

SB849

DAVID IGE
GOVERNOR



CATHERINE PAYNE
CHAIRPERSON

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

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1111 Bishop Street, Suite 516, Honolulu, Hawaii 96813
Tel: 808-586-3775 Fax: 808-586-3776

FOR: SB 849 Relating to Charter Schools
DATE: Friday, February 6, 2015
TIME: 1:15 p.m.
COMMITTEE(S): Senate Committee on Education
ROOM: Conference Room 229
FROM: Tom Hutton, Executive Director
State Public Charter School Commission

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

The State Public Charter School Commission (“Commission”) appreciates the opportunity to submit this testimony in support of Senate Bills 849 and 1215, “Relating to Charter Schools,” and Senate Bill 850, “Relating to Facilities Funding for 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.

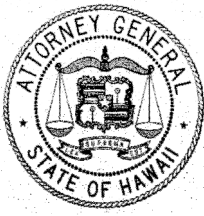
In addition to the CIP requests from the schools, the Commission requested a \$5 million appropriation to provide commercial kitchens at six charter schools. Some charter schools lack kitchen facilities adequate to provide meals to students. Previously these schools were able to contract with the Department of Education (“Department”) for meals, but in response to an

internal audit of the overall school lunch program, the Department in 2013 discontinued this vending relationship. The Commission has been discussing with the Department the possibility of recommencing vending to at least some charter schools where the geographic and other considerations could make this cost-effective, but SB 1215 would provide funding for six of the schools should construction of a kitchen prove the more cost-effective and viable option or where larger community considerations than the school considerations for this community asset were an important factor.

Senate Bills 849 and 850 are proposals reintroduced from the 2014 Session that would provide temporary general obligation bond authority and general funds, respectively, to support charter school facilities needs.

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.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 849, RELATING TO CHARTER SCHOOLS.

BEFORE THE:

SENATE COMMITTEE ON EDUCATION

DATE: Friday, February 6, 2015

TIME: 1:15 p.m.

LOCATION: State Capitol, Room 229

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

Chair Kidani 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 SENATE COMMITTEE ON EDUCATION
ON
SENATE BILL NO. 849

February 6, 2015

RELATING TO CHARTER SCHOOLS

Senate Bill No. 849 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.

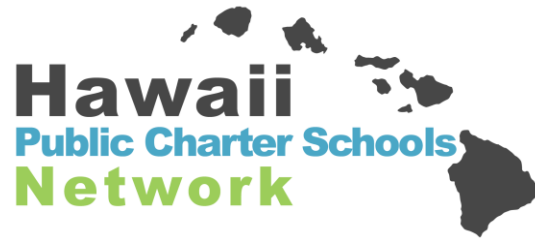
The Department of Budget and Finance would like to make several technical comments on this bill. First, charter schools already have the ability to request capital funding as part of the budget process through the proposed charter school programs budget submittal. The availability of G.O. bonds and/or 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.



Hawaii State Senate
Committee on Education

DATE: Friday, February 6, 2015

TIME: 1:15 p.m.

PLACE: Conference Room 229, Hawaii State Capitol

Chair Kidani, Vice Chair Harimoto, and Members of the Education Committee,

Re: SB849 Relating to Charter Schools

Mahalo for the opportunity to testify ***IN STRONG SUPPORT*** of SB849 - Relating to Education. Hawaii Public Charter Schools Network (HPCSN) is committed to quality education for all public school students in Hawaii through our support of, and work with, Hawaii's public charter schools. One of our priorities is to help make progress with facilities funding/support, an area of great challenge for public charter schools. HPCSN objectives are:

- 1) to gain facilities funding/support for charter schools in a variety of scenarios, i.e. on state land, not on state land, leasing property, building facilities, maintaining and repairing existing structures;
- 2) to reassure legislators that the charter accountability system is fair, strong and getting stronger;
- 3) to make reasonable and incremental progress on facilities funding/support; and,
- 4) during the process, to provide any needed data for decision making.

This bill 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.

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 SB850, a bill to appropriate funds for the state public charter school commission to allocate to charter schools for facilities projects.

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 horizontal line extending to the right.

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



SB849
RELATING TO CHARTER SCHOOLS
Senate Committee on Education

February 6, 2015

1:15 p.m.

Room 229

The Administration of the Office of Hawaiian Affairs (OHA) will recommend to the Board of Trustees a position of **SUPPORT** on SB849, 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, SB849 authorizes the State Public Charter School Commission to request the issuance of general obligation bonds to finance charter school facilities. SB849 also creates a working group to provide direction and oversight in the allocation of proceeds from these bonds.

SB849 would help bring parity to start-up charter schools, and help address the longstanding problem of financing their facilities. OHA therefore urges the Committee to **PASS** SB849.

Mahalo nui for the opportunity to testify on this measure.



MĀLAMA HONU CHARTER SCHOOL

Friday, February 6, 2015

1:15 PM

Conference Room 229

TESTIMONY TO THE SENATE COMMITTEE ON EDUCATION

RE: SB 849 – Relating to Charter Schools

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

My name is Denise Espania, School Director of Mālama Honua Public Charter School (MHPCS), a K-2 public charter school founded in August 2014 and located in Waimānalo. In partnership with the Polynesian Voyaging Society (PVS), founder Nainoa Thompson founded a public charter school born out of the Worldwide Voyage that is committed to providing the students of Hawai‘i a rigorous, values-based, and place-based education. MHPCS stands to provide the community with a school dedicated to indigenous cultural values that nourish goodness; in addition to helping students develop into wise, compassionate navigators of their learning, lives and 21st century global world.

MHPCS is in strong support of SB 849, a bill for an act that would authorize the state public charter school commission to request the issuance of general obligation bonds to finance public charter school facilities.

We believe in the public purpose of education and that families should have choices when it comes to the education of their children. Charter schools in Hawai‘i provide that option for our families who otherwise may not be able to find a public school that shares their educational and cultural values.

Charter schools currently receive about half as much per-pupil funding than their DOE counterparts for the education of their students and are left to their own devices to find alternate streams of revenue to make up the difference. In addition, public charter schools struggle to raise monies to build or renovate their facilities or for the maintenance of their current ones and are forced to make difficult tradeoffs between facilities funding and education.

MHPCS currently rents facilities from St. Matthew’s Church in Waimānalo, which we were fortunate to procure just one month prior to the start of the new school year on August 1st. Beginning on July 7th we held nine ‘ohana workdays totaling 43 ½ hours of worktime; our 37 families contributed over 400 hours of sweat equity to completely renovate the virtually abandoned rooms in preparation for the new school year. This included a top to bottom cleaning, ripping out and replacing the old flooring, painting building interiors, exteriors and furniture, constructing and replacing various fixtures around the school, and electrical and plumbing work just to name a few.

Due to the high demand to attend our school we are already in the process of attempting to procure a new facility that will accommodate our students for school year 2015-2016, which necessarily means that we will have to move to a new location after just one year and many hours of work on our current facility.

Thank you for the opportunity to testify in strong support of this measure.



KAMEHAMEHA SCHOOLS®

TO: Honorable Michelle N. Kidani, Chair
Honorable Breene Harimoto, Vice Chair
Members of the Committee on Education

DATE: February 6, 2015
TIME: 1:15 p.m.
PLACE: Conference Room 229
Hawai'i State Capitol

FROM: Kamehameha Schools

RE: SENATE BILL 849, RELATING TO CHARTER SCHOOLS

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

Thank you for this opportunity to testify in support of SB 849, 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.

From: mailinglist@capitol.hawaii.gov
To: [EDU Testimony](#)
Cc: orchid6128@aol.com
Subject: Submitted testimony for SB849 on Feb 6, 2015 13:15PM
Date: Wednesday, February 04, 2015 10:34:50 PM

SB849

Submitted on: 2/4/2015

Testimony for EDU on Feb 6, 2015 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
deb mader	Individual	Oppose	No

Comments: Aloha 'Aina. The right to protect and uphold the Public Trust Doctrine. If the federal and state regulatory agencies won't practice Aloha 'Aina, we as a county have the duty to do so. My family OPPOSES sb849. This bill is meant to protect the large multi-national corporations who conduct open air GMO and Chemical Experiments here, just down the street from us, under the false pretense of "agriculture" As a county, we have specific needs and issues facing us. We have the right to protect our health, our community, and our resources for future generations to come. Corporations have infiltrated virtually all aspects of government and regulatory agencies. The last bastion of democracy often lies in the county or town. This year, here on Maui, we passed the first ever successful citizens initiative. Some call it the "Maui Miracle" Our community united to protect ourselves- to stand up against MILLIONS and intense propaganda to protect our beloved community. A bill such as sb849 would destroy us- the PEOPLE- you are supposed to represent. Corporations are NOT people. We implore you to not allow this bill to proceed. Let's work on TRUE AG reform, where local farmers who malama the 'aina and produce REAL food that we eat locally can benefit. This bill is not meant to protect anyone but big business, biotech and those that hope to never have to answer to a concerned community. After all, we are getting sued by companies who spent a combined \$7 million to AVOID \$500k in environmental and health impact studies. After 2 decades we deserve some answers, hoping it's not too late. Please defend a county's right to home rule and join us in opposing sb849 Mahalo Deb Mader Creagh and Ohana

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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From: mailinglist@capitol.hawaii.gov
To: [EDU Testimony](#)
Cc: aandrea99@aol.com
Subject: Submitted testimony for SB849 on Feb 6, 2015 13:15PM
Date: Wednesday, February 04, 2015 6:44:05 PM

SB849

Submitted on: 2/4/2015

Testimony for EDU on Feb 6, 2015 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Oppose	No

Comments: Please do not use taxpayer monies to fund improvements to charter schools. It takes monies away from public school systems, which are more regulated and have greater oversight with regard to student achievement. Likely for this reason, public school students have been shown to outperform those from private or charter schools. Also, since some charter schools are religious in nature, the bill would force taxpayers to fund religious schools, which is a violation of church/state separation and thereby could spur lawsuits at taxpayer expense.

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To: [EDU Testimony](#)
Cc: nikki2244@gmail.com
Subject: Submitted testimony for SB849 on Feb 6, 2015 13:15PM
Date: Wednesday, February 04, 2015 6:07:25 PM

SB849

Submitted on: 2/4/2015

Testimony for EDU on Feb 6, 2015 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Nicole Chatterson	Individual	Oppose	No

Comments: Aloha Committee, It is imperative that the power to check and balance agribusiness remain with the counties and the people. This bill was proposed as protection to companies who wish to use Hawaii as a testing ground for chemicals that are both known to be harmful and unknown in their impact. Make a decision for the people, not for the business. With Aloha, Nicole Chatterson Community Member and Environmental Professional

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Cc: doclrob@yahoo.com
Subject: Submitted testimony for SB849 on Feb 6, 2015 13:15PM
Date: Wednesday, February 04, 2015 4:13:54 PM

SB849

Submitted on: 2/4/2015

Testimony for EDU on Feb 6, 2015 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
lyle robinson	Individual	Oppose	No

Comments: I strongly oppose this bill since in these circumstances "farming" is used very liberally. true farming refers to the practice of growing food to feed people. Many large corporations are "farming" without the intention of feeding anyone. And many of these practices are extremely harmful to the environment and people. Clearly, since the State has not taken any steps to protect its citizens from these practices, local governments should absolutely retain the right to do so. Clearly, the protection needs to come from somewhere and right now the only rights being protected are those of the corporations, whose goal is profit not sustenance. Mahalo, Dr. Lyle Robinson

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From: mailinglist@capitol.hawaii.gov
To: [EDU Testimony](#)
Cc: terrytravis@hawaiiantel.net
Subject: Submitted testimony for SB849 on Feb 6, 2015 13:15PM
Date: Wednesday, February 04, 2015 3:27:22 PM

SB849

Submitted on: 2/4/2015

Testimony for EDU on Feb 6, 2015 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Terry Travis	Individual	Support	No

Comments: THE SAFE SCHOOLS FOR ALL STUDENTS ACT recognizes that students often face bullying based on race, ethnicity, sexual orientation, gender and gender identity and other common characteristics and strengthens approaches to training and reporting.

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From: mailinglist@capitol.hawaii.gov
To: [EDU Testimony](#)
Cc: ian.l.york@gmail.com
Subject: Submitted testimony for SB849 on Feb 6, 2015 13:15PM
Date: Thursday, February 05, 2015 12:38:35 PM

SB849

Submitted on: 2/5/2015

Testimony for EDU on Feb 6, 2015 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Ian York	Individual	Support	No

Comments: Commission should have the tools needed to provide facility funding.

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From: mailinglist@capitol.hawaii.gov
To: [EDU Testimony](#)
Cc: terriyork2@gmail.com
Subject: *Submitted testimony for SB849 on Feb 6, 2015 13:15PM*
Date: Thursday, February 05, 2015 10:27:59 AM

SB849

Submitted on: 2/5/2015

Testimony for EDU on Feb 6, 2015 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Terri York	Individual	Support	No

Comments:

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