



STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 01/30/2023

Time: 03:00 PM

Location: CR 229 & Videoconference

Committee: Senate Education

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: SB 0414 RELATING TO EDUCATION.

Purpose of Bill: Establishes the Hawaii Educational Expenditure Trust Fund as a separate fund of the Department of Education for improving the education of, and supporting the programs benefiting, the students of the Hawaii public school system.

Department's Position:

The Hawaii State Department of Education (Department) supports passage of SB 414.

This measure would provide the Department with an additional tool to accept, manage, and expend resources to support public education, beyond the traditional trust fund structure allowed under current law.

This measure would authorize the Department to establish the Hawaii Educational Expenditure Trust Fund. This would go beyond the Department's existing authority for trust funds by allowing for the deposit of State or County funds into the fund, the acceptance of non-monetary assets, and authorizing the hiring of an investment manager and a third party to oversee the administration and expenditure of funds.

The assets of the fund would be used to support public school students by allowing fund assets to be used for the support for Department operations, programs to support public school students, public school facilities, and for the benefit of public education.

The measure also requires the Superintendent to seek resources for deposit into the fund, publicize the fund, and develop plans, policies, and strategies for the fund.

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



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TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Establishes the Hawaii Educational Expenditure Trust Fund

BILL NUMBER: SB 414

INTRODUCED BY: KIDANI

EXECUTIVE SUMMARY: Establishes the Hawai‘i Educational Expenditure Trust Fund as a separate fund of the Department of Education for improving the education of, and supporting the programs benefiting, the students of the Hawai‘i public school system.

Our view is that this fund is entirely unnecessary, probably violates special and trust fund criteria in HRS chapter 37, and decreases transparency into education funding.

SYNOPSIS: Adds a new section to chapter 302A, HRS, establishing the Hawaii educational expenditure trust fund. States that moneys received from the State or county, tax remittances, fee assessments, private contributions of cash and other property, and the income and capital gains earned by the trust fund, shall constitute the trust fund assets. The department shall be responsible for determining the moneys that shall be deposited into the trust fund; provided that the department may hire a private third party to administer the trust fund.

Moneys in the fund may be spent on: (1) grantmaking to raise awareness of the trust fund; (2) allocation of funds for the operations of the department; (3) allocation of funds for the education of students in the Hawaii public school system; (4) allocation of funds for programs that support the education of and benefit the students in the Hawaii public school system; (5) allocation of funds for public school facilities; and (6) allocation of funds for the benefit of public education.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: Special funds are pots of money that exist for a specific purpose, and largely bypass the legislative appropriation process. The existence of hundreds of these special funds has often confounded those who seek answers to simple questions like “How much money does the State have?”

Our Legislature is supposed to be the steward of all state moneys, but special funds make it very easy to lose track of where the money is and how it is being spent. Departments are supposed to tell the Legislature if they have special funds and how much is in them, but they don’t always. Recently, in Report No. 20-01, the State Auditor took DBEDT to task for failing to report \$6.5 million in non-general fund moneys. DBEDT’s response? Just that they’ll “take corrective action.” Not even a “Whoops! We screwed up and promise to do better next time!” This followed closely on the heels of Report No. 19-16, where the Auditor found that \$1.04 million in non-general fund moneys administered by the Attorney General wasn’t reported. That department responded that they “shall establish procedures to assure required reports are issued.”

Is it any wonder that it's getting harder and harder to follow the money and rein in government spending?

The proposed fund is denominated a trust fund. Section 37-62, HRS, defines a trust fund as one in which "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." The State Auditor's reports explain that trust funds invoke a fiduciary responsibility of state government to care for and use the assets held only for those designated to benefit from the funds. A pension fund is an example of a trust fund, for example, because 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.

The proposed fund does not appear to meet the criteria for a trust fund. No student, for example, can say that he or she has any vested beneficial interest or ownership in any of the moneys in the fund. It is probably more accurate to classify the proposed fund as a special fund.

There are established criteria for the establishment and continuance of special funds in section 37-52.3, HRS. One of the criteria is that the fund must reflect a clear nexus between the benefits sought and charges made upon the program users or beneficiaries or a clear link between the program and the sources of revenue, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process. Here, with vague criteria surrounding what can be deposited into the fund and what moneys from the fund can be spent on, it is easy to conclude that the proposed fund is a device to provide a means of support that is removed from the normal budget and appropriation process.

The moral of the story is that special funds are often used to obfuscate and confuse, to put a smokescreen between those who spend the money and those who are charged with making sure the money is well spent. We need to do all of ourselves a favor and get rid of the special funds we don't really need, and make sure that the operations of the ones we do need are transparent and accountable. The fund proposed by this bill appears to be a special fund that appears to be unnecessary (people can and do donate to schools now), illegal (in violation of HRS section 37-52.3), and having a practical effect of obscuring oversight into how DOE funds are spent.

Digested: 1/28/2023