



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

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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