



LATE

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

S.B. NO. 3104, RELATING TO PUBLIC CHARTER SCHOOLS.

BEFORE THE:

SENATE COMMITTEES ON EDUCATION AND ON JUDICIARY AND LABOR

DATE: Friday, February 12, 2016

TIME: 1:15 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Holly T. Shikada, Deputy Attorney General, or
Melissa J. Kolonie, Deputy Attorney General

Chairs Kidani and Keith-Agaran and Members of the Committees:

The Department of the Attorney General opposes part IV of this bill.

Part IV of this bill allows for an exemption to public charter schools and their governing boards from the statutory prohibition on retaining outside counsel. Part IV of this bill allows public charter schools to retain private attorneys for any action involving the charter contract negotiation, charter revocation, or charter nonrenewal process.

Part IV of this bill will not achieve the desired result of the charter schools. Section 302D-18, Hawaii Revised Statutes, does not contemplate the Commission entering into negotiations with the charter schools, yet, the charter schools want to negotiate the terms of their charter contracts. The Charter School charter contract renewal process is a unilateral process resulting in a performance-based contract. Nevertheless, part IV of this bill would allow charter schools to retain private counsel to negotiate the terms of their charter contracts. The Charter School Commission ("Commission"), like Charter Schools, is a state entity. The Commission, as the overseer of the charter schools it authorizes, has been tasked with the mission of ensuring that charter schools are of high-quality and that there is a long-term strategic vision for Hawaii's public charter schools. It is the Commission's responsibility, in working in the best interest of the State, to draft charter contracts in a manner that assists the Commission in ensuring that a charter school is and remains organizationally viable.

Part IV of this bill not only seeks to allow charter schools to hire private attorneys to negotiate their charter contracts with the Commission, but also would allow charter schools to hire private attorneys to represent them in any charter revocation and charter nonrenewal situation. This impedes the legal obligation of the Department of the Attorney General to its

clients, particularly in areas where representation has previously been provided by deputy attorneys general. The Department of the Attorney General continues to be willing and able to provide independent legal representation to the charter schools in the charter revocation and charter nonrenewal processes.

By locating the attorneys for state agencies within a single department, the Department of the Attorney General is able to provide a wide range of experience and expertise to those agencies. Private attorneys retained by charter schools are unlikely to acquire the necessary breadth of knowledge and experience that the Department of the Attorney General already has. Additionally, because state agencies are regulated by a variety of laws, such as the Code of Ethics for state employees, and Collective Bargaining in Public Employment, not applicable to private practice, the Department of the Attorney General has a depth of expertise in representing state agencies that would be difficult to duplicate by private attorneys, and certainly not without additional expense. Finally, deputy attorneys general, being separate and apart from the state agencies they represent, are insulated from political issues that may arise within a state agency. This insulation permits the Department of the Attorney General to provide objective and high-quality legal counsel.

The Department of the Attorney General is also unique in its ability under the law to undertake concurrent representation of multiple state agencies that may have conflicting interests, something that private attorneys are not able to do under the Hawai'i Rules of Professional Conduct, the rules governing lawyers. In State v. Klattenhoff, 71 Haw. 598, 801 P.2d 548 (1990), the Hawai'i Supreme Court ruled that the Department of the Attorney General may assign deputies to represent agencies that have competing interests as long as it erects appropriate firewalls between those attorneys and takes steps to ensure that no prejudice is suffered by the clients. The Department of the Attorney General has done this in past cases to ensure that all client agencies are vigorously, and separately, represented. We have provided, and will continue to provide, vigorous and objective legal representation to the charter schools.

We respectfully recommend the Committees to amend the bill by removing part IV.



LATE

KAMEHAMEHA SCHOOLS®

Senate Committee on Education
Senate Committee on Judiciary and Labor

Time: 1:15 p.m.
Date: February 12, 2016
Where: State Capitol Room 229

TESTIMONY
By Ka'ano'i Walk
Kamehameha Schools

To: Chair Kidani, Vice Chair Harimoto, Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committees

RE: **SB 3104 Relating to Public Charter Schools**

E ka Luna Ho'omalū Kidani, ka Luna Ho'omalū Keith-Agaran, ka Hope Luna Ho'omalū Harimoto, ka Hope Luna Ho'omalū Shimabukuro a me nā Lālā o kēia mau Kōmike o ka 'Aha Kenekoa, aloha! My name is Ka'ano'i Walk and I serve as the Senior Policy Analyst of the Kūamahi Community Education Group of Kamehameha Schools. Senate Bill 3104 relating to public charter schools simplifies the process for an entity to become an authorizer and establishes a shortened timeline for the release of charter school funds. It authorizes charter schools to retain attorneys for charter contract negotiation, charter revocation, and charter nonrenewal processes.

As part of the second goal of Kamehameha Schools' strategic plan, which guides us to contribute to the communities collective efforts to improve Hawai'i's education systems for Native Hawaiian learners, Kamehameha Schools is committed to support Hawaiian-focused charter schools and therefore we stand in **support** of SB 3104.

Kamehameha Schools advocates for and supports the achievement of Hawai'i's Native Hawaiian public school students. As such, we have been a collaborator with the Hawai'i public charter schools for over a decade. Through our work with Hawaiian-focused public charter schools, we hope to significantly impact more children and their families through education. We believe that Hawaiian-focused charter schools provide quality educational choices for our families and ultimately enhance both academic achievement and engagement for students. We encourage you, the leaders of our government to stand with us in supporting a move to improve the educational system in Hawai'i in this way.

Founded in 1887, Kamehameha Schools is a statewide educational system supported by a trust endowed by Princess Bernice Pauahi Bishop, whose mission is to improve the capability and well-being of Native Hawaiian learners. We believe that by continuing to engage in dialog around these charter school policies and proposals, we can contribute in a positive and meaningful way. We believe that this bill promotes the saying, e kūlia i ka nu'u. To constantly strive for the summit! We commend the legislature for working hard to increase the effectiveness of our public education system. Mahalo nui.

LATE

From: mailinglist@capitol.hawaii.gov
To: [EDU Testimony](#)
Cc: leila@kuaokala.org
Subject: *Submitted testimony for SB3104 on Feb 12, 2016 13:15PM*
Date: Thursday, February 11, 2016 8:12:26 PM

SB3104

Submitted on: 2/11/2016

Testimony for EDU/JDL on Feb 12, 2016 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Leila Kealoha	Individual	Oppose	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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Subject: *Submitted testimony for SB3104 on Feb 12, 2016 13:15PM*
Date: Thursday, February 11, 2016 9:46:59 PM

SB3104

Submitted on: 2/11/2016

Testimony for EDU/JDL on Feb 12, 2016 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Samuel Kaauwai	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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