



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

June 7, 2016

TO: Lance Mizumoto
Chairperson, Board of Education

FROM: Jim Williams
Board Member, Board of Education

AGENDA ITEM: Board Action on request to Governor to veto House Bill 2205, House Draft 1, Senate Draft 2, Conference Draft 1 (Relating to Charter Schools) of the 2016 Legislative Session

At its meeting of February 16, 2016, the Board of Education (“Board”) voted to oppose House Bill (“HB”) 2205 and Senate Bill (“SB”) 2780. The Board’s most recent testimony (submitted to the Senate Committee on Education on an earlier draft of HB 2205) is attached as **Exhibit A**.

SB 2780 passed the Senate but failed to get a hearing in the House. HB 2205 passed both the House and Senate (with amendments) and then was approved in conference committee and sent to the Governor as HB 2205 Conference Draft (“CD”) 1. The bill and the conference committee report are attached as **Exhibit B**.

Testimony against the HB 2205 was overwhelmingly in opposition. Testimony in opposition came from several charter schools, individuals, and interested organizations, including Common Cause Hawaii, Connections Public Charter School, Council for Native Hawaii Advancement, Halau Ku Mana Public Charter School, Hawaii Academy of Arts & Science Public Charter School, Hawaii Educational Policy Center, Hawaii Public Charter Schools Network, Ka Waihona o ka Na’auao Public Charter School, Kamehameha Schools, Kanu o ka ‘Āina New Century Public Charter School, Kanu o ka ‘Āina Learning ‘Ohana, Ke Kula ‘o Nāwahīokalani‘ōpu‘u Iki LPCS, Kua o ka Lā New Century Public Charter School, League of Women Voters, and 19 individuals.

In its final form, HB 2205 CD 1 has eight sections, with the first six sections amending various parts of Chapter 302D, Hawaii Revised Statutes (“HRS”). Section 1 prohibits an authorizer from providing technical support to an applicant for a charter. As pointed out in the Board’s testimony, this provision is not objectionable, but it is also not necessary. Section 2 provides detailed language on how charter schools must make available minutes of their governing board meetings. The State Public Charter School Commission (“Commission”) has the authority to address these details in its contracts with charter schools. The statute is not the place to provide detailed instructions for

posting meeting minutes. Section 3 provides the same protection to applicant governing boards as it does to charter school governing boards. This is a curious provision that warrants the scrutiny of the Department of the Attorney General since an applicant has no standing as a government entity. This provision alone seems to provide the necessary grounds for a veto.

Section 4, from the point of view of transparency in government and basic due process, is the most objectionable part of this legislation. Section 4 exempts the Commission from the provisions of Chapter 91, HRS, in making decisions about renewal of charter school contracts and/or closure of a charter school. In addition to the granting of charter contracts, decisions about the renewal and closure are the most significant, high-stakes decisions made by the Commission. Chapter 91, HRS, is known as the Hawaii Administrative Procedures Act. This Board is subject to Chapter 91, HRS, and there is no justifiable reason for the Commission to be exempt. Although the bill provides that the Commission should follow the provisions of Chapter 302D, HRS, in its decision-making on renewals and closures, there are no provisions comparable to Chapter 91 contained in Chapter 302D, HRS. Section 4 of HB 2205 CD 1 takes vital protections away from charter schools, and this should be persuasive grounds for a veto.

Section 5 permits charter schools to collect fees from students for extracurricular activities. This provision represents a solution for a problem that never existed. Charter schools already charge the aforementioned fees, and the schools that testified indicated they did not request or need this provision. Furthermore, Section 5 does not provide justification for approving Sections 3 and 4 (as noted above). Section 6 clarifies enrollment requirements for certain conditions at conversion charter schools. As with Section 5, there is not persuasive evidence that this statutory revision is needed, and this section does not provide sufficient justification to accept Sections 3 and 4.

Section 7 is standard language regarding the format of the bill. Section 8 provides for an effective date of July 1, 2016.

Based on the foregoing, I recommend that the Board adopt the following motion: "The Board of Education requests that the Governor veto HB 2205 CD 1. The Board authorizes the Chairperson to submit this request to the Governor based on the rationale stated in the memorandum from Board Member Jim Williams, dated June 7, 2016, on the subject."

Exhibit A

Board's testimony to the Senate Committee on Education regarding HB 2205 HD1



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

Senate Committee on Education

Monday, March 14, 2016
1:25 P.M.
Hawaii State Capitol, Room 229

House Bill 2205, HD1, Relating to Charter Schools

Dear Chair Kidani, Vice Chair Harimoto, and Members of the Committee:

The Board of Education ("Board") is testifying in opposition of House Bill 2205 HD1, which would, among other things, establish additional requirements for charter school governing board meetings and exempt the State Public Charter School Commission ("Commission") from certain public meeting requirements.

The Board believes the interests of the public and charter school students would best be served by this Committee indefinitely deferring this measure. An earlier draft of this measure would have allowed the Commission to adopt interim rules for 18 months and forego the formal promulgation of administrative rules. While the Board appreciates the removal of that provision, the remaining provisions range from unnecessary to unacceptable.

Section 1 would clarify that authorizers should not provide technical support to charter school applicants. While the Board does not object to this provision, the Board believes the provision is not necessary, and it should not be used as a justification for keeping this measure alive.

Section 2 would place additional requirements on charter school governing boards for posting of meeting documents. The current requirements are sufficient to protect the interests of charter school stakeholders and the public. The Board believes it is unnecessary to impose additional requirements. The Commission should focus its efforts on the current statutory requirements.

Section 3 would provide protections to some applicant governing boards. Applicant governing boards are not government entities until their applications are approved by the Commission and they execute charter contracts. This provision seems contrary to wise public policy.

Section 4 would essentially exempt the Commission's decision-making process regarding revocation and nonrenewal of charter contracts from Chapter 91, Hawaii Revised Statutes. Revocation and nonrenewal are the most significant and high stakes decisions the Commission can make. Transparency and due process are especially important for all concerned during Commission decision-making on these and related decisions. The Board urges this Committee to refrain from approving this provision in any form.

Section 5 would clarify that charter schools are permitted to charge certain fees. This provision is unnecessary as charter schools already have the ability to collect fees for co-curricular activities, and this proposal should not be used as a reason to keep this measure alive.

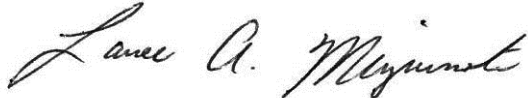
Section 6 would exempt conversion charter schools from the Department of Education's geographic exceptions procedures and allow them to establish enrollment preferences for students not located within the respective school's geographic service area. The Board is not aware of problems with the current provision that would warrant a change in the statute.

Section 7 would explicitly include the Commission as a board that exercises adjudicatory functions in matters it has already decided upon in a public meeting. The Board objects to this provision and notes that the Board itself is not explicitly included on the list to which this measure would add the Commission. This provision would potentially allow the Commission to claim that it was making certain high stakes decisions about charter schools in private due to its "adjudicatory functions."

In summary, the Board believes there is no reason for this measure to move forward and respectfully requests that this Committee defer HB 2205 HD1 indefinitely.

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

Very truly yours,

A handwritten signature in cursive script that reads "Lance A. Mizumoto".

Lance A. Mizumoto
Chairperson

Exhibit B

HB 2205 HD1 SD2 CD1 and Conference Committee Report

A BILL FOR AN ACT

RELATING TO CHARTER SCHOOLS.

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

1 SECTION 1. Section 302D-5, Hawaii Revised Statutes, is
2 amended by amending subsection (g) to read as follows:
3 "(g) An authorizer shall not provide technical support to
4 a prospective charter school applicant, an applicant governing
5 board, or a charter school it authorizes in cases [where] in
6 which the technical support will directly and substantially
7 impact any authorizer decision related to the [~~authorization~~]
8 approval or denial of the charter application or the renewal,
9 revocation, or nonrenewal of the charter [~~school~~] contract.
10 This subsection shall not apply to technical support that an
11 authorizer is required to provide to a charter school pursuant
12 to federal law."

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

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

18 (1) Hold meetings open to the public;



- 1 (2) ~~[Make available]~~ Post the notices and agendas of
2 public meetings:
- 3 (A) At a publicly accessible area in the charter
4 school's office so ~~[as to be]~~ they are available
5 for review during regular business hours; and
- 6 (B) On the charter school's internet website,
7 not less than six calendar days prior to the public
8 meeting, unless a waiver is granted by the authorizer
9 or authorizer's designee in the case of an emergency;
10 ~~[and]~~
- 11 (3) Keep written minutes of all public meetings that shall
12 include:
- 13 (A) The date, time, and place of the meeting;
14 (B) The members of the governing board recorded as
15 either present or absent;
16 (C) The substance of all matters proposed, discussed,
17 and decided;
18 (D) The views of the participants;
19 (E) A record, by individual member, of any votes
20 taken; and



- 1 (F) Any other information that any member of the
2 governing board requests be included or reflected
3 in the minutes;
- 4 (4) Not be required to produce a full transcript or audio
5 or video recording of any public meeting, unless
6 otherwise required by law;
- 7 ~~[-(3) Make available]~~ (5) Post the written minutes from
8 public meetings:
- 9 (A) At a publicly accessible area in the charter
10 school's office so the minutes are available for
11 review during regular business hours; and
- 12 (B) On the charter school's internet website,
13 within ~~[thirty days and maintain]~~ sixty calendar days
14 after the public meeting or five calendar days after
15 the next public meeting, whichever is sooner; and
- 16 (6) Maintain a list of the current names and contact
17 information of the governing board's members and
18 officers:
- 19 (A) In the charter school's office so ~~[as to be]~~ it
20 is available for review during regular business
21 hours; and



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

2 SECTION 3. Section 302D-13, Hawaii Revised Statutes, is

3 amended by amending subsection (b) to read as follows:

4 "(b) Any community, department school, school community

5 council, group of teachers, group of teachers and

6 administrators, or nonprofit organization may submit a letter of

7 intent to an authorizer to form a charter school and establish

8 an applicant governing board. An applicant governing board may

9 develop a charter application pursuant to this section; provided

10 that:

11 (1) An applicant governing board established by a

12 community may develop a charter application for a

13 start-up charter school;

14 (2) An applicant governing board established by a

15 department school or a school community council may

16 develop a charter application for a conversion charter

17 school;

18 (3) An applicant governing board established by a group of

19 teachers or a group of administrators may develop a

20 charter application for a start-up or conversion

21 charter school; and

- 1 (4) A nonprofit organization may:
- 2 (A) Establish an applicant governing board that is
- 3 separate from the nonprofit organization and
- 4 develop a charter application for a start-up or
- 5 conversion charter school; or
- 6 (B) Establish an applicant governing board that shall
- 7 be the board of directors of the nonprofit
- 8 organization and may develop a charter
- 9 application for a conversion charter school;
- 10 provided that any nonprofit organization that
- 11 seeks to manage and operate a conversion charter
- 12 school shall:
- 13 (i) Submit to the authorizer at the time of the
- 14 charter application bylaws or policies that
- 15 describe the manner in which business is
- 16 conducted and policies that relate to the
- 17 management of potential conflict of interest
- 18 situations;
- 19 (ii) Have experience in the management and
- 20 operation of public or private schools or,
- 21 to the extent necessary, agree to obtain



- 1 appropriate services from another entity or
- 2 entities possessing such experience; [and]
- 3 (iii) Not interfere in the operations of the
- 4 department school to be converted until
- 5 otherwise authorized by the authorizer in
- 6 consultation with the department [-]; and
- 7 (iv) Have the same protections that are afforded
- 8 to all other governing boards in its role as
- 9 the conversion charter school governing
- 10 board."

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

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

- 15 (1) Provide charter contract holders with a timely
- 16 notification of the prospect of revocation or non-
- 17 renewal and the reasons for such possible closure;
- 18 (2) Allow charter contract holders a reasonable amount of
- 19 time in which to prepare a response;
- 20 (3) Provide charter contract holders with an opportunity
- 21 to submit documents and give testimony challenging the



1 rationale for closure and supporting the continuation
2 of the school at an orderly proceeding held for that
3 purpose; provided that the proceeding shall be
4 governed by the requirements set forth in this section
5 and shall not be additionally subject to the
6 requirements for an agency hearing under chapter 91;

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

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

17 "(h) No charter school may assess tuition[-]; provided
18 that a charter school may assess and collect special fees and
19 charges from students for co-curricular activities. Any special
20 fees and charges collected pursuant to this subsection shall be



1 deposited into insured checking or savings accounts and expended
2 by each individual charter school."

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

5 "(c) A conversion charter school shall:

6 (1) Enroll any student who resides within the school's
7 former geographic service area pursuant to section
8 302A-1143, for the grades that were in place when the
9 department school converted to a charter school;
10 provided that the department may consult with a
11 conversion charter school every three years to
12 determine whether realignment of the charter school's
13 service area is appropriate given population shifts
14 and the department's overall service area reviews;

15 [~~(2) Follow the department's procedures regarding~~
16 ~~enrollment, including but not limited to geographic~~
17 ~~exceptions and enrollment preferences,~~] and

18 [~~(3)~~] (2) Be subject to subsection (b) [~~for grades~~]:

19 (A) For grades that were not in place when the school
20 converted to a public charter school [~~-~~]; and



1 (B) For any seats still available at the charter
2 school after the enrollment of all students
3 desiring to attend the charter school who reside
4 within the school's former geographic service
5 area pursuant to section 302A-1143."

6 SECTION 7. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 8. This Act shall take effect on July 1, 2016.

Report Title:

Charter Schools; Rules; Fees

Description:

Establishes requirements for public charter school board meetings. Clarifies that revocation and renewal proceedings shall not be subject to Chapter 91, Hawaii Revised Statutes. Authorizes charter schools to assess fees and charges for co-curricular activities. (HB2205 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Honolulu, Hawaii

April 29, 2016

RE: H.B. No. 2205
H.D. 1
S.D. 2
C.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sirs:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 2205, H.D. 1, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO CHARTER SCHOOLS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose and intent of this measure is to refine the governance of charter schools.

Specifically, this measure:

- (1) Prohibits charter school authorizers from providing technical support to prospective charter school applicants or their governing boards when that technical support will impact a decision to approve or deny a charter application;



- (2) Establishes meeting minutes requirements for charter schools and their governing boards;
- (3) Provides nonprofit organizations acting in the role of a conversion charter school governing board with the same protections afforded to all other governing boards;
- (4) Authorizes charter schools to assess and collect special fees and charges from students for co-curricular activities; and
- (5) Allows a conversion charter school to establish its own enrollment procedures and apply certain enrollment preferences.

Your Committee on Conference has amended this measure by making technical, nonsubstantive amendments.

Your Committee on Conference finds that the Legislature did not intend the charter school law to include provisions for a contested case hearing between a charter school and its authorizer when Act 130 was enacted in 2012. The State Public Charter School Commission, as an authorizer of charter schools, is expected to oversee and regulate charter schools to ensure that they are providing a high-quality education and that they are being responsibly managed. For that reason, the Commission should have the authority to revoke or choose not to renew contracts with charter schools that fail to meet the State's expectations on how public funds are spent.

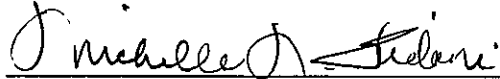
As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 2205, H.D. 1, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2205, H.D. 1, S.D. 2, C.D. 1.

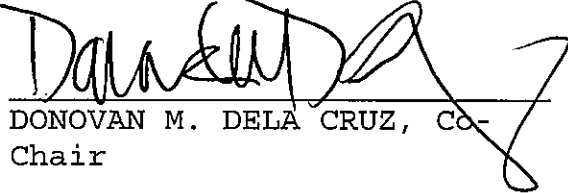


Respectfully submitted on behalf
of the managers:


ON THE PART OF THE SENATE

ON THE PART OF THE HOUSE


MICHELLE N. KIDANI, Chair


DONOVAN M. DELA CRUZ, Co-
Chair


ROY M. TAKUMI, Co-Chair


KARL RHOADS, Co-Chair


AARON LENG JOHANSON, Co-Chair



Hawaii State Legislature

Record of Votes of a
Conference Committee

CCR 100-16

Bill / Concurrent Resolution No.: HB 2205, HD 1, SD 2	Date/Time: 4/29/16 5:10 pm
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The recommendation of the House and Senate managers is to pass with amendments (CD).

The Committee is reconsidering its previous decision.



The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure

The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.

Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
KIDANI, Michelle N., Chr.	✓				TAKUMI, Roy M., Co-Chr.	✓			
DELA CRUZ, Donovan M., Co-Chr.	✓				RHOADS, Karl, Co-Chr.				✓
KAHELE, Kaiali'i	✓				JOHANSON, Aaron Ling, Co-Chr.	✓			
					MATSUMOTO, Lauren Kealohilani	✓			
TOTAL	3	0	0	0	TOTAL	3	0	0	1

A = Aye WR = Aye with Reservations N = Nay E = Excused

Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted	House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted
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Senate Lead Chair's or Designee's Signature: 	House Lead Chair's or Designee's Signature: 
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 File with Conference Committee Report House Clerk's Office Senate Clerk's Office Drafting Agency