

SB 3006

SD-2

**RELATING TO
BUILDING CODES**

A BILL FOR AN ACT

RELATING TO BUILDING CODES.

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

1 SECTION 1. Building codes are standards or procedures
2 developed by standards organizations and adopted into law and
3 enforced by state and local governments. These building codes
4 standardize the practices of the building industry and provide
5 minimum standards for the protection of public health and
6 safety. The Hawaii state building codes apply to all
7 construction in the State and are based on the state fire code,
8 the Uniform Plumbing Code, the International Building Code, the
9 International Residential Code, the International Energy
10 Conservation Code, the National Electrical Code, the Hawaii
11 design standards, and other code provisions based on nationally
12 published codes or standards.

13 The legislature finds that while building codes address
14 public health and safety and environmental concerns, building
15 codes must also address cost efficiencies and investment value
16 in construction. Due to the high costs of construction and the
17 State's and counties' general policies of providing more



1 affordable housing in transit-oriented development areas and
2 other areas, the legislature believes that enforcement and
3 application of the building codes need to include considerations
4 of changing technologies, improved materials and methods, and
5 improved approaches to protecting public health and safety to
6 meet the needs of communities statewide. To facilitate the
7 construction of affordable public and private projects in the
8 State, the legislature believes that it would benefit the State
9 to find the most efficient way to lower building costs, while
10 still ensuring that public health and safety are protected.

11 The purpose of this Act is to provide greater flexibility
12 to the State in the use and application of Hawaii state building
13 codes.

14 SECTION 2. Section 107-25, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§107-25 Hawaii state building codes; requirements. (a)**

17 There is established the Hawaii state building codes applicable
18 to all construction in the State of Hawaii. The Hawaii state
19 building codes shall be based upon:

20 (1) The state fire code as adopted by the state fire
21 council;



- 1 (2) The Uniform Plumbing Code, as copyrighted and
2 published by the International Association of Plumbing
3 and Mechanical Officials, including its appendices;
- 4 (3) The International Building Code, the International
5 Residential Code, and the International Energy
6 Conservation Code, as published by the International
7 Code Council;
- 8 (4) The National Electrical Code, as published by the
9 National Fire Protection Association;
- 10 (5) Hawaii design standards implementing the criteria
11 pursuant to Act 5, Special Session Laws of Hawaii[7]
12 2005, as applicable to:
- 13 (A) Emergency shelters built to comply with hurricane
14 resistant criteria, including enhanced hurricane
15 protection areas capable of withstanding a five
16 hundred-year hurricane event as well as other
17 storms and natural hazards; and
- 18 (B) Essential government facilities requiring
19 continuity of operations; and
- 20 (6) Code provisions based on nationally published codes or
21 standards that include but are not limited to



1 residential and hurricane resistant standards related
2 to loss mitigation standards in accordance with
3 section 431P-12, elevator, mechanical, flood and
4 tsunami, existing buildings, and onsite sewage
5 disposal.

6 (b) The State may use alternative building codes for the
7 design and construction of a state project; provided that:

8 (1) The alternative code shall be more cost effective than
9 the applicable code of trade or area of construction
10 specified in subsection (a);

11 (2) The prescriptive design of the alternative code shall
12 be used; provided that it does not negatively affect
13 the performance of the project or public safety and
14 health;

15 (3) The alternative code shall be approved and adopted by
16 the state building code council; and

17 (4) The alternative code corresponds to an applicable code
18 of trade or area of construction provided for in
19 paragraphs (a) (2) - (4).

20 No county shall deny a permit for construction or alteration to
21 facilities for any state project that uses an alternative code



1 pursuant to this subsection. Notwithstanding the provisions of
2 any alternative code, the same standard of care applicable to
3 the design and construction services procured for state
4 facilities shall apply to any project using an alternative code
5 under this subsection."

6 SECTION 3. New statutory material is underscored.

7 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

State Building Codes; Alternative Codes

Description:

Allows state projects to be designed and constructed using an alternative code that is the most cost effective for a project, subject to certain conditions, including protection of public health and safety. Effective 7/1/2050. (SD2)

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

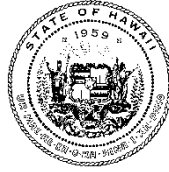


SB 3006

SD-2

TESTIMONY

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
ON
THURSDAY, MARCH 22, 2018
9:15 A.M.
CONFERENCE ROOM 309

S.B. 3006, S.D. 2

RELATING TO BUILDING CODES.

Chair Johanson, Vice Chair Holt, and Members of the Committee, thank you for the opportunity to submit testimony on S.B. 3006, S.D. 2.

The Department of Accounting and General Services (DAGS) continues to have many of the concerns expressed in our earlier written testimony submitted to previous Committees on this measure. Hawaii Revised Statutes (HRS) Chapter 107 Part II establishes a process through which building codes are to be considered for approval and adoption by the State Building Code Council, and it is probable the intent of this measure would be better accomplished through this process.

In addition, the current draft of the bill inserts new language that, if passed into law, may present significant challenges to implementation, including:

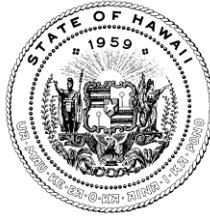
1. The bill provides that “[n]o county shall deny a permit for construction or alteration to facilities for any state project that uses an alternative code pursuant to this subsection.” In the face of this mandate, the counties would reasonably

choose not to accept State applications for building permits on projects using codes not adopted by the counties, which would not constitute denial of a permit. As a result, the State would not be accorded the value of the counties' permit reviews of its projects, which would have wide-ranging effects the State now avoids through the use of those reviews.

2. The bill requires that the same standard of care apply to projects designed and constructed under both conventional and alternative codes. The term "standard of care" is a threshold for measuring conduct based on what a reasonable and prudent design or construction professional would do under similar circumstances. Design or construction under a conventional code would be inherently dissimilar to design or construction under an alternative code and, therefore, the "similar circumstances" required for application of a "standard of care" would not exist.

Thank you for the opportunity to submit testimony on this matter.

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555

**Testimony of
SUZANNE B. CASE
Chairperson**

**Before the House Committee on
LABOR**

**Thursday, March 22, 2018
9:15 AM
State Capitol, Conference Room 309**

**In Consideration of
SENATE BILL 3006, SENATE DRAFT 2
RELATING TO BUILDING CODES**

Senate Draft 3006, Senate Draft 2 proposes to provide greater flexibility in the use and application of Hawaii state building codes, while ensuring public health and safety. **The Department of Land and Natural Resources (Department) supports this measure and recommends that it be amended as detailed below.**

Historic buildings represent both the heritage of the State of Hawaii, and economic and housing assets. Rehabilitation and reuse of historic buildings offers substantial economic benefits as can be seen, for example, in the historic districts throughout the state. At the same time, rehabilitation, renovation and continuing occupation of historic residential buildings can contribute to easing of Hawaii's housing shortage. Rehabilitation, renovation, and continuing and/or reuse is sometimes challenged by the requirements of building codes that are designed for new construction while not necessarily enhancing health or safety.

Accordingly, the Department recommends that SECTION 2 of this measure be amended as follows:

"§107-25 Hawaii state building codes; requirements. (a) There is established the Hawaii state building codes applicable to all construction in the State of Hawaii. The Hawaii state building codes shall be based upon:

- (1) The state fire code as adopted by the state fire council;

- (2) The Uniform Plumbing Code, as copyrighted and published by the International Association of Plumbing and Mechanical Officials, including its appendices;
- (3) The International Building Code, the International Residential Code, Chapter 12 of the International Existing Building Code, and the International Energy Conservation Code, as published by the International Code Council....” Recommended amendment underlined.

Chapter 12 of the International Existing Building Code is designed to preserve historic buildings by minimizing unnecessary changes to historic fabric, while ensuring that all measures needed to ensure structural integrity, fire, health, and safety are accomplished in a manner respecting the historic character of the structure.

Thank you for the opportunity to comment on this measure.



LiUNA!

**TESTIMONY OF RYAN K. KOBAYASHI
GOVERNMENT AND COMMUNITY RELATIONS DIRECTOR
HAWAII LABORERS UNION LOCAL 368**

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

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*Business Manager/
Secretary-Treasurer*

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Auditor

RUSSELL NAPIHA'A
Auditor

MARK TRAVALINO
Auditor

ALFRED HUFANA JR.
Sergeant-At-Arms

NOTICE OF HEARING

DATE: Thursday, March 22, 2018
TIME: 9:15 a.m.
PLACE: Room 309

**TESTIMONY IN SUPPORT OF SB 3006 RELATING TO BUILDING
CODES**

ALOHA COMMITTEE CHAIR JOHANSON, VICE-CHAIR HOLT
My name is Ryan K. Kobayashi, Government and Community Relations Director for the Hawaii Laborers Union Local 368. The Hawaii Laborers Union is made up of over 5000 working and retired members across the State of Hawaii, and we **SUPPORT SB 3006 SD2 Relating to Building Codes and respectfully request an amendment.**

The requested amendment is as follows:

- **Strike (Delete)** the original language in SB3006 SD2 from page 4, Line 6 to Page 5, Line 5.
- **Insert** the following language into H.R.S. Section 107-25 as a new Subsection (2)(a):

"(2) The Uniform Plumbing Code, as copyrighted and published by the International Association of Plumbing and Mechanical Officials, ~~including its~~ appendices;

LiUNA Local 368
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Feel the Power

(A) The International Plumbing Code, as copyrighted and published by the International Code Council, may be used in lieu of the Uniform Plumbing Code when approved by the administrative authority having jurisdiction provided that:

(1) A written request by a Hawaii licensed professional engineer with the concurrence of the building project owner must be made to the administrative authority having jurisdiction; and

(2) The details of this approval shall be recorded and entered in the files of the department; and

(3) Plans submitted shall be stamped by the Hawaii licensed professional engineer; and

(4) Where conflicts exist between a code the authority having jurisdiction shall deem which provision in part or whole

shall be recognized, approved and enforced; and

(5) Plans submitted shall clearly state on the submitted title, plumbing and/or mechanical sheets that the International Plumbing Code was used as a basis of the design."

The requested amendment to SB3006 would essentially turn SB 3006 into a "housekeeping" bill by bringing H.R.S. 107-25 current with the Hawaii State Plumbing Code, and eliminate nearly all prior testimony in opposition by removing any ambiguous language regarding the use of "cheaper" or "alternative codes".

In essence, this proposed amendment would generally codify language that already exists in the Hawaii State Plumbing Code section 301.2 which at present, State Departments such as DAGS, DLNR, HIEMA all presently operate under, as well as private trades and trade organizations that work with this particular section of the code.

Furthermore, this amendment also comports with a Hawaii State Attorney General's opinion released on February 20, 2018 to the State Building Codes Council regarding a similar issue.¹

Thank you for the opportunity to testify on this matter.

¹ See Attached Attorney General Opinion to the State Building Codes Council, October 25, 2017 (Publicly released February 20, 2018)

*Displaced
2/23/2018*

DAVID Y. IGE
GOVERNOR



DOUGLAS S. CHIN
ATTORNEY GENERAL

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

October 25, 2017

Gaur Johnson, Ph.D.
Chair
State Building Code Council
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Chair Johnson:

Re: Proposed Section 301.2, Hawaii State Plumbing Code

In its meeting on September 19, 2017, the State Building Code Council (SBCC) requested an opinion from the Department of the Attorney General concerning a provision in the proposed Hawaii State Plumbing Code. The specific provision at issue, section 301.2, would allow the use of the International Plumbing Code in lieu of the Uniform Plumbing Code when approved by the administrative authority, provided that certain specified requirements are met. The language of the provision reads as follows:

301.2 The use of the International Plumbing Code may be used in lieu of the Uniform Plumbing Code when approved by the administrative authority. A written request by a Hawaii licensed mechanical engineer with the concurrence of the building or project owner must be made to the administrative authority. The details of this approval shall be recorded and entered in the files of the department. Plans submitted shall be stamped by the Hawaii licensed mechanical engineer. This section shall only apply to a new building or project and shall not be applied in conjunction with an existing building. Provisions of the Uniform Plumbing Code and the International Plumbing Code shall not be combined or interchanged unless approved by the administrative authority. Plans submitted shall clearly state on the submitted title, plumbing and/or mechanical sheets that the International Plumbing Code was used as the basis of design.

The International Association of Plumbing and Mechanical Officials (IAPMO), which publishes the Uniform Plumbing Code, objects to the inclusion of this proposed provision and submitted a Code Amendment Proposal to the SBCC on August 23, 2017, requesting that this provision be deleted. IAPMO provided a list of reasons for the deletion as well as a copy of an

opinion letter from the Attorney General of Washington that advised the Washington Building Code Council that it lacked authority to include such a provision in its state's building code. We decline to follow the Washington Attorney General's opinion because the relevant Washington statutes and the Hawaii statutes are not identical, and the background facts and situations are different.

Applying basic rules of statutory construction, words in a statute are given their usual meaning. *See* Haw. Rev. Stat. § 1-14. Legislative history is consulted if the language of the statute is unclear or ambiguous. *See* Haw. Rev. Stat. § 1-15. If the language is ambiguous, the "reason and spirit of the law, and the cause which induced the legislature to enact it, may be considered to discover its true meaning" and "[e]very construction which leads to an absurdity shall be rejected." Haw. Rev. Stat. § 1-15(2) and (3).

Section 107-25, Hawaii Revised Statutes (HRS), which is the statutory authority for the Hawaii State Building Codes, states, in relevant part:

§107-25 Hawaii state building codes; requirements. There is established the Hawaii state building codes applicable to all construction in the State of Hawaii. The Hawaii state building codes shall be based upon:

-
(2) The Uniform Plumbing Code, as copyrighted and published by the International Association of Plumbing and Mechanical Officials, including its appendices;
-
(6) Code provisions based on nationally published codes or standards that include but are not limited to residential and hurricane resistant standards related to loss mitigation standards in accordance with section 431P-12, elevator, mechanical, flood and tsunami, existing buildings, and onsite sewage disposal.

Haw. Rev. Stat. § 107-25 (Supp. 2016).

Although section 107-25, HRS, lists the UPC as the basis for the plumbing code for Hawaii, the statutory language does not contain a term of limitation, e.g. it does not say that the Hawaii State Plumbing Code can only be based upon the UPC. Further, we can find no evidence in the statute or in the legislative history that the Legislature intended to ban completely the use of another plumbing code if, for some reason, the UPC cannot be used for the particular project.¹ The language of the proposed code provision appears to track similar language in the City's and the counties' codes, which allow the use of the International Plumbing Code (IPC), but only if approved by the administrative authority, and only if the applicant is able to meet specified

¹ Washington's statute states that its building code "shall consist of the following codes" before listing the UPC among other codes.

requirements. We also note that the addition of this provision was approved by the subcommittee of county building officials under section 107-24(b), HRS.

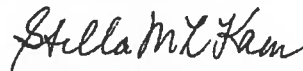
Like the similar code provision found in the plumbing codes of the City and the counties, the proposed code provision was adopted because the counties recognized that there may be circumstances when adherence to the UPC would be inappropriate or unreasonable. The provision's stringent requirements of the applicant and the administrative authority safeguards make clear that this provision is only to be used in unusual circumstances and only upon approval. Only if an applicant can establish to the administrative authority's satisfaction that the IPC is more appropriate for a particular project, and the applicant is able to meet all of the other requirements in the proposed code provision, would the IPC be allowed.

The language of section 107-25, HRS, does not contain any requirement that only the UPC may be used, nor any prohibition that prevents the application of an alternative code; and safeguards were added to the proposed code provision to allow application only in unusual circumstances. In our opinion, allowing the proposed code provision, which only allows an alternative in unusual circumstances and with specified requirements, is the more prudent alternative than an outright ban, which could have unintended consequences and effectively put a halt to a project or could possibly increase costs beyond the available budget.

Finally, we note that subsection (6) of section 107-25, HRS, allows for alternative code provisions "based on nationally published codes or standards" and appears to allow for the proposed code provision at issue. Given the existence of this subsection, it would be an absurdity to say that the IPC cannot be used at all, even when exceptional circumstances as determined by the administrative authority merit use of the IPC and the administrative authority has approved its use.

Based upon the above, it is our opinion that the proposed code provision is within the scope of section 107-25, HRS, and within the SBCC's authority to adopt as part of the State building codes.

Very truly yours,



Stella M.L. Kam
Deputy Attorney General



Committee on Labor & Public Employment

Dear Chairman, Johanson

I'm writing to you about Senate Bill 3006, SD2, Relating to Building Codes.
The IAPMO Group wants to go on record *opposing* this legislation for the following reasons.

- **As written, the proponents of this legislation are seeking to adopt an additional plumbing code, the International Plumbing Code (IPC).**
- **This issue is currently being discussed within the State Building Code Council.**
- **As proposed starting on line 11, “The alternative code shall be more cost effective than the applicable code of trade or area of construction...” The language is very subjective, *who would determine which code is more cost effective?***
- **Contractors and Plumbers are licensed per the Uniform Plumbing Code. If an alternate code is adopted, no one will be licensed to perform the work per the alternative code.**
- **A fiscal note will be needed for SB 3006, SD2 as the State licensing agency will need to be funded to implement tests for contractors and plumbers**
- **Contractors and Plumbers will have to learn installation practices of an alternative code. Inspectors will have to be trained on how to inspect to the alternative code**
- **No other discipline in the state is simultaneously regulated by two different codes; rules; sets of practice**
- **In the code development process and the adoptions of codes at the “local level” stakeholders demand an open, transparent process by the adopting agencies. Adopting a second plumbing code by fiat legislation defies this concept.**
- **Technical Advisory Groups (TAG) are comprised of a broad spectrum of SME’s (Subject Matter Expert) who can vet provisions – these committees and their members are completely excluded since the International Plumbing Code (IPC) will be adopted without any review or amendments as has been done to the 2012 Uniform Plumbing Code (UPC).**
- **The public is disenfranchised by not being permitted to speak on their perspectives regarding the IPC.**



- The UPC has been used in Hawaii since the early 1970's and requires ONE book.
- Journeyman Plumbers and Contractor licensing certify competency by taking exams based on the Uniform Plumbing Code.
- Plumbing Inspectors are certified to the Uniform Plumbing Code.
- Apprenticeship and Journeyman classes are instructed on the plumbing installations based on the UPC.
- The County building department staff will have to become knowledgeable with the inspections required by the IPC and the differences between the IPC and the UPC.
- Any gain sought by the supposed "flexibility" of the IPC is already available by using UPC section 301.3 "Alternate Materials & Methods of Construction Equivalency". Here a Building Official or Plumbing Inspector have broad discretionary latitude.
- This proposal requires acquisition of six (6) additional volumes in order to have the full set of books required to perform all plumbing applications,
 - IPC
 - IRC
 - IBC
 - IECC
 - IFGC
 - IMC
 - Plus NFPA 99 for Medical Gas systems
- The plumbing industry at large does not want a new or additional code regulating their work. This will cause unnecessary "unfunded mandate" to the industry
- The UPC has served the industry and consumers very well and is sufficient for
 - Journeyman plumbers
 - Contractors
 - Engineers & designers of plumbing systems
 - MCA
 - PHCC
 - Trainers of apprentices & journeyman
- Cost – it is prohibitively expensive to have two (2) codes in play for all parties noted above. Bottom line, consumers will pay more...

Thank you for allowing me to submit testimony to SB 3006, SD2.

Dwight Perkins
Sr. VP of IAPMO Field Services
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HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST
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March 22, 2018

HOUSE OF REPRESENTATIVES
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2018

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

AMENDED NOTICE OF HEARING

DATE: Thursday, March 22, 2018
TIME: 9:15 AM
PLACE: Conference Room 309

RE: SUPPORT OF SB 3006, SD2- RELATING TO BUILDING CODES

Aloha Chair Aaron Johanson, Vice Chair Daniel Holt, and members of the Committee on Labor & Public Employment,

The Hawaii Laborers-Employers Cooperation and Education Trust (LECET) is a labor-management partnership between the 5000+ members of the Hawaii Laborers Union and its 250+ unionized contractors.

Hawaii LECET SUPPORTS SB 3006, SD2 which allows state projects to be designed and constructed using an alternative code that is most cost effective to a project, subject to certain conditions, including health and safety.

Building codes are necessary to protect public health, safety and general welfare as they relate to the construction and occupancy of buildings and structures. They dictate how things are built, but when building codes are too strict and causes unnecessary increases in costs (material, labor, etc...), alternative codes should be considered if public health and safety are not compromised.

We understand the proponents of this measure is working on more narrowly defined language. With that said, we would support deletion of the proposed languages in section §107-25 (b) on page 5 of 8, and insert new proposed language in section §107-25 (a) (2) to include the option to utilize the International Plumbing Code (IPC) under certain conditions when approved by the authority having administration jurisdiction.

For these reasons, we ask for your consideration to pass SB 3006, SD2 with proposed amendments.

With respect,

Peter H. M. Lee
Hawaii Laborers-Employers Cooperation
and Education Trust



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HONOLULU, HI 96813
PH: (808) 597-1216

GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

March 20, 2018

Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice-Chair
House of Representatives Committee on Labor and Public Employment
The Twenty-Ninth Legislature, Regular Session of 2018

Chair Johanson, Vice Chair Holt, and Members of the Committee:

SUBJECT: SB3006 SD2 Relating to Building Codes

My name is Gregg Serikaku. I am the Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii. The Association for which I speak is **strongly opposed** to SB3006 SD2.

This bill would permit state projects to be designed and constructed using alternative building codes from what is required under the state model codes subject to certain conditions. These conditions require that:

1. the alternative code is more cost effective than the applicable model code,
2. the prescriptive design of the alternative code does not negatively impact the performance of the project,
3. the alternative code does not negatively impact public safety and health, and
4. the alternative code is approved by the building code council.

While we certainly appreciate the stated intent of this bill, there are many questions about these requirements that need to be addressed:

- Who will be the person or agency responsible for determining whether an alternative code is more cost effective and how will this be substantiated?
- Will cost effectiveness be determined for the initial cost of construction only or will it also include cost of future system maintenance?
- Who will be the person or agency responsible for determining whether the alternative code does not negatively affect the performance of the project and how will this be substantiated?
- Who will be the person or agency responsible for determining whether the alternative code does not negatively affect public health and safety and how will this be substantiated?
- Will there be a thorough review by an independent party for each state project in order to verify that the alternative code meets all of the requirements for use?

Obviously, since every construction project presents different designs, requirements and conditions, there are no blanket answers to these questions, therefore making these determinations will involve significant costly research and detailed comparisons of the model code vs. the alternative code for each project in which the alternative code is being proposed.

There are many other serious considerations specific to the licensed plumbing and electrical trades as follows:

1. The State's licensing divisions utilize the State designated model codes in their testing for both individuals' and contractors' plumbing and electrical licenses. Furthermore, every 3 years, all individually licensed electricians and plumbers must go through a recertification which is largely based on the changes in most recent publication of the designated model codes.

If alternative codes are allowed, what type of requirements will be placed on the licensed contractors and individual tradespersons to insure they understand the proper implementation of the alternative codes and any changes that arise out of newer publications?

2. The largest registered apprenticeship programs in the State of Hawaii for both plumbers and electricians are based on the designated State model codes. These programs require 5 years of schooling and a minimum of 10,000 hours of work experience before apprentices can apply for their license exams.

If alternative codes are allowed, how will the State insure the tradespersons are properly trained in the correct installation of systems under the alternative codes?

3. All of the current designated model codes already have provisions that allow the use of alternative materials and methods of equivalency. These provisions are intended to apply in specific situations for which the model codes cannot reasonably accommodate, and must be reviewed and approved by the authority having jurisdiction to insure there are no concerns with its utilization.

Why is there a need to allow the use of an entirely unvetted alternative codes when there are already provisions in the current model codes that allow for specific limited alternative materials and methods when deemed necessary?

In fact it must be pointed out that when the legislature approved the formation of the State Building Code Council in 2005, the legislators wisely recognized the importance of protecting the licensed plumbing and electrical trades and specifically required that the model plumbing code be based solely on the Uniform Plumbing Code (UPC), and the model electrical code be based solely on the National Electrical Code (NEC), because these were the codes universally utilized by the 2 licensed trades in Hawaii. (Note: These 2 trades are long recognized under HRS 448E as significant trades that require individually licensed tradespersons due to the public health and safety concerns these types of trades entails.)

In closing, we feel that SB3006 SD2 as written creates significant concerns in regards to its implementation. We therefore respectfully urge this committee hold this bill.

Sincerely,



Gregg S. Serikaku
Executive Director

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 348-8885

March 21, 2018

The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair
and members
House Committee on Labor
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Support for SB3006, Relating to Building Codes, and Suggested Amendment

Dear Chair Johanson, Vice Chair Holt, and Members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We support SB3006, Relating to Building Codes, and respectfully request an amendment.

The bill as currently drafted would allow state projects to be designed and constructed using an alternative code that is the most cost effective for a project, subject to certain conditions, including protection of public health and safety.

Since the bill's previous hearing, an opinion from the Attorney General's office to the State Building Code Council was disclosed to the public, which clarifies a few key legal questions relating to a provision in the proposed Hawaii State Plumbing Code – specifically the use of the International Plumbing Code in lieu of the Uniform Plumbing Code when approved by the administrative authority, provided that certain specified requirements are met.

Among the conclusions from the Attorney General's office are:

- “Although section 107-25, HRS, lists the UPC as the basis for the plumbing code for Hawaii, the statutory language does not contain a term of limitation, e.g. it does not say that the Hawaii State Plumbing Code can only be based upon the UPC;”
- “...there may be circumstances when adherence to the UPC would be inappropriate or unreasonable;”
- “In our opinion, allowing the proposed code provision, which only allows an alternative in unusual circumstances and with specified requirements, is the more prudent alternative than an outright ban, which could have unintended consequences and effectively put a halt to a project or could possibly increase costs beyond the available budget.”

Based on the recently-disclosed Attorney General's opinion, we respectfully request that SB3006 be amended to reflect the Attorney General's findings specific to the area of plumbing, to provide for statutory clarity that the International Plumbing Code may indeed be used in lieu of the Uniform Plumbing Code when approved by the administrative authority, provided that certain specified requirements are met.

Therefore, we respectfully request the following amendments be made by your committee as part of an HD1 draft:

- **Striking the original language in SB3006 SD2, from Page 4, Line 6 to Page 5, Line 5.**
- **Inserting the following into Section 107-25 as a new Subsection (2)(A):**

"(2) The Uniform Plumbing Code, as copyrighted and published by the International Association of Plumbing and Mechanical Officials, ~~including its appendices~~; provided that:

(A) The International Plumbing Code, as copyrighted and published by the International Code Council, may be used in lieu of the Uniform Plumbing Code when approved by the administrative authority having jurisdiction provided that:

- (1) A written request by a Hawaii licensed professional engineer with the concurrence of the building project owner must be made to the administrative authority having jurisdiction; and
- (2) The details of this approval shall be recorded and entered in the files of the department; and
- (3) Plans submitted shall be stamped by the Hawaii licensed professional engineer; and
- (4) Where conflicts exist between a code the authority having jurisdiction shall deem which provision in part or whole shall be recognized, approved and enforced; and
- (5) Plans submitted shall clearly state on the submitted title, plumbing and/or mechanical sheets that the International Plumbing Code was used as a basis of the design."

Please do not hesitate to contact me should you have any questions.

Mahalo,



Tyler Dos Santos-Tam
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org

Disposed
2/20/2018

DAVID Y. IGE
GOVERNOR



DOUGLAS S. CHIN
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FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
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(808) 586-1500

October 25, 2017

Gaur Johnson, Ph.D.
Chair
State Building Code Council
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Chair Johnson:

Re: Proposed Section 301.2, Hawaii State Plumbing Code

In its meeting on September 19, 2017, the State Building Code Council (SBCC) requested an opinion from the Department of the Attorney General concerning a provision in the proposed Hawaii State Plumbing Code. The specific provision at issue, section 301.2, would allow the use of the International Plumbing Code in lieu of the Uniform Plumbing Code when approved by the administrative authority, provided that certain specified requirements are met. The language of the provision reads as follows:

301.2 The use of the International Plumbing Code may be used in lieu of the Uniform Plumbing Code when approved by the administrative authority. A written request by a Hawaii licensed mechanical engineer with the concurrence of the building or project owner must be made to the administrative authority. The details of this approval shall be recorded and entered in the files of the department. Plans submitted shall be stamped by the Hawaii licensed mechanical engineer. This section shall only apply to a new building or project and shall not be applied in conjunction with an existing building. Provisions of the Uniform Plumbing Code and the International Plumbing Code shall not be combined or interchanged unless approved by the administrative authority. Plans submitted shall clearly state on the submitted title, plumbing and/or mechanical sheets that the International Plumbing Code was used as the basis of design.

The International Association of Plumbing and Mechanical Officials (IAPMO), which publishes the Uniform Plumbing Code, objects to the inclusion of this proposed provision and submitted a Code Amendment Proposal to the SBCC on August 23, 2017, requesting that this provision be deleted. IAPMO provided a list of reasons for the deletion as well as a copy of an

opinion letter from the Attorney General of Washington that advised the Washington Building Code Council that it lacked authority to include such a provision in its state's building code. We decline to follow the Washington Attorney General's opinion because the relevant Washington statutes and the Hawaii statutes are not identical, and the background facts and situations are different.

Applying basic rules of statutory construction, words in a statute are given their usual meaning. *See* Haw. Rev. Stat. § 1-14. Legislative history is consulted if the language of the statute is unclear or ambiguous. *See* Haw. Rev. Stat. § 1-15. If the language is ambiguous, the "reason and spirit of the law, and the cause which induced the legislature to enact it, may be considered to discover its true meaning" and "[e]very construction which leads to an absurdity shall be rejected." Haw. Rev. Stat. § 1-15(2) and (3).

Section 107-25, Hawaii Revised Statutes (HRS), which is the statutory authority for the Hawaii State Building Codes, states, in relevant part:

§107-25 Hawaii state building codes; requirements. There is established the Hawaii state building codes applicable to all construction in the State of Hawaii. The Hawaii state building codes shall be based upon:

....

(2) The Uniform Plumbing Code, as copyrighted and published by the International Association of Plumbing and Mechanical Officials, including its appendices;

....

(6) Code provisions based on nationally published codes or standards that include but are not limited to residential and hurricane resistant standards related to loss mitigation standards in accordance with section 431P-12, elevator, mechanical, flood and tsunami, existing buildings, and onsite sewage disposal.

Haw. Rev. Stat. § 107-25 (Supp. 2016).

Although section 107-25, HRS, lists the UPC as the basis for the plumbing code for Hawaii, the statutory language does not contain a term of limitation, e.g. it does not say that the Hawaii State Plumbing Code can only be based upon the UPC. Further, we can find no evidence in the statute or in the legislative history that the Legislature intended to ban completely the use of another plumbing code if, for some reason, the UPC cannot be used for the particular project.¹ The language of the proposed code provision appears to track similar language in the City's and the counties' codes, which allow the use of the International Plumbing Code (IPC), but only if approved by the administrative authority, and only if the applicant is able to meet specified

¹ Washington's statute states that its building code "shall consist of the following codes" before listing the UPC among other codes.

requirements. We also note that the addition of this provision was approved by the subcommittee of county building officials under section 107-24(b), HRS.

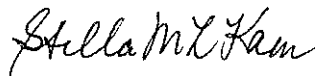
Like the similar code provision found in the plumbing codes of the City and the counties, the proposed code provision was adopted because the counties recognized that there may be circumstances when adherence to the UPC would be inappropriate or unreasonable. The provision's stringent requirements of the applicant and the administrative authority safeguards make clear that this provision is only to be used in unusual circumstances and only upon approval. Only if an applicant can establish to the administrative authority's satisfaction that the IPC is more appropriate for a particular project, and the applicant is able to meet all of the other requirements in the proposed code provision, would the IPC be allowed.

The language of section 107-25, HRS, does not contain any requirement that only the UPC may be used, nor any prohibition that prevents the application of an alternative code; and safeguards were added to the proposed code provision to allow application only in unusual circumstances. In our opinion, allowing the proposed code provision, which only allows an alternative in unusual circumstances and with specified requirements, is the more prudent alternative than an outright ban, which could have unintended consequences and effectively put a halt to a project or could possibly increase costs beyond the available budget.

Finally, we note that subsection (6) of section 107-25, HRS, allows for alternative code provisions "based on nationally published codes or standards" and appears to allow for the proposed code provision at issue. Given the existence of this subsection, it would be an absurdity to say that the IPC cannot be used at all, even when exceptional circumstances as determined by the administrative authority merit use of the IPC and the administrative authority has approved its use.

Based upon the above, it is our opinion that the proposed code provision is within the scope of section 107-25, HRS, and within the SBCC's authority to adopt as part of the State building codes.

Very truly yours,



Stella M.L. Kam
Deputy Attorney General

SB-3006-SD-2

Submitted on: 3/19/2018 10:19:08 PM

Testimony for LAB on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Oppose	No

Comments:

SB 3006

SD-2

LATE

TESTIMONY

DAVID Y. IGE
GOVERNOR



RODERICK BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE BUILDING CODE COUNCIL

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY ON SENATE BILL 3006 SD2, RELATING TO BUILDING CODES

Before the House Committee on
LABOR & PUBLIC EMPLOYMENT

Chair Johanson, Vice Chair Holt, and members of the Committee,

Thank you for the opportunity to submit testimony on S.B. 3006 SD2.

The proponents of this bill have not contacted, nor coordinated, this bill with the State Building Code Council (SBCC). The State Building Code Council (SBCC) recently became aware of this bill and discussed it during the monthly public meeting held on February 20, 2018. In short, the bill proposes modifying HRS 107-25 by adding, "*The State may use alternative building codes for the design and construction of a state project*" with the goal for the alternative code being more cost effective than the model codes listed in HRS107-25 without impacting project performance or public safety and health provided that the alternative code is approved and adopted by the council.

The SBCC offers the following comments for your consideration:

- Prior to the establishment of the SBCC there were only a few years in the history of the State for which all four counties were working from the same building code. This was a problem because the design and construction industry had to keep track of up to four different sets of requirements. As federal requirements to be eligible for FEMA disaster relief grants and the National Flood Insurance Program (NFIP) are tightened it has become more critical that the State keep up to date with the latest nationally recognized building codes.
- Historically, a lack of funding for the two administrative positions Executive Director and Executive Assistant which the SBCC has requested regularly since its inception has been the biggest source of delay for the timely adoption of building code updates.
- Additional resources would be required for the all-volunteer members of the SBCC to also study if alternative codes are more cost effective than the current codes and to study how the use of such alternative codes may impact public safety and health. **At a minimum fully funding the Executive Director and Executive Assistant positions at \$150,000 per year as well as providing an additional \$100,000 per year to allow the SBCC to procure professional services through contracts administered by the Department of Accounting and General Services (DAGS) would be required to accomplish this additional work.**

Resources are needed to consider, amend and adopt another entire set of codes.

- The SBCC was originally setup to facilitate the evaluation and adoption of recent nationally recognized building codes such that all four counties could pool resources and work together to adopt modern, nationally recognized model building codes.
- The SBCC helps to leverage resources from all four counties, state agencies as well as the design and construction industry to adopt a set of nationally recognized codes listed in HRS107-25.
- National model codes, upon which the State Building Codes are based, are currently published on a three-year cycle. The time required of the volunteer members of the SBCC to amend and adopt a single set of codes is already a challenge. The SBCC is not resourced to be able to evaluate more than one set of codes during each three-year code cycle.

Only the Counties issue building permits

- It has been the practice for state funded construction projects to obtain a building permit through the county permitting process. The plan reviewers are trained and know the building codes which have been adopted through their county ordinance. **If wholly different alternative codes were utilized for state projects, what resources would be available to evaluate if the planned construction adequately addresses the provisions of the alternative building codes?**

The goals of the proponents can already be reached

- The expressed goal of the bill is the exact reason national model codes are updated every three years; because over time, “*new technologies, improved materials and methods, and better approaches to public health and safety to meet the needs of communities*” become available through experiences gained during natural disasters, and through construction innovation. If codes weren’t updated, we could not use new more cost-effective technologies and our buildings would never become more resilient to disasters.
- In Hawaii, the SBCC is the venue for any member of the public, or State agency, to propose amendments to the State Building Codes. **During each code cycle, the SBCC adopts amendments to address issues which are unique to Hawaii and are not adequately addressed in the national model codes.** The SBCC encourages the public to participate and offers that chance at the beginning of every meeting it conducts.
- Each amendment is evaluated by the volunteer technical experts on the council who consider both the technical aspects of the amendments with respect to safety, while also considering any cost impacts. Each of the proposed State Building Codes is sent to the Small Business Regulatory Review Board (SBRRB) which requires a small business impact statement which in part speaks to associated costs.
- **Each code that the SBCC has adopted already contains alternate means and methods provisions which allow an owner (or their design professional) to ask the building official to consider items which are not already in the building code.** The building official can evaluate the information / justification provided by the owner and either approve or reject the proposed alternative means or method.

Until funding of the SBCC at levels sufficient to accomplish this new task is available, the SBCC is currently able to review specific targeted code change proposals that can help Hawaii to address it's affordable housing needs and will also ensure public health and safety. The SBCC looks forward to hearing these proposals at any future SBCC meeting.

More information regarding activities of the SBCC can be found at <http://ags.hawaii.gov/bcc/>

Sincerely,

GAUR JOHNSON
Chair, State Building Code Council
state.bcc@hawaii.gov

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Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 22, 2018

TO: HONORABLE AARON JOHANSON, CHAIR, HONORABLE DANIEL HOLT,
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE
ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **SUPPORT AMENDMENTS TO S.B. 3006, SD2, RELATING TO
PROCUREMENT.** Allows state projects to be designed and constructed using an
alternative code that is the most cost effective for a project, subject to certain
conditions, including protection of public health and safety. Effective 7/1/2050.
(SD2)

HEARING

DATE: March 22, 2018
TIME: 9:15 AM
PLACE: Capitol Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

S.B. 3006 proposes to amend Section 107-25, HRS to allow state projects to be designed using an alternative code to ensure flexibility in design, cost and best practices in the design and construction of public buildings without compromising public health and welfare. It is also our understanding that proposed amendments to the bill will narrow its applicability to a particular code to allow alternatives for designers to use.

GCA is in support of the proposed amendments and respectfully request this Committee to pass this measure. Thank you for the opportunity to share our support.