

DAVID Y. IGE
GOVERNOR



JOHN S.S. KIM
CHAIRPERSON

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

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FOR: SB 814 SD1 HD1 Relating to Charter Schools
DATE: April 1, 2021
TIME: 2:30 P.M.
COMMITTEE: Committee on Finance
ROOM: Conference Room 309
FROM: Yvonne Lau, Interim Executive Director
State Public Charter School Commission

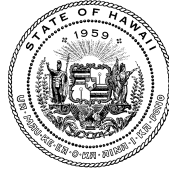
Chair Luke, Vice Chair Cullen, and members of the Committee:

The State Public Charter School Commission (“Commission”) appreciates the opportunity to submit this testimony and provides **COMMENTS on SB 814 SD1 HD1** which Requires members of the charter school commission to collectively possess strong experience and expertise in various fields. Allows the authorizer's staff to provide technical support up until the completed charter application is submitted. Clarifies charter application notice requirements. Clarifies authorizer compliance requirements in cases of an appeal.

The Commission is concerned with the proposed changes to Section 1, page 8, lines 19-21, page of the bill. The addition of this provision to the statute will create a conflict with the Commission’s statutory oversight functions. While the bill attempts to make a distinction between the Commissioners and the Commission staff, the Commission’s staff are there to serve the Commission in their statutory function of oversight and authorizing functions and cannot at the same time serve as technical support to prospective applicants.

HRS 302D-5 (g) specifically prohibits such acts: “the authorizer shall not provide technical support to a prospective charter school applicant, an applicant governing board, or a charter school it authorizes in cases ***in which technical support will directly and substantially impact any authorizer decision*** related to the approval or denial of the charter application or the renewal, revocation, or nonrenewal of the charter contract. . .”

Thank you for your consideration and the opportunity to provide this testimony.



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

House Committee on Finance

Thursday, April 1, 2021
2:30 p.m.
Via Videoconference
Hawaii State Capitol, Room 308

Senate Bill 814, Senate Draft 1, House Draft 1, Relating to Charter Schools

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee:

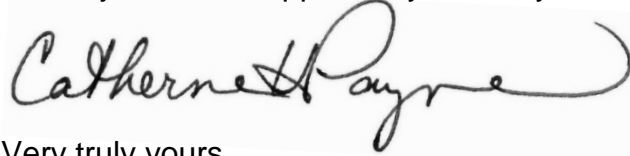
The Board of Education ("Board") appreciates the intent of SB814 SD1 HD1 but has comments. SB814 SD1 HD1 would allow an authorizer's staff to provide some technical support to prospective charter school applicants and applicant governing boards, among other things.

The Board **opposes** the provision that would allow a charter school authorizer's staff to provide technical support to a prospective charter school applicant or an applicant governing board up until the completed charter application is submitted. Statute already allows an authorizer to provide technical support provided that it does not "directly and substantially impact any authorizer decision related to the approval or denial of the charter application or the renewal, revocation, or nonrenewal of the charter contract." By including this new language, this bill would essentially allow an authorizer's staff to provide technical support to prospective charter school applicants and applicant governing boards that could "directly and substantially impact any authorizer decision related to the approval or denial of the charter application." This runs counter to the role of the authorizer and national best practices for charter school authorizing and risks weakening the effectiveness of accountability of the charter school system in the developmental stages for charter schools.

The Board recognizes that the charter schools and charter applicants lack support, and the Board has raised this issue with the Legislature through its most recent annual charter school reports. Asking authorizers whose primary role is the accountability of charter schools to also provide this support is not the answer. Instead, we encourage

the Legislature to engage in a conversation with the Board about potential ways to provide centralized support for the charter school system.

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

A handwritten signature in black ink that reads "Catherine Payne". The signature is written in a cursive style with a large, looping initial "C" and a long, sweeping tail that ends in a hook.

Very truly yours,

Catherine Payne
Chairperson, Board of Education
Chairperson, 2021 Legislative Ad Hoc Committee

TO: House Committee on Finance
FROM: Kulia Academy
RE: Testimony in SUPPORT of SB 814

Chair Luke, Vice Chair Cullen and members of the committee:

My name is Murat Arabaci, and I am the Board Secretary of the applicant governing board of the Kulia Academy. We first applied in 2018. We are in the current application cycle that opened in 2020. We hope that current application cycle becomes unsuspended soon.

We want to express our support for the SB 814.

Additionally, we would like to be able to ask *clarifying questions* to the authorizer. We are not asking technical assistance. To give context, allow me to give an example. Applications Committee of the Hawaii State Public Charter School Commission decided on March 12, 2020 that there will be a two-step charter approval process. First approval is to vet the concept, and if it meets, second approval will look at the capacity of the applicant group. However, the request for proposal (RFP) for the current application cycle that was posted on March 30th 2020 talks about a “conditional pre-approval” and a “final” approval. Capacity interview, though, is part of the conditional pre-approval stage. As an applicant, I am confused and ability to send a quick email to clarify would be helpful. Currently, the Commission does not accept any questions from applicant groups because the charter school law prohibits answering questions. We need your help with this matter so we can ask clarifying questions.

Please contact us at our contact information below should you have any questions.

Sincerely Yours,

Murat Arabaci
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arabaci@hawaii.edu

SB-814-HD-1

Submitted on: 3/30/2021 1:03:53 PM

Testimony for FIN on 4/1/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John D. Smith	Individual	Support	No

Comments:

I support this bill to be passed through legislature.

TESTIMONY OPPOSING SB814 SD1 HD1

John Thatcher

Chairperson Luke, Vice Chair Cullen and Members of the House
Committee on Finance:

Aloha,

I have spent the past 21 years working for Connections Public Charter School in Hilo. I was a DOE teacher for 15 years before helping to found the first charter school in Hawaii approved by the BOE. As it is currently written, SB814 SD1 HD1 does absolutely nothing to improve the toxic atmosphere in this state for educational reform. Charter schools were created as catalyst for reforming public education in our state. We have been strangled by zealous over-regulation by the State Public Charter School Commission and a BOE that is beset with turmoil and an inability to maintain a focus on the most important mission of all schools... our students. I strongly suggest that the current contents of this bill be replaced with the following:

SECTION 1. Section 302D-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (c) and (d) to read:

"(c) The commission shall consist of nine members [~~to be appointed by the board.~~]. Three members shall be appointed by the governor; two members shall be appointed by the president of the senate and one member by the senate minority leader; and two members shall be appointed by the speaker of the house of representatives and one by

the minority leader of the house of representatives. The [board]
appointing authorities shall appoint members who will be tasked with authorizing public charter schools that serve the unique and diverse needs of public school students. The chair of the commission shall be designated by the members of the commission for each school year beginning July 1, and whenever there is a vacancy. The [board]
appointing authorities shall consider the combination of abilities, breadth of experiences, and characteristics of the commission, including but not limited to reflecting the diversity of the student population, geographical representation, and a broad representation of education-related stakeholders. Members of the commission shall collectively possess strong experience and expertise in public and nonprofit governance; management and finance; public school leadership; assessment; curriculum and instruction; and public education law. The commission shall be exempt from sections 26-34 and 26-36.

(d) Understanding that the role of the commission is to ensure a long-term strategic vision for Hawaii's public charter schools, each nominee to the commission shall meet the following minimum qualifications:

- (1) Commitment to ~~[education.]~~ charter schooling. Each nominee's record should demonstrate a deep and abiding interest in education, and a dedication to the social, academic, and character development of young people through the administration of a high performing charter school system;
- (2) Record of integrity, civic virtue, and high ethical standards. Each nominee shall demonstrate integrity, civic virtue, and high ethical standards and be willing to hold fellow commission members to the same;

(3) Availability for constructive engagement. Each nominee shall commit to being a conscientious and attentive commission member; and

(4) Knowledge of best practices. Each nominee shall have an understanding of best practices in charter school educational governance or shall be willing to be trained in such."

2. By amending subsections (g) and (h) and to read:

"(g) Commission members shall serve not more than three consecutive three-year terms, with each term beginning on July 1; provided that ~~[the initial terms that commence after June 30, 2012, shall be staggered as follows:~~

~~(1) Three members, including the chairperson, to serve three-year terms;~~

~~(2) Three members to serve two-year terms; and~~

~~(3) Three members to serve one-year terms.]~~

effective July 1, 2021, as the terms of existing members expire, a new appointee will be made in the following order: the governor, the president of the senate, the senate minority leader, the speaker of the house of representatives, the minority leader of the house of representatives, the governor, the president of the senate, the speaker of the house of representatives, and then the final appointment by the governor. The seats shall retain their current term expirations.

(h) Notwithstanding the terms of the members, the ~~[board]~~ appointing authority may fill vacancies in the commission of any member for which the appointing authority is responsible at any time when a vacancy occurs due to resignation, non-participation, the request of a majority of the commission members, or termination by the ~~[board]~~ responsible appointing authority for cause."

SECTION 2. Section 302D-4, Hawaii Revised Statutes, is amended to read as follows:

1. By amending subsections (b) and (c) to read:

"(b) Governing boards of accredited public and private postsecondary institutions, including community colleges, technical colleges, and four-year universities may [~~apply to the board, pursuant to this section, for statewide, regional, or local chartering authority,~~] authorize public charter schools anywhere in the State in accordance with each institution's regular operating jurisdiction.

(c) A county or state agency may [~~apply to the board, pursuant to this section, for chartering authority.~~] authorize public charter schools."

2. By amending subsection (h) to read:

"(h) [~~This section~~] The provisions of subsections (e), (f), and (g) shall not apply to [~~the commission.~~] those entities listed in subsections (a), (b), and (c)."

SECTION 3. Section 302D-5, Hawaii Revised Statutes, is amended to read as follows:

"§302D-5 Authorizer powers, duties, and liabilities.(a) Authorizers are responsible for executing the following essential powers and duties:

(1) Soliciting and evaluating charter applications;

(2) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices;

(3) Declining to approve weak or inadequate charter applications;

(4) Negotiating and executing sound charter contracts with each approved charter applicant and with existing public charter schools;

(5) Monitoring, in accordance with charter contract terms, the performance and legal compliance of public charter schools; and

(6) Determining whether each charter contract merits renewal, nonrenewal, or revocation.

(b) An authorizer shall:

(1) Act as a point of contact between the department and a public charter school it authorizes;

(2) Be responsible for and ensure the compliance of a public charter school it authorizes with all applicable state and federal laws, including reporting requirements;

(3) Be responsible for the receipt of applicable federal funds from the department and the distribution of funds to the public charter school it authorizes; and

(4) Be responsible for the receipt of per-pupil funding from the department of budget and finance and distribution of the funding to the public charter school it authorizes.

(c) An authorizer shall have the power to make and execute contracts and all other instruments necessary or convenient for the exercise of its duties and functions under this chapter.

(d) An authorizer may delegate its duties to officers, employees, and contractors.

(e) Regulation by authorizers shall be limited to the powers and duties set forth in this section, and shall be consistent with the spirit and intent of this chapter.

(f) An authorizer, members of the board of an authorizer acting in their official capacity, and employees or agents of an authorizer are immune from civil and criminal liability with respect to all activities related to a public charter school authorized by that authorizer, except for any acts or omissions constituting wilful misconduct. Members of the commission shall be afforded the same protection afforded the members of the board pursuant to section 26-35.5.

~~[(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 in which the technical support will directly and substantially impact any authorizer~~

~~decision related to the approval or denial of the charter application or the renewal, revocation, or nonrenewal of the charter 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 4. Section 302D-13, Hawaii Revised Statutes, is amended to read as follows:

"§302D-13 Start-up and conversion charter schools; establishment. (a)

New start-up and conversion charter schools may be established pursuant to this section.

(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. The letter of intent shall serve merely as a notice provided by the applicant to the authorizer to advise the authorizer that the applicant intends to complete an application. All applicants who submit a letter of intent may later submit an application. 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]~~ operates separately from, but

may have similar members with, its nonprofit organization, and develop a charter application for a start-up or conversion charter school; [øø] provided that the members of the applicant governing board shall not constitute the majority of members from the nonprofit organization; 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;
- (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.

(c) The charter school application process and schedule shall be determined by the authorizer, and shall provide for and include, at a minimum, the following elements:

(1) The issuance and publication of [~~a request for proposals~~] an application process by the authorizer on the authorizer's internet website that, at a minimum:

(A) Solicits charter applications and presents the authorizer's strategic vision for chartering;

(B) Includes or directs applicant governing boards to the performance framework developed by the authorizer in accordance with section 302D-16;

© Includes statutory criteria that will guide the authorizer's decision to approve or deny a charter application;

(D) States clear, appropriately detailed questions and provides guidelines concerning the format and content essential for applicant governing boards to demonstrate the capacities necessary to establish and operate a successful charter school; and

(E) Requires charter applications to provide or describe all essential elements, as determined by the authorizer, of proposed school plans;

(2) The submission of a letter of intent to notify the authorizer of the applicant's intent to open and operate a start-up charter school or to convert a department school to a conversion charter school; provided that a letter of intent may not be utilized as a basis for the denial of the right to submit an application;

(3) The timely submission of a completed charter application to the authorizer; provided that a charter application for a conversion charter school shall include certification and documentation that the charter application was approved by a majority of the votes cast by existing administrative, support, and teacher personnel, and parents of students at the existing department school; provided that:

(A) This vote shall be considered by the authorizer to be the primary indication of the existing administrative, support,

and teaching personnel, and parents' approval to convert to a charter school;

(B) The balance of stakeholders represented in the vote and the extent of support received in support of the conversion shall be key factors, along with the applicant's proposed plans, to be considered by the authorizer when deciding whether to award a charter; and

© A breakdown of the number of administrative, support, and teaching personnel, and parents of students who constitute the existing department school and the number who actually participated in the vote shall be provided to the authorizer;

(4) The timely review of the charter application by the authorizer for completeness, and notification by the authorizer to the applicant governing board that the charter application is complete[;] or, if the authorizer determines that the application is incomplete, notification by the authorizer to the applicant governing board that the application is incomplete, providing a detailed listing of any missing elements of the application, and providing a reasonable opportunity for the applicant governing board to cure any deficiency by providing any missing elements to the authorizer;

(5) Upon receipt of a completed charter application, the review and evaluation of the charter application by qualified persons including but not limited to:

(A) An in-person interview with representatives from the applicant governing board; and

(B) An opportunity in a public forum for the public to provide input on each charter application;

(6) Following the review and evaluation of a charter application, approval or denial of the charter application by the authorizer in a meeting open to the public[;] and subsequent written notice to the applicant; provided that in the event of a denial, such notice must provide specific information to the applicant on its right to appeal the decision to the board, including but not limited to the number of days by which the applicant must file an appeal with the board and where to file such an appeal;

(7) A provision for a final date by which a written decision to approve or deny a charter application must be made by the authorizer[;] to the applicant, upon receipt of a complete charter application;

provided that if no written decision is provided by that date, the application shall be deemed approved;
and

(8) A provision that no charter school may begin operation before obtaining authorizer approval of its charter application and charter contract and fulfilling pre-opening requirements that may be imposed by the authorizer, pursuant to section 302D-14.5.

(d) A charter application to become a start-up or conversion charter school shall meet the requirements of this subsection, section 302D-25, and any other requirements set by the authorizer. The charter application shall, at a minimum:

(1) Include plans for a charter school that are likely to satisfactorily meet the academic, financial, organizational, and operational performance indicators, measures, and metrics set forth in the authorizer's performance framework, pursuant to section 302D-16;

(2) Include plans for a charter school that is in compliance with applicable laws; and

(3) ~~Recognize~~ the interests of the general public.

(e) In reviewing a charter application under this section, an authorizer shall take into consideration the constitution of the applicant governing board, terms of applicant governing board members, and the process by which applicant governing board members were selected.

(f) In reviewing charter applications under this section, an authorizer shall develop a schedule to approve or deny a charter application by the end of the calendar year prior to the opening year of the proposed charter school for purposes of meeting any deadlines to request funding from the legislature; provided that nothing in this section shall be construed as requiring an authorizer to accept and review charter applications annually.

(g) If a conflict between the provisions in this section and other provisions in this chapter occurs, this section shall control.

(h) If an authorizer takes any action that prohibits any applicant from proceeding with an application for any reason, such action shall

be deemed a denial and subject to appeal pursuant to section 302D-15."

SECTION 5. Section 302D-15, Hawaii Revised Statutes, is amended to read as follows:

"§302D-15 Appeals; charter applications, renewals, or revocations.

(a) The board shall have the power to decide appeals of decisions by an authorizer to deny the approval of a charter application, deny renewal of a charter contract, or revoke a charter school's charter contract. An appeal shall be filed with the board within twenty-one calendar days of the receipt of the notification of denial or revocation. Only a party whose charter application has been denied, whose charter contract renewal has been denied, or whose charter contract has been revoked may initiate an appeal under this section for cause. The board shall review an appeal and issue a final decision within sixty calendar days of the filing of the appeal.

(b) The board shall serve as the final arbitrator of appeals authorized by subsection (a)~~[-]~~, and the authorizer shall act in accordance with the board's decision within the timeframe stated by the board or, in the absence of a timeframe, such reasonable amount of time needed to comply. If an authorizer fails to timely comply with the final decision of the board, the board may impose a penalty on the authorizer, including but not limited to fining the authorizer for every day the authorizer is not in compliance; implementing the decision and binding the authorizer to the final decision; or revoking the authorizer's charter authority, consistent with section 302D-11.

(c) A party shall not be entitled to a hearing before the board under this section until it has exhausted all available administrative remedies.

(d) The board shall adopt rules pursuant to chapter 91 to implement this section.

(e) If the board overrules a denial or revocation by the authorizer, another eligible authorizer may, subject to the agreement of the charter school and the eligible authorizer, be designated as the charter school's authorizer for ongoing operations of the charter school."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2021.

Aloha

I am writing to you on behalf of Maui's most vulnerable student population. Since 1973 Maui Hui Malama has been providing a safe space for students who have not fit in to the current Maui public schools where they are able to receive an education through the Department of Education, off campus of their home school due to a variety of reason. Majority of our clients have been asked to leave campus due to behavioral issues often linked to historical and generational trauma. They are provided work to do at home without the help of DOE teacher, and unable to access any services on campus. Some of them have been bullied and feel unsafe left feeling like they have to choose to between an education or safety. Many more reasons apply, but the same result are true, Maui Hui Malama has been a community support for the Department of Education and our Maui students for almost 50 years.

The changes in the Department of Education within the last 50 years have been difficult to navigate for students and ourselves. The requests to overcome the communication barriers between the DOE, our students, and our agency have been a glaring community need within the past 5 years at least. We took a leap to decide to apply as charter, to do what we have been doing for almost 50 years, but to better the communication and align with DOE.

You can imagine our surprise when we had a team of people looking over the Charter School application process, working tirelessly to meet short deadlines, providing documentation required, and we were not able to even get past the first step and be allowed to apply. Our team are not rookies in government applications processes. I even dare to gloat that we have strong skills in that area.

On April 15, 2020 we received a letter informing us that our intent to apply was denied with one single reason listed:

After review of the Intent to Apply Packet, the Commission has found the submission to be incomplete:

- *Resolution provided does not articulate the stated requirements*

As a first time charter school applicant, I thought, I don't understand what that means, but I'm sure there's a good reason. I then emailed to ask for clarification on this statement so that I could learn from my mistakes. In my email I asked for the clarification below:

I understood that the list of documents that was listed on the first page needed to be turned in by the deadline, but there is nowhere that states that areas need to be articulated to a certain extent. If I missed the area on the instructions that state that, please let me know.

The response I received stated this:

Thank you for your email. I'm sorry that the intent to apply packet submitted by your team was found to be incomplete. As stated in the letter that you received yesterday, we noted that the

resolution provided does not articulate the stated requirements. In this case, both resolutions submitted did not meet the requirements of the RFP.

The first requirement was for a resolution from the applicant governing board approving the execution of the intent to apply packet. The resolution submitted to address this requirement was signed by you. However, since you are also the primary contact for the purposes of the intent to apply packet, the resolution should be signed by someone else on the board to give you the authority to do so.

The second requirement was for a resolution from the nonprofit board approving the establishment of the applicant governing board. The resolution submitted was missing the date that the board took action.

My team and I looked through every link provided on the in the RFP have not found the specifications of these reasons to be listed.

On April 21, 2020. I asked for further clarification and referral to the resources that are provided to show us specifications required. Till this date I have not received a response.

This application process seems to navigate more on technical aspects versus community need and the ability for a group to provide data driven processes that have a strong hold on high level delivery. Even those technical aspects can be identified to not have a strong backing of being available to applicants as aspects that are required. I hope this Senate can identify this issue as barrier to the students who really need more realms of education paths then what is currently offered. Many of those students at a loss due to this technical issue are Hawaii's most vulnerable keiki.

Even if Maui Hui Malama has been a strong DOE support for almost 50 years, we are not asking for a free pass to an approved charter. What we are asking for is a honest, transparent, and ethical process that doesn't shut down the possibility to change thousands of student's lives due to technicalities which can be looked at as created and delivered by choice of the management of this application process. We strongly support bills SB 814, and feel this is a need to deliver the schools the our keiki here in Hawaii deserve. We also hope that this bill helps the Charter School Commission to stop vilifying non profit organizations and assuming that we are working towards applications just to receive funding from the DOE. There is a lot of hard work and unpaid time that we put in to create a learning space. Yvonne Lau's comments about non profits have a bad reputation and not being trusted community partners is not the way we build strong futures for out youth.

The interactions with some of the commission members have been abrupt and many seem confused on what their roles are in their positions. Many votes are based off opinion with no real backing of research or experience in the areas they are voting on.

I know that we are all in difficult times during our world's pandemic, and we appreciate you still working diligently in supporting Hawaii's students. I look forward seeing these bills passed.

Sincerely,
Chelsie Evans
Maui Hui Malama
Executive Director
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chelsie@mauihui.org