SHAN TSUTSUI LT. GOVERNOR



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To: The Honorable Kaiali'i Kahele, Chair and Members of the Senate Committee on Higher Education
Date: Tuesday, February 14, 2017
Time: 1:15 P.M.
Place: Conference Room 414, State Capitol
From: Maria E. Zielinski, Director Department of Taxation

Re: S.B. 940, Relating to the State of Hawaii Section 529 College Savings Program

The Department of Taxation (Department) provides the following comments on S.B. 940, an Administration measure, for your consideration.

S.B. 940 excludes from gross income, for income tax purposes, contributions made by account owners to the college savings program under chapter 256, Hawaii Revised Statutes (HRS). The amount of the deduction is limited as follows:

Filing Status	Amount of Deduction
Individual	Up to \$5,000
Married filing separate	Up to \$10,000 (up to \$5,000 per spouse)
Married filing joint, head of	Up to \$10,000
household, or surviving spouse	

The bill further provides that if the deduction exceeds taxable income for the year the contribution is made, the excess may be carried forward to subsequent years until exhausted. The deduction is recaptured if the taxpayer makes subsequent nonqualified withdrawals from the college savings program or rolls the account into another state's college savings program. The bill is effective upon approval and applies to tax years beginning after December 31, 2017.

First, the Department suggests that the college savings deduction created by this bill is added as a new section in chapter 235, HRS, instead of being added in section 235-7(a), HRS. Section 235-7(a), HRS, lists types of income received by a taxpayer that are excluded from gross income, whereas this bill creates a deduction for amounts paid by a taxpayer. Similar to the deduction from gross income for contributions made to individual housing accounts in section 235-5.5, HRS, and the deduction for expenses to maintain an exceptional tree in section 235-19,

Department of Taxation Testimony HRE SB 940 February 14, 2017 Page 2 of 2

HRS, the deduction for contributions to a college savings account should be in a new section instead of inserted into section 235-7, HRS.

Finally, the Department notes that this bill will require instruction and form modifications. Should this bill advance, the Department estimates that it will be able to implement these changes for tax years beginning after December 31, 2017, as currently written in the measure.

Thank you for the opportunity to provide comments.

GOVERNOR



STATE OF HAWAII DEPARTMENT OF BUDGET AND FINANCE P.O. BOX 150 HONOLULU, HAWAII 96810-0150 WESLEY K. MACHIDA DIRECTOR

LAUREL A. JOHNSTON DEPUTY DIRECTOR

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

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

#### WRITTEN ONLY

TESTIMONY BY WESLEY K. MACHIDA DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE TO THE SENATE COMMITTEE ON HIGHER EDUCATION ON SENATE BILL NO. 940

> February 14, 2017 1:15 P.M. Conference Room 414

### RELATING TO THE STATE OF HAWAII SECTION 529 COLLEGE SAVINGS PROGRAM

Senate Bill No. 940, proposes a state tax incentive for participants to contribute to their account in the Hawai'i 529 College Savings Program (**"Program**"). Established in 2002 and originally named "TuitionEDGE," the Program was revamped in 2007 under a new Program manager and re-branded as "HI529 Hawaii's College Savings Program". As of December 31, 2016, the Program had approximately 6,600 accounts (5,628 or 85% of these accounts belong to in-state participants) and \$72.8 million in Program assets. The goal of the proposed tax deduction for contributions is to increase participation in the Program, helping families set aside funds for future higher education costs.

The Department of Budget and Finance **<u>strongly supports</u>** this administration bill. However, subsequent to the submittal of the bill, the Department of the Attorney General ("**AG**") informed us that the location of the proposed language in HRS section 235-7, should be corrected. Instead of inserting it as item (15) under 235-7(a), the AG suggested that it be added in as a new subsection (g) under HRS section 235-7. For your convenience, we have attached the corrected bill language to our testimony.

The Program is authorized by Section 529 of the Internal Revenue Code, and allows each state to establish and design, within program requirements, their own college savings program. The primary benefit of the 529 programs is that earnings on the contributions grow federal tax-deferred, and withdrawals used to pay for a beneficiary's qualified higher education costs are federal tax-free. This tax-exempt treatment was made permanent by the federal Pension Protection Act of 2006. Hawaii also exempts the investment earnings from Hawaii State income taxes; provided that the earnings are used for qualified educational expenses.

Currently 48 states have at least one state-sponsored 529 plan, and of these, over 80% of states that have income taxes provide some kind of additional in-state tax incentive, such as the proposal contained in this bill.

These 529 programs provide an easy way to save for college by opening an account and making a minimum contribution. Hawaii's Program is a direct-sold plan with a low minimum contribution of \$15/month, and an account may be opened online at www.HI529.com. Plan participants select from an array of investment options and their account is professionally managed by an outside investment company hired by the State to be the Program's third-party administrator.

Currently, aside from the State tax exemption on earnings, there is no additional incentive for Hawaii residents to invest in the Program. Senate Bill No. 940 proposes a State income tax deduction for contributions made to an account in the Program, of up to \$5,000 for individual taxpayers and married couples filing separate returns; and up to

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\$10,000 for married couples filing joint returns, heads of households or surviving spouses, with excess deductions carried over to subsequent tax years. Both the former and current Program managers have suggested that the State establish this tax incentive as a means to increase participation in the Program. This bill should provide a significant incentive for Hawaii residents to establish accounts with Hawaii's Program, and start saving for their children's futures, instead of incurring more debt through educational loans.

Higher education costs continue to rise, and trying to save for higher education can be a difficult task for Hawai'i families juggling various daily living expenses. This bill will give additional incentive for families to put aside periodic college savings in an easy way.

Thank you for your consideration of our comments.

# A BILL FOR AN ACT

RELATING TO THE STATE OF HAWAII SECTION 529 COLLEGE SAVINGS PROGRAM.

#### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In 2002, the State of Hawaii established a college savings program called "TuitionEDGE" pursuant to chapter 2 3 256, Hawaii Revised Statutes, and section 529 of the Internal 4 Revenue Code of 1986, as amended. In November 2007, the program 5 was revamped under a new program manager, and re-branded as "HI529 Hawaii's College Savings Program". The program was 6 7 established and exists to assist and encourage families to invest funds for future higher education expenses. 8 The 9 investment income earned under the program is exempt from 10 federal and State taxes; provided that the funds are used for 11 qualified higher education expenses.

As of September 30, 2016, there were approximately 6,542 accounts (5,591 in-state and 951 out-of-state) in the program and \$73,138,396 in program assets. The asset size of Hawaii's program is relatively small, and the participation rate is low compared to other states' college savings programs.

1 Most states offer some kind of in-state tax deduction or 2 credit for contributions as an incentive for their residents to 3 participate in their college savings programs. To provide an 4 incentive to Hawaii taxpayers' to participate in the Hawaii 5 program, and to increase the program's assets so that the State 6 and program participants may be able to obtain a lower program management fee in the future, this bill provides a State income 7 8 tax deduction for contributions to the program. 9 As the cost of higher education continues to rise, the tax deduction will also help Hawaii families save for college 10 11 instead of having to take out educational loans. This income 12 tax deduction will apply to program contributions made in 13 calendar year 2018 and beyond. SECTION 2. Section 235-7, Hawaii Revised Statutes, is 14 amended to read as follows: 15 16 "§235-7 Other provisions as to gross income, adjusted

17 gross income, and taxable income. (a) There shall be excluded 18 from gross income, adjusted gross income, and taxable income: 19 (1) Income not subject to taxation by the State under the 20 Constitution and laws of the United States;

21 (2) Rights, benefits, and other income exempted from
22 taxation by section 88-91, having to do with the state

1		retirement system, and the rights, benefits, and other
2		income, comparable to the rights, benefits, and other
3		income exempted by section 88-91, under any other
4		public retirement system;
5	(3)	Any compensation received in the form of a pension for
6		past services;
7	(4)	Compensation paid to a patient affected with Hansen's
8		disease employed by the State or the United States in
9		any hospital, settlement, or place for the treatment
10		of Hansen's disease;
11	(5)	Except as otherwise expressly provided, payments made
12		by the United States or this State, under an act of
13		Congress or a law of this State, which by express
14		provision or administrative regulation or
15		interpretation are exempt from both the normal and
16		surtaxes of the United States, even though not so
17		exempted by the Internal Revenue Code itself;
18	(6)	Any income expressly exempted or excluded from the
19		measure of the tax imposed by this chapter by any
20		other law of the State, it being the intent of this
21		chapter not to repeal or supersede any such express
22		exemption or exclusion;

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1 (7) Income received by each member of the reserve 2 components of the Army, Navy, Air Force, Marine Corps, 3 or Coast Guard of the United States of America, and 4 the Hawaii National Guard as compensation for performance of duty, equivalent to pay received for 5 6 forty-eight drills (equivalent of twelve weekends) and 7 fifteen days of annual duty, at an: 8 (A) E-1 pay grade after eight years of service; 9 provided that this subparagraph shall apply to taxable years beginning after December 31, 2004; 10 E-2 pay grade after eight years of service; 11 (B) 12 provided that this subparagraph shall apply to 13 taxable years beginning after December 31, 2005; E-3 pay grade after eight years of service; 14 (C) 15 provided that this subparagraph shall apply to 16 taxable years beginning after December 31, 2006; 17 E-4 pay grade after eight years of service; (D) 18 provided that this subparagraph shall apply to 19 taxable years beginning after December 31, 2007; 20 and

1		(E) E-5 pay grade after eight years of service;
2		provided that this subparagraph shall apply to
3		taxable years beginning after December 31, 2008;
4	(8)	Income derived from the operation of ships or aircraft
5		if the income is exempt under the Internal Revenue
6		Code pursuant to the provisions of an income tax
7		treaty or agreement entered into by and between the
8		United States and a foreign country, provided that the
9		tax laws of the local governments of that country
10		reciprocally exempt from the application of all of
11		their net income taxes, the income derived from the
12		operation of ships or aircraft that are documented or
13		registered under the laws of the United States;
14	(9)	The value of legal services provided by a prepaid
15		legal service plan to a taxpayer, the taxpayer's
16		spouse, and the taxpayer's dependents;
17	(10)	Amounts paid, directly or indirectly, by a legal
18		service plan to a taxpayer as payment or reimbursement
19		for the provision of legal services to the taxpayer,
20		the taxpayer's spouse, and the taxpayer's dependents;
21	(11)	Contributions by an employer to a legal service plan
22		for compensation (through insurance or otherwise) to

1		the employer's employees for the costs of legal
2		services incurred by the employer's employees, their
3		spouses, and their dependents;
4	(12)	Amounts received in the form of a monthly surcharge by
5		a utility acting on behalf of an affected utility
6		under section 269-16.3; provided that amounts retained
7		by the acting utility for collection or other costs
8		shall not be included in this exemption;
9	(13)	Amounts received in the form of a cable surcharge by
10		an electric utility company acting on behalf of a
11		certified cable company under section 269-134;
12		provided that any amounts retained by that electric
13		utility company for collection or other costs shall
14		not be included in this exemption; and
15	(14)	One hundred per cent of the gain realized by a fee
16		simple owner from the sale of a leased fee interest in
17		units within a condominium project, cooperative
18		project, or planned unit development to the
19		association of owners under chapter 514A or 514B, or
20		the residential cooperative corporation of the
21		leasehold units.

22 For purposes of this paragraph:

1 "Fee simple owner" shall have the same meaning as 2 provided under section 516-1; provided that it shall 3 include legal and equitable owners; "Legal and equitable owner", and "leased fee 4 interest" shall have the same meanings as provided 5 6 under section 516-1; and "Condominium project" and "cooperative project" 7 8 shall have the same meanings as provided under section 9 514C-1. 10 There shall be included in gross income, adjusted (b) gross income, and taxable income: 11 12 (1) Unless excluded by this chapter relating to the 13 uniformed services of the United States, cost-of-14 living allowances and other payments exempted by 15 section 912 of the Internal Revenue Code, but section 16 119 of the Internal Revenue Code nevertheless shall 17 apply; and 18 Unless expressly exempted or excluded as provided by (2) 19 subsection (a)(6), interest on the obligations of a 20 State or a political subdivision thereof. The deductions of or based on dividends paid or 21 (C) 22 received, allowed to a corporation under chapter 1,

1 subchapter B, part VIII of the Internal Revenue Code, shall not be allowed. In lieu thereof there shall be allowed as a 2 3 deduction the entire amount of dividends received by any corporation upon the shares of stock of a national banking 4 5 association, qualifying dividends, as defined in section 243(b) 6 of the Internal Revenue Code, received by members of an 7 affiliated group, or dividends received by a small business 8 investment company operating under the Small Business Investment 9 Act of 1958 (Public Law 85-699) upon shares of stock qualifying 10 under paragraph (3), seventy per cent of the amount received by 11 any corporation as dividends:

12 (1) Upon the shares of stock of another corporation, if at 13 the date of payment of the dividend at least 14 ninety-five per cent of the other corporation's 15 capital stock is owned by one or more corporations 16 doing business in this State and if the other 17 corporation is subjected to an income tax in another 18 jurisdiction (but subjection to federal tax does not 19 constitute subjection to income tax in another 20 jurisdiction); [and]

1 (2) Upon the shares of stock of a bank or insurance 2 company organized and doing business under the laws of 3 the State; and 4 (3) Upon the shares of stock of another corporation, if at 5 least fifteen per cent of the latter corporation's 6 business, for the taxable year of the latter 7 corporation preceding the payment of the dividend, has 8 been attributed to this State.

9 However, except for national bank dividends, the deductions under this subsection are not allowed when they would not have 10 been allowed under section 243 of the Internal Revenue Code, as 11 12 amended by Public Law 85-866, by reason of subsections (b) and 13 (c) of section 246 of the Internal Revenue Code. For the 14 purposes of this subsection fifteen per cent of a corporation's 15 business shall be deemed to have been attributed to this State 16 if fifteen per cent or more of the entire gross income of the 17 corporation as defined in this chapter (which for the purposes 18 of this subsection shall be computed without regard to source in 19 the State and shall include income not taxable by reason of the 20 fact that it is from property not owned in the State or from a 21 trade or business not carried on in the State in whole or in 22 part), under section 235-5 and the other provisions of this

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chapter, shall have been attributed to the State and subjected
 to assessment of the taxable income therefrom (including the
 determination of the resulting net loss, if any).

4 (d) (1) For taxable years ending before January 1, 1967, the 5 net operating loss deductions allowed as carrybacks 6 and carryovers by the Internal Revenue Code shall not 7 be allowed. In lieu thereof the net operating loss 8 deduction shall consist of the excess of the 9 deductions allowed by this chapter over the gross 10 income, computed with the modifications specified in 11 paragraphs (1) to (4) of section 172(d) of the Internal Revenue Code, and with the further 12 13 modification stated in paragraph (3) hereof; and shall 14 be allowed as a deduction in computing the taxable 15 income of the taxpayer for the succeeding taxable 16 year;

17 (2) (A) With respect to net operating loss deductions
18 resulting from net operating losses for taxable
19 years ending after December 31, 1966, the net
20 operating loss deduction provisions of the
21 Internal Revenue Code shall apply; provided that
22 there shall be no net operating loss deduction

1	carried	back	to	any	taxable	year	ending	prior	to
2	January	1, 1	967;	;					

- 3 (B) In the case of a taxable year beginning in 1966
  4 and ending in 1967, the entire amount of all net
  5 operating loss deductions carried back to the
  6 taxable year shall be limited to that portion of
  7 taxable income for such taxable year which the
  8 number of days in 1967 bears to the total days in
  9 the taxable year ending in 1967; and
- 10 (C) The computation of any net operating loss
  11 deduction for a taxable year covered by this
  12 subsection shall require the further
  13 modifications stated in paragraphs (3), (4), and
  14 (5) of this subsection;
- 15 In computing the net operating loss deduction allowed (3) 16 by this subsection, there shall be included in gross 17 income the amount of interest which is excluded from 18 gross income by subsection (a), decreased by the 19 amount of interest paid or accrued which is disallowed as a deduction by subsection (e). In determining the 20 21 amount of the net operating loss deduction under this 22 subsection of any corporation, there shall be

1		disregarded the net operating loss of such corporation
2		for any taxable year for which the corporation is an
3		electing small business corporation;
4	(4)	No net operating loss carryback or carryover shall be
5		allowed by this chapter if not allowed under section
6		172 of the Internal Revenue Code;
7	(5)	The election to relinquish the entire carryback period
8		with respect to a net operating loss allowed under
9		section 172(b)(3)(C) of the Internal Revenue Code
10		shall be operative for the purposes of this chapter;
11		provided that no taxpayer shall make such an election
12		as to a net operating loss of a business where such
13		net operating loss occurred in the taxpayer's business
14		prior to the taxpayer entering business in this State;
15		[and]
16	(6)	The five-year carryback period for net operating
17		lasses for one bouchle man and/or during 2001 and

17 losses for any taxable year ending during 2001 and
18 2002 in section 172(b)(1)(H) of the Internal Revenue
19 Code as it read on December 31, 2008, shall not be
20 operative for purposes of this chapter; and
21 (7) The election for the carryback for 2008 or 2009 net
22 operating losses of small businesses as provided in

section 172(b)(1)(H) of the Internal Revenue Code as
 it read on December 31, 2009, shall not be operative
 for purposes of this chapter.

(e) There shall be disallowed as a deduction the amount of 4 5 interest paid or accrued within the taxable year on indebtedness 6 incurred or continued, (1) to purchase or carry bonds the interest upon which is excluded from gross income by subsection 7 8 (a); or (2) to purchase or carry property owned without the 9 State, or to carry on trade or business without the State, if 10 the taxpayer is a person taxable only upon income from sources 11 in the State.

12 (f) Losses of property as the result of tidal wave, 13 hurricane, earthquake, or volcanic eruption, or as a result of 14 flood waters overflowing the banks or walls of a river or 15 stream, or from any other natural disaster, to the extent of the 16 amount deductible, under this chapter, not compensated for by 17 insurance or otherwise, may be deducted in the taxable year in 18 which sustained, or at the option of the taxpayer may be 19 deducted in equal installments over a period of five years, the 20 first such year to be the calendar year or fiscal year of the 21 taxpayer in which such loss occurred.

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1	(g)(1)	The following annual deductions from gross income
2		shall be allowed for contributions to an account in
3		the Hawaii college savings program provided under
4		chapter 256:
5		(A) Up to \$5,000 for individual taxpayers;
6		(B) Up to \$10,000 for married couples filing separate
7		returns; provided that each spouse may claim a
8		deduction up to \$5,000; and
9		(C) Up to \$10,000 for married couples filing joint
10		returns, individuals filing as the head of
11		households, or individuals filing as surviving
12		spouses; provided that the deduction shall be
13		available to married couples filing joint returns
14		if at least one spouse is an account owner in the
15		Hawaii college savings program;
16		provided that only a Hawaii taxpayer who is an account
17		owner in the Hawaii college savings program shall be
18		allowed to claim the above applicable deduction for
19		contributions made by the taxpayer into the taxpayer's
20		account in the Hawaii college savings program.
21	(2)	In order to be deductible for a particular taxable
22		year, a contribution shall be credited to the account

1		of the Hawaii taxpayer on or before the last day of			
2		that taxable year; provided that if a contribution is			
3		mailed in, it shall be postmarked on or before the			
4		last day of that taxable year.			
5	(3)	Rollovers from another state's college savings program			
6		into Hawaii's college saving program shall not be			
7		considered to be contributions eligible for the State			
8		tax deduction in subparagraph (g)(1).			
9	(4)	If the amount of the State tax deduction exceeds the			
10		Hawaii taxpayer's taxable income for the taxable year			
11		the contribution is made, the excess deduction may be			
12		used as a deduction against the taxpayer's taxable			
13		income in subsequent tax years until the excess			
14		deduction is exhausted.			
15	(5)	Contributions to the Hawaii college savings program			
16		that have been deducted from the Hawaii taxpayer's			
17		adjusted gross income for prior tax years shall be			
18		subject to recapture if the taxpayer:			
19		(A) Makes a subsequent nonqualified withdrawal from			
20		the Hawaii college savings program; or			
21		(B) Rolls the Hawaii college savings program account			
22		into another state's college savings program.			

1	The contribution shall be recaptured by adding the			
2	amount previously deducted, not to exceed the amount			
3	of the nonqualified withdrawal or rollover, to the			
4	taxpayer's adjusted gross income for the tax year in			
5	which the nonqualified withdrawal or rollover			
6	occurred."			
7	SECTION 3. Section 256-1, Hawaii Revised Statutes, is			
8	amended by adding two new definitions to be appropriately			
9	designated and to read as follows:			
10	"Contribution" means:			
11	(1) Any payment directly allocated to a Hawaii college			
12	savings program account for the benefit of designated			
13	beneficiary, or used to pay administrative fees			
14	associated with the account; and			
15	(2) That portion of any rollover amount treated as a			
16	contribution under section 529 of the Internal Revenue			
17	Code of 1986, as amended, or successor legislation.			
18	"Rollover" means a distribution or transfer from an account			
19	that is transferred to or deposited within sixty calendar			
20	days of the distribution into an account of the same person			
21	for the benefit of the same designated beneficiary or			
22	another person who is a member of the family of the			

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1	designated beneficiary if the transferee account was				
2	created under chapter 256 or another college savings				
3	program maintained in accordance with section 529 of the				
4	Internal Revenue Code of 1986, as amended, or successor				
5	legislation."				
6	SECTION 4. Statutory material to be repealed is bracketed				
7	and stricken. New statutory material is underscored.				
8	SECTION 5. This Act, upon its approval, shall apply to				
9	taxable years beginning after December 31, 2017.				
10					
11	INTRODUCED BY:				
12	BY REQUEST				
13					

Report Title: State of Hawaii Section 529 College Savings Program

**Description:** Establishes a State income tax deduction for eligible contributions made to Hawaii's section 529 college savings program.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

.B. NO.\_\_\_

From:	mailinglist@capitol.hawaii.gov
Sent:	Tuesday, February 7, 2017 6:53 PM
То:	HRE Testimony
Cc:	mendezj@hawaii.edu
Subject:	*Submitted testimony for SB940 on Feb 14, 2017 13:15PM*

#### <u>SB940</u>

Submitted on: 2/7/2017 Testimony for HRE on Feb 14, 2017 13:15PM in Conference Room 414

Submitted By	Organization	<b>Testifier Position</b>	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

#### Comments:

Please note that testimony submitted <u>less than 24 hours prior to the hearing</u>, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Subject:	*Submitted testimony for SB940 on Feb 14, 2017 13:15PM*		

#### <u>SB940</u>

Submitted on: 2/7/2017 Testimony for HRE on Feb 14, 2017 13:15PM in Conference Room 414

Submitted By	Organization	<b>Testifier Position</b>	Present at Hearing
Alan Urasaki	Individual	Support	No

Comments:

Please note that testimony submitted <u>less than 24 hours prior to the hearing</u>, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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