



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

H.B. NO. 233, RELATING TO CHARTER SCHOOLS.

BEFORE THE:

HOUSE COMMITTEE ON EDUCATION

DATE: Monday, February 9, 2015

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Randall S. Nishiyama, Deputy Attorney General

Chair Takumi and Members of the Committee:

The Department of the Attorney General provides the following comments regarding this bill.

This bill authorizes the state Public Charter School Commission ("Commission") to request the issuance of general obligation bonds to finance public charter school facilities, creates a working group to determine the allocation of the bond proceeds, specifies that bond funded facilities are owned by the State, requires an annual report to the Legislature, and authorizes the issuance of bonds to fund public charter school facilities.

We have three concerns regarding this bill.

First, subsection (b) of the new section 302D-A on page 1, lines 11-16, provides that general obligation bonds issued pursuant to this bill can be allocated to any public charter school irrespective of the specific project or purpose that has been provided for by the legislative act authorizing the issuance of the general obligation bonds.

This provision ignores the Legislature's authority to prescribe the project that it wants funded. This legislative prerogative occurs throughout the budget and appropriation process.

We note that this statutory provision, by itself, does not appropriate the general obligation bonds. Appropriations are made, not in general law, but through the budget and appropriation process. Town of Milton v. Commonwealth, 623 N.E.2d 482, 484 (Mass. 1993). Article VII, section 5, of the Hawaii State Constitution provides that "[n]o public money shall be expended except pursuant to appropriations made by law." In addition, Article VII, section 9, of the Hawaii State Constitution prescribes the appropriation process.

By having the Commission being able to expend general obligation bonds without regard to its legislatively prescribed purpose, we believe that this violates the Legislature's authority to enact appropriations and to reasonably direct their use.

Second, the same subsection (b) on page 1, line 16-17, and on page 2, lines 1-3, requires that the Commission allocate the general obligation bonds pursuant to the criteria and the prioritization schedule established by the Charter School Facilities Funding Working Group ("Working Group"). We note that the Working Group (section 302D-B of the bill) is comprised of various members of the Commission, the Director of Finance, the Chair of the Senate Committee on Ways and Means, and the Chair of the House of Representatives Committee on Finance. The inclusion of the chairs from the Legislature's money committees on the membership of the Working Group violates the constitutional separation of powers because it is an attempt to manage the expenditure of moneys after the moneys have been appropriated.

Under the principles of separation of powers, the spending of an appropriation is an inherently executive function:

- "[T]he activity of spending money is essentially an executive task." New England Div. Of American Cancer Soc'y. Comm. of Admin., 769 N.E.2d 1248, 1256 (Mass. 2002).
- "[A]ppropriation is a legislative power, but spending is an executive power." Hunter v. State, 865 A.2d 381, 392 (Vt. 2004).
- "[T]he exercise of discretion in determining when and how to distribute funds is an executive function." McInnish v. Riley, 925 So. 2d 174, 182 (Ala. 2005) (internal quotation marks and brackets omitted).
- "[W]hile the legislature is vested with the power to appropriate, that power may not unduly intrude on the spending prerogatives of the executive." Common Cause of Pennsylvania v. Commonwealth, 668 A.2d 190, 206 (Pa. Cmwlth. Ct. 1995) (citations omitted).
- "[T]here is one thing the Legislature cannot do. It cannot exercise the functions of the executive. It cannot administer the money after it has been once appropriated." Communications Workers of Am. v. Florio, 617 A.2d 223, 235 (N.J. 1992) (internal quotation marks, citations and ellipses omitted).

We believe that this constitutional violation can be cured by having the Working Group act in an advisory capacity instead of mandating that its actions be followed by the Commission.

Third, subsection (d) of the new section 302D-A on page 2, lines 8-13, provides that the general obligation bonds appropriated to the Commission shall be considered expended upon distribution to the Commission. We believe that the presumed expenditure of the general obligation bonds upon its distribution to the Commission before the actual expenditure of such moneys violates Article VII, section 5, of the Hawaii State Constitution.

The Governor's authority to restrict appropriated funds is set forth in Article VII, section 5, of the State Constitution, which provides in pertinent part:

Section 5. Provision for the control of the rate of expenditures of appropriated state moneys, and for the reduction of such expenditures under prescribed conditions, shall be made by law.

The statutory provisions that implement this provision of Article VII, section 5, of the State Constitution, are set forth in sections 37-31 to 37-43, Hawaii Revised Statutes, the allotment system. The allotment system requires departments to request the release of appropriated moneys from the Director of Finance or the Governor before the expenditure of such moneys can occur. The allotment requirement is the Administration's means of controlling expenditures and enforcing the Administration's policies.

In implementing the budget, the Administration may impose restrictions on funding to address situations such as the uncertainty regarding the receipt of revenues or to ascertain whether a program's requirements would be satisfied by the expenditure of funds. Consequently, restrictions are an essential tool in administering the State's budget.

We believe that this constitutional infirmity can be cured by deleting subsection (d) of section 302D-A.

We ask that the Committee consider our comments.

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON EDUCATION
ON
HOUSE BILL NO. 233

February 9, 2015

RELATING TO CHARTER SCHOOLS

House Bill No. 233 authorizes the State Public Charter School Commission to request the issuance of general obligation (G.O.) bonds from the Director of Finance for the planning, construction, repair, and maintenance of public charter school facilities, establishes the "Charter School Facilities Funding Working Group," and provides an unspecified appropriation for this purpose.

The Department of Budget and Finance would like to make several technical comments on this bill. First, charter schools already have the ability to request capital funding as part of the budget process through the proposed charter school programs budget submittal. The availability of G.O. bonds and/or funds for capital projects is competitive across all programs of the State - including, the Department of Education, the Hawaii State Public Library System and the University of Hawaii, and every other program in the State.

Second, in determining the appropriateness of providing G.O. bonds to any charter school, the Legislature should consider the following factors with respect to startup charter schools: a) suitable site control arrangements of property occupancy that is consistent with the duration of long-term debt; b) disposition of buildings and land back to State ownership should a public charter school discontinue its

operations; and c) the major financial commitment of funding capital improvements for start-up public charter schools as well as the recurring repair and maintenance costs associated with these facilities.

Third, federal tax law requires that tax-exempt G.O. bond proceeds be used only to finance projects that serve public purposes. Consequently, charter schools would need to ensure no private activity use of general bond funded facilities.

Finally, as funding for these projects is not included in the proposed Executive Budget, an amount for the corresponding annual debt service will need to be included in the Legislature's version of the budget should this bill pass the Legislature.

DAVID 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 233 Relating to Charter Schools
DATE: Monday, February 9, 2015
TIME: 2:00 p.m.
COMMITTEE(S): House Committee on Education
ROOM: Conference Room 309
FROM: Tom Hutton, Executive Director
State Public Charter School Commission

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

The State Public Charter School Commission (“Commission”) appreciates the opportunity to submit this testimony in support of House Bill 49, “Relating to Education,” House Bill 232, “Relating to Facilities Funding for Charter Schools,” House Bill 233, “Relating to Charter Schools,” and House Bill 1251, “Relating to Public Charter Schools,” each of which would provide much needed facilities support for charter schools.

The need to address facilities costs for start-up charter schools is arguably the greatest unaddressed challenge for Hawaii’s chartering system. Currently, start-up charter schools must pay for the costs of their facilities from out of their already stretched operational funds.

We note that, as in past years, the Commission this year submitted proposed Capital Improvement Projects (“CIP”) as submitted from charter schools. The Commission has been instructed that eligibility for these requests is limited to start-up charter schools located on state land. These projects are not recommended for approval in the executive budget. If charter school CIP projects are not to be considered, in the Commission’s view it is all the more important that other means of providing at least some support for the charter schools’ facilities needs be considered.

House Bills 49, 232, and 233 are proposals reintroduced from the 2014 Legislative Session that would provide to support charter school facilities needs. HB 49 would establish a charter school facilities fund and a state income tax credit for taxpayers who make contributions to the

development of charter school facilities, and authorize the use of funds not only to fund projects but also to secure loans from private lending institutions for financially stable charter schools.

HB 232 would simply make a general fund appropriation for charter school facilities needs, based in part on charter school need and performance. HB 233 would authorize the Commission to request the issuance of general obligation bonds from the Director of Finance and establish a charter school facilities funding working group, including the Director of Finance and the Chairs of the Senate Committee on Ways and Means and the House Committee on Finance, to determine criteria for and to prioritize the allocation of funds to the schools. We believe these proposals, which result from discussions of the informal interagency working group on charter school funding convened by then Senate Committee on Education Chair and current Senate Committee on Ways and Means Chair Jill Tokuda after the 2013 Legislative Session, merit the Legislature's continued consideration.

HB 1251, a new proposal introduced this Session on behalf of the Hawaii Public Charter Schools Network, combines several components of these other measures and also merits the Legislature's consideration. Among other things, this bill would establish a charter school facilities funding working group similar to that contemplated by HB 233 but instead have the Commission determine criteria for and prioritize the allocation of funds; would authorize the issuance of general obligation bonds; would appropriate general funds for charter school facilities design, planning, construction, repair, and maintenance; and would require state departments to identify unused properties that may be suitable for use by a charter school or a pre-plus program.

This past Friday, the Department of the Attorney General noted several legal concerns with respect to certain provisions that are included in HB 233 and HB 1251. The Commission is prepared to work with the Department and the Committee to address these concerns so that these measures can advance.

Finally, the Commission acknowledges the State's fiscal challenges. Nevertheless, we remain hopeful that among the various proposals currently in motion in the Legislature, a way can finally be found to make a start in addressing this longstanding problem.

Thank you for the opportunity to provide this testimony.



HB233
RELATING TO CHARTER SCHOOLS
House Committee on Education

February 9, 2015

2:00 p.m.

Room 309

The Administration of the Office of Hawaiian Affairs (OHA) will recommend to the Board of Trustees a position of **SUPPORT** on HB233, which seeks to alleviate the unique financial burdens borne by start-up public charter schools, in meeting their facilities needs.

Meeting start-up charter schools' facilities needs is arguably the single greatest unaddressed challenge for Hawai'i's public charter schools. Currently, start-up charter schools must pay for the costs of their facilities using their already-stretched operational funds. This is a cost that is not borne by conversion charter schools, or schools under the Hawai'i State Department of Education. To address this disparity, HB233 authorizes the State Public Charter School Commission to request the issuance of general obligation bonds to finance charter school facilities. HB233 also creates a working group to provide direction and oversight in the allocation of proceeds from these bonds.

HB233 would help bring parity to start-up charter schools, and address the longstanding problem of financing their facilities. OHA therefore urges the Committee to **PASS** HB233.

Mahalo nui for the opportunity to testify on this measure.



KAMEHAMEHA SCHOOLS®

TO: Honorable Roy Takumi, Chair
Honorable Takashi Ohno, Vice Chair
Members of the House Committee on Education

DATE: February 9, 2015
TIME: 2:00 p.m.
PLACE: Conference Room 309
Hawai'i State Capitol

FROM: Kamehameha Schools

RE: HOUSE BILL 233, RELATING TO CHARTER SCHOOLS

Chair Takumi, Vice Chair Ohno, and members of the Committee,

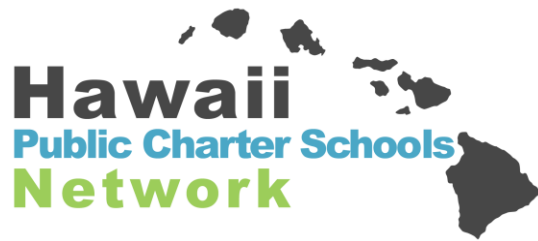
Thank you for this opportunity to testify in support of HB 233, relating to charter schools.

Kamehameha Schools offers comments in support of temporarily authorizing the state public charter school commission to request the issuance of general obligation bonds to finance public charter school facilities, creating a working group to determine the allocation of bond proceeds and specifying that bond-funded facilities are owned by the State. We note that this bill requires an annual report to the legislature and authorizes the issuance of bonds to fund public charter school facilities.

Kamehameha Schools supports promoting the achievement and success of Hawai'i's public school students and, as such, has been a collaborator with the Hawai'i public charter schools for over a decade. Through our work with public charter schools, we hope to significantly impact more children and their families through education. We believe charter schools provide positive choices for education and ultimately enhance both achievement and engagement for students across Hawai'i.

Financial support for the charter school system is crucial in maintaining the services these schools provide. We ask that you help to provide our state's most innovative educators with the strong support and stable foundation they need continue their positive growth. We believe efforts to improve the public charter school system improve access to education and, ultimately, enhance education for all of Hawai'i's children.

Thank you for the opportunity to testify on this measure.



Hawaii State House of Representatives
Committee on Education

DATE: Monday, February 9, 2015

TIME: 2:00 p.m.

PLACE: Conference Room 309, Hawaii State Capitol

Chair Takumi, Vice Chair Ohno, and members of the Committee,

Re: HB 233 – RELATING TO FACILITIES FUNDING FOR CHARTER SCHOOLS

Mahalo for the opportunity to testify **in support** of HB 233, a bill that temporarily authorizes the state public charter school commission to request the issuance of general obligation bonds to finance public charter school facilities; creates a working group to determine the allocation of bond proceeds; specifies that bond-funded facilities are owned by the State and requires an annual report to the legislature.

In 2005 the Legislative Reference Bureau in its report entitled, *On the Level? Policy, Law and the Charter School Movement* stated, “Unlike their public school, conversion school, and school-within-school counterparts, start-up schools must rent or build facilities, or ask the public to donate facilities, or both. The cost of building public schools is usually spread out over twenty years through the issuance of general obligation bonds. Neither the BOE, the HIDOE, nor individual public schools, are responsible for debt service—or the payment of principal and interest on these bonds. These bonds are the responsibility of the State, and are backed by it’s the full faith and credit (i.e., taxing power).” Some charter schools have facilities on state land and have access through the normal CIP process - others do not (see attachment).

The language for the charter school facilities working group is a solution oriented idea to address any remaining questions or concerns about charter schools receiving G.O. Bond funding. HB 1251 adds “risk and recourse to the State” language to the criteria that the working group is to consider, an added protection to the State as the director of budget and finance would be a part of the working group.

In order to help provide relief to charter schools that are either not on state land or paying rent for school facilities with the per pupil allocation they receive from the State, HPCSN also supports HB 232, a bill to appropriate funds for the state public charter school commission to allocate to charter schools for facilities projects.

Hawaii Public Charter Schools Network (HPCSN) represents 30 of 34 public charter schools in Hawaii and is committed to quality education for all public school students in Hawaii through our support of, and work with, Hawaii's public charter schools.

Thank you for your attention to and consideration of this very important matter to charter schools. Your support of Hawaii's public students is greatly appreciated.

Mahalo Nui Loa,

A handwritten signature in black ink, appearing to read "Lynn Finnegan", with a stylized flourish at the end.

Lynn Finnegan
Executive Director

Attachment

Charter Schools Facilities Bills

			GO Bond	General Funds
On state land	Lease	Kawaikini, Kekaha+, Kanuikapono, Halau Ku Mana, ULS, Hakipuu, Ka Waihona,	P	A
	USDA loan	Kamakau, WHEA+, Kanu o ka Aina, Volcano ~+	P	A
	Conversions	Kualapuu, Lanikai^, Waialae^, Kamaile, Waimea Middle^, Lapahoehoe	P	A
Not on state land	Lease	Kihei, KANAKA, MBTA, HTA, Voyager, Halau Lokahi, Connections+, Na Wai Ola, Kua o ka La , HAAS, SEEQS, Malama Honua		P
	USDA loan	Kona Pacific, Innovations.		P
Facilities are on both on state land and not on state land		Nawahi	A	P
Checking status		Ka Umeke, Laahana		A

Note: Leases could be held by non-profit, school enters lease with non-profit

[Blue](#) = Checking/verifying with schools

P = Priority

A = Applies

+ Received GIA

^ Received CIP and/or upgrades through the DOE system

~ USDA in process

LATE

HB 232 RELATING TO FACILITIES FUNDING FOR CHARTER SCHOOLS

COMMITTEE ON EDUCATION

Monday, February 9, 2015

Chair Takumi, Vice Chair Ohno and members of the committee, thank you for the opportunity to provide testimony in support of HB 233 relating to charter schools.

My name is Michelle Kauhane, President & CEO at the Council for Native Hawaiian Advancement (CNHA). 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, economic and community development of Native Hawaiians. CNHA offers strong support for facilities funding for Hawaii's Charter Schools with over 30% of our membership made up of educators that include Native Hawaiian Charter Schools.

In 2013, at our annual policy roundtable, a priority was brought forward and adopted by the Council's policy center to support parity for Hawaii's Charter Schools. Specific reference was made to the lack of facilities funding provided by the Hawaii state legislature with no CIP allocations made to Hawaii charter schools. In 2014, CNHA's policy center hosted a roundtable for charter school leaders and educators throughout Hawaii to meet with Secretary Arne Duncan of the US Department of Education. Again, the need for charter schools facilities funding and providing sufficient operational funds were two of the primary issues discussed with the US DOE Secretary.

The need to address facilities funding for our charter schools demands the immediate attention of the Hawaii state legislature. It is simply unrealistic for these schools to be expected to cover the cost of their facilities development from their already stretched operational budgets. For years, several charters have been educating their students in tents and make shift classrooms. We must do better for our children and provide these schools with funding for facilities.

CNHA supports the issuance of general obligation bonds to finance public charter school facilities.

Thank you.

LATE

HB233

Submitted on: 2/9/2015

Testimony for EDN on Feb 9, 2015 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Curtis Muraoka	Individual	Support	No

Comments: Aloha Chair Takumi, Vice-Chair Ohno, and Esteemed Members of the House Committee on Education: Thank you for agreeing to hear HB233. This bill seeks to provide a logical and practical avenue for public charter schools to received facilities support. We all realize that there are many innovative and successful schools across the state, whether DOE, private, or public charter schools. However, only two of the three have resources specific to facilities, either from tax revenues or tuition. All students deserve to have their school facility supported without having to sacrifice significant instructional resources to do so. This bill would provide a modicum of such support, and the avenue for disbursement. Mahalo nui loa for your consideration. Curtis Muraoka, Co-Director West Hawaii Explorations Academy



LATE

LATE

1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

TESTIMONY BEFORE THE HOUSE
COMMITTEE ON EDUCATION

Wil Okabe
President
Joan Kamila Lewis
Vice President
Colleen Pasco
Secretary-Treasurer
Wilbert Holck
Executive Director

DATE: MONDAY, FEBRUARY 9, 2015

RE: H.B. 233 - RELATING TO CHARTER SCHOOLS

PERSON TESTIFYING: WIL OKABE
HAWAII STATE TEACHERS ASSOCIATION

The Honorable Chair Roy Takumi, Honorable Vice Chair Takashi Ohno and Members of the Committee:

The Hawaii State Teachers Association (HSTA) **supports H.B. 233**, relating to charter schools.

HSTA is the exclusive representative of more than 13,500 public and charter school teachers statewide. HSTA is the state affiliate, of the 3.2 million members of the National Education Association.

Over 20 years ago, the state of Hawai'i committed itself to embracing the educational innovations made possible outside of the Department of Education by enacting public charter school legislation.

Since then, the state has further committed itself by enacting legislation to expand our public charter school system.

The legislation before you provides our public charter school system the assistance needed to be the best it can be. HSTA supports innovation in public education. The core assumptions that inform the charter school concepts - innovation, autonomy, and accountability - indicate that charter schools have the potential to facilitate positive change and should be qualitatively different from what is available in mainstream public schools.

As such, on behalf of Hawai'i's 13,500 public and public charter school teachers, the Hawai'i State Teachers' Association stands in **support of H.B. 233**.