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**(‘AHA KULA HO‘ĀMANA)**

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

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### **Testimony in support of HB 2205**

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

The State Public Charter School Commission appreciates the opportunity to submit this testimony in support of Senate Bill 2780, "Relating to Charter Schools," which makes clarifying and conforming amendments to the statutory provisions governing charter schools. We are grateful to Chair Takumi and Vice Chair Ohno for their sponsorship of the bill.

The proposed measure as introduced would:

- Allow the Commission to issue interim administrative rules by Commission directives pending adoption of permanent rules under the formal rulemaking process pursuant to Chapter 91, and limit the interim rules for no more than eighteen months;
- Prohibit the Commission from providing technical support to prospective charter applicants that would directly and substantially impact its decision related to the approval or denial of the charter application;
- Provide charter school governing boards some additional flexibility regarding the posting of meeting agendas, minutes, and membership as well as some minimal guidance regarding the quality of such disclosures to better ensure greater public transparency;

- Provide the same protections to a nonprofit organization that serves as a charter school's governing board as are afforded to other governing boards;
- Specify that the procedural requirements for Commission hearings are those set forth in the charter school statute, not other requirements for contested case hearings set forth in Chapter 91, Hawaii Revised Statutes;
- Expressly allow charter schools to assess special fees and charges for co-curricular activities, to parallel the department of education's statute;
- Allow conversion charter schools to apply enrollment preferences, if any, to those enrollment seats remaining available after all students from within the school's attendance district have been admitted; and
- Expressly add the Commission to the non-exhaustive list of state agencies that are excluded from open meeting requirements of sections 91-8 and 91-9, HRS, when exercise purely adjudicatory functions.

The Commission respectfully requests several amendments to the bill.

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

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

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

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

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

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

These proposed provisions represent incremental but important refinements to the statutory framework governing Hawaii's public charter school sector.

Thank you for your consideration of this testimony.

# A BILL FOR AN ACT

RELATING TO CHARTER SCHOOLS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

## PART I

~~SECTION 1. Section 302D-3.5, Hawaii Revised Statutes, is amended to read as follows:~~

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

SECTION ~~2~~ 1. Section 302D-5, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) An authorizer shall not provide technical support to a prospective charter school applicant, an applicant governing board, or a charter school it authorizes in cases where the technical support will directly and substantially impact any

authorizer decision related to the [~~authorization,~~] approval or denial of the charter application or the renewal, revocation, or nonrenewal of the charter [school-] contract. This subsection shall not apply to technical support that an authorizer is required to provide to a charter school pursuant to federal law."

SECTION ~~3~~ 2. Section 302D-12, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) Charter schools and their governing boards shall be exempt from the requirements of chapters 91 and 92. The governing boards shall:

- (1) Hold meetings open to the public;
- (2) [~~Make available~~] Post the notices and agendas of public meetings:
  - (A) At a publicly accessible area in the charter school's office so [~~as to be~~] they are available for review during regular business hours; and
  - (B) On the charter school's internet website, not less than six calendar days prior to the public meeting, unless a waiver is granted by the authorizer or authorizer's designee in the case of an emergency; [~~and~~]
- (3) Keep written minutes of all public meetings that shall include:

- (A) The date, time, and place of the meeting;
  - (B) The members of the board recorded as either present or absent;
  - (C) The substance of all matters proposed, discussed, and decided;
  - (D) The views of the participants;
  - (E) A record, by individual member, of any votes taken; and
  - (F) Any other information that any member of the board requests be included or reflected in the minutes;
- (4) Not be required to produce a full transcript or audio or video recording of any public meeting, unless otherwise required by law;
- [~~(3)~~] (5) [~~Make available~~] Post the written minutes from public meetings:
- (A) At a publicly accessible area in the charter school's office so the minutes are available for review during regular business hours; and
  - (B) On the charter school's internet website, within [~~thirty days and maintain~~] sixty **calendar** days **after** the public meeting or **no less than** five **calendar** days **after** ~~prior to~~ the next public meeting, whichever is sooner; and

(6) Maintain a list of the current names and contact information of the governing board's members and officers:

(A) In the charter school's office so [~~as to be~~] it is available for review during regular business hours; and

(B) On the charter school's internet website."

SECTION 4 3. Section 302D-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any community, department school, school community council, group of teachers, group of teachers and administrators, or nonprofit organization may submit a letter of intent to an authorizer to form a charter school and establish an applicant governing board. An applicant governing board may develop a charter application pursuant to this section; provided that:

- (1) An applicant governing board established by a community may develop a charter application for a start-up charter school;
- (2) An applicant governing board established by a department school or a school community council may develop a charter application for a conversion charter school;

- (3) An applicant governing board established by a group of teachers or a group of administrators may develop a charter application for a start-up or conversion charter school; and
- (4) A nonprofit organization may:
  - (A) Establish an applicant governing board that is separate from the nonprofit organization and develop a charter application for a start-up or conversion charter school; or
  - (B) Establish an applicant governing board that shall be the board of directors of the nonprofit organization and may develop a charter application for a conversion charter school; provided that any nonprofit organization that seeks to manage and operate a conversion charter school shall:
    - (i) Submit to the authorizer at the time of the charter application bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of potential conflict of interest situations;
    - (ii) Have experience in the management and operation of public or private schools or,

to the extent necessary, agree to obtain appropriate services from another entity or entities possessing such experience; [~~and~~]

- (iii) Not interfere in the operations of the department school to be converted until otherwise authorized by the authorizer in consultation with the department[~~-~~]; and
- (iv) Have the same protections that are afforded to all other governing boards in its role as the conversion charter school governing board."

SECTION 5-4. Section 302D-18, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) An authorizer shall develop revocation and nonrenewal processes that:

- (1) Provide charter contract holders with a timely notification of the prospect of revocation or non-renewal and the reasons for such possible closure;
- (2) Allow charter contract holders a reasonable amount of time in which to prepare a response;
- (3) Provide charter contract holders with an opportunity to submit documents and give testimony challenging the rationale for closure and supporting the continuation of the school at an orderly proceeding held for that

purpose; provided that the proceeding shall be governed by the requirements set forth in this section and not additionally subject to requirements established for an agency hearing not be subject to under chapter 91;

- (4) Allow charter contract holders access to representation by counsel, subject to section 28-8.3, and to call witnesses on their behalf;
- (5) Permit the recording of proceedings described in paragraph (3); and
- (6) After a reasonable period for deliberation, require a final determination to be made and conveyed in writing to the charter contract holders."

SECTION **6 5**. Section 302D-28, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) No charter school may assess tuition[-]; provided that a charter school may assess and collect special fees and charges from students for co-curricular activities. Any special fees and charges collected pursuant to this subsection shall be deposited into insured checking or savings accounts and expended by each individual charter school."

SECTION **7 6**. Section 302D-34, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A conversion charter school shall:

- (1) Enroll any student who resides within the school's former geographic service area pursuant to section 302A-1143, for the grades that were in place when the department school converted to a charter school; provided that the department may consult with a conversion charter school every three years to determine whether realignment of the charter school's service area is appropriate given population shifts and the department's overall service area reviews;
- ~~[(2) Follow the department's procedures regarding enrollment, including but not limited to geographic exceptions and enrollment preferences;]~~ and
- ~~[(3)]~~ (2) Be subject to subsection (b) for ~~[grades]~~:
- (A) Grades that were not in place when the school converted to a public charter school~~[-]~~; and
- (B) For any seats still available at the charter school after the enrollment of all students desiring to attend the charter school who reside within the school's former geographic service area pursuant to section 302A-1143."

## PART II

SECTION **8 7**. Section 92-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This part shall not apply:

- (1) To the judicial branch[-]; and
- (2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising adjudicatory functions include, but are not limited to, the following:
- (A) Hawaii labor relations board, chapters 89 and 377;
- (B) Labor and industrial relations appeals board, chapter 371;
- (C) Hawaii paroling authority, chapter 353;
- (D) Civil service commission, chapter 26;
- (E) Board of trustees, employees' retirement system of the State of Hawaii, chapter 88;
- (F) Crime victim compensation commission, chapter 351;
- [and]
- (G) State ethics commission, chapter 84[-]; and
- (H) The state public charter school commission, established pursuant to section 302D-3, as to a matter on which the commission already has rendered a decision in a public meeting notwithstanding any other law to the contrary."

PART III

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

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