



STATE OF HAWAII
DEPARTMENT OF EDUCATION
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Date: 02/10/2020
Time: 02:45 PM
Location: 229
Committee: Senate Education

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: SB 2487 RELATING TO EDUCATION.

Purpose of Bill: Deems student interns to be employees of the State of Hawaii when acting for an agency; allows the Department of Education to transfer revenue from school commercial enterprises to other department funds.

Department's Position:

The Department of Education (Department) supports SB 2487, which will allow for more efficient implementation of commercial enterprises in schools.

Further, SB 2487 aligns with the Department's Promise Plan for student success – Hawaii, Equity, School Design, Empowerment and Innovation. This measure will enhance the rigor and relevance of work-based learning throughout the P-20 continuum as students engage in comprehensive, real-world immersive experiences particularly in the areas of entrepreneurship and strategic commercial enterprise.

Thank you for the opportunity to provide testimony on SB 2487.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
EDUCATION

February 10, 2020 2:45 PM

SB2487
RELATING TO EDUCATION

Chair Kidani, Vice Chair Kim, and members of the committee, thank you for the opportunity to submit testimony on SB2487. The State Procurement Office (SPO) provides the following comments.

The SPO has concerns on the request to exempt the procurement of merchandise, supplies, and equipment by any individual department school, or career pathway, academy or program within a school (Section 1, page 2, lines 1-2).

The Hawaii Public Procurement Code (code) is the single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure and transparency in the procurement and contracting process vital to good government.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. To legislate that any one entity should be exempt from compliance with both HRS chapter 103D and 103F conveys a sense of disproportionate equality in the law's application.

Exemptions to the code mean that all procurements made with taxpayer monies will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the code. It means that there is no requirement for due diligence, proper planning or consideration of protections for the state in contract terms and

conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. As such, Agencies can choose whether to compete any procurement or go directly to one contractor. As a result, leveraging economies of scale and cost savings efficiencies found in the consistent application of the procurement code are lost. It also means Agencies are not required to adhere to the code's procurement integrity laws.

The National Association of State Procurement Officials state: "Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by raising the costs to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments."

When public bodies, are removed from the state's procurement code it results in the harm described above. As these entities create their own procurement rules, businesses are forced to track their various practices. Moreover, a public body often can no longer achieve the benefits of aggregation by using another public body's contract because different state laws and regulations may apply to the various public bodies making compliance more difficult.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly, while other public bodies, such as agencies with strong legislative influence, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the various jurisdictions and the entire procurement process becomes less efficient and costlier for the state and vendors.

Thank you.

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February 10, 2020

LATE

To: The Honorable Michelle N. Kidani, Chair,
The Honorable Donna Mercado Kim, Vice Chair, and
Members of the Senate Committee on Education

Date: Monday, February 10, 2020
Time: 2:45 p.m.
Place: Conference Room 229, State Capitol

From: Scott T. Murakami, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 2487 RELATING TO EDUCATION

I. OVERVIEW OF PROPOSED LEGISLATION

SB2487 amends Section 302A-448, Hawaii Revised Statutes (HRS), by including student interns as "employees of the State" under the State's tort liability law.

The DLIR provides comments and notes concerns about some unintended consequences.

II. COMMENTS ON THE SENATE BILL

The DLIR recognizes that this measure is attempting to provide tort liability coverage for student interns participating in career pathway, academy, and programs at the DOE. The DLIR notes the following about the measure:

- The student interns would be exempt from the State's Minimum Wage and Child Labor Laws as State employees are exempted from these laws. However, the student interns would fall under the federal Fair Labor Standards Act (FLSA), meaning that the students would be subject to child labor, minimum wage, and overtime provisions in federal law.
- As State employees, student interns would be entitled to workers' compensation and temporary disability insurance. Therefore, if a student intern is injured on the job, the State could be liable for the medical care, services, and supplies. Further, questions could arise about who a student intern's "employer" would be in workers' compensation disputes.

- Depending on the number of hours worked and the duration of the program, the student interns may be eligible for health insurance. The State offers health care to full-time employees that work ninety days or more.