



GOV. MSG. NO. 1285

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 6, 2021

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith HB613 HD2 SD2 CD2, without my approval and with the statement of objections relating to the measure.

HB613 HD2 SD2 CD2

RELATING TO EDUCATION.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 6, 2021

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 613

Honorable Members
Thirty-First Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, House Bill No. 613, entitled "A Bill for an Act Relating to Education."

The purposes of this bill are to: (1) appropriate moneys from the Elementary and Secondary School Emergency Relief Fund established by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, received by the State for the Department of Education (DOE) to fund certain education related items; (2) appropriate moneys from the Coronavirus Response and Relief Supplemental Appropriations Act, 2021, Public Law 116-260, received by the State for the DOE to fund certain education related items; (3) appropriate moneys from the American Rescue Plan Elementary and Secondary School Emergency Relief (ESSER) Fund established by the American Rescue Plan Act of 2021 (ARPA), Public Law 117-2; and (4) delay pay increases for all superintendents granted by the Board of Education until Department heads receive raises set forth in the most recent salary recommendations by the Commission on Salaries.

This bill is objectionable because appropriations made in this bill do not comply with federal guidance for spending and put the state at risk of being in violation of federal rules. According to guidance issued by the United States Department of Education, state legislatures do not have the ability to limit a local education agency's

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 613
Page 2

use of funds appropriated through the CARES Act or ARPA.¹ For federal purposes, DOE is considered both a State Education Agency, as well as a Local Education Agency. The proscriptive limits on spending for each service category outlined in the bill effectively limit DOE's ability to allocate funds in violation of the federal guidance.

Additionally, the federal government requires a Local Education Agency using ARPA funds to develop a spending plan that incorporates "meaningful consultation" with community stakeholders, including teachers, principals, students, school staff, unions, civil rights organizations, English learners, and various other groups. 86 Fed. Reg. 21195, 21195. The spending plan outlined in this bill was developed during conference committee and it does not appear that any meaningful community consultation occurred. This lack of a transparent and open consultation process puts the State and DOE at risk of being in violation of federal guidance. Violation of federal rules could result in the State being required to return such funds.

For the foregoing reasons, I am returning House Bill No. 613 without my approval.

Respectfully,



DAVID Y. IGE
Governor of Hawai'i

¹ *Frequently Asked Questions – Elementary and Secondary School Emergency Relief Programs Governor's Emergency Education Relief Programs*, U.S. Department of Education, May 26, 2021, at 15.

https://oese.ed.gov/files/2021/05/ESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf

A BILL FOR AN ACT

RELATING TO EDUCATION.

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

1 SECTION 1. The legislature finds that the department of
2 education is the only public education system in the country
3 that is wholly state funded. This singular funding status has
4 resulted in the department of education facing unique challenges
5 to utilizing funds provided by the federal government to offset
6 the negative economic impacts of the coronavirus disease 2019
7 (COVID-19) pandemic.

8 The legislature also finds that the states that receive
9 certain federal funds, including moneys from the Elementary and
10 Secondary School Emergency Relief Fund established by the
11 Coronavirus Aid, Relief, and Economic Security Act, Public
12 Law 116-136 (CARES Act), and the Coronavirus Response and Relief
13 Supplemental Appropriations Act, 2021, Public Law 116-260 (CRRS
14 Appropriations Act), are required to assure that they will
15 maintain support for education programs during fiscal years
16 2019-2020 and 2020-2021 by meeting certain benchmarks.

17 The legislature further finds that the CARES Act created
18 the federal Education Stabilization Fund. The State, through



1 the department of education, must comply with the provisions of
2 the federal Education Stabilization Fund as set forth in
3 sections 18006 and 18008 of the CARES Act and sections 315 and
4 317 of the CRRS Appropriations Act in order to receive and
5 expend CARES Act and CRRS Appropriations Act moneys. In
6 accepting and expending federal CARES Act and CRRS
7 Appropriations Act moneys, it is the legislature's intent that
8 the department of education employees who are subject to a
9 collective bargaining agreement continue to receive their pay.

10 The legislature also finds that the State, through the
11 department of education, must also comply with the "maintenance
12 of effort" provisions set forth in section 18008 of the CARES
13 Act. These provisions require funding for public education to
14 be maintained at the same funding levels as in fiscal years
15 2017, 2018, and 2019, for those funds that are part of the CARES
16 Act, and at a proportional funding level for the CRRS
17 Appropriations Act.

18 The legislature declares that it does not support any
19 attempts by the superintendent of education to seek a waiver
20 from the Secretary of Education.



1 The purpose of this Act is to appropriate certain federal
2 moneys received by the State to the department of education to
3 fund certain education related items.

4 SECTION 2. There is appropriated out of the Coronavirus
5 Response and Relief Supplemental Appropriations Elementary and
6 Secondary Schools Emergency Relief Fund appropriation for the
7 department of education the sum of \$144,656,637; provided that
8 of the Coronavirus Response and Relief Supplemental
9 Appropriations Elementary and Secondary Schools Emergency Relief
10 Fund appropriation for the department of education:

11 (1) The sum of \$32,500,000 or so much thereof as may be
12 necessary for fiscal year 2020-2021 shall be expended
13 for teacher pay differentials as approved by the board
14 of education;

15 (2) The sum of \$21,000,000 or so much thereof as may be
16 necessary for fiscal year 2020-2021 shall be expended
17 for school food services as approved by the board of
18 education;

19 (3) The sum of \$8,991,457 or so much thereof as may be
20 necessary for fiscal year 2020-2021 shall be expended
21 by the Hawaii state public charter school commission



1 for school-level programming as approved by the board
2 of education;

3 (4) The sum of \$9,650,000 or so much thereof as may be
4 necessary for fiscal year 2020-2021 shall be expended
5 for summer hubs to address learning loss as approved
6 by the board of education;

7 (5) The sum of \$1,790,000 or so much thereof as may be
8 necessary for fiscal year 2020-2021 shall be expended
9 for summer start kindergarten transition program to
10 address learning loss as approved by the board of
11 education;

12 (6) The sum of \$333,334 or so much thereof as may be
13 necessary for fiscal year 2020-2021 shall be expended
14 for summer ohana help desk to address learning loss as
15 approved by the board of education;

16 (7) The sum of \$1,360,000 or so much thereof as may be
17 necessary for fiscal year 2020-2021 shall be expended
18 for connectivity to address learning loss as approved
19 by the board of education;

20 (8) The sum of \$6,000,000 or so much thereof as may be
21 necessary for fiscal year 2020-2021 shall be expended



1 for transportation support services as approved by the
2 board of education;

3 (9) The sum of \$6,000,000 or so much thereof as may be
4 necessary for fiscal year 2020-2021 shall be expended
5 for school food support services as approved by the
6 board of education;

7 (10) The sum of \$8,401,000 or so much thereof as may be
8 necessary for fiscal year 2020-2021 shall be expended
9 for student computer devices as approved by the board
10 of education;

11 (11) The sum of \$1,000,000 or so much thereof as may be
12 necessary for fiscal year 2020-2021 shall be expended
13 for summer school fees as approved by the board of
14 education;

15 (12) The sum of \$1,000,000 or so much thereof as may be
16 necessary for fiscal year 2021-2022 and the sum of
17 \$1,500,000 or so much thereof as may be necessary for
18 fiscal year 2022-2023 shall be expended by the school
19 facilities agency for personnel, operating, and
20 programmatic expenses;



1 (13) The sum of \$35,740,846 or so much thereof as may be
2 necessary for fiscal year 2021-2022 shall be expended
3 for the weighted student formula; and

4 (14) The sum of \$4,695,000 or so much thereof as may be
5 necessary for fiscal year 2021-2022 and the same sum
6 or so much thereof as may be necessary for fiscal year
7 2022-2023 shall be expended for repairs and
8 maintenance as follows:

9 (A) For elementary schools, \$2,088,000 or so much
10 thereof as may be necessary for fiscal year 2021-
11 2022 and the same sum or so much thereof as may
12 be necessary for fiscal year 2022-2023; provided
13 that \$12,000 shall be allocated to each
14 elementary school;

15 (B) For middle schools, \$651,000 or so much thereof
16 as may be necessary for fiscal year 2021-2022 and
17 the same sum or so much thereof as may be
18 necessary for fiscal year 2022-2023; provided
19 that \$15,500 shall be allocated to each middle
20 school;



1 (C) For high schools, \$748,000 or so much thereof as
2 may be necessary for fiscal year 2021-2022 and
3 the same sum or so much thereof as may be
4 necessary for fiscal year 2022-2023; provided
5 that \$22,000 shall be allocated to each high
6 school;

7 (D) For combined/mixed schools, \$968,000 or so much
8 thereof as may be necessary for fiscal year 2021-
9 2022 and the same sum or so much thereof as may
10 be necessary for fiscal year 2022-2023; provided
11 that \$22,000 shall be allocated to each
12 combined/mixed school; and

13 (E) For schools with pre-kindergarten classrooms,
14 \$240,000 or so much thereof as may be necessary
15 for fiscal year 2021-2022 and the same sum or so
16 much thereof as may be necessary for fiscal year
17 2022-2023; provided that \$12,000 shall be
18 allocated to each school with pre-kindergarten
19 classrooms; and

20 provided further that any funds not expended for these purposes
21 shall lapse.



1 SECTION 3. There is appropriated out of the American
2 Rescue Plan Elementary and Secondary Emergency Relief Fund
3 appropriation for the department of education the sum of
4 \$412,328,764; provided that of the American Rescue Plan
5 Elementary and Secondary Schools Emergency Relief Fund
6 appropriation for the department of education:

7 (1) The sum of \$76,280,821 or so much thereof as may be
8 necessary for fiscal year 2021-2022 shall be expended
9 to address learning loss;

10 (2) The sum of \$20,204,110 or so much thereof as may be
11 necessary for fiscal year 2021-2022 shall be expended
12 by the Hawaii state public charter school commission
13 for school-level programming;

14 (3) The sum of \$110,000,000 or so much thereof as may be
15 necessary for fiscal year 2021-2022 shall be expended
16 by the office of facilities and operations to address
17 school-level needs for safe re-opening, including but
18 not limited to improved indoor air quality, food
19 services, transportation, personal protective
20 equipment, and other needs as identified by the Center
21 for Disease Control and Prevention; provided that for



1 indoor air quality measures, priority shall be given
2 to those projects that also provide heat abatement
3 through mechanical cooling, such as air conditioning
4 with appropriate Centers for Disease Control
5 filtration systems;

6 (4) The sum of \$100,300,000 or so much thereof as may be
7 necessary for fiscal year 2021-2022 shall be expended
8 by complex area superintendents for school-level
9 programming, including but not limited to programs for
10 social, emotional, mental and physical health service
11 needs, and to foster innovation projects for science,
12 technology, engineering, and mathematics (STEM),
13 career and technical education, Hawaiian culture,
14 sustainability, trauma-informed care services, and to
15 address community-based issues as follows:

16 (A) For the Kailua-Kalaheo complex area, \$5,463,813
17 or so much thereof as may be necessary for fiscal
18 year 2021-2022;

19 (B) For the Hilo-Waiakea complex area, \$5,073,541 or
20 so much thereof as may be necessary for fiscal
21 year 2021-2022;



- 1 (C) For the Honokaa-Kealakehe-Kohala-Konawaena
2 complex area, \$7,415,175 or so much thereof as
3 may be necessary for fiscal year 2021-2022;
- 4 (D) For the Farrington-Kaiser-Kalani complex area,
5 \$9,756,810 or so much thereof as may be necessary
6 for fiscal year 2021-2022;
- 7 (E) For the Aiea-Moanalua-Radford complex area,
8 \$8,585,993 or so much thereof as may be necessary
9 for fiscal year 2021-2022;
- 10 (F) For the Campbell-Kapolei complex area, \$7,024,903
11 or so much thereof as may be necessary for fiscal
12 year 2021-2022;
- 13 (G) For the Kaimuki-McKinley-Roosevelt complex area,
14 \$10,927,627 or so much thereof as may be
15 necessary for fiscal year 2021-2022;
- 16 (H) For the Leilehua-Mililani-Waialua complex area,
17 \$7,805,447 or so much thereof as may be necessary
18 for fiscal year 2021-2022;
- 19 (I) For the Nanakuli-Waianae complex area, \$3,512,451
20 or so much thereof as may be necessary for fiscal
21 year 2021-2022;



- 1 (J) For the Pearl City-Waipahu complex area,
2 \$6,634,630 or so much thereof as may be necessary
3 for fiscal year 2021-2022;
- 4 (K) For the Castle-Kahuku complex area, \$6,244,358 or
5 so much thereof as may be necessary for fiscal
6 year 2021-2022;
- 7 (L) For the Kau-Keaau-Pahoa complex area, \$3,512,451
8 or so much thereof as may be necessary for fiscal
9 year 2021-2022;
- 10 (M) For the Baldwin-Kekaulike-Maui complex area,
11 \$7,805,447 or so much thereof as may be necessary
12 for fiscal year 2021-2022;
- 13 (N) For the Hana-Lahaina-Lanai-Molokai complex area,
14 \$4,292,996 or so much thereof as may be necessary
15 for fiscal year 2021-2022; and
- 16 (O) For the Kapaa-Kauai-Waimea complex area,
17 \$6,244,358 or so much thereof as may be necessary
18 for fiscal year 2021-2022;
- 19 (5) The sum of \$1,800,000 or so much thereof as may be
20 necessary for fiscal year 2021-2022 shall be expended



1 by Honouliuli middle school for new classroom
2 furnishing and equipment;
3 (6) The sum of \$2,061,645 or so much thereof as may be
4 necessary for fiscal year 2021-2022 shall be expended
5 for administrative costs and emergency needs; provided
6 that funds are not expended for additional
7 compensation for existing positions;
8 (7) The sum of \$19,000,000 or so much thereof as may be
9 necessary for fiscal year 2021-2022 shall be expended
10 by complex area superintendents through the office of
11 curriculum and instructional design for virtual
12 learning, including but not limited to software
13 subscriptions and licenses and other technical
14 resources and materials to support virtual learning
15 based on an approved list provided by the office of
16 curriculum and instructional design;
17 (8) The sum of \$24,205,024 or so much thereof as may be
18 necessary for fiscal year 2021-2022 shall be expended
19 for summer enrichment programs to address learning
20 loss;



- 1 (9) The sum of \$412,329 or so much thereof as may be
2 necessary for fiscal year 2021-2022 shall be expended
3 for comprehensive afterschool programs to address
4 learning loss;
- 5 (10) The sum of \$1,000,000 or so much thereof as may be
6 necessary for fiscal year 2021-2022 shall be expended
7 by the executive office on early learning for early
8 childhood educators to support and stabilize educator
9 workforce;
- 10 (11) The sum of \$20,000,000 or so much thereof as may be
11 necessary for fiscal year 2021-2022 shall be expended
12 for underserved student groups as outlined by the
13 United States Department of Education, including but
14 not limited to students from low-income families,
15 underserved student groups by gender, race or
16 ethnicity, English learners, children with
17 disabilities, students experiencing homelessness,
18 children and youth in foster care, migratory students,
19 and other groups disproportionately impacted by the
20 pandemic (e.g., youth involved in the criminal justice
21 system and LGBTQ+ students); provided that no less



1 than \$5,000,000 shall be expended on community
2 outreach programs to service the needs of the
3 aforementioned students; provided further that funding
4 allocations shall be based on identified underserved
5 groups by complex;

6 (12) The sum of \$1,000,000 or so much thereof as may be
7 necessary for fiscal year 2021-2022 shall be expended
8 by the office of talent management for alternative
9 teacher licensure programs to support and stabilize
10 the educator workforce;

11 (13) The sum of \$29,700,000 or so much thereof as may be
12 necessary for fiscal year 2021-2022 shall be expended
13 for the purpose of educator workforce stabilization to
14 retain teachers; provided that moneys appropriated
15 shall be used for a one-time stabilization payment of
16 \$2,200 for each full-time and half-time teacher; and

17 (14) The sum of \$6,360,000 or so much thereof as may be
18 necessary for fiscal year 2021-2022 shall be expended
19 within four complex areas; Kauai; Maui (Molokai);
20 Hawaii island (Honokaa-Kealakehe, Kohala, Konawaena);
21 and Leilehua-Mililani-Waialua for the purpose of a



1 pilot greenhouse(s) for sustainability and agriculture
2 training, including robotics and other agricultural
3 technology training; provided that, as much as
4 possible, the greenhouse(s) shall be adjacent to
5 agricultural production centers and develop capacity
6 for future farming and farmers; and
7 provided further that any funding amounts that the Department of
8 Education wishes to reallocate for the purposes of meeting the
9 requirements set forth by the United States Department of
10 Education shall receive prior approval of the legislature;
11 provided further that the funds appropriated by this section
12 shall not lapse at the end of the fiscal year for which they are
13 appropriated; provided further that all moneys from the
14 appropriation that are unencumbered as of June 30, 2023, shall
15 lapse as of that date.

16 SECTION 4. Any pay increases for all superintendents
17 granted by the board of education shall only take effect when
18 department heads receive their raise set forth in the most
19 recent salary recommendations by the commission on salaries.



HB No. 613, HD 2, SD 2, CD 2

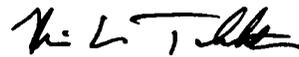
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 29, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives



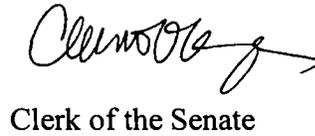
Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: April 29, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2021.


President of the Senate


Clerk of the Senate