

Honolulu, Hawaii

April 1, 2010

RE: S.B. No. 2124  
S.D. 2  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2010  
State of Hawaii

Sir:

Your Committee on Finance, to which was referred S.B. No. 2124, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAII HURRICANE RELIEF FUND,"

begs leave to report as follows:

The purpose of this bill is to restore the remaining public school instructional days for the 2009-2010 and 2010-2011 school years that would otherwise be lost to furloughs pursuant to a collective bargaining agreement with the Hawaii State Teachers Association (HSTA). Specifically, this bill appropriates funds from the Hawaii Hurricane Relief Fund (HHRF) to the public schools, including a proportionate amount to charter schools, provided that:

- (1) The funds shall only be released upon completion of all negotiations of all parties necessary to execute the restoration of instructional days; and
- (2) The collective bargaining agreement contain a provision to relinquish at least one planning day for every two lost instructional days due to furloughs once the instructional days are restored.

HSTA, the Charter School Administrative Office, and two concerned individuals testified in support of this bill. The



Department of Commerce and Consumer Affairs; Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO; Hawaii Association of REALTORS; and a concerned individual testified in opposition to this measure. The Office of the Governor and Department of Education (DOE) provided comments.

Hawaii is facing one of the most challenging economic times it has ever faced and these economic conditions have necessitated difficult decisions by the State to balance an already precarious budget. One such decision reached through collective bargaining between the Governor, the Board of Education (BOE), DOE, and HSTA, was to institute furlough days for Hawaii's educational system. As a result of this agreement, Hawaii's keiki have already lost nearly three weeks worth of instructional days during the current school year and are scheduled to lose anywhere from 17 to 21 more days during the next school year.

Your Committee finds that the loss of these instructional days may have a tremendous impact on the youth of our state. It may be devastating to the quality of their education and a loss which may constrain individual achievement and potential. In addition to the effect on our youth, these lost days may have far reaching effects on the prosperity, health, and growth of the entire state for years to come.

Despite the State's economic difficulties and the great need for additional resources in many areas that would benefit the public welfare, the Legislature finds that the education of our youth is of the utmost importance. Accordingly, your Committee feels that appropriating moneys from the Hawaii Hurricane Relief Fund to restore instructional days for the 2009-2010 and 2010-2011 school years that would be lost to furloughs is appropriate and prudent while continuing to recognize the fiscal constraints facing the entire State.

Your Committee finds that as required by the Hawaii Constitution, the Legislature's authority and responsibility is to establish funding priorities that will result in a balanced budget. In our current fiscal climate it is difficult to balance the many needs of the people of Hawaii, but the Legislature has made the educational needs of Hawaii's children a top priority and therefore has appropriated these funds to restore instructional days. In doing so, it is not the intent of the Legislature to become a participant in the collective bargaining process. In fact, the Hawaii Constitution forbids this. The Legislature's



role is to reject or approve funding for the cost items agreed to by collective bargaining.

Cognizant of the fact that a supplemental contract agreement was reached and entered into by the BOE and HSTA, on March 31, 2010, your Committee remains concerned with some of the provisions contained in this supplemental agreement. Of particular concern is the provision that states:

*"The parties acknowledge that there is the potential for further budget reductions and/or reduced revenue that could result in the need for the employer to implement further cost saving measures subject, when appropriate, to collective bargaining. If the enacted Department of Education budget (approved by the Legislature and signed by the Governor) for the school year 2010-2011 results in reductions greater than those submitted by the Board of Education to the legislature on or about March 22, 2010, the Employer reserves the right to declare this agreement null and void. The Employer shall notify the Union of its decision to declare this agreement null and void no later than July 8, 2010, otherwise the agreement shall be implemented as provided herein."*

Implicit in this provision is a threat that furloughs will continue if the Legislature reduces the budget of the DOE more than reductions proposed by the BOE.

Your Committee finds that:

- (1) Funding decisions contained in this bill have no bearing on funding decisions in other bills; and
- (2) Article VII of the Hawaii Constitution clearly delegates the power to appropriate to the Legislature.

One of the basic tenets of our Democratic-Republic is that idea of the separation of powers and responsibilities between the three branches of government. This is a fundamental key to ensuring that our system of checks and balances works. The Legislature, clearly, cannot and must not interfere with the collective bargaining process under Chapter 89, Hawaii Revised Statutes. Likewise, collective bargaining contract provisions



cannot and must not interfere with the role of the Legislature in determining appropriation levels for all of state government.

Thus, your Committee notes that the education of our youth is a high priority of the Legislature and that it is clearly within the sole authority of the Legislature to appropriate HHRF moneys for the restoration of instructional days, without condition, and has amended this bill by:

- (1) Clarifying that the funds provided by this measure are to restore an unspecified number of instructional days to the current and for the next school year;
- (2) Deleting language requiring that the collective bargaining agreement reached by the parties contain provisions to relinquish at least one planning day for every two lost instructional days due to furloughs once the instructional days are restored;
- (3) Changing all appropriations in this measure to unspecified sums; and
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2124, S.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2124, S.D. 2, H.D. 1.

Respectfully submitted on  
behalf of the members of the  
Committee on Finance,

  
MARCUS R. OSHIRO, Chair



