

EXECUTIVE CHAMBERS

HONOLULU

JUNE 20, 2002

COPY

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2231

Honorable Members
Twenty-First Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith without my approval, House Bill No. 2231, entitled "A Bill for an Act Relating to the Auditor."

The purpose of House Bill No. 2231 is to clarify the confidential nature of the Auditor's records in the education area. House Bill No. 2231, however, poses constitutional issues relating to the separation of powers and the Supremacy Clause.

The separation of powers issues are twofold. First, the bill attempts to make the Legislature's Auditor "an authorized representative of the department of education and department of health, a state educational authority, or a state educational official" for purposes of obtaining access to any student or other records. The Legislature's Auditor is not an "authorized representative" of either the Department of Education (DOE) or the Department of Health (DOH). To require executive branch agencies to accept the Legislature's Auditor as an authorized representative impinges upon the Executive Branch's authority and administrative function of determining who may act on its behalf. Second, this bill poses a separation of powers issue if the Legislature's Auditor is made an authorized representative of an executive branch agency, especially when the Legislature's Auditor is performing official duties of auditing the particular department for the Legislature. To require this by statute intrudes into the executive branch agency's functions and causes a conflict of interest when the Legislature's Auditor must audit the agency for which the Auditor is deemed to be an authorized representative.

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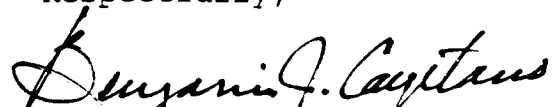
With respect to the Supremacy Clause issue, attempting to include the Legislature's Auditor into the federal definition of an authorized representative of the State's educational authority cannot be accomplished through state law. The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, provides that the DOE cannot make accessible nor release any educational records of personally identifiable information without written consent of the student or parent, except under nine specific exceptions. The FERPA provisions pertinent to this bill are 20 U.S.C. § 1232g(b)(3) and (5). Under both provisions, access for audit purposes is only to authorized representatives of the State's educational authorities (20 U.S.C. § 1232g(b)(3)) or State and local educational officials (20 U.S.C. § 1232g(b)(5)). The Legislature's Auditor is neither an authorized representative nor a state educational official.

In any case, release of information and records for audit purposes must be in connection with an audit and evaluation of federally supported education programs, or in connection with the enforcement of the federal legal requirements relating to such programs. 20 U.S.C. § 1232g(b)(3).

FERPA and the corresponding administrative rule (chapter 8-34, Hawaii Administrative Rules) already allow the Auditor access to these records with the issuance of a subpoena by the Auditor and notification of the subpoena to the parent or eligible student by the DOE in advance of compliance, so that the parent or eligible student can seek protective action if they desire.

For the foregoing reasons, I am returning House Bill No. 2231 without my approval.

Respectfully,


BENJAMIN J. CAYETANO
Governor of Hawaii

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P R O C L A M A T I O N

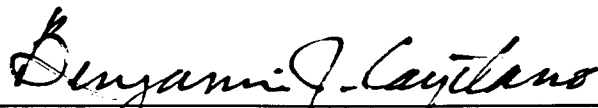
WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 2231, entitled "A Bill for an Act Relating to the Auditor," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 2231 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, BENJAMIN J. CAYETANO, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 2231 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 20
day of June, 2002.



BENJAMIN J. CAYETANO
Governor of Hawaii