HAWAII STATE TEACHERS ASSOCIATION
Teaching Today for Hawaii's Tomorrow

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SENATE COMMITTEE ON
WAYS AND MEANS

RE: SB 2789, SD1 -- RELATING TO EDUCATION.

February 28, 2012

WIL OKABE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Ige and Members of the Committee:

The Hawaii State Teachers Association respectfully opposes SB 2789 SD1, relating to education, which directs the Department of Education to establish a performance management system and extends the probationary period for new teachers from two to three years.

Though we support efforts to effectively measure student achievement and reward teachers who demonstrate strong classroom performance, we feel that the creation of a performance management system that effects the compensation and reemployment of teachers, or "merit pay," should be subject collective bargaining procedures, not legislated by the state. Put simply, any evaluation system that excludes educators from the design and implementation process, as this bill does, is destined to not only ostracize incumbent and prospective teachers, but also discount the insights and experiences of those professionals most heavily involved with day-to-day instructional tasks.

Additionally, HSTA believes that performance evaluations must be based upon multiple facets of a students' performance and cannot rely on a single measure such as standardized test scores. We must address not only a student's test taking skills, but also their long-term academic performance and growth. Unfortunately, while this bill prohibits the use of a single standardized test in relating student achievement to teacher effectiveness, it does not prevent the *sole* use of standardized assessments.

This bill specifies, moreover, that student achievement must comprise 50 percent of the DOE's evaluation model, but does not demand that the model must contain due process provisions for teachers who receive an unsatisfactory rating. We feel that this violates both the letter and spirit of Article VIII, subsection (N) of the current HSTA-BOE master agreement, relating to teacher performance, which clearly states, "A teacher who has been given an unsatisfactory rating may process a grievance," and subsection (O), which says, "No teacher shall be adversely evaluated without proper cause." With all due respect to department officials, what "proper cause" exists for instituting merit pay without teacher approval? We are also concerned about the amendment to Chapter 89 with regards to tenure and re-employment rights. This may diminish our right to protect probationary teacher' right to due process.

We feel compelled to note that federal RTTT officials will be visiting Hawaii during the week of March 25 to reassess the state's grant status, a date that falls in the middle of the legislative calendar. That means that these bills cannot be implemented prior to reassessment, leaving only the DOE's recently launched pilot evaluation program, currently being hosted in two "zones of innovation" (Nanakuli and Wai'anae on Oahu, as well as Ka'u, Ke'aau, and Pahoa on the Big Island), as evidence of "progress." Because the pilot evaluation program is, by definition, an experimental program, its results cannot and should not be interpreted as representative of all schools. Like any pilot program, the costs and benefits of the experiment must be analyzed at regular intervals and cannot be fully determined prior to the program's completion. It is too soon too tell whether or not the model used in the program will lead to lasting gains in teacher effectiveness and student achievement. What happens if student achievement declines during the experiment? What happens if the DOE's longitudinal data tracking system suffers a technological glitch or fails? Would evaluations be performed based upon compromised data? A decision that effects the compensation and employment of the state's 13,000 teachers should not be based on speculation. Because the pilot program remains in its infancy, however, these scenarios, as troubling as they may be, are just as possible as more hopeful pictures drawn by the DOE.

Again, any reference made to the details of an evaluation system, right now, is purely hypothetical, since no such evaluation system exists. What matters, instead, is what is called for by this bill, itself, which gives educators little comfort about their inclusion in the design and implementation of the evaluative model that will ultimately be used to judge their professional status. Therefore, on behalf of our members, we must oppose this bill and call upon lawmakers to reject false arguments about the potential loss of federal grant money and faulty logic that excludes the department's evaluation proposal from teacher approval.

Thank you for the opportunity to testify.

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TESTIMONY FOR SENATE BILL 2789, SENATE DRAFT 1, RELATING TO EDUCATION

Senate Committee on Ways and Means
Hon. David Y. Ige, Chair
Hon. Michelle N. Kidani, Vice Chair

Tuessday, February 28, 2012, 9:00 AM
State Capitol, Conference Room 211

Honorable Chair Ige and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in opposition to, with amendments for SB 2789, SD1, relating to education.

While the IMUAlliance sympathizes with efforts to improve Hawaii's education system, we feel that this bill fails to ordain policies proven to enhance student achievement and sets a bad precedent for future collective bargaining negotiations with teachers. Last month, 67 percent of voting members of the Hawaii State Teachers Association rejected a contract proposal that tied compensation to performance evaluations, sending a clear signal that teachers will not accept inequitable treatment from state officials. One of the prime complaints about the contract proposal, prior to its renunciation, was that too few details were disclosed about how evaluations would work. Though SB 2789, SD1 does not explicitly detail the **merit pay** system that it purports to enable, it is clear from positions taken by the state during contract negotiations that **merit pay** is exactly what is being sought by the Department of Education. In fact, page 13 of the department's Phase 2 Race to the Top grant application specifically states, under item 3 relating to "Hawaii's Career and College Readiness Agenda" on cultivating and rewarding effective teaching: "HIDOE will cultivate a highly effective performance-oriented teacher and principal workforce whose evaluation, tenure, and compensation are linked to their effectiveness in facilitating student growth. To be clear, this is not a measure about evaluations, but about codifying the state's hardline collective bargaining tactics into a **merit pay** system authorized under the ambiguous auspices of this bill. In fact, the Governor's own testimony bears this out, when, at previous hearings, he said that the purpose of this bill is to "clearly establish the authority" to implement a performance management system that effects the compensation of personnel, something that, to again cite his own testimony, the Attorney General has confirmed that the state does not currently have the authority to do. Therefore, it should be clear that state

law, to date, has recognized the right of employees to collectively bargain issues of compensation, and that this bill is an attempt to circumvent that right.

Moreover, the Hawaii State Board of Education, last week, passed an unconstitutional **merit pay** policy meant to facilitate the abrogation of collective bargaining outlined in this bill. Most problematically, the policy resdesignates probationary teachers as "at will" employees, who may be terminated at any time by the DOE, without recourse to HSTA's–or any–grievance procedure. Probationary teachers are not "at will" employees, however, but dues-paying union members subject to the HSTA-BOE master agreement upon being hired. In other words, they are contracted employees. Instituting unilateral departmental authority over hiring and firing would, in principle, practice and law, require the exclusion of probationary teachers from the master agreement by canceling their collective bargaining rights. Why? Because any state employed teacher subject to the master agreement is also subject to the agreement's due process and grievance provisions, and is, again, under contract. Thus, the BOE's policy clearly violates Article XIII of the State Constitution, which provides the right to collective bargaining for all state employees. Yet, that policy is, in effect, what you are being asked vote on, inasmuch as it serves as the *de facto* implementation policy for state-directed departmental evaluations.

The IMUAlliance wholeheartedly agrees with this bill's introductory claim (Section 1, page 2, lines 4-6) that "effective teaching is the school-based factor that contributes most to student achievement." Unfortunately, state mandated performance evaluations do little to promote effective teaching without subsequent escalations in funding, availability of professional development programs, and classroom support. Moreover, evidence on the efficacy of performance evaluations in determining the effectiveness of educators is mixed, at best. For example, according to a 2008 study published by BYU economists Brian A. Jacob and Lars Lefgren in the *Journal of Labor Economics*, administrators, and specifically principals, were found to be generally capable of identifying teachers whose pedagogical methods produce the largest and smallest student achievement gains, but were far less capable of distinguishing the effectiveness of teachers falling in between those two poles. Granted, this bill does not specify an evaluation design or metrics to be used, leaving those decisions to the DOE. This proposal does, however, call for "an annual rating of performance that differentiates using at least four performance levels," necessitating disaggregation of the messy middle ground–levels two and three, presumably–that Jacob and Lefgren's study shows is difficult to evaluate. Little incentive is given to strive for the highest effectiveness rating, too, if both the third and fourth levels of performance effectiveness result in the same consequence or reward system (since these levels cannot be linked to compensation sans collective bargaining consent) as they were in the recently defeated tentative agreement, a problem that cannot be mitigated by establishing different professional development requirements for the second and third levels of effectiveness, since determining effectiveness at these two levels is, again, highly problematic.

Finally, the IMUAlliance has concerns about the fiscal components of SB 2789, SD1. Here, the bill is problematic on two fronts. First, as stated before, the measure clearly appears intended to circumvent the collective bargaining process, denying teachers a seat at the table in designing and implementing performance assessments. The HIDOE and executive have made overtures about working "collaboratively" with all stakeholders, but have failed to do in practice, evidenced most abrasively by the state's unilateral implementation of its "last, best, final," contract offer. Currently, this measure directs the DOE to design a comprehensive system of educational accountability, with no reference to the inclusion of other education stakeholders in the design or implementation process. Any evaluation system that excludes educators from the design process is destined to not only ostracize incumbent and prospective teachers, but also discount the insights and experiences of those professionals most involved with day-to-day instructional tasks. Second, performance assessments are likely to be a high-cost item, one that the DOE may not be able to afford at a time of fiscal restraint.

At the very least, in light of the BOE's aforementioned policy, to ensure due process for all teachers, probationary and incumbent, receiving an unsatisfactory rating, an additional subsection should be added to Section 3 of this bill that reads: **"The department shall establish a due process procedure by which any probationary or incumbent teacher subject to evaluation may challenge the fairness of a rating he or she has been given."** While we recognize that such a change may be beyond the scope of your committee, however, we encourage you to seek such a change prior to passage, if you should deem this bill fit to move forward.

More personally, we hope that state officials will not bow to the pressures of factional politics or threats made by colleagues, as happened last year with the battle over granting the DOE authority to reconstitute schools. While subject-matter chairs are tasked with setting policy, committees are disaggregated to ensure checks and balances on legislation with unintended consequences. Even if a specific measure is a priority for one lawmaker, or is used as a vehicle for politically debasing those in power, it must be judged on its own merits. The faction that will retain leadership in the House, in our opinion, is the faction that protects the right of public workers. Put simply, securing our children's future requires safeguarding it from the perils of political ambition.

Again, we hope that your committee will not subvert the results of collective bargaining negotiations by expanding executive privilege and will, instead, leave the details of evaluations to future discussions between the state and teachers. That said, we do feel that our proposed amendments make this measure much more palatable and equitable to all affected parties. Mahalo for the opportunity to testify in opposition to this bill.

Sincerely,
Kris Coffield

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