



HB 2527, HD1
RELATING TO EDUCATION
Committee on Finance

February 27, 2012

3:00 p.m.

Room 308

The Office of Hawaiian Affairs would like to offer the following comments on HB 2527 HD1, a bill that requires the Department of Education to establish a performance management system that includes an evaluation component for teachers and educational officers and that requires teachers entering the service of the Department of Education for the first time to serve a minimum probationary period of three years.

OHA offers the following caution on the amendment to Section 302A-638, Hawaii Revised Statutes, regarding evaluation of teachers and educational officers, specifically:

(b) Each teacher and educational officer shall be evaluated on efficiency, ability, and contribution to student learning and growth and the evaluation criteria shall include assessment of the effectiveness of individual teachers and educational officers in supporting: (1) Student learning and growth, which shall consist of multiple measures, to include student assessment, as determined by the department; (2) Fiscal accountability and instructional leadership on the part of educational officers; and (3) Effective classroom practice and student engagement on the part of teachers."

Firestone, Mayrowetz and Fairman (1998) found that high stakes testing in Maryland and Maine had little effect on instructional practice and Jones et al (1999) found mixed results in North Carolina. Moreover, performance-based evaluation has been found to lead to negative relocation of curriculum (Shepard and Dougherty, 1991) and a narrowing of curriculum (Corbett and Wilson, 1991). Measuring the "contribution" of teachers and educational officers to student learning and growth is new and has not been well researched. Consequently, this section should require that the evaluation of teachers be research-based. In addition, the statute should require a formal and independent evaluation of that evaluation system.

Currently, there are no metrics or rubrics in existence to measure the causal effects of "contribution." Therefore, requiring that "student learning and growth shall constitute fifty percent of the evaluation rating," as described in subsection (c) appears arbitrary. Again, this requirement should be vetted. OHA recommends not adopting this measure until empirical evidence and research is provided to the legislature. Mahalo for this opportunity to provide comment.



HAWAII STATE TEACHERS ASSOCIATION

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HOUSE COMMITTEE ON FINANCE

RE: HB 2527, HD1 -- RELATING TO EDUCATION.

MONDAY; FEBRUARY 27, 2012

WIL OKABE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Oshiro and Members of the Committee:

The Hawaii State Teachers Association respectfully opposes HB 2527, HD 1, 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 to 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.

You are probably aware, at this point, that the Hawaii State Board of Education recently passed a policy on performance evaluations meant to facilitate their implementation, if this bill passes. Sadly, the BOE's policy contains several glaring errors. For instance, the policy refers to 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. At will employment defines an employment relationship in which

either the employer or employee can break the relationship without liability, however, if there is no contractual arrangement governing employment and the employee does not belong to a collective bargaining unit. This does not apply to probationary teachers, who are not "at will" employees, but union members subject to the HSTA-BOE master agreement. In other words, they are contracted employees. The only way to mandate unilateral departmental authority over hiring and firing is to specifically exclude probationary teachers from the master agreement by cancelling their collective bargaining rights. This policy is a clear violation of Article XIII of the State Constitution, which provides the right to collective bargaining for all public employees. Yet, it is, in effect, what you are being asked vote on, inasmuch as it serves as the companion policy for state-directed departmental evaluations.

Additionally, HSTA believes that performance evaluations must be based upon multiple facets of a student's 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?

To that last point, 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 this bill 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 Waianae on Oahu, as well as Kau, Keaau, 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. In other words, it is too soon to 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.

On a personal note, we hope that state officials will not kowtow 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 entitled to set policy, committees are separated into distinct groups to provide 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. Put simply, securing our children's future requires safeguarding it from the perils of political ambition.

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 HOUSE BILL 2527, HOUSE DRAFT 1, RELATING TO
EDUCATION**

**House Committee on Finance
Hon. Marcus R. Oshiro Chair
Hon. Marilyn B. Lee, Vice Chair**

**Wednesday, February 27, 2012, 3:00 PM
State Capitol, Conference Room 308**

Honorable Chair Oshiro 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, with consideration for amendments to HB 2527, HD1, 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 HB 2527, HD1 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 redesignates 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. Section 2, §302A-1004(a)(11) of 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. Thus, while we strongly oppose this measure, we urge your committee to consider

revising the first sentence of Section 2, §302A-1004(a)(11) to read: "Establish an annual rating of performance that differentiates using at least three performance levels, as determined by the department," thereby eliminating the messy middle. We would like to stress, however, that implementing this change will not in any way alter our staunch opposition to this measure, unless corresponding amendments are also made.

Finally, the IMUAlliance has concerns about the fiscal components of HB 2527, HD1. 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, §302A-1004 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.

In order to rectify the aforementioned problems with this piece of legislation, the IMUAlliance urges your committee to consider seeking several amendments prior to passage. First, to ensure due process for all teachers, probationary and incumbent, receiving an unsatisfactory rating, we encourage the committee to revise the first line of §302A-1004(a)(11) to read: "Establish an annual rating of performance that differentiates using at least three performance levels, as determined by the department, **and a procedure by which probationary and incumbent may protest the validity of a rating he or she has been given.**" Second, we believe that **the design of the evaluation system should come from a board, committee, or other body composed, in equal parts, of representatives from the DOE and educators or their representatives, such as the Hawaii State Teachers Association.** Third, we feel that accurate evaluations require methodological transparency and that, therefore, a subsection §302A-1004(a)(12) should be added to the bill, stating: "**Methods used in annually evaluating and rating the effectiveness of educators shall be clearly explained prior to enactment and made available upon request by any educator subject to evaluation.**" Finally, to protect against the sole use of standardized test scores in assessments of student achievement as part of performance evaluations, we suggest that lawmakers revise §302A-1004(a)(10)(A)(iii) to read: "The measurement of students' academic achievement must consist of multiple measures to include statewide assessment and other student learning objectives, as determined by the department, and cannot be based ~~on a single~~ **solely on** standardized test scores."

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
Legislative Director
IMUAlliance

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 25, 2012 4:18 PM
To: FINTestimony
Cc: angietannehill@hotmail.com
Subject: Testimony for HB2527 on 2/27/2012 3:00:00 PM

Testimony for FIN 2/27/2012 3:00:00 PM HB2527

Conference room: 308
Testifier position: Oppose
Testifier will be present: No
Submitted by: Angela Tannehill
Organization: Individual
E-mail: angietannehill@hotmail.com
Submitted on: 2/25/2012

Comments:
Aloha -

I, as a teacher, strongly oppose this amendment. The RTTT funds are granted for a period of four years. This law will be in effect and the funds to support it will no longer be there after that time. The evaluation process is time consuming and tedious. This will yet again takes away resources that could be better utilized in the classroom to actually help students in a more effective learning process. It will chase excellent teachers out of the classroom because it will increase the amount of paperwork for teachers. This is actually doing the opposite of the intent of creating "incentives" for teachers. It creates more work for a minimal increase in pay increase. Please look at the big picture beyond the \$75 million dollars of RTTT funds. Please consider that the state will have to continue to support this process down the road as it is having to bear the financial burden for other federal initiatives that don't come with proper long term support.

Thank you for your time and consideration.

Sincerely,
Angela Tannehill

Aloha -

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Thank you for your time and consideration.

Sincerely,

Angela Tannehill