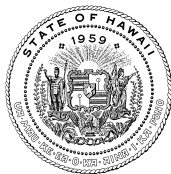


DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

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

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

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

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 3103, S.D. 2, H.D. 1

June 29, 2020
2:00 p.m.
Room 329

RELATING TO A SCHOOL FACILITIES AGENCY

The Department of Budget and Finance (B&F) offers comments on Senate Bill (S.B.) No. 3103, S.D. 2, H.D. 1.

This bill establishes the School Facilities Agency (SFA) to be responsible for all public school development, planning, and construction related to capital improvement projects (CIP) assigned by the Legislature, Governor, or Board of Education. Among other provisions, this bill establishes the School Facilities Special Fund (SFSF) to fund school development, planning, or construction within SFA's jurisdiction and assigns management of school impact fees to SFA. In addition, this bill appropriates an unspecified amount of general funds for FY 21 for establishment of SFA.

B&F has the following comments regarding areas that are not clear in the current draft of S.B. No. 3103:

- How will SFA ensure compliance with Internal Revenue Service regulations related to private activity to maintain the tax-exempt status for school facilities that were funded by general obligation (G.O.) bonds?

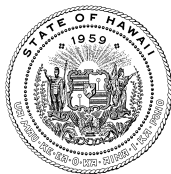
- The Internal Revenue Code (IRC) has certain restrictions on the following transactions with private entities (including for-profit or non-profit organizations, individuals, and the federal government or any of its agencies): a) the direct or indirect loan of tax-exempt G.O. bond proceeds; b) the sale of tax-exempt G.O. bond-financed property; c) the lease or license of bond-financed property (other than leases with a term, inclusive of renewal options, not exceeding 50 days that are negotiated at arm's length for fair market value compensation); and d) contracts for the management or operation of tax-exempt G.O. bond-financed property.
- Additionally, public-private partnership arrangements that transfer operation, control, or use of tax-exempt G.O. bond-financed property to a nongovernmental person must comply with private use restrictions.
- It is noted that most (if not all) school facilities are subject to these private activity restrictions.
- Although H.D. 1 includes a provision that appropriate accounts and subaccounts be established in the SFSF to ensure compliance with the IRC, these accounts alone are not sufficient to ensure compliance.
- How will SFA coordinate with the Department of Education (DOE) on school facility requirements? Who determines what projects are needed? Who sets project priorities in implementation? Who requests funding for school facility projects?
 - Educational program requirements drive school facility needs, but this bill is silent on this critical issue.
 - It is also unclear if SFA or DOE is to request and expend funding for school projects.

- Will SFA's revenue sources be sufficient to issue revenue bonds to finance school facility projects?
 - In order to issue revenue bonds a dedicated and stable revenue stream is necessary that is sufficient to cover debt service requirements, maintain necessary reserves and provide for applicable operational costs.
- Will responsibility for major repairs and maintenance (R&M) be assigned to SFA or remain with DOE?
 - It should be noted that roughly one-half of DOE's current CIP budget is for major R&M projects.

Additionally, as a matter of general policy, B&F does not support the creation of any special fund that does not meet the requirements of Section 37-52.3, HRS. Special funds should: 1) serve a need as demonstrated by the purpose, scope of work, and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. Regarding S.B. No. 3103, it is difficult to determine whether the proposed special fund would be self-sustaining.

Thank you for your consideration of our comments.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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WRITTEN ONLY
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TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 3103, S.D. 2, H.D. 1

June 29, 2020
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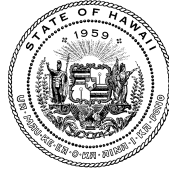
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Thank you for your consideration of our comments.



STATE OF HAWAII
BOARD OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

House Committee on Finance

Tuesday, June 22, 2020
2:00 p.m.
Hawaii State Capitol, Room 329

Senate Bill 3103, Senate Draft 2, House Draft 1, Relating to a School Facilities Agency

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Board of Education ("Board") appreciates the intent of SB3103 SD2 HD1 but has comments. SB3103 SD2 HD1 would establish the School Facilities Agency ("Agency") to be responsible for all public school development, planning, and construction, related to capital improvement projects assigned by the Legislature, Governor, or Board as well as the management of school impact fees.

The Board supports proposed legislation that improves processes and resources for the construction and maintenance of school facilities. To this end, the Board submitted earlier testimony noting its preference for an approach that provides similar exemptions¹ and resources to the Department of Education ("Department") as proposed by previous drafts of this measure for the new Agency rather than the establishment of new, separate agency. The Board noted this preference before the House Committee on Lower & Higher Education removed essentially all major exemptions, which is a significant difference in the HD1 than previous drafts and substantially changes the original concept of this measure. Without the exemptions, this measure becomes primarily about the structure of authority and responsibility over the management of school facilities construction and maintenance.

The Board does not take a position on the fundamental question as to whether the establishment of a separate agency is a better structure that will improve the construction and maintenance of school facilities. If the Legislature determines a separate agency would improve the construction and maintenance of school facilities, the Board requests that this measure:

- Clearly delineates the powers, duties, and responsibilities of the Agency, the Department, and the Board as they relate to public school land and facilities;

¹ Note that the Board does not take a position on the types of exemptions that may be necessary to improve the processes for the construction and maintenance of school facilities. On this matter, the Board defers to the Legislature, Department, and others.

- Maintains the Board's jurisdiction over school facilities by assigning governance authority over the Agency to the Board; and
- Ensures a transition of duties and responsibilities from the Department to the Agency that does not interfere with operations, delay projects, or otherwise negatively affect the ongoing facilities needs of public schools.

Delineation of Powers, Duties, and Responsibilities

While SB3103 SD2 HD1 clearly gives the general responsibility of public school development, planning, and construction to the Agency, the Agency's precise duties and powers to execute its duties and responsibilities are not entirely clear. Further, the Board and Department's powers and responsibilities related to school facilities and lands, if any, are unclear.

The broadest example of unclear powers, duties, and responsibilities lies in the fundamental purpose and role of the Agency as described in proposed new HRS Section 302A-C(a), which states, "Except as otherwise limited by this chapter, the agency shall be responsible for all public school development, planning, and construction related to capital improvement projects assigned by the legislature, governor, or board of education" (Page 2, Lines 11-15). While it is simple enough to deduce that the Legislature would "assign" capital improvement projects to the Agency through legislative appropriations, it is unclear how, and under what authority, the Governor or Board would "assign" capital improvement projects to the Agency. Further, if the Agency is responsible over only capital improvement projects assigned to it, it appears that the Department could continue to retain authority over any other capital improvement projects not assigned to the Agency, but it is not clear what kinds of projects those might be. The lack of clear roles concerning school facilities would likely result in unnecessary redundancies between the Agency and Department, at a minimum, and potentially an outright inefficient use of state funds for the administration of two similar programs.

Moreover, this measure would appear to give broad powers to the Agency, although this too is unclear. SB3103 SD2 HD1 proposes a provision that would allow the Agency to "[d]o any and all things necessary to carry out its purposes and exercise the powers given and granted in this subpart."² Without defining the Board's powers, it appears this measure could give the Agency the power to override the Board's policies whenever it deems appropriate to fulfill its purposes. The Board opposes this provision, as the Board does not support proposed legislation that could diminish the Board's power to formulate statewide educational policy as envisioned and established by Article X, Section 3, of the Constitution of the State of Hawaii.

In addition to the aforementioned broad instances of ambiguity, this measure becomes even less clear when juxtaposed against Hawaii Revised Statutes ("HRS") Chapter 302A. For example, SB3103 SD2 HD1 would allow the Agency to acquire real property³ and lease or gain control over "state lands under the control and management of another department [that] are

² See proposed new HRS Section 302A-C(c), paragraph (16) (Page 6, Lines 14-16).

³ See proposed new HRS Section 302A-C(c), paragraphs (6) and (7) (Pages 3, Line 20 through Page 4, Line 9).

required by the agency for its purposes” (Page 9, Line 18 through Page 10, Line 5). These provisions presumably would allow the Agency to control and manage land. However, it is unclear how these provisions intersect with other existing parts of statute. The following is a non-exhaustive list of statutory provisions that illustrate the Department’s authority over school facilities and land that would seemingly overlap and possibly conflict with the Agency’s authority for which this measure would provide.

- HRS Section 302A-1151 gives the Superintendent approval authority over the sale of lands and facilities “no longer necessary for school purposes[.]”
- HRS Section 302A-1151.1 requires the Department to serve as the “facilitator” of “a pilot program for the lease of public school land, including facilities.” (Note that Section 9 of SB3103 SD2 HD1 (Page 20, Lines 3-9) would transfer the “development, planning, oversight, management, and responsibility of the capital improvement projects authorized by [the Acts that established and subsequently amended this section of statute]” to the Agency without actually amending HRS Section 302A-1151.1, which is confusing and unclear.)
- HRS Section 302A-1506 authorizes the Department to “enter into such contracts, leases, lease-purchase agreements, or other transactions as may be necessary for the acquisition of public school facilities, including any lands for these facilities[.]”
- HRS Section 302A-1506.2 authorizes the Department to “acquire or contract to acquire” any real property “for its immediate or future use for public educational purposes” and “acquire, construct, reconstruct, rehabilitate, improve, alter, or repair any infrastructure or accessory facilities in connection with any project[.]”

Read together with the totality of the statutory chapter, it is not clear how this measure envisions the delineation of the control and management of school facilities and land between the Agency and the Department.

As a final example, Section 6 of SB3103 SD2 HD1 (Page 19, Lines 6-11) would amend most sections within HRS Chapter 302A, Part V, Subpart A, which establishes school impact fees, by “substituting the word “agency”, or similar term, wherever the word “department”, “department of education”, or similar term, appears, as the context requires.” Such a vague declaration for amendments makes it impossible to know the exact statutory changes contemplated by this measure and the effect those changes would have on the powers and responsibilities of the Board, Department, and Agency concerning school impact fees.

Governance

SB3103 SD2 HD1 appears to give governance and oversight of the Agency to the Governor, although the Board possibly still has some decision-making authority in some areas under the Agency’s jurisdiction, such as impact fee districts, for example. The proposed new School Facilities Board would evaluate the Executive Director of the Agency, but it would not have any real authority over the Agency, as it would primarily be an advisory body. The Governor would

appoint both the Executive Director of the Agency and the members of the School Facilities Board. This structure is concerning and potentially ripe for contention.

Under this governance structure, the Department and Agency would be accountable to different bodies and individuals, yet responsibilities and jurisdiction of both entities would undoubtedly intersect and overlap. This measure does not contemplate any mechanism or structure to resolve conflicts in instances where the two agencies disagree and move in opposing directions. The Board is able to serve as the intermediary and ultimate decision maker when necessary to resolve conflicts between the Department, the Hawaii State Public Library System, and the charter school system. Therefore, the Board contends that it should have oversight and governance authority over the Agency similar to the authority it has over the Department, the Hawaii State Public Library System, and the charter school system.

Moreover, the Board believes it should retain its authority over school facilities as an important component of public education. A school is more than just buildings on a campus, and those buildings should meet the school's needs. Recognizing the importance of school facilities to a quality education, the Board recently adopted a policy directing the Department to allocate its facilities resources equitably by accounting for the socioeconomic and academic needs of each school's student population.⁴ Thus, moving authority over school facilities completely out of the public education governance structure is inadvisable.

In addition, with governance authority over both the Department and Agency, the Board could help ensure the transfer of positions, records, and equipment from the Department to the Agency, as envisioned in Section 10 (Page 20, Lines 10-20), to effectuate the purposes of this measure.

Transition

This measure contemplates the establishment of the Agency in the 2020-2021 fiscal year,⁵ which means duties and responsibilities related to capital improvement projects could transfer from the Department to the Agency as early as next school year. The transfer of any duties and responsibilities, however, does not necessarily mean the transfer of Department offices, funds, or positions to the Agency, at least not initially.⁶

The Board is wary of a transition that would place responsibilities on the Agency to execute capital improvement projects in its first year of operations, which is unreasonable and could negatively affect schools and students in the short term. Rather, in its first year, the Agency should focus on hiring personnel, determining its needs, and setting up the rules, policies, and

⁴ Board Policy 301-10, entitled "Equitable Allocation of Facilities Resources," states, "The Department shall strive to ensure that all students have safe, accessible, and supportive school facilities by allocating Capital Improvement Program and repair and maintenance resources equitably, effectively, and transparently. This equitable allocation must take into account the socioeconomic and academic needs of each school's student population."

⁵ See Section 7 (Page 19, Lines 12-15).

⁶ See Section 8 (Page 19, Line 18 through Page 20, Line 2).

procedures necessary to execute its duties and responsibilities. The Board requests that this measure ensures the transition of duties and responsibilities from the Department to the Agency does not interfere with operations, delay projects, or otherwise negatively affect the ongoing facilities needs of schools.

Thank you for this opportunity to testify on behalf of the Board.

Very truly yours,

A handwritten signature in black ink that reads "Catherine Payne". The signature is written in a cursive style with a large, sweeping flourish at the end.

Catherine Payne
Chairperson, Board of Education
Chairperson, 2020 Legislative Ad Hoc Committee



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 06/29/2020
Time: 02:00 PM
Location: 329
Committee: House Finance

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: SB 3103, SD2, HD1 RELATING TO A SCHOOL FACILITIES AGENCY.

Purpose of Bill: Establishes the school facilities agency to be responsible for all public school development, planning, and construction, related to capital improvement projects assigned by the legislature, governor, or board of education. Places management of school impact fees with the agency. Appropriates funds. Effective 7/1/2051. (HD1)

Department's Position:

The Hawaii Department of Education (Department) respectfully offers comments on SB 3103, SD2, HD1. The Department appreciates the legislature's commitment to providing the necessary resources to furnish our schools with appropriate facilities to ensure equitable access to a quality education for our students. The Board of Education (BOE) implemented Policy E-301, which serves as a guiding principle for the Department with regard to its facilities, to ensure that all students have safe, accessible and supportive school facilities.

The Department has made progress in improving its systems and with regard to Repair & Maintenance (R&M) and Capital Improvement Projects (CIP). The implementation of our Job Order Contracting and CIP project tracker demonstrates our commitment to modernizing the way we manage these critical projects. We continue to engage with key stakeholders, such as legislators, to maintain real-time status updates for both R&M and CIP projects and to modernize our systems.

During the current public health emergency, the Department allowed contractors on campus to work on critical CIP projects that could not have otherwise been done had students been on campus. Since March 16, 2020, twelve Job Order Contract roofing projects have been completed.

Enabling the Department to lead the overhaul of its business functions in support of school design would be an important testament to public school empowerment and leadership. The Department will have an incredible opportunity to engage in a community engagement design

process for our campuses, connect innovative school facilities to our school design models, link our structural designs to commercialism opportunities to support entrepreneurship for students, and be a partner in the economic development of Hawaii through student voice. The Department stands ready to work with the legislature to further adjust the processes to improve Department facilities.

Thank you for the opportunity to provide testimony on this measure.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.



SB3103 SD2 HD1
RELATING TO A SCHOOL FACILITIES AGENCY
House Committee on Finance

June 29, 2020

2:00 p.m.

Room 329

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees offer the following **COMMENTS** on SB3103 SD2 HD1, which would establish a School Facilities Agency (SFA) responsible for the development, planning, and construction of capital improvement projects that support our public schools. **OHA expresses great appreciation for the removal of the proposed blanket exemption from Hawai'i Revised Statutes (HRS) Chapters 6E and 343, which could have subverted or completely obviated laws and processes critical to protecting Hawai'i's irreplaceable and invaluable historic sites, iwi kūpuna (ancestral Native Hawaiian remains), and our fragile natural and cultural resources.** To the extent that the proposed SFA would be transferred the authority to oversee capital improvement projects originally granted to the Department of Education (DOE) under Act 272 (Reg. Sess. 2019), OHA does reiterate its prior concerns regarding the 99-year leasing authorities provided for under that Act, to the extent that such long-term leases may effectively foreclose Native Hawaiian claims to "ceded" lands for a century or longer.

1. OHA appreciates the removal of exemptions from Chapter 6E and 343, Hawai'i Revised Statutes.

As an initial matter, OHA appreciates the amendments made in the HD1 draft of this measure, which eliminates proposed exemptions to HRS Chapters 6E and 343, and thereby addresses OHA's primary concerns in opposing this measure's prior drafts.

As OHA noted in its opposition to this measure's previous iterations, HRS Chapter 6E provides critical procedural and substantive protections for our islands' historic properties, including irreplaceable cultural resources and iwi kūpuna. Among other protections, HRS Chapter 6E ensures the referral of proposed projects that could impact historic and cultural resources as well as iwi kūpuna to the State Historic Preservation Division (SHPD) for historic preservation review; such review in turn informs project planning and ensures appropriate expert and stakeholder consultation to avoid or mitigate historic preservation impacts. Chapter 6E also describes processes for the treatment of iwi kūpuna known to be situated in project areas or that may be inadvertently discovered during project development, including notification to law enforcement authorities to determine jurisdiction, as well as consultation with island burial councils and other appropriate stakeholders to help determine a respectful final disposition. **The proposed exemption of SFA projects from Chapter 6E would have resulted in total uncertainty on how SFA projects would identify, mitigate impacts to, and otherwise protect historic**

resources and iwi kūpuna, if at all, and would have further eliminated any legal recourse for even the most egregious and knowingly destructive conduct in SFA projects. OHA accordingly greatly appreciates the removal of the proposed Chapter 6E exemption for SFA projects.

Similarly, OHA had previously noted that HRS Chapter 343 plays a vital role in the preservation of Hawai'i's limited natural and cultural resources, ensuring that decisionmakers consider and take a "hard look" at the potential social, environmental, and cultural impacts of covered projects and actions, and expressly consider alternative actions and project designs that may mitigate such impacts. The Chapter 343 process also provides opportunities for stakeholders, government agencies, the Native Hawaiian community, and the general public to provide valuable information that may be critical to prudent project planning, and that decisionmakers may not otherwise have any knowledge of. While OHA appreciated that the SFA would have been required to develop rules for a substitute process for Chapter 343's requirements, it was unclear whether and how this substitute process would have been beneficial to the SFA's construction efforts, while also ensuring the same level of public review and input as that provided for under existing and well-established HRS Chapter 343 procedures and requirements. **Hastily developed rules that failed to properly ensure an appropriate level of procedural protections and prudent project planning, including commensurate opportunities for public review and input, could have result in a vast range of irreparable, but avoidable, harms to natural and cultural resources as a result of SFA projects.** OHA accordingly also appreciates the removal of the proposed Chapter 343 exemption for SFA projects.

2. Native Hawaiians' unrelinquished and unresolved claims to the "ceded" lands corpus must be accounted for in the issuance of any long-term, multigenerational leases to "ceded" lands, including leases for capital improvement projects overseen by the SFA.

While OHA appreciates the amendments made to this measure, OHA does note that it still holds serious concerns regarding the long-term leasing authority provided to the DOE under Act 272 (Reg. Sess. 2019).

Under the current and previous drafts of this measure, the SFA would appear to adopt the capital improvement responsibilities granted to the DOE under Act 272. OHA did oppose Act 272, insofar as it allowed the DOE to issue 99-year leases for public and potentially "ceded" lands, including but not limited to public land trust lands, taken through the unlawful overthrow of the Hawaiian Kingdom, and to which Native Hawaiians maintain unrelinquished claims. OHA has consistently opposed such long-term, multi-generational leases of "ceded" and public land trust lands, as they may inhibit multiple future generations from ensuring the best and most appropriate use of such lands, can effectively foreclose Native Hawaiian claims to "ceded" lands for nearly a century, and can create a sense of entitlement on the part of lessees that has led and may continue to lead to the alienation of public lands, including "ceded" lands.

Given these concerns, OHA has in this current session and in prior sessions offered potential ways to ensure that long-term leases of “ceded” lands, including but not limited to public land trust lands, can better account for the unrelinquished and unresolved Native Hawaiian claims to such lands. These latter approaches have not been adopted, and OHA notes that Act 272 does not provide any mechanism to otherwise account for Native Hawaiian claims to “ceded” lands that may be subject to 99-year leases.

Mahalo nui for the opportunity to testify on this measure.



HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

Committee: Committee on Finance
Bill Number: S.B. 3103, S.D.2, H.D.1
Hearing Date/Time: Monday, June 29, 2020, 2:00 p.m.
Re: Testimony of the Hawai‘i State Ethics Commission with
COMMENTS ON AND PROPOSED AMENDMENT TO S.B. 3103,
S.D.2, H.D.1, Relating to a School Facilities Agency

Chair Luke, Vice Chair Cullen, and Members of the Committee on Finance:

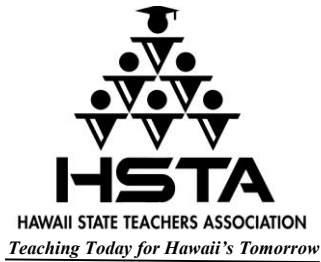
For clarity, the Hawai‘i State Ethics Commission (“Commission”) respectfully suggests that the Committee insert the word “other” on page 12, line 7 (proposed HRS § 302A-F(d)), so that the new text reads: “Subject to chapter 84, but any other law to the contrary notwithstanding....”

The Commission does not believe that this amendment would result in a substantive change to the statutory language, but believes it may help to clarify the Legislature’s intent.

Thank you for your continuing support of the Commission’s work and for considering the Commission’s testimony on S.B. 3103, S.D.2, H.D.1.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

Corey Rosenlee
President
Osa Tui Jr.
Vice President
Logan Okita
Secretary-Treasurer
Wilbert Holck
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON FINANCE

RE: SB 3103, SD2, HD1 - RELATING TO SCHOOL FACILITIES AGENCY

MONDAY, JUNE 29, 2020

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Luke and Members of the Committee:

The Hawaii State Teachers Association **is providing comments on SB 3103, SD2, HD1**, relating School Facilities Agency.

We appreciate the legislature's removal of a majority of the HRS Chapter exemptions. However, we wonder if it was an oversight that one exemption is left that we are concerned with page 3, lines, 14-19, that state:

Through its executive director, appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, **without regard to chapter 76**; provided that the creation of the agency shall not affect existing civil service positions;

We propose deleting “without regard to chapter 76”

Through its executive director, appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, ~~without regard to chapter 76~~; provided that the creation of the agency shall not affect existing civil service positions;

We strongly support the concept to expediently improve our public school facilities to meet 21st century needs and recognize the need for structural change, we cannot support this measure in its current form, as it is still unclear how potential new-hire employees would be affected and protected.

We are concerned with these exemptions to civil service law (HRS 76) and have consistently stated that these exemptions are in direct conflict with Article XVI, Section 1 of the Hawaii State Constitution and state law which establish a merit-based system free from coercive political influences. We can understand that certain administrators or management positions could be “at will,” however we oppose denying employment protections for all other employees.

Thank you for considering Hawaii State Teachers Association comments on this bill, **we hope you will remove the final Chapter 76 exemption that we are concerned with so that we may support this bill.**

TESTIMONY BEFORE THE HOUSE COMMITTEE ON FINANCE

RE: SB 3103, SD2, HD1 - RELATING TO SCHOOL FACILITIES AGENCY

MONDAY, JUNE 29, 2020

MITZIE HIGA, LEGISLATIVE CHAIR

DEMOCRATIC PARTY OF HAWAII LABOR CAUCUS

Chair Luke and Members of the Committee:

The Democratic Party of Hawaii Labor Caucus **is providing comments on SB 3103, SD2, HD1**, relating to School Facilities Agency.

We appreciate the legislature's removal of a majority of the HRS Chapter exemptions. However, we wonder if it was an oversight that one exemption is left that we are concerned with page 3, lines, 14-19, that state:

Through its executive director, appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, **without regard to chapter 76**; provided that the creation of the agency shall not affect existing civil service positions;

We propose deleting “without regard to chapter 76”

Through its executive director, appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, ~~without regard to chapter 76~~; provided that the creation of the agency shall not affect existing civil service positions;

We strongly support the concept to expediently improve our public school facilities to meet 21st century needs and recognize the need for structural change, we cannot support this measure in its current form, as it is still unclear how potential new-hire employees would be affected and protected.

We are concerned with these exemptions to civil service law (HRS 76) and have consistently stated that these exemptions are in direct conflict with Article XVI, Section 1 of the Hawaii State Constitution and state law which establish a merit-based system free from coercive political influences. We can understand that certain administrators or management positions could be “at will,” however we oppose denying employment protections for all other employees.

Thank you for considering the Labor Caucus comments on this bill, **we hope you will remove the final Chapter 76 exemption that we are concerned with so that we may support this bill.**



June 29, 2020

Rep. Sylvia Luke
Chair, Committee on Finance
State Capitol
Honolulu, Hawai'i 96813

RE: SB3103, SD2, HD1 RELATING TO A SCHOOL FACILITIES AGENCY
Hearing Date: Monday, June 29, 2020, 2:00 pm

Dear Chair Luke:

My name is Jeanne Afuvai Schultz, President & CEO of the Hawai'i Institute for Public Affairs (HIPA). HIPA strongly supports SB3103, SD2, HD1 which establishes a School Facilities Agency to be responsible for all public school development, planning, and construction, related to capital improvement projects.

In Hawai'i, public school facilities are inadequate to meet the needs of 21st Century learning. In 2016, the State Department of Education reported that the average age of Hawai'i's public schools is approximately 61 years, of which 53 buildings are over 100 years of age. School facilities more than 50 years old often fail to provide ideal conditions for student learning, including lack of air conditioning, strained electrical systems, stressed Internet access, and questionable safety and security.

A 21st century school includes a full complement of the people, programs and places that support a wide range of personal learning styles and instructional modalities. More recent models for educational delivery include innovative and effective practices like differentiated instruction, cooperative and project-based learning, multiple pathways and other educational strategies. These new strategies call for school designs that include some significant modifications, like more flexible and adaptable floor plan layouts, more advanced technology, improved daylighting and more. These design changes are all part of a new era of twenty-first century school facilities.

Over the years, the Hawai'i State Legislature has adopted legislation which has begun the process for the Department of Education to build 21st century schools, including:

- Act 309 (SLH 2012) established a Special Fund dedicated for 21st Century Schools construction;
- Act 155 (SLH 2013) which established a pilot project program to develop three 21st century schools;

- Act 210 (SLH 2018) which transferred public school lands to the Department of Education, and authorized the DOE to develop underutilized public school lands for joint commercial, educational and community purposes that would further public education;

SB3103, SD2, HD1 is essential for the final phase of a decade's worth of legislation required to aggressively move forward on establishing an agency which has the authority, powers, and capacity to build new 21st century schools for Hawai'i's keiki. The measure creates an independent authority, separate from the DOE, but requires it to collaborate with the department to ensure that teaching and student needs are integrated into school design and facilities.

The school facilities authority would also be responsible for the construction of the much needed pre-K classrooms throughout the state. It is estimated that about 20,000 3- and 4-year olds are without access to early childhood education due to the lack to qualified teachers and available classrooms.

Lastly, SB3103, SD2, HD1 will create thousands of construction jobs needed to build 21st century schools in the upcoming years as we seek to rebuild the Hawai'i economy as a result of the COVID-19 pandemic.

HIPA strongly supports SB3103, SD2, HD1 and encourages the passage of this measure. Thank you for the opportunity to testify on this matter.

Sincerely,

/S/

JEANNE AFUVAI SCHULTZ
President & CEO

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

50 Years of Excellence

2019 - 2020

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Ginny M. Wright
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Honolulu, Hawaii 96814
Ph: (808) 741-4772
Email: gwright@acechawaii.org
Website: www.acechawaii.org

House Committee on Finance

Hearing Date: June 29, 2020, Conference Room 329

Time: 2p.m.

Subject: **SB 3103, HD1 Relating to School Facilities Agency Support, with Suggested Amendment to require the use of Qualification Based Selection in Procuring Professional Service Contracts for Licensees under Chapter 464**

Dear Chair Luke, Vice-Chair Cullen, and Members of the Committee:

The American Council of Engineering Companies of Hawaii (“ACECH”) represents 66 engineering consulting firms with over 1,500 employees throughout Hawaii. ACEC nationally is a strong supporter of long-term investment in modern and efficient infrastructure as a driver of our economy. We are in support this bill to establish a school facilities agency that may improve the delivery of public-school development, planning, and construction.

We are very pleased that the HD1 requires that the proposed school facilities agency be subject to Qualifications-Based Selection (“QBS”), the nationally recognized model procurement code for the procurement of design professional services. QBS protects public interests by providing for the selection of the best qualified design professional for each project. Thus, QBS is essential for public safety.

With the inclusion of QBS, we support this bill.

Thank you for the opportunity to testify to ensure that our schools are designed by the most qualified design professionals and are safe for our keiki and educators.

Testimony of
Pacific Resource Partnership

House Committee on Finance
The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair

SB 3103 SD2 HD1 Relating to a School Facilities Agency

Monday, June 29, 2020
2:00 P.M.
Conference Room 329

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee:

Pacific Resource Partnership (PRP) writes in support of SB3103 SD2 HD1, which represents a collective effort by government and community stakeholders to facilitate the expedited development, planning and construction of Hawaii's public schools.

Hawaii Department of Education (HIDOE) is comprised of 15 complex areas and 256 schools averaging approximately 60 years in age. HIDOE schools require repairs and maintenance that far exceed current funding levels. Most HIDOE educational facilities were originally built to support an instructional model that has since evolved.¹ The State of Hawaii must find new and innovative ways to modernize its educational facilities to enhance the educational outcomes for Hawaii's children and youth. Best practices that have proven successful in modernizing public schools can and should inform our collective goals and efforts.

SB 3103 SD2 establishes a new entity, School Facilities Agency, which will have the power, authority, and expertise to modernize Hawaii's educational facilities in a focused and expedited manner, allowing HIDOE to concentrate its resources on the most important task of educating our children and youth. PRP believes the Schools Facilities Agency model will complement HIDOE's mission and the interaction and cooperation of the two will produce a combined effect greater than the sum of their individual efforts.

There will no doubt be challenges and issues that will need to be addressed in implementing the School Facilities Agency concept, but we should be supportive of new ideas and ways of reaching our goals.

PRP supports SB 3103 SD2 HD1 and respectfully recommends a friendly amendment noting that Chapter 104, Hawaii Revised Statutes, applies to any long-term lease agreement for real property owned by and leased from the state for the purposes of development pursuant to this bill. Thank you for this opportunity to submit written testimony.

¹ Hawaii Department of Education Statewide Facility Master Plan, April 2019



Painting Industry of Hawaii Labor Management Cooperation Trust Fund

Hawaii Tapers Market Recovery Trust Fund

Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889
AFL-CIO Stabilization Trust Fund

&

Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund

Re: The House Committee on Finance
Hearing on Senate Bill 3103, SD2, HD1 Relating To A School Facilities Agency
Date: June 29, 2020
Time: 2:00 p.m.
Location: Conference Room 329

Chair Luke and Members of the Finance Committee:

Thank you for this opportunity to submit testimony on behalf of the Painting Industry of Hawaii Labor Management Cooperation Trust Fund, Hawaii Tapers Market Recovery Trust Fund, Hawaii Glaziers, Architectural Metal Glassworkers Local Union 1889 AFL-CIO Stabilization Trust Fund, and Carpet, Linoleum and Soft Tile Local Union 1926 Market Recovery Trust Fund **commenting** on Senate Bill 3103, SD2, HD1. The aforesaid organizations are labor management cooperation funds between the Painters Union, Tapers Union, Glaziers Union, and Carpet and Soft Tile Layers Union and their signatory contractors.

Senate Bill 3103, SD2, HD1 creates a new school facilities agency that will, among other things, be responsible for all public school development, planning, and construction related to capital improvement projects that are assigned to it by the Legislature, Governor, or Board of Education. Under the HD1 version of this measure, the proposed agency will not be exempt from the state procurement code, Chapter 103D, Hawaii Revised Statutes ("HRS"). The HD1 also adds a member of the Hawaii Construction Alliance to the governing board of the school facilities agency.

The subcontractor listing provision in the procurement code is critical to ensuring that specialty contractors are protected from the undesirable, unethical and harmful practice of bid shopping. With respect to procurement code, we prefer the bill in its current form where there is no Chapter 103D exception. If the Committee is inclined to consider an exemption from the procurement code to the school facilities agency, however, we respectfully ask that it restore the language in the SD2 draft which required subcontractor listing.

Finally, if input from the construction industry is desired on the board of the school facilities agency, we submit that a broader range of construction interests should be involved, instead of only the input of the Hawaii Construction Alliance. This could be accomplished by including a member of the Hawaii Building and Construction Trades on the board.

Thank you again for this opportunity to share our comments and concerns.



TESTIMONY TO THE COMMITTEE ON FINANCE

**Monday, June 29, 2020, 2:00 p.m.
State Capitol, Conference Room 329**

TO: The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
Finance Committee Members

TESTIMONY IN SUPPORT OF SB3103 SD2 HD1 RELATING TO A SCHOOL FACILITIES AGENCY

I am Peter Ho, Chairman, President and CEO of Bank of Hawaii, testifying in support of SB3103 SD2 HD1 relating to the establishment of a School Facilities Agency. As a major employer with more than 2,000 employees across the state, we commend the legislature for its comprehensive, multi-pronged approach to address Hawaii's most pressing economic and social issues. Our state's aging public school buildings and infrastructure continue to be major impediments to better learning. It is critical that our public schools provide the type of innovative classroom designs, digital technologies, and learning environments that will help ensure the future academic success of our students.

This bill would create an independent Schools Facilities Agency to be housed within the DOE, while functionally allowing the DOE to focus on carrying out its most important mission of educating our youth. The Agency would be responsible for all public school development, planning and construction related to capital improvement projects assigned by the legislature, Governor or Board of Education.

The new Agency has the potential to expedite much needed projects to provide the best schools possible. It is a practical and thoughtful approach to help increase efficiencies, which aligns with the vision created by the legislature under the 21st Century Schools Model.

I respectfully encourage your favorable consideration of this measure. Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in cursive script that reads 'Peter Ho'.



Young Progressives Demanding Action
P.O. Box 11105
Honolulu, HI 96828

June 29, 2020
2:00 PM

TO: House Committee on Finance
RE: Testimony Offering Comments on SB3103 SD2 HD1

Aloha Chair Luke, Vice Chair Cullen, Members of the House Committee on Finance,

My name is Jun Shin. I am a Junior at the University of Hawai‘i at Mānoa, and serve as the Environmental Justice Action Committee Chair for the Young Progressives Demanding Action (YPDA). YPDA advocates for public policies that reflect the values of young people throughout the State of Hawai‘i. One of those values is that education is crucial to creating an informed democratic society. YPDA is offering **Comments** to **SB3103 SD2 HD1**, Relating to a School Facilities Agency.

We appreciate the removal of much of the exemptions to the Hawai‘i Revised Statutes, including environmental laws (HRS 343) and laws that protect Native Hawaiian burial sites (HRS 6E). However we are still concerned with page 3, lines, 14-19, that state:

“Through its executive director, appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapter 76; provided that the creation of the agency shall not affect existing civil service positions”

We propose deleting “without regard to chapter 76”. Article XVI, Section 1 of the Hawai‘i State Constitution and state law establish a merit-based system free from coercive political influences. The ability to do the job should be the priority. We can understand that certain administrators or management positions could be “at will,” however we oppose denying employment protections for all other employees.

Thank you for considering Young Progressives Demanding Action’s **Comments** on **SB3103 SD2 HD1**. **Please remove the exemption to HRS 76**. We need to create the best public schools for our keiki.

Mahalo for the opportunity to testify,

Jun Shin,
Environmental Justice Action Committee Chair
Young Progressives Demanding Action (YPDA)
Cell: 808-255-6663
Email: junshinbusiness729@gmail.com
CC: action@ypdahawaii.org



June 29, 2020

House of Representatives
The Thirtieth Legislature
Regular Session of 2020

Committee on Finance
Rep. Sylvia Luke, Chair
Rep. Ty J.K. Cullen, Vice Chair

Date: Monday, June 29, 2020
Time: 2:00 p.m.
Place: Conference Room 329
State Capitol

Testimony on SB3103, S.D. 2, H.D.1 Relating to A School Facilities Agency

By Liz Ho, Administrator
UPW/AFSCME Local; 646 AFL-CIO

HB3103, S.D. 2, H.D.1 establishes the School Facilities Agency (SFA) to be responsible for all public-school development, planning, and construction related to capital improvement projects assigned by the Legislature, Governor, or Board of Education. This bill is an improvement over the previous version HB3103. However, there are areas that require further clarification.

Paragraph 302A-C Powers: generally, states in part that the agency shall be responsible for all public-school development, planning and construction. Repair and maintenance are not mentioned as part of the responsibility of the SFA. However, subparagraphs (6), (8) and (11) pages 4 and 5 respectively, states that "...the agency may...construct, reconstruct, *rehabilitate*, improve, alter...any project. ""

The term "rehabilitate" with respect to building maintenance and repair inherently includes "repair". The language should be clear that the SFA will not and does not perform R&M and rehabilitation on newly constructed DOE facilities. This is the current work performed by the R&M staff and should be applied to any new DOE building constructed with tax monies and government bonds, with all punch list items cleared and subsequently turned over to the State of Hawaii.

According to the American Society of Real Estate Counselors', rehabilitation" ...usually involves repair of all building's basic systems and elements of construction. Repair may include replacement or strengthening of deficient or damaged structural elements. Repair of leaks and damage to roofs and exterior walls, windows, and doors also are typically included."

UNITED PUBLIC WORKERS
AFSCME Local 646, AFL-CIO
Administrator Liz Ho



The UPW supports the concept of improving the facilities of the DOE. This has been the goal for many years. However, the bill will cause confusion in determining what rehabilitation includes and what is the intent of the State. The UPW requests that the bill be clear and that R&M operations of the DOE shall not be privatized. Further, HRS 76 the civil service system should be honored and protected as provided for in the Hawaii State Constitution.

Thank you for the opportunity to share our concerns with HB3103, S.D. 2. H.D.1.

UNITED PUBLIC WORKERS
AFSCME Local 646, AFL-CIO
Administrator Liz Ho

TEL (808) 847-2631 | **EMAIL** Lho@afscme.org | 1426 North School Street, Honolulu, HI 96817

LATE

841 Bishop St., Suite 301
Honolulu, Hawaii 96813



Telephone: 808 926-1530
Contact@HEECoalition.org

Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty Cullen, Vice Chair

June 29, 2020

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee.

This testimony is submitted in **support of SB3103, SD2, HD1.**

HE`E Coalition has been following the issue of our aging school facilities for the past ten years. We strongly support the establishment of a School Facilities Agency, which can be solely focused on the tremendous needs of our school facilities.

States such as New Mexico and Ohio and districts such as New York City have school facilities agencies separate from their education departments that have successfully transformed the development and management of their school facilities systems. They have been able to manage effectively the use of public funds by creating comprehensive standards and transparent processes of how public funds are allocated and for what purpose.

We are also pleased that the School Facilities Agency will have the ability to expand early learning centers to help provide early learning access to families and children who currently do not have these opportunities.

Hui for Excellence in Education, or "HE`E," promotes a child-centered and strength-based public education system in which families, communities and schools are valued and empowered to help every student succeed. HE`E works to bring diverse stakeholders together to harness collective energy, share resources, and identify opportunities for progressive action in education.

Thank you for the opportunity to testify. Our support represents a 75% consensus or more of our voting membership.

Sincerely,

Cheri Nakamura
HE`E Coalition Director



Academy 21
After-School All-Stars Hawai'i
Alliance for Place Based Learning
American Civil Liberties Union
*Castle Complex Community Council
*Castle-Kahuku Principal and CAS
Coalition for Children with Special Needs
Education Institute of Hawai'i
*Faith Action for Community Equity
Fresh Leadership LLC
Girl Scouts Hawaii
Harold K.L. Castle Foundation
*HawaiiKidsCAN
*Hawai'i Afterschool Alliance
*Hawai'i Appleseed Center for Law and Economic Justice
*Hawai'i Association of School Psychologists
Hawai'i Athletic League of Scholars
*Hawai'i Charter School Network
*Hawai'i Children's Action Network
Hawa'i Education Association
Hawai'i Nutrition and Physical Activity Coalition
* Hawai'i State PTSA
Hawai'i State Student Council
Hawai'i State Teachers Association
Hawai'i P-20
Hawai'i 3Rs
Head Start Collaboration Office
It's All About Kids
*INPEACE
Joint Venture Education Forum
Junior Achievement of Hawaii
Kamehameha Schools
Kanu Hawai'i
*Kaua'i Ho'okele Council
Keiki to Career Kaua'i
Kupu A'e
*Leaders for the Next Generation
Learning First
McREL's Pacific Center for Changing the Odds
Native Hawaiian Education Council
Our Public School
*Pacific Resources for Education and Learning
*Parents and Children Together
*Parents for Public Schools Hawai'i
Punahou School PUEO Program
Special Education Provider Alliance
*Teach for America
The Learning Coalition
US PACOM
University of Hawai'i College of Education
YMCA of Honolulu

Voting Members () Voting member organizations vote on action items while individual and non-voting participants may collaborate on all efforts within the coalition.*



**Hawaiian
Electric**

LATE

**TESTIMONY BEFORE THE
HOUSE COMMITTEE ON FINANCE**

S.B. 3103, SD2, HD1

Relating to a School Facilities Agency

Friday, June 29, 2020

2:00 p.m.

State Capitol, Conference Room 329

Written Testimony in Support

Shannon Asato
Treasurer
Hawaiian Electric Company, Inc.

Chair Luke, Vice Chair Cullen, Committee Members,

My name is Shannon Asato and I am testifying on behalf of Hawaiian Electric Company Inc., (Hawaiian Electric Company) in support of S.B. 3103, SD 2, HD1 Relating to a School Facilities Agency.

The Hawaiian Electric Companies believe that one of the foundational elements to building a better Hawaii is investing in our keiki. Hawaiian Electric is supportive of a bill that will create an agency dedicated to planning, designing and constructing modern schools. This should more quickly address facility construction to meet the needs of our students, educators and renewable energy policies. This in turn will build more sustainable communities that will help to preserve our culture while improving our economic future.

Thank you for this opportunity to testify.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Finance
Monday, June 29, 2020 at 2:00 P.M.
Conference Room 329, State Capitol**

LATE

RE: SB 3103 SD2 HD1, RELATING TO A SCHOOL FACILITIES AGENCY

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** SB 3103 SD2 HD1, which establishes the School Facilities Agency to be responsible for all public-school development, planning, and construction, related to capital improvement projects (CIP) assigned by the Legislature, Governor, or Board of Education.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber appreciates the Legislature's work to introduce a package of bills to address cost-of-living and educational issues through a comprehensive and holistic approach. We believe that we all must play a part in allowing Hawaii residents to find brighter futures here at home. The Chamber is committed to contributing to collaborative approaches.

The upkeep and innovation of our public-school facilities is imperative to providing an optimal learning and teaching environment for our students and teachers. Hawaii's public school facilities continue to face a number of infrastructure challenges with some facilities reportedly over 100 years old. These types of facilities do not often provide ideal conditions for student learning. This bill would help to provide mechanisms to process CIPs in a timely manner in order to address these challenges.

The Chamber also recognizes the financial toll that the current COVID-19 pandemic has caused on our State's budget and the impact it will have on the way that our education system will operate moving forward. We are hopeful that the State Legislature will be able to continue to move this bill in order to provide much needed support to improve our classroom needs. As learning and student skillsets evolve, it is imperative that their learning environments evolve with them. This bill will give educators and students the tools that they deserve to ensure that our public schools are living up to their promise to our keiki.



Thank you for the opportunity to testify.

LATE

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: House Committee on Finance

From: Cheryl Kakazu Park, Director

Date: June 29, 2020, 2:00 p.m.
State Capitol, Conference Room 329

Re: Testimony on S.B. No. 3103, S.D. 2, H.D. 1
Relating to Education

Thank you for the opportunity to submit testimony on this bill, which would establish a School Facilities Agency to be responsible for all public school development, planning, and construction. The Office of Information Practices (OIP) takes no position on the substance of this bill, **but questions why the proposed policy-making School Facilities Board would be allowed to form subcommittees that would not be required to follow the usual requirements under part I of chapter 92, the Sunshine Law.**

By default, a subcommittee of a board must follow the same Sunshine Law requirements as the full board, meaning that they must provide public notice of their meetings, accept public testimony, open the meetings to the public unless the law allows a closed meeting, and keep minutes of those meetings. As an alternative to creating a subcommittee, a Sunshine Law board also has the option to use a permitted interaction set out in section 92-2.5(b), HRS, which would allow board members to talk together outside a meeting if the board has created a temporary group of less than a quorum of its members to look into a specific area before reporting back to the full board. This temporary group, sometimes called a

permitted interaction group or “PIG,” will essentially dissolve after reporting back, and the board must wait to discuss or take action until the next meeting after the PIG’s report, which allows the public an opportunity to testify on the PIG’s report and recommendations before the full board considers it.

The permitted interaction proposed by this bill would allow the School Facilities Board to create subcommittees of less than a quorum of the board that do not follow the Sunshine Law’s requirements as a subcommittee normally must, and also are not subject to the constraints a PIG normally must operate within. There can be instances in which a Sunshine Law board is appropriately given a board-specific permitted interaction that basically allows less than a quorum of its members to talk outside a meeting – for instance, where a board dealing with relatively fine-grained issues is completely or mostly made up of government employees who must discuss the same issues before the board as part of their regular jobs. The subcommittee proposed in this bill, however, will be charged with setting policy regarding the relatively broad topic of public school facilities and will be made up mainly of gubernatorial appointees, so it is not clear why a permitted interaction would be appropriate here.

OIP therefore recommends that this Committee either (1) explain in its Committee Report on this bill why it finds that the School Facilities Board’s workgroups or subcommittees should be excused from the Sunshine Law requirements normally applicable to subcommittees of a board, **or (2) delete the language, at bill page 8 line 18 through page 9 line 2,** that allows such workgroups or subcommittees to operate as a permitted interaction.

Thank you for considering OIP’s testimony and recommendation.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 3103, S.D. 2, H.D. 1, RELATING TO A SCHOOL FACILITIES AGENCY.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

LATE

DATE: Monday, June 29, 2020

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Melissa J. Kolonie,
Deputy Attorney General, at 586-1255)

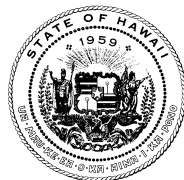
Chair Luke and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of this bill are to: (1) establish the School Facilities Agency (Agency) to be responsible for public school development, planning, and construction related to capital improvement projects assigned by the Legislature, Governor, or Board of Education; (2) establish the School Facilities Board to oversee the Agency; and (3) transfer to the Agency certain Department of Education functions related to construction.

Page 2, lines 18-20, of the bill, requires the Agency to give preference to construction bids submitted by a contractor or subcontractor domiciled within the State. This raises a potential issue under the Equal Protection clause and the Privileges and Immunities clause of the United States Constitution. We recommend amending this provision to include a limitation on how the Agency prioritizes local businesses by inserting a specific bidding preference percentage.

Thank you for the opportunity to provide comments.



STATE OF HAWAII
HAWAII STATE PUBLIC LIBRARY SYSTEM
OFFICE OF THE STATE LIBRARIAN
44 MERCHANT STREET
HONOLULU, HAWAII 96813



HOUSE COMMITTEE ON FINANCE
Monday, June 29, 2020
2:00 pm
State Capitol, Room 329

By Stacey A. Aldrich
State Librarian

S.B. 3103, S.D.2, H.D.1 Relating to a School Facilities Agency

To: Chair Sylvia Luke
Vice Chair Ty J.K. Cullen
Members of the House Committee on Finance

The Hawaii State Public Library System (HSPLS) appreciates the opportunity to provide comments related to S.B. 3103, S.D.2, H.D.1, which proposes to establish a new School Facilities Agency (SFA) for the purpose of managing all public school development, planning and construction, related to capital improvement projects assigned by the legislature, governor, or board of education.

HSPLS appreciates the amendments that were included to ensure that the proposed SFA will work with HSPLS for those projects that may impact HSPLS operations directly, particularly where libraries are located in close proximity to public schools and their construction projects.

HSPLS also notes that there is no position named "...deputy state librarian of the department of education" as referenced in the bill, Section 2, page 15, lines 10-11.

Thank you for the opportunity to provide comments on this measure and your continued support of the Hawaii State Public Library System.

LATE

SB-3103-HD-1

Submitted on: 6/29/2020 9:27:34 AM

Testimony for FIN on 6/29/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Meredith Buck	Individual	Oppose	No

Comments:

Dear Chair Woodson, Vice Chair Hashem, and Members of the Lower and Higher Education Committee,

Please OPPOSE SB3103. While I support addressing our school facility needs, an agency exempt from procurement, environmental, and historic preservation laws will invite far more harm than good. These laws keep our children safe, uphold the trust of taxpayers, and stop the outright desecration of all ancestral remains, Native Hawaiian or otherwise. Such a controversial measure should NOT be passed in light of the limited opportunity for public participation and dialogue over its final amended form. Please do not vote for its passage and HOLD SB3103 in committee.

Thank you,
Meredith Buck