



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 198, RELATING TO CHARTER SCHOOLS.

BEFORE THE:

SENATE COMMITTEE ON EDUCATION

DATE: Monday, January 30, 2017 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Gary S. Sukanuma, Deputy Attorney General

Chair Kidani and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of this bill are to: (1) require that every charter school governing board be a nonprofit organization whose primary purpose is operating the charter school; (2) prohibit comingling moneys distributed by the State or federal government for the purpose of operating a charter school with other moneys that do not have an educational purpose that benefits the charter school; and (3) require charter schools to indemnify the State against any claims arising from misconduct of the school or governing board.

This bill requires a charter school, including its governing board, to indemnify and hold harmless the State, its officers, agents, and employees from and against any and all claims arising from any misconduct by the school or governing board, or any employee or agent of the school or governing board. (S.B. No. 198, page 21, lines 18-20, through page 22, lines 1-2). Section 302D-25(e), Hawaii Revised Statutes, states, “[n]otwithstanding any law to the contrary, as public schools and entities of the State, a charter school, including its governing board, the commission, and any authorizer may not bring suit against any other entity or agency of the state.” Thus, the requirement that charter schools indemnify the State is contrary to law and unnecessary. A charter school, which includes its governing board, is a state entity and cannot indemnify another state entity.

This bill also requires every charter school governing board to be a nonprofit organization. (S.B. No. 198, page 10, lines 13-15). A “nonprofit organization” means a private, nonprofit, tax-exempt entity that: (1) Is recognized as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code; and (2) Is registered to do business in this State in accordance with chapter 414D. (S.B. No. 198, page 1, lines 14-17, through page 2, lines 1-2). Under section 302D-25(e), a governing board is a state entity. This bill blurs the line with regard to whether a governing board is a private organization or a public entity by requiring governing boards, which are public entities, to become private organizations. If the governing boards are required to be private entities, section 1, article X of the Hawaii Constitution may be violated, which prohibits the appropriation of public funds for the support or benefit of any sectarian or nonsectarian private educational institution.

Section 1, article X of the Hawaii Constitution provides for a statewide system of public schools. Under section 302A-1101(d), Hawaii Revised Statutes, the Board of Education is responsible for appointing the State Public Charter School Commission, which serves as the statewide charter authorizer for charter schools, with the power and duty to issue charters, oversee and monitor charter schools, hold charter schools accountable for their performance, and revoke charters. Charter schools, including their governing boards, are overseen by the State Public Charter School Commission. However, if governing boards are required to be nonprofit organizations, under the Hawaii Nonprofit Corporations Act, chapter 414D, Hawaii Revised Statutes, the Department of the Attorney General would have oversight authority over the governing boards. If both the Department of the Attorney General and the State Public Charter School Commission both have oversight authority over charter school governing boards, this could create confusion if there is a difference of action or opinion by one of the overseeing entities.

We recommend removing the requirement that governing boards become nonprofits and the provision requiring charter schools to indemnify the State.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR



CATHERINE PAYNE
CHAIRPERSON

STATE OF HAWAII
STATE PUBLIC CHARTER SCHOOL COMMISSION
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FOR: SB 198 Relating to Charter Schools
DATE: Monday, January 30, 2017
TIME: 2:45 PM
COMMITTEE(S): Senate Committee on Education
ROOM: Conference Room 229
FROM: Sione Thompson, Executive Director
State Public Charter School Commission

Testimony in support of SB 198

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

The State Public Charter School Commission appreciates the opportunity to submit this testimony of Senate Bill 198, "Relating to Charter Schools," which requires that every charter school governing board be a non-profit organization whose primary purpose is operating the charter school. We are grateful to Chair Kidani and Vice Chair Kahele, and senators Inouye, Baker, Chang, Dela Cruz, Galuteria, Nishihara, Riviere and Ruderman for their sponsorship of the bill.

The Commission appreciates and supports the intent of the bill in limiting the state's liability while ensuring that the charter school is run by a governing board whose focus is the charter school and the students it serves. It is the understanding that charter schools will not lose their status as state agencies as a result of this bill. The Commission looks forward to further discussions that will bring clarity to school concerns and whether the Commission's legal authority over the non-profit governing board and the charter school would change.

Thank you for the opportunity to provide testimony.



HAWAI'I EDUCATIONAL POLICY CENTER TESTIMONY

January 30, 2017 Senate
Committee on Education
2:45 pm Conference Room 229

RE: SB 198 RELATING TO CHARTER SCHOOLS

HEPC POSITION: OPPOSED

Chair Kidani, Members of the Committee. SB 198 would appear to put the public funding of charter school at odds with the Hawai'i State Constitution, Article X, section 1.

Section 1. The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry; ***nor shall public funds be appropriated for the support or benefit of any sectarian or nonsectarian private educational institution***, except that proceeds of special purpose revenue bonds authorized or issued under section 12 of Article VII may be appropriated to finance or assist: 1. Not-for-profit corporations that provide early childhood education and care facilities serving the general public; and 2. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities. [Ren and am Const Con 1978 and election Nov 7, 1978; am L 1994, c 280, §4 (HB 2692-94) and election Nov 8, 1994; am HB 2848 (2002) and election Nov 5, 2002]

The Issue: Because private, nonprofit preschools were considered "educational institutions," our state attorneys concluded it was unconstitutional to support them with public funds. A proposed constitutional amendment to permit this was rejected by voters.

A nonprofit organization is not a state agency. Nonprofit status is not simply declared, it is granted by the federal government.

Were Hawai'i's charter school governing boards to become nonprofit organizations, their employees would no longer be state employees. The principals, staff, and teachers would no longer enjoy the benefits of state employees, such as health, retirement, coverage by the state's workers compensation system, etc. They also would no longer be members of the public sector unions. In other words, one interpretation of the practical effect of SB 198 would be to remove the charter schools from the public sector. ***They would be, in essence, privatized.***

HEPC does not see how the governing boards can be legally separated from the schools themselves. It is the governing board that has the power and responsibility for hiring all school employees. Consider the language of the law relating to the governing boards:

HRS 302D -12 (f) states:

“(f) The governing board shall be the independent governing body of its charter school and shall have oversight over and be responsible for the financial, organizational, and academic viability of the charter school, implementation of the charter, and the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws. The governing board shall ensure its school complies with the terms of the charter contract between the authorizer and the school. The governing board shall have the power to negotiate supplemental collective bargaining agreements with the exclusive representatives of their employees.”

It would be difficult to separate the governing board from the school. If the governing board were not a state agency, but a nonprofit, arguably the school would not be a state agency.

HEPC observes that charter schools have had to forge affiliations with nonprofits in order to survive. Many sources of grant funds will not give support to state agencies. This is true of some sources of funding for Hawai‘ian focused schools. A public charter school cannot, on its own, build a school. However, a nonprofit can build a school, and rent it to the charter. Because the State of Hawai‘i has taken the position that charter school students do not deserve public facilities as do the HIDOE students, charters have developed close relationships with nonprofits.

The nonprofit boards are completely separate from the charter governing boards. Should the nonprofit have an employee, he or she would not be a state employee. The nonprofit would, like any private organization or business, be required to provide appropriate health benefits. It may or may not offer any retirement package. It would need to purchase separate liability insurance.

In Conclusion. HEPC does not understand the purpose of the bill. It may well convert public schools into private schools and sever the ability of the state to support them. It does not matter that there would be a Commission that is public, for the Commission is a channel for public funds to public agencies/schools. Conversion of the governing boards to nonprofits raises many legal questions, and no doubt, would simulate legal challenges.

Thank you for the opportunity to provide this testimony.

HAWAI‘I EDUCATIONAL POLICY CENTER

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 8:37 AM
To: EDU Testimony
Cc: taffi@kalo.org
Subject: *Submitted testimony for SB198 on Jan 30, 2017 14:45PM*

SB198

Submitted on: 1/30/2017

Testimony for EDU on Jan 30, 2017 14:45PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Taffi Wise	Individual	Support	No

Comments:

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

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