

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Sequestration of tax revenues for continued education funding

BILL NUMBER: SB 815; HB 611

INTRODUCED BY: SB by KIDANI, CHANG, DELA CRUZ, INOUYE, KEOHOKALOLE, MISALUCHA, SAN BUENAVENTURA, Baker, Fevella, Gabbard, Keith-Agaran, Shimabukuro, Taniguchi, Wakai; HB by WOODSON, GATES, HASHIMOTO, HOLT, ICHIYAMA, ILAGAN, KAPELA, LOWEN, MATAYOSHI, MCKELVEY, MIZUNO, MORIKAWA, PERRUSO, TAKAYAMA, TARNAS, LoPresti

EXECUTIVE SUMMARY: Establishes maintenance of effort provisions. Establishes a public education stabilization trust fund. Makes appropriations.

SYNOPSIS: Adds a new section to chapter 237, HRS, providing that if there is a difference between the Department of Education appropriations from the last fiscal year to the current one, the difference is sequestered from tax collections and deposited into the newly created public education stabilization trust fund.

Adds a new subpart to chapter 302A, HRS, which among other things provides a special appropriation section stating: (a) The state appropriations to the department for the provision of free education for the current fiscal year shall not be less than state appropriations to the department for the preceding fiscal year. (b) If state appropriations to the department for the current fiscal year are less than the preceding fiscal year, then the aggregate proportion of the department's annual appropriations from the state general funds over the preceding ten years shall be maintained as the appropriation to the department. (c) If state appropriations to the department for the current fiscal year are less than the preceding fiscal year, the difference between the preceding fiscal year appropriation and the current fiscal year appropriation shall be deposited to the credit of the public education stabilization trust fund.

Allows for temporary suspension of the foregoing “maintenance of effort” provisions under certain circumstances such as a natural disaster

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: This measure, if enacted, would destabilize the appropriation process.

The apparent intent of the measure is that if the appropriation to the Department of Education is reduced for whatever reason in the current fiscal year, the difference between last year's and this year's appropriation is yanked from general excise tax collections and deposited into the public education stabilization trust fund, which seems to be intended to result in the same amount of money as last year being available for education anyway.

There appear to be myriad technical issues with this measure:

- It also works in reverse. If the appropriation to the DOE is greater than the previous fiscal year, then the difference between the appropriations is also yanked from general excise tax collections and deposited in the stabilization fund.
- The maintenance of effort provisions seem to contradict themselves. They say that DOE appropriations shall not be less than appropriations for the prior fiscal year, but then provide for two things to happen if they are not. One is that the difference is sequestered from general excise collections and placed in the stabilization fund. The other is that the appropriation to the DOE shall be magically adjusted to the same proportion of state general funds. Meaning that if the “same proportion” number is higher than the current year appropriation, DOE gets the higher appropriation number *and* a bump to the stabilization fund. If that number is lower than the current year appropriation, the current year appropriation gets reduced – apparently not what the drafter intended.
- If the appropriation to the DOE is automatically adjusted to the “same proportion” number, the budget will be out of balance and will violate the state constitutional provisions requiring the budget to be balanced.
- The public education stabilization trust fund is not well defined. The measure needs to specify the expending agency and under what conditions the money can be spent.
- Section 37-62, HRS, requires that for a trust fund, “designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes.” Trust funds invoke a fiduciary responsibility of state government to care for and use only for those designated to benefit from the funds. A pension fund is an example of a trust fund. Contributions and payments are to be held for the beneficiaries of the pension fund. Another example is tenants’ security deposits, which are held in trust for the future benefit of tenants and landlords. Until forfeited or returned, deposits are the property of the tenants and should be accounted for accordingly. Here, there appears to be no class of persons with a vested beneficial interest or equitable ownership, so the fund does not appear to meet the statutory criteria for a trust fund.



Committee on Education
Representative Justin Woodson, Chair
Representative Jeanne Kapela, Vice Chair

February 9, 2021

Dear Chair Woodson, Vice Chair Kapela, and Members of the Committee,

We would like to comment on HB 611, which establishes maintenance of effort provisions and a public education stabilization trust fund.

HE'E fully supports the concept of long-term stable funding for public education. The adverse effects of budget reductions resulting from the COVID-19 pandemic is creating extreme stress for our schools. A state maintenance of effort law could help ease this stress by ensuring consistent funding so that schools can execute their academic plans with minimal disruption.

We have comments with respect to the public education stabilization fund proposal, which provides that if the current year's state education allocation is less than the previous year's state education allocation, then general excise tax funds would be deposited in the amount of that difference. We suggest that rather than calculating a year-on-year difference of the entire the state education allocation, **the allocation comparison be narrowed to EDN 100 (school-based budgeting) and EDN 150 (special education funding)**. The reason is we want to stabilize funds where it impacts the students the most, which is in the classroom.

In addition, we are not comfortable with a special fund in which the DOE would have full discretion without transparency and accountability, the two tenants for which the Coalition consistently advocates. Stakeholders are entitled to know how our resources are being utilized to deliver the best outcomes for our students. We would expect that at a minimum, the Board of Education would have oversight on the use of such funds. Furthermore, we believe that these funds should be prioritized for teaching and learning in the classroom.

Hui for Excellence in Education, or "HE'E," promotes a child-centered and strength-based public education system in which families, communities and schools are valued and empowered to help every student succeed. HE'E works to bring diverse stakeholders together to harness collective energy, share resources, and identify opportunities for progressive action in education.

Thank you for the opportunity to testify. Our support represents a 75% consensus or more of our voting membership.

Sincerely,

Cheri Nakamura
HE'E Coalition Director



Academy 21

After-School All-Stars Hawai'i

Alliance for Place Based Learning

*Castle Complex Community Council

*Castle-Kahuku Principal and CAS

*Education Institute of Hawai'i

*Faith Action for Community Equity

Fresh Leadership LLC

Girl Scouts Hawaii

Harold K.L. Castle Foundation

*HawaiiKidsCAN

*Hawai'i Afterschool Alliance

*Hawai'i Appleseed Center for Law and Economic Justice

*Hawai'i Association of School Psychologists

Hawai'i Athletic League of Scholars

*Hawai'i Children's Action Network

Hawai'i Education Association

Hawai'i Nutrition and Physical Activity Coalition

* Hawai'i State PTSA

Hawai'i State Student Council

Hawai'i State Teachers Association

Hawai'i P-20

Hawai'i 3Rs

Head Start Collaboration Office

It's All About Kids

*INPEACE

Joint Venture Education Forum

Junior Achievement of Hawaii

Kamehameha Schools

Kanu Hawai'i

*Kaua'i Ho'okele Council

Keiki to Career Kaua'i

Kupu A'e

*Leaders for the Next Generation

Learning First

McREL's Pacific Center for Changing the Odds

Native Hawaiian Education Council

Our Public School

*Pacific Resources for Education and Learning

*Parents and Children Together

*Parents for Public Schools Hawai'i

*Teach for America

The Learning Coalition

US PACOM

University of Hawai'i College of Education

YMCA of Honolulu

Voting Members () Voting member organizations vote on action items while individual and non-voting participants may collaborate on all efforts within the coalition.*

DAVID Y. IGE
GOVERNOR



JOHN S.S. KIM
CHAIRPERSON

STATE OF HAWAII
STATE PUBLIC CHARTER SCHOOL COMMISSION
(‘AHA KULA HO‘ĀMANA)

<http://CharterCommission.Hawaii.Gov>
1111 Bishop Street, Suite 516, Honolulu, Hawaii 96813
Tel: (808) 586-3775 Fax: (808) 586-3776

FOR: HB 611 Relating to Education Funding
DATE: February 9, 2021
TIME: 2:00 P.M.
COMMITTEE: Committee on Education
ROOM: Conference Room 309
FROM: Yvonne Lau, Interim Executive Director
State Public Charter School Commission

Chair Woodson, Vice Chair Kapela, and members of the Committee:

The State Public Charter School Commission (“Commission”) appreciates the opportunity to submit this testimony in **SUPPORT of HB 611** which establishes maintenance of effort provisions, a public education stabilization trust fund, and makes appropriations.

As per pupil funding for our public charter schools are inherently tied to the funding for our Department public schools, namely program IDs EDN 100, 200, 300, and 400, the establishment of maintenance of effort provisions and a public education stabilization trust fund would provide all of our public schools, including our public charter schools, with the ability to weather future downturns in our economy and limit any drastic impacts on public education funding as we are seeing with the advent of the coronavirus pandemic.

Thank you for the opportunity to provide this testimony.



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

Date: 02/09/2021

Time: 02:00 PM

Location: 309 Via Videoconference

Committee: House Education

Department: Education

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

Title of Bill: HB 0611 RELATING TO EDUCATION FUNDING.

Purpose of Bill: Establishes maintenance of effort provisions. Establishes a public education stabilization trust fund. Makes appropriations.

Department's Position:

The Hawaii State Department of Education (Department) strongly supports this measure, which aims to provide improved predictability and stability in educational funding for Hawaii's public schools.

As the State faces dire fiscal challenges and cuts to the state budget, the Department implores the legislature to consider the critical role its instructional and non-instructional services play in the lives of haumāna and their 'ohana.

Dramatic decreases in funding for the Department jeopardizes both access to learning and the existence of critical safety nets for a significant number of students, particularly the Department's most vulnerable learners. The "Maintenance of Effort" provisions proposed by this measure will help to insulate the Department from extraordinary funding reductions, thereby minimizing the negative impacts on both instructional and non-instructional services.

It is worth highlighting that reliance on the Department's non-instructional services has increased dramatically in the wake of the Coronavirus Disease 2019 (COVID-19) pandemic. These essential non-instructional services include food services, homeless liaison services, mental and behavioral health services, emergency shelter during natural disasters, and access to broadband and internet infrastructure. In addition to the ongoing funding needs for its instructional initiatives, the Department appreciates any help in addressing the growing deficit in these non-instructional areas.

The National Conference of State Legislatures list equity, predictability, and stability as critical components for maintaining an effective school finance system. The state's existing weighted

student formula assures the equity component, while this measure aims to establish the predictability and stability pieces. This bill will greatly improve the Department's capacity to meet constantly evolving student needs and the ability to design and execute appropriate learning and support systems.

The current reductions contained in the Governor's Executive Biennium Budget Request and Financial Plan are estimated at \$270 million:

1. \$100.2 million reduction that was implemented this current fiscal year using one-time adjustments that are not sustainable,
2. \$41 million of Program Review Reductions (down from the original \$164 million), and
3. \$128 million labor savings (estimate based on previous furlough proposal) of undetermined form pending the outcome of negotiations.

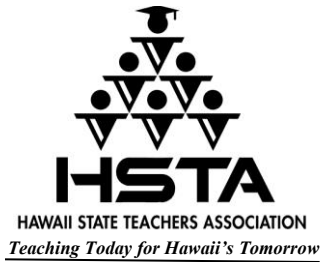
The Department cannot sustain these dramatic cuts, while simultaneously ensuring the delivery of quality K-12 public education system. This measure aims to insulate the Department from these kinds of budgetary reductions.

It is also important to note that the Department receives millions of dollars in federal funding each year. For each federal award, the program statute tied to the award establishes a maintenance of effort requirement upon the Department. Federal maintenance of effort provisions require the Department to demonstrate that the level of state and local funding remains relatively constant from year to year. Program statutes specify that the Department may receive the federal funds only if it can demonstrate that it maintained its non-federal fiscal effort as required by the statute. Noncompliance of the federal maintenance of effort requirements could result in the loss of millions of dollars in federal awards to the Department. This measure would safeguard the Department's ability to fulfill these obligations.

Ensuring a vibrant K-12 public education system enables the fulfillment of educational goals and aspirations far beyond a student's successful completion of secondary education requirements. Approval of this measure promotes stability and predictability of K-12 education revenues and ensures the uninterrupted equitable provision of educational resources for all public school students in Hawaii.

Thank you for the opportunity to provide testimony on this measure.

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.



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

Corey Rosenlee
President

Osa Tui Jr.
Vice President

Logan Okita
Secretary-Treasurer

Wilbert Holck
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON EDUCATION

RE: HB 611 RELATING TO EDUCATION FUNDING

TUESDAY, FEBRUARY 9, 2021

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Woodson, and Members of the Committee

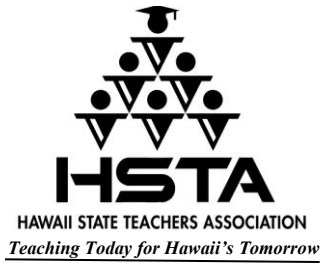
The Hawaii State Teachers Association **supports HB 611 with amendments.** This bill would require the use of General Excise Taxes to be applied to the DOE if either the DOE budget decreases by either a proportion of the state budget or if the budget is lower than previous fiscal year.

The current proposal would require the maintenance of effort to be applied if the appropriation to the department is lower than the preceding ten years as a proportion of the overall budget. The DOE's proportion of the state budget's general funds has gone from 23.1% for FY14 to 19.7% in FY23. If implemented this would indicate that the DOE received \$234 million less in funding then if this bill was enacted. HSTA fully supports fixing the DOE's budget to a fixed percentage of the state's budget. The DOE has seen a decline of the state budget, and HSTA's believes this trend will only continue.

The second provision where the MOE would be applied is if the fiscal year appropriation is less than the preceding year. HSTA would also support this provision.

HSTA would ask that the bill be amended to delete 302A which would allow a temporary suspension of the MOE.

The DOE's budget does increase in years where the Consumer Price Increase(CPI) and decreases in year where the CPI declines. By allowing the provision where the governor can suspend the MOE provision would negate the whole purpose of the bill. As the only time the bill would be needed is when there is an economic downturn.



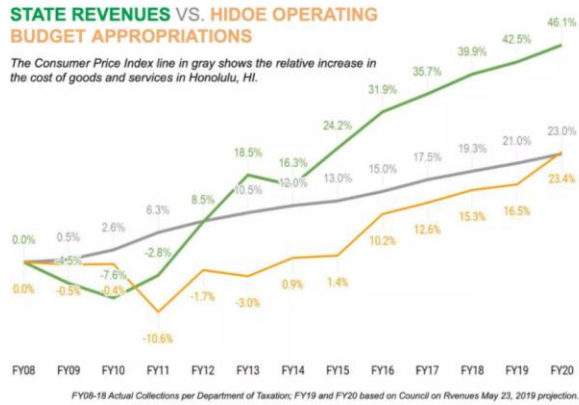
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Secretary-Treasurer

Wilbert Holck
Executive Director



Enacting an MOE bill would protect education funding, but only if these provisions can't be suspended.



Kamehameha Schools®

House Committee on Education

Date: Wednesday, February 9, 2021

Time: 2:00 p.m.

Place: Via Videoconference
State Capitol Room 309

TESTIMONY

By Wai‘ale‘ale Sarsona, EdD
Vice President, Hi‘ialo Group

RE: **HB 611, Relating to Education Funding**

E ka Luna Ho‘omalua Woodson, ka Hope Luna Ho‘omalua Kapela, a me nā Lālā o ke Kōmike Ho‘ona‘auao o ka Hale o nā Lunamaka‘āinana, aloha kākou!

Kamehameha Schools **supports the intent** of HB 611, which establishes maintenance of effort provisions, establishes a public education stabilization trust fund, and makes appropriations.

All children in Hawai‘i deserve a quality education that addresses their needs. Our public education system must be able to count on stable and predictable funding to serve them well. With such fiscal stability, the state can set clear expectations of the public education system’s performance and outcomes for students.

Founded in 1887, Kamehameha Schools is an educational organization striving to restore our people through education and advance a thriving Lāhui where all Native Hawaiians are successful, grounded in traditional values, and leading in the local and global communities. We believe that community success is individual success, Hawaiian culture-based education leads to academic success and local leadership drives global leadership.

‘A‘ohe ‘ulu e loa‘a i ka pōkole o ka lou. There is no success without preparation. **Please advance this measure.**

DAVID Y. IGE
GOVERNOR



LATE

CRAIG K. HIRAI
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE**

P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON EDUCATION
ON
HOUSE BILL NO. 611

**February 9, 2021
2:00 p.m.
Via Videoconference**

RELATING TO EDUCATION FUNDING

House Bill No. 611 establishes maintenance of effort provisions for public education funding and a Public Education Stabilization Trust Fund (PESTF). The bill provides that the following revenues are to be deposited into PESTF:

- Sum from all general excise tax revenues realized by the State that represents the difference between State appropriations to the Department of Education for the provision of free public education from the preceding fiscal year and the current fiscal year.
- Any other appropriations by the Legislature to PESTF.
- Income and capital gains earned by PESTF.

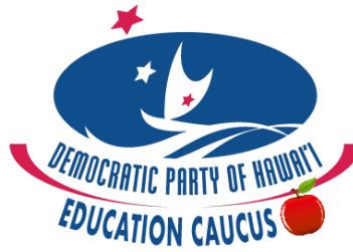
The bill also appropriates an unspecified amount of general funds in both FY 22 and FY 23 to be deposited into PESTF.

As a matter of general policy, the Department of Budget and Finance does not support dedication of general fund tax revenues for a specific purpose. We strongly believe that carve-outs of general fund revenues for specific purposes hinder the orderly

prioritizing and funding of programs to meet statewide goals and objectives that the budgeting process is designed to achieve. This bill will essentially dedicate all general excise tax proceeds, which represents approximately 50% of the general fund revenues for the State, to public education.

Thank you for your consideration of our comments.

LATE



HOUSE BILL 611, RELATING TO EDUCATION FUNDING

FEBRUARY 9, 2021 · HOUSE EDUCATION
COMMITTEE · CHAIR REP. JUSTIN H. WOODSON

POSITION: Support with amendments.

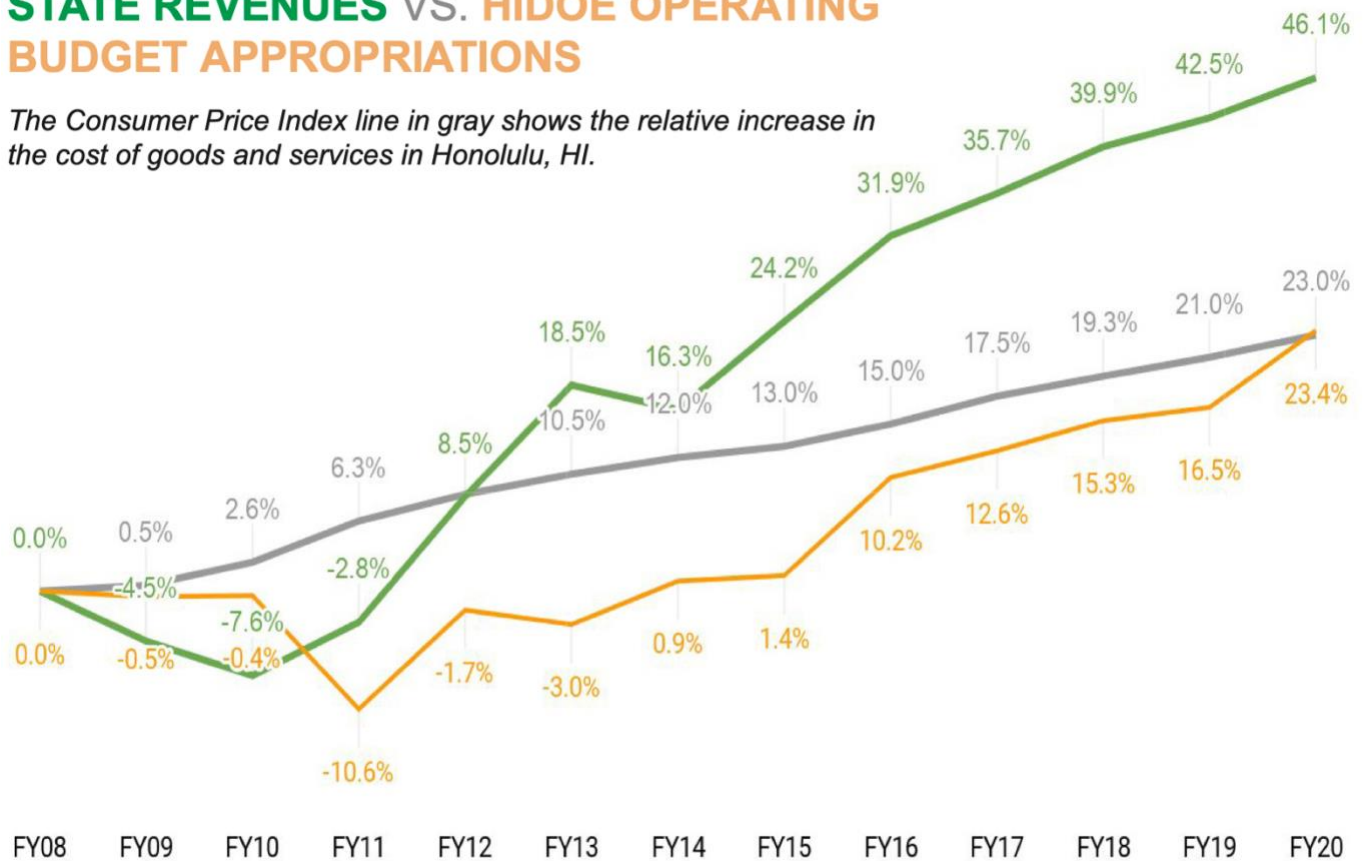
RATIONALE: The Democratic Party of Hawai'i Education Caucus supports and suggests amendments for HB 611, relating to education funding, which establishes maintenance of effort provisions and establishes a public education stabilization trust fund.

We desperately need to increase funding for public education. As it has for years, the Aloha State is suffering from a chronic teacher shortage crisis, which could be exacerbated by proposed cuts to the Hawai'i Department of Education's budget amounting to 15 to 21 percent. Additionally, we continue to lose approximately 50 percent of new hires after five years—the number of teachers exiting the teaching profession has spiked by over 80 percent since 2010.

Prior to the pandemic, the Hawai'i Department of Education saw its budget grow at a pace that was much slower than the rate of increase for general fund revenue. From FY2008 to FY2020, the DOE's budget grew by 23.4 percent, keeping pace with the escalation in the state's cost of living. Yet, general fund revenue grew by 46.1 percent, nearly double the growth reflected in the DOE's budget. This proportional disparity must be rectified, so that our schools and students don't lose out on critical resources or learning opportunities. Education must be a priority for our state.

STATE REVENUES VS. HIDEO OPERATING BUDGET APPROPRIATIONS

The Consumer Price Index line in gray shows the relative increase in the cost of goods and services in Honolulu, HI.



FY08-18 Actual Collections per Department of Taxation; FY19 and FY20 based on Council on Revenues May 23, 2019 projection.

That said, we note that this measure, in its current form, fails to resolve the problem it addresses. While the bill contains language requiring DOE appropriations to be sustained from year to year and, in the event that they are not sustained, be greater than the average aggregate proportional appropriation amount for the preceding decade, page 5, lines 14 to 21, and page 6, lines 1 to 7, allow the governor to temporarily suspend these provisions when the state is facing a “precipitous decline in general fund revenue” during declared periods of emergency.

Since times of economic hardship are precisely when the DOE would most need its budget to be maintained, this exception would seem to render the proposal moot. While the DOE’s budget has not increased at a rate proportional to other state agencies, it has increased over the last decade, which, if that trend were to continue as we exit the COVID-19 crisis, would fulfill the measure’s

requirements (the Legislature could literally appropriate a single dollar more to the DOE to comply with the law). Thus, it would appear that the only provision of this proposal that would ever actually be useful is the provision on page 5, lines 3 to 8, which requires the proportional aggregate departmental allocation to be made following a drop in the department's budget that, in turn, would only be permitted during a recession stemming from a declared emergency—precisely the conditions under which the law could be suspended. Accordingly, **we urge your committee to consider deleting or revising the measure's "temporary suspension" provision, thereby applying the proposal's maintenance of effort requirements at all times, including during the times of financial hardship when they would be most useful.**

We cannot give up the quest for a fully-funded school system. Our keiki's and our community's future depends on our resolve.

Kris Coffield · Chairperson, Democratic Party of Hawai'i Education Caucus · (808) 679-7454 · kriscoffield@gmail.com

LATE

HB-611

Submitted on: 2/8/2021 6:59:31 PM

Testimony for EDN on 2/9/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Pcola_Davis	Individual	Support	No

Comments:

I support this bill with some reservations.

- (1) Establish maintenance of effort provisions;
- (2) Establish a public education stabilization trust fund; and
- (3) Make appropriations.

SUPPORT a) The state appropriations to the department for the provision of free education for the current fiscal year shall not be less than state appropriations to the department for the preceding fiscal year.

SUPPORT (b) If state appropriations to the department for the current fiscal year are less than the preceding fiscal year, then the aggregate proportion of the department's annual appropriations from the state general funds over the preceding ten years shall be maintained as the appropriation to the department.

SUPPORT (c) If state appropriations to the department for the current fiscal year are less than the preceding fiscal year, the difference between the preceding fiscal year appropriation and the current fiscal year appropriation shall be deposited to the credit of the public education stabilization trust fund.

§302A- Maintenance of effort; temporary suspension. (a) Upon a declaration by the governor concurred to by the legislature, the maintenance of effort provisions pursuant to this chapter **may be temporarily suspended for any of the following reasons: NONE OF THESE REASONS ARE ACCEPTABLE.**

This temporary suspension defeats the purpose of the bill in the first place, "It is also incumbent on the legislature to promote predictability and stability of K-12 education revenues by committing a base of annual funding in the face of changing circumstances to ensure the continuous and uninterrupted equitable distribution of educational resources for all public school students."

Putting this into the bill does not promote predictability or stability.

My reservations rely with accountability. The following show you my reasoning.

(b) The public education stabilization trust fund shall be administered by the department and **used to fund any program in the state budget. Why to fund any program in the state budget, IT IS MEANT FOR EDUCATION.**

(c) The department shall submit to the director of finance a report that shall be prepared in the form described by the director of finance and shall identify the total amount of funds that will carry over to the next fiscal year. **THIS IS NOT THE TIME TO BE HOLDING BACK IN ORDER TO CARRY OVER FUNDS FOR THE NEXT YEAR.**

The department shall submit the report to the director of finance **within ninety days of the close of each fiscal year** and a copy of the information contained in the report to the director of finance shall be included within the agency's report to the legislature." **THIS REPORT NEEDS TO BE AVAILABLE TO THE PUBLIC.**