school due process.

Finally, the 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: Alvin Parker [<mailto:principal@kawaihonapcs.org>]

Sent: Friday, February 05, 2016 1:07 PM

To: Rep. Roy Takumi

Subject: Oppositon to HB 2205

Aloha Chair Takumi,

I am writing to express my opposition to HB 2205 that authorizes the charter school commission to adopt interim rules that establishes requirements for meeting minutes and authorizes charter to assess fees and charges for co-curricular activities. I believe this bill is ill-conceived and intentionally pre-determines the structure and criteria for the reporting of meeting minutes. This bill is intrusive and I am in opposition of the passage of HB2205.

Mahalo,

Alvin N. Parker

Principal, Ka Waihona o ka Na`auao PCS



House Education Committee
Chair Roy Takumi, Vice Chair Takashi Ohno

Monday 02/08/2016 at 2:00 PM in Room 309
HB 2205 – Relating to Charter Schools

TESTIMONY — OPPOSE
Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair Takumi, Vice Chair Ohno, and members of the House Education Committee:

Common Cause Hawaii opposes HB 2205 which would decrease openness and transparency of the Charter School Commission (Commission), by allowing the Commission to be exempt from certain provisions of Hawaii's Sunshine Law. Public participation should be encouraged through increased access to information and open dialogue and discussion, not less.

Thank you for the opportunity to offer testimony **opposing HB 2205**.



KAMEHAMEHA SCHOOLS®

House Committee on Education

Time: 2:00 p.m.

Date: February 8, 2016

Where: State Capitol Room 309

TESTIMONY

By Ka'ano'i Walk
Kamehameha Schools

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

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

E ka Luna Ho'omalua Takumi, ka Hope Luna Ho'omalua Ohno a me nā Lālā o ke Kōmike Ho'ona'auao o ka Hale o nā Lunamaka'āinana, 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 relating to charter schools authorizes the charter school commission to adopt interim rules without providing notice and establishes requirements for meeting minutes. 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.

This bill now seeks to expand that authority to adopting rules without notice. It would allow the Hawai'i Charter School Commission to issue interim rules by Commission directives that "shall be exempt from the public notice, public hearing and gubernatorial approval requirements." We believe that rules adopted in such a manner, even if limited in duration, will tend to undermine public confidence and hinder the objectives of transparency, accountability and open government.

Kamehameha Schools advocates for and supports the achievement of Hawai'i's Native Hawaiian public school students. As such, we have 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 our 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.

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.

The BOE took unanimous Action on designation of Board members to an investigative committee (a permitted interaction group pursuant to Hawaii Revised Statutes Section 92-2.5(b)), concerning Board responsibilities under Hawaii Revised Statutes Section 302D-11, Oversight of public charter school authorizers and review of proposed charter school legislation. The motion, "to designate Board Members Jim Williams (chair of committee), Brian De Lima, Hubert Minn, and Amy Asselbaye to an investigative committee to 1) determine if a special review of the State Public Charter School Commission is warranted and, if so, develop the process and procedures for such a review that apply nationally recognized principles and standards for quality charter authorizing, pursuant to Hawaii Revised Statutes Section 302D-11(c); and 2) review the legislative proposals, as attached in Board Member Jim William's memorandum dated January 19, 2016, and develop a recommendation to the Board of whether to formally support them through written testimony to the Legislature."

http://www.hawaiiboe.net/Meetings/Notices/Documents/2016-01-19%20GBM/GBM_20160119_Board%20Action%20on%20PIG%20re%20charter%20school%20authorizers%20and%20proposed%20legislation.pdf

The motion was passed because of a BOE listening tour that took place in November-December 2015, on three islands a clip from the conclusion presented to the BOE 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....**"

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.” The BOE conducted a Charter School Listening Tour in response to numerous complaints in December 2015. 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.

Please do **NOT SUPPORT THIS BILL.**

With humility,

A handwritten signature in cursive script that reads "Taffi Wise".

Taffi Wise



Hālau Kū Māna
New Century Public Charter School

TESTIMONY IN **OPPOSITION** TO **HB 2205**
RELATING TO CHARTER SCHOOLS

COMMITTEE ON EDUCATION
Monday, February 8, 2016
Conference Rm 309; 2:00PM

Chair Takumi, Vice Chair Ohno and Members of the House Committee on Education,

On behalf of Hālau Kū Māna, I strongly urge the Committee to **OPPOSE** HB 2205.

This bill seeks to further empower the Commission with unwarranted and unnecessary authority that would ultimately weaken charter schools' already limited autonomy and exclude schools from participating in decisions that may affect its very existence.

State law already provides expedited rulemaking to occur only when it finds that an imminent peril to public health, safety or morals exists, which needs to be documented in writing. The statute provides that these rules would be effective for a maximum period of four months (HRS 91-3(b)). The Commission, however, has never articulated or has been clear about the need to be exempt from the requirements of chapter 91. Further, the Commission asks that the rules be in place for eighteen months. No state agency or department should be given exceptions to existing statutes.

Section 5 of this bill seeks to amend Hawaii's charter school law by exempting proceedings related to charter revocation and nonrenewal, granted under chapter 91. Should a charter be revoked or not renewed, due process procedures provided for in chapter 91 may be critical in protecting the rights and interests of the school, its students, parents and all of its stakeholders.

Also, section 8 of this measure would exempt the Commission from open meeting requirements of Hawaii Revised Statute Chapter 92 when engaging in adjudicatory functions. As briefly discussed above, this would eliminate any opportunity for public notice or oversight in decisions that affect the interests of our schools, which are public institutions and deserve public input and oversight.

And finally, I trust that each of you are aware of the recent Board of Education report that noted Charter Schools, its families and stakeholders expressed concerns that are of such significant breadth and depth that a formal investigation of the Hawaii Public Charter School Commission is warranted. As a result the establishment of a Permitted Interactive Group (PIG) is being considered to investigate the Commission and the concerns raised during the listening sessions.

As a school that educates 140 students in grades 4 – 12 from across the island of O'ahu, we urge the committee to **OPPOSE** HB 2205.

Mahalo,
B. Keoni Bunag, Ed.D.
Po'okula

Rep. Roy M. Takumi, Chair
Rep. Takashi Ohno, Vice Chair

House Committee on Education

House Bill 2205
Relating to Charter Schools

Monday, February 8, 2016; 2:00 PM
Conference Room 309, State Capitol

Testimony

Chair Takumi, Vice Chair Ohno and members of the Committee, my name is Jim Williams. I am a member of the Board of Education and chair of the Board's special committee (permitted interaction group) currently investigating whether to recommend that the Board conduct a "special review" of the performance of the Charter School Commission. Since the Board has not yet taken any positions on proposed legislation, including HB 2205, I am testifying as an individual. Thank you for this opportunity to present this testimony in opposition to HB 2205.

Recently I joined several of my colleagues on the Board in conducting a "listening tour" to hear the concerns of charter schools regarding the Charter School Commission. My report to the Board on the listening tour concluded that "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 Board's staff has transmitted a copy of the full report to you and members of this Committee.

Based on feedback received, on my understanding of HRS 302D, and on my own knowledge of charter schools, I believe the public interest and the interests of charter school students would be served best by the Committee holding this bill. Below are brief comments on pertinent sections of the bill:

Section 1, permitting interim rules for 18 months. The Commission has had sufficient time to enact rules. At a time when charter schools have expressed significant concerns about the decision-making processes of the Commission, it would not be prudent to grant additional unilateral powers to the Commission.

Section 2, regarding technical support to applicants. While I do not object to this provision, I do not believe it is necessary, and it should not be used as a justification for keeping this bill alive.

Section 3, placing additional requirements on charter schools for posting of documents. The current requirements are sufficient to protect the interests of charter school stakeholders and the public. In my view, it is unnecessary and unfair to impose additional requirements. The Commission should focus its efforts on supporting the requirements already in the law.

Section 4, protections for governing boards on applicants. Applicants are not government entities until their applications are approved by the Commission. This proposal seems contrary to wise public policy.

Section 5, exempting Commission decisions regarding revocation and non-renewal from Chapter 91. Revocation and non-renewal 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. I urge this Committee to refrain from approving this proposal in any form.

Section 6, permitting charter schools to charge certain fees. This proposal is unnecessary and should not be used as a reason to keep this bill alive.

Section 7, relating to enrollment in conversion charter schools. This proposal is unnecessary, as the Commission already has the authority to deal with this issue, if it would properly enact appropriate rules for the purpose.

Section 8, specifically including the Commission as a board that exercises adjudicatory functions. This is a particularly objectionable proposal. It 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." Unlike the Board of Education (which is NOT on the list to which this bill would add the Commission) the Commission does not handle appeals from agencies not under its direct control. The only appeals heard by the Commission are related to charter school applicants and charter schools. These types of appeals should not be termed "adjudicatory" as they are part of the Commission's core responsibilities.

In summary, key provisions of this bill are highly objectionable and others are unnecessary. I respectfully recommend that the Committee hold HB 2205.

Thank you for considering my individual testimony.

Jim Williams
60 N. Beretania St.
Honolulu, Hawaii 96817

HB2205

Submitted on: 2/5/2016

Testimony for EDN on Feb 8, 2016 14:00PM in Conference Room 309

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

Comments: Comments: Aloha Representatives, I serve on the board of Nawahi Iki Hawaiian language Charter School. There are distinctive federal and state laws relative to use of Hawaiian in education of which the Commission staff and Commission itself lack sufficient knowledge to create rules on their own without public input. I strongly oppose HB 2205.

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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HB2205

Submitted on: 2/3/2016

Testimony for EDN on Feb 8, 2016 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Kauanoë Kamana	Individual	Oppose	No

Comments: This bill has sections that are very detrimental to Hawaiian medium education programs. Therefore, I do not support this bill.

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HB2205

Submitted on: 2/3/2016

Testimony for EDN on Feb 8, 2016 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Namaka	Individual	Oppose	No

Comments: I do not support this bill. Mahalo nui

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HB2205

Submitted on: 2/4/2016

Testimony for EDN on Feb 8, 2016 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Ka'iulani Pahi'o	Individual	Oppose	No

Comments: Agree to significantly OPPOSE!

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HB2205

Submitted on: 2/5/2016

Testimony for EDN on Feb 8, 2016 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Anthony Fraser	Individual	Oppose	No

Comments:

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HB2205

Submitted on: 2/5/2016

Testimony for EDN on Feb 8, 2016 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Samuel Kaauwai	Individual	Oppose	No

Comments:

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HB2205

Submitted on: 2/5/2016

Testimony for EDN on Feb 8, 2016 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Levenson	Individual	Oppose	No

Comments:

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HB2205

Submitted on: 2/6/2016

Testimony for EDN on Feb 8, 2016 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong	Individual	Support	No

Comments:

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HB2205

Submitted on: 2/7/2016

Testimony for EDN on Feb 8, 2016 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
William J Hancock	Individual	Oppose	No

Comments: no due process for the schools

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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Marion K A Kapuniai
P. O. Box 6753
Kamuela, Hawaii 96743

February 7, 2016

COMMITTEE ON EDUCATION

Hearing: Monday, February 8, 2016 2:00 p.m.
Conference Rm 309 State Capitol, Hawaii

TESTIMONY ON HB 2205

Authorizes the charter school commission to adopt interim rules. Establishes requirements for meeting minutes. Authorizes charter schools to assess fees and charges for co-curricular activities.

I, an interested and concerned citizen, and Governing Board Member of Kanu O Ka 'Aina New Century Public Charter School testify to OPPOSE HB 2205.

SECTION 1. OPPOSE amendments to 302D-3.5

We are part of a governmental institution built "of the people, for the people, and by the people" which specifies laws and rules designed and promulgated to protect the peoples' rights. This suggested amendment to 302D-3.5 infringes on my rights and that of all other charter school governing board members, staff, parents, and students to participate in the rule making process. The Charter School Commission under the direction of its Executive Director and staff have no compelling reason to request this amendment – 1) Does not further the statutory mission of the commission, 2) Does not enhance the performance of the Commission staff, 3) Does not enhance the capabilities of the contracted charter schools to lift their students, 4) Was not identified as a concern in the Executive Director's Annual Report to the Legislature.

SECTION 3. OPPOSE amendments to 302D-12

I, along with other charter school governing board members, will have to review other agency procedures, formats, and timelines before agreeing to include in this section of the law.

Minutes serve to memorialize and to confirm actions taken!

SECTION 5. OPPOSE amendment to 302D-18

This is another example of attempting to erode and infringe upon our rights to due process Protections. (An attempt to circumvent the Board of Education's approval of a permitted interactive group to investigate complaints and concerns against the Charter School Commission and its Staff, led by its Executive Director.)

SECTION 8. OPPOSE amendment to Section 92-6 HRS

Further Comment:

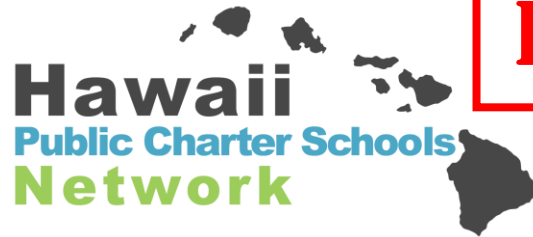
The amendments proposed in this bill combine unrelated issues. This bill should go no further as presented.

We have identical kuleana – to SERVE and REPRESENT.

I appreciate this opportunity to participate!

Thank You, M Kapuniai,
Waimea, Moku O Keawe

Phone: (808) 936-0157
Email: duke@sandwichisles.net



LATE

February 8, 2016

To: Honorable Roy Takumi, Chair
Honorable Takashi Ohno, Vice Chair
House Committee on Education

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

Re: **HB 2205 – RELATING TO PUBLIC SCHOOLS – COMMENTS with SUGGESTED CHANGES**
Conference Room 309 – Hawaii State Capitol – Feb. 8, 2016, 2 P.M.

On behalf of the Hawaii Public Charter School Network (HPCSN), I am submitting comments with suggested amendments on HB 2205, Relating to Charter Schools, which seeks to allow the Charter School Commission to promulgate interim rules that shall be exempt from the public notice, public hearing and gubernatorial requirements of HRS chapter 91 (“Administrative Rules”) and allow rules to be effective up to 18 months.

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.

Under HRS 302D, authorizers are required to “...carry out all their duties under this chapter in a manner consistent with nationally recognized principles and standards and with the spirit and intent of this chapter. Evidence of material or persistent failure to do so shall constitute grounds for losing charter authorizing powers.”

Section 1 of this bill would provide the adoption of rules without notice and public input, which impedes the public rule making process that is intended to ensure that the public is informed of proposed rules before they take effect; the public can comment on the proposed rules and provide additional data to the agency; the public can access the rulemaking record and analyze the data and analysis behind a proposed rule; the agency analyzes and responds

to the public's comments; the agency creates a permanent record of its analysis and the process; and the agency's actions can be reviewed by a judge or others to ensure the correct process was followed.

HPCSN has concerns that Section 1 is inconsistent with the spirit of Chapter 302D and will hinder public confidence. The promulgation of interim rules as offered in this bill would significantly impede with the administrative rulemaking process. As such, HPCSN urges members of the committee to carefully weigh the potential precedent this bill would have on the state's administrative rules and open meetings laws and ask that the amended language in Section 1 be stricken from the bill.

In Section 5, the Commission is seeking an amendment to HRS Section 302D-18, to be exempted from the contested case procedures under HRS Chapter 91. We understand the purpose of this provision is to seek clarity on whether disputes on revocation or non-renewal of school contracts should be subject to contested case proceedings. HPCSN appreciates the need to have clarity in this process and further recommends providing adequate due process to affected parties and providing for contested case procedures in matters relating to disputes on the revocation and non-renewal of charter school contracts. However, both the Charter School Commission and the affected charter school should have full access to legal representation by the Attorney General in disputes on the revocation or non-renewal of their contracts.

In Section 8 of this bill, 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.

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 comments. We appreciate the opportunity to provide testimony on behalf of HPCSN.