

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
BONNIE KAHAKUI
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
WAYS AND MEANS
February 19, 2020m, 10:00 AM

SB 3103, SD1
RELATING TO SCHOOL FACILITIES AGENCY

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee, thank you for the opportunity to submit testimony on SB 3103 SD1. The State Procurement Office (SPO) opposes the language that would allow the School Facilities Agency to be exempt from HRS §103D, the Hawaii Public Procurement Code (Code), for the development, planning, and construction of public schools.

In general, construction projects exempt from the Code can be very problematic in maintaining public trust in the process. In 2010, Act 82, granted the Board of Regents or the University of Hawaii an exemption from the Code for construction projects. The processes developed were controversial and perceived as subjective and unfair, and as a result, the legislature repealed the president's authority as the chief procurement officer for construction and professional services, construction related, contracts. Those duties were undertaken by the Administrator of the State Procurement Office, pursuant to Act 87, SLH 2013.

It was not until eight years later, in 2018, pursuant Act 42, SLH 2018, that full authority was restored to the University of Hawaii President to act as the Chief Procurement Officer for all procurement contracts under HRS §103D. The Code is time tested, and as a result, the SPO has strong concerns exempting the agency from the procurement code (Section 1, page 2, lines 16-17).

Recommendation:

One of the reasons the procurement of construction and repairs and maintenance is delayed, is because currently, the 21 Chief Procurement Officers in the State of Hawaii do not have the authority to exempt construction procurement on a case-by-case basis. This frustrates government action because often times there are situations where an additional minor scope

change is found but is unable to be added to the incumbent already working the site, and a whole new procurement must be made.

While SPO opposes an outright exemption of all DOE construction, it does support giving that authority to the CPO, the Superintendent in this case, to decide on a case-by-case basis which construction procurements should be exempt based on when it is not practicable or advantageous to competitively procure. This would save the State both time and money.

In order to achieve this flexibility, SPO recommends the following **statute change**:

AMEND section: §103D-102 Application of this chapter.

Amend §103D-102(b)(4) to “To procure the following goods or services, or construction which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State.”

AMEND section:

§103D-102 Application of this chapter.

Amend §103D-102(b)(4)(L) to “Any other goods, or services, or construction which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State;” There may be instances when a construction procurement is in a situation where it is not practicable or advantageous to be competed.

Thank you.

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Wednesday, February 19, 2020
10:00 AM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 3103, SENATE DRAFT 1
RELATING TO A SCHOOL FACILITIES AGENCY**

Senate Bill 3103, Senate Draft 1 proposes to establish a Schools Facilities Agency (Agency) to be responsible for all public school development, planning, and construction, related to capitol improvement projects assigned by the Legislature, Governor, or Board of Education. **The Department of Land and Natural Resources (Department) offers comments and recommends an amendment.**

Section 302A-C(b), Hawaii Revised Statutes (HRS), of this measure proposes to exempt the projects of the Agency from Chapters 6E, 343, as well as a number of other chapters in the HRS. For all of the exempted chapters except Chapter 6E, HRS, Senate Bill 3103, Senate Draft 1 proposes to provide statutory protection, or the Agency is required develop initiatives that ensure protections consistent with the exempted chapter. Regarding Chapter 343, HRS, it specifically requires the Agency to adopt rules “that provide substantially similar protections to those required by chapter 343;...”.

Senate Bill 310,3 Senate Draft 1 proposes to provide the Agency with a blanket exemption from Chapter 6E, HRS, making no provision for the purpose, intent, and requirements of Chapter 6E, HRS. As currently proposed, the Agency is not required consider the historic properties, including burial sites, that may be affected by its projects. Thirty-six public schools are listed in the national register of historic places. In addition, some public schools that are not on this list of 36 nationally recognized historic properties are historically significant. The Chapter 6E, HRS, exemption would allow the Agency to alter, damage, or even demolish those historic properties without any consideration of their historical importance. This exemption makes it highly likely

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

that important historic properties, including burial sites will be altered, damaged, or destroyed by agency projects.

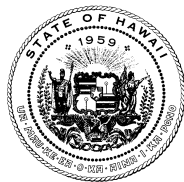
Chapter 6E, HRS, provides the only statutory basis for the rules and procedures protecting and treating Hawaii's significant historic properties, and historic burials, native and non-native alike. As currently, drafted, Senate Bill 3103, Senate Draft 1 provides for no consideration of historic properties and historic burial sites in project planning; and provides no guidance on what will happen if historic properties and/or burial sites are encountered during project implementation.

The Department recommends that Senate Bill 3103, Senate Draft 1 be amended to delete the Chapter 6E, HRS, exemption for agency projects.

If the Senate Committee on Ways and Means feels that exemption from Chapter 6E, HRS is warranted, the Department recommends that Senate Bill 3103 Senate Draft 1 be amended (underscored) to read as follows, on page 2, beginning at line 16:

(b) The projects of the agency shall be exempt from chapter 6E, 37, 76, 103, 103D, and 343 and all county ordinances except the respective building codes; provided that the agency shall adopt rules that provide substantially similar to the protections required by chapter 6E; provided further that the agency shall establish and publish transparency initiatives as prescribed by the agency to ensure that the public is properly informed of its activities, to deter fraud and...

Thank you for the opportunity comment on this measure.



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

SENATE COMMITTEE ON WAYS AND MEANS
Wednesday, February 19, 2020
10:00 am
State Capitol, Room 211

By Stacey A. Aldrich
State Librarian

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

To: Chair Donovan M. Dela Cruz
Vice Chair Gilbert S.C. Keith-Agaran
Members of the Senate Committee on Ways and Means

The Hawaii State Public Library System (HSPLS) appreciates the opportunity to provide comments related to S.B. 3103 S.D.1 for the Committee's consideration.

S.B. 3103 proposes to establish a new School Facilities Agency (SFA) for the purpose of managing all planning, development and construction related to capital improvement projects, as assigned. The new SFA would report to a newly established appointed school facilities board. The S.D.1 includes new subsection 302A-C(d) which would require a new school facilities agency to consult with HSPLS on construction or renovation projects prior to approval where public libraries are adjacent or on school campuses.

We appreciate the new proposed subsection 302A-C(d) to address HSPLS concerns related to construction and renovation projects adjacent or on public and school libraries. We respectfully request a further clarifying amendment to also state that the agency shall continue to work with HSPLS during the construction work to mitigate impacts to the public and HSPLS operations.

Throughout the State, there are 12 "public and school libraries" that are located on or adjacent to school campuses, as well as other libraries that were built in close proximity to school campuses, such as the Salt Lake-Moanalua Public Library. Most of the public and school libraries were built in the 1970's and most were located on the neighbor islands: six are located on Hawaii (Keaau, Mountain View, Laupahoehoe, Pahala, Pahoia, Thelma Parker); three are located on Oahu (Ewa Beach, Kahuku, Waimanalo); one is located on Kauai (Koloa); one is located on Maui (Hana); and one is located on Lanai.

At the time the 12 public and school libraries were built, the State Librarian reported to the Superintendent of the Department of Education (DOE). However, with the adoption of Act 150, Session Laws of Hawaii 1981, the State Librarian now reports directly to the Board of Education (BOE), and the Public Library System is not a part of the Department of Education.

The Hawaii State Public Library System is responsible for the complete management and maintenance of library properties. Because we are a separate space on or adjacent to DOE property, we do face challenges. Over the last several years, sometimes school construction projects at or near our libraries have negatively impacted library operations and the public's access to the library. In some cases, there is a temporary loss of power, water, internet connectivity and building access. In other cases, there is a more prolonged impact on our operations, such as loss of a substantial portion of our parking lot during the entire construction period or the temporary relocation of our telephone lines.

HSPLS has done our best to accommodate the DOE when they have construction projects nearby; however, the lack of predictability and control over circumstances during construction projects means that there will likely be impacts to HSPLS operations during future school construction. We appreciate the Legislature's support for the Hawaii State Public Library System and are willing to work with a new agency that would handle public school facility construction to minimize disruption to the community's use of public library services, programs and spaces in these joint locations.

Thank you for the opportunity to testify on this measure.



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

Date: 02/19/2020

Time: 10:00 AM

Location: 211

Committee: Senate Ways and Means

Department: Education

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

Title of Bill: SB 3103, SD1 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. (SD1)

Department's Position:

The Hawaii Department of Education (Department) respectfully offers comments on SB 3103, SD1. 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.

One of the challenges in maintaining and upgrading our current facilities in a timely manner is the lack of flexibility provided to the Department in statute. The current draft of SB 3103, SD1 proposes to exempt the new School Facilities Agency from a number of statutory requirements, which will ensure the flexibility that the Department currently lacks to provide the optimal response to the many needs facing Department facilities. If these same exemptions were permitted to the Department, it would allow for a more efficient and effective process.

The Department is currently engaged in exciting and innovative initiatives to improve the management and effective utilization of our facilities. The Department continues its work relative to HRS 302A §1151.1, Pilot Program for Lease of Public School Land (Act 155). The BOE recently approved Kaimuki High School and its property at 475 22nd Avenue as pilot sites

for the Department's implementation of Act 155. Our intention is to leverage these sites to enable the Department to facilitate the modernization of existing facilities that will help to inspire pride and respect amongst the student body and faculty. We hope that this will also set an example for other Act 155 projects to follow and further transition the facilities at other campuses across the state into 21st Century Schools that provide greater equity and access to quality education.

Also worth highlighting is the progress the Department has made 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.

Enabling the Department to lead this overhaul of its business functions in support of school design is an important testament to public school empowerment and leadership. If granted the flexibility proposed for the State Facilities Agency in SB 3103, SD1, the Department will be better able to effectively address school facility needs. 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.

DAVID Y. IGE
GOVERNOR



LATE

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
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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 SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 3103, S.D. 1

February 19, 2020
10:00 a.m.
Room 211

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. 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 \$1,500,000 in 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:

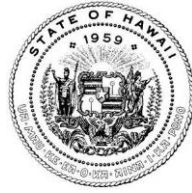
- How will SFA ensure compliance with Internal Revenue Service regulations related to private activity to maintain the tax-exempt status for school facilities that were funded by general obligation (G.O.) bonds?

- 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 S.B. No. 3103, S.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?
 - Educational program requirements drive school facility needs, but this bill is silent on this critical issue.
- How will SFA be funded regarding: 1) school facility projects; and 2) staffing and operational expenses?

- This bill exempts SFA projects from Chapter 37, HRS, which governs the budgeting and allotment processes for State agencies, but it is silent on how SFA is to request and expend funding for school projects and its operations.
- 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.

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, S.D. 1, it is difficult to determine whether the proposed special fund would be self-sustaining.

Thank you for your consideration of our comments.



LATE

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

Testimony of Linda Chu Takayama
Chief of Staff, Office of the Governor of Hawaii

Before the
Senate Committee on Education
February 19, 2020
10:00 a.m., Conference Room 211

In consideration of
Senate Bill 3103 SD1
RELATING TO A SCHOOL FACILITIES AGENCY

Chair Dela Cruz, Vice Chair Keith-Agaran, and committee members:

On behalf of Governor David Ige, thank you for the opportunity to provide comments on Senate Bill 3103 SD1. This 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.

The Governor fully appreciates and joins with the Legislature on programs to improve school facilities. Therefore, we strongly support the bill and recognize the significant need for all of our keiki and families to have access to a high-quality learning environment that will give our keiki the head start that they for a successful future.

The administration further acknowledges the benefits of tasking an independent authority to facilitate municipal construction to make the best use of limited state resources appropriated by the Legislature. Moving quickly to give our keiki the greatest advantage requires nimbleness and a willingness to embrace innovation and new ideas – both of which can be achieved by an independent School Facilities Agency.

Again, we strongly support this legislation. Thank you for your consideration.

LATE

OFFICE OF INFORMATION PRACTICES

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TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Ways and Means

From: Cheryl Kakazu Park, Director

Date: February 19, 2020, 10:00 a.m.
State Capitol, Conference Room 211

Re: Testimony on S.B. No. 3103, 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 has comments regarding a provision that would allow the proposed School Facilities Board 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 9, lines 12-17,** that allows such workgroups or subcommittees to operate as a permitted interaction.

Thank you for considering OIP’s testimony and recommendation.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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info@civilbeatlawcenter.org

Senate Committee on Ways and Means
Honorable Donovan M. Dela Cruz, Chair
Honorable Gilbert S.C. Keith-Agaran, Vice Chair

**RE: Testimony Commenting on S.B. 3103 S.D. 1,
Relating to a School Facilities Agency**
Hearing: February 19, 2020 at 10:00 a.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit comments on S.B. 3103 S.D. 1.

As a practical matter, all substantive policy work of the School Facilities Board will occur in secret if subcommittee and working group discussions all occur outside the Sunshine Law. Such an exemption is antithetical to the principles of transparency that Hawai`i has embraced for decades.

In response to testimony from the Law Center and the State of Hawai`i Office of Information Practices raising questions about the permitted interaction for the School Facilities Board, the Committee on Education made an amendment intended to “[m]ak[e] the School Facilities Board subject to the State sunshine law.” S. Stand. Comm. Rep. No. 2878. Unfortunately, the amendment only confuses the issue further.

The Law Center agrees with the prior testimony by OIP recommending either (1) a committee report explain why the Board’s subgroups should not be required to comply with the Sunshine Law; or (2) deletion of the “permitted interaction” for the Board’s subgroups. Absent some compelling explanation for exempting these groups from open meetings requirements, the Law Center would support deletion.

To be clear, a “permitted interaction” exempts the designated group from the Sunshine Law – usually imposing alternative requirements to protect the public interest. But the bill proposes to exempt the Board’s subgroups from any requirements. Unlike most other permitted interactions under the Sunshine Law, the bill does not impose any restrictions or reporting requirements on the subgroups. The subgroups would be permitted to deliberate toward decision and make voting commitments outside the public eye without notice and without receiving any community testimony. Nothing about these meetings would be publicly reported.

As OIP explained in its prior testimony, the Board's subgroups would have options for permitted interactions under existing law to consult with experts and make recommendations *without the full limitations of the Sunshine Law*—pursuant to HRS § 92-2.5(b)(1).¹ To protect the public interest, however, that permitted interaction requires that the subgroup publicly report its findings and recommendations and that all deliberation and decision-making occur at a properly noticed meeting that is subject to the full Sunshine Law requirements.

Thank you again for the opportunity to provide comments on S.B. 3103 S.D. 1.

¹ The Law Center considers certain procedural aspects of the HRS § 92-2.5(b)(1) permitted interaction cumbersome for boards and has suggested streamlining the process. But such concerns should be addressed for the Sunshine Law generally, not as to particular boards.



HAWAI'I COMMUNITY
FOUNDATION

February 17, 2020

Senate Committee on Ways and Means
Hearing: 10:00 a.m. February 19, 2020
Hawaii State Capitol Room 211

Re: SUPPORT for SB 3103, SD1, Relating to School Facilities

Aloha Chair Dela Cruz, Vice-Chair Keith Agaran and members of the committee:

The Hawaii Community Foundation supports SB 3103, SD1, relating to school facilities. This bill establishes the School Facilities Agency which will be responsible for all public school development, planning, and construction, related to capital improvement projects assigned by the Legislature, Governor, or Board of Education. It places management of school impact fees with the agency and appropriates funds.

We recognize that problems that are big and complex require people from across all sectors who believe in the power of collective action to work together toward shared goals. Hawaii Community Foundation has identified the establishment of a school facilities agency as an important step toward addressing significant community needs.

Please advance this measure.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the Senate Committee on Ways and Means
Wednesday, February 19, 2020 at 10:00 A.M.
Conference Room 211, State Capitol**

RE: SB 3103 SD1, RELATING TO A SCHOOL FACILITIES AGENCY

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** SB 3103 SD1, 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.

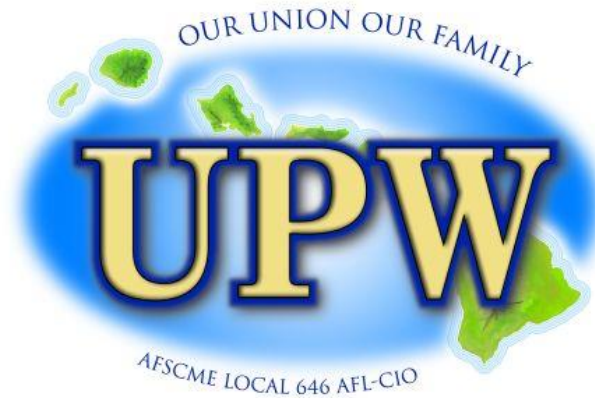
The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business 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.

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.



THE HAWAII STATE SENATE

The Thirtieth Legislature
Regular Session of 2020

Committee on Ways and Means

Senator Donovan Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Date of Hearing: Wednesday, February 19, 2020
Time of Hearing: 10:00 a.m.
Place of Hearing: Conference Room 211
State Capitol
415 South Beretania St.

Testimony on SB3103 SD1 School Facilities Agency

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive bargaining representative for approximately 13,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and four counties. The UPW also represents about 1,500 members in the private sector.

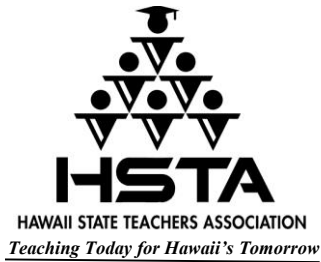
SB3103 SD1 establishes the School Facilities Agency to be responsible for all public-school development, planning and construction related to capital improvement projects assigned by the Legislature, Governor or Board of Education. Specifically, Paragraph 32A-C Powers; generally, (b) states that "The projects shall be exempt from chapter...76..."

The UPW is strongly opposed to this exemption. The Hawaii State Constitution Article XVI Civil Service requires the State to establish and maintain a civil service system based on the merit principle. "The merit principle is the selection of persons based on their fitness and ability for public employment and retention of employees based on their demonstrated appropriate conduct and productive performance. It is also the purpose of this chapter to build a career service in government, free from coercive political influences, to render impartial service to the public at all times, according to the dictates of ethics and morality in compliance with all laws.

The School Facilities Agency will be a government agency, "a public instrumentality of the State" with government funding and subject to appropriate existing laws. To by-pass the civil service laws is privatization at its fullest and contrary to the Konno decision. There exist civil service workers that perform repair and maintenance work for the DOE and other departments. This bill deprives these workers of the policies prescribed by HRS76-1, (1) equal opportunity and non -discrimination; (2) impartial selection, (3) incentives and promotions;(4) reasonable job security, contractual grievance procedures and internal complaint procedures; (5) equal play for equal work and (6) the use of advanced technology.

The UPW respectfully requests deletion of the exemption of HRS 76 language in the bill to allow existing civil service workers and future civil service workers advancement opportunities, training, experience, career development and compliance with HRS 76 provisions as the Hawaii Constitution intended.

Thank you or the opportunity to submit this testimony.



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 SENATE COMMITTEE ON WAYS AND MEANS

RE: SB 3103 - RELATING TO SCHOOL FACILITIES AGENCY

WEDNESDAY, FEBRUARY 19, 2020

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

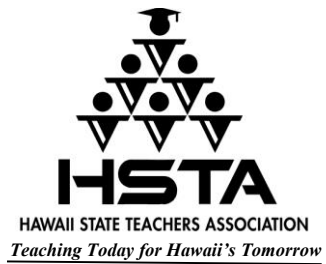
Chair Dela Cruz and Members of the Committee:

The Hawaii State Teachers Association **is providing comments on SB 3103, SD1,** relating School Facilities Agency.

The Hawaii State Teachers Association stands with HGEA and opposes specific portions of S.B. 3103, SD1 that establishes the School Facilities Agency to be responsible for all public school development, planning, and construction capital improvement projects as assigned by the Legislature, Governor, or Board of Education.

While 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 unclear how existing unionized employees and potential new-hire employees would be affected. There are 140 employees in the Department of Education Office of Facilities and Operation, including architects, planners, building inspectors, and engineers, who may be adversely impacted by the creation of the School Facility Agency (SEA). While Section 6 of S.B. 3103, SD1, specifically states that this measure shall not be construed to transfer positions from the DOE to the SEA, it is still unclear which employees will carry out the duties of the agency.

Additionally, we stand with HGEA and other unions and strongly oppose all blanket exemptions to civil service law 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.



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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

Thank you for considering Hawaii State Teachers Association comments on this bill,
we cannot support it fully in its current form.



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 211
WEDNESDAY, FEBRUARY 19, 2020 AT 10:00 A.M.**

To The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran Vice Chair; and
Members of the Committee on Ways and Means,

COMMENTS ON SB3103 RELATING TO A SCHOOL FACILITIES AGENCY

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, with approximately 650 members. I am writing share our comments on SB3103.

While the goals for this bill are not included in the language, it appears that this bill was introduced to help streamline the process and bring in broader industry representation through the board to help reduce costs, expedite and modernize facilities building. It also appears that the state will then separate out related funding and expenditures to go directly towards the new agency and private donations could be added to state funding. We appreciate the intent of this bill.

As currently the function of public school planning, development and construction resides within the Department of Education, we ask that these related positions and funding will then be taken out of the DOE and moved to the new agency so there is no redundancy between the DOE and agency. This should not increase costs or add additional positions.

Further, we have always supported an independent audit of the DOE and feel that more funding should be going to the classroom and facilities level. We believe there is room in our current system to make some needed changes. We do not want to see an expansion of funding should this bill be passed unless an independent audit is conducted first.

We appreciate the opportunity to testify on this matter.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



1003 Bishop St. Suite 1975
Honolulu, Hawaii 96813
(808) 942-7474

To: Honorable Donovan Dela Cruz, Chair of Ways and Means and
Senator Gilbert Keith-Agaran, Vice Chair

From: Lorraine Minatoishi, Ph.D., AIA

Hearing: Committee on Ways and Means, Feb 19, 2020, 10:00AM in Room 211.

Subject: **Opposition to SB3103SD, Relating to School Facilities**

Dear Chair Dela Cruz,

I am in **opposition** to Bill SB3103SD.

I am an architect and have worked with the Department of Education on several design and construction projects.

In years past, design and construction was under DAGS, and it was determined that the Department of Education should have its own amount of autonomy and make its decisions with the Superintendent of School at the helm. They believed that schools should decide what is important to the students and teachers in the way of buildings and maintenance. It is not a perfect system. But building and maintenance is not easy.

This new agency that would have the power to make decisions autonomously is against what the DOE is all about. Also, I don't see how creating yet another agency will make buildings better or maintenance smoother without costing students' health and welfare.

Why should our schools- institutions that should be the beacon of doing things the correct and proper way, be literally built on de-regulation and lack of oversight? What does this say to our children? Either it says that they don't matter, or it is okay to not follow rules. These rules have been set by our state for a reason. They protect the public good. It is not only a very scary statement to our children but it may endanger our children.

Also, all the additional allowances of the agency is also unacceptable- alter by-laws, make agreements without oversight, condemn properties, etc. etc.

I am an architect with the AIA and am on several volunteer committees that provide regulation oversight and engagement. Creating a type of agency that would have the power to make important design and building decisions without city or state oversight is extremely ill conceived. Moreover, it affects our children and teens.

Please vote no on the bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lorraine'.

Lorraine Minatoishi, Ph.D., AIA

LATE



Aloha United Way
200 N. Vineyard Blvd., Suite 700
Honolulu, Hawaii 96817

February 18, 2020

SB 3103, SD1: STRONG SUPPORT

Senator Donovan M. Dela Cruz, Chair, Way and Means Committee
Senator Gilbert S. C. Keith-Agaran, Vice Chair, Ways and Means Committee

Hearing: February 19, 2020; Hearing Time 10:00AM; Conference Room 211

Aloha Chair Kidani, Vice Chair Kim, and Committee Members:

Aloha United Way supports SB 3103, SD1 which creates a new School Facilities Agency to oversee the public school development, planning and construction for capital improvement projects assigned by the Legislature, Governor or Board of Education.

Hawaii has the highest cost of living in the nation. Child care and housing are generally the highest monthly expense for our working families. The ALICE® Report, released by Aloha United Way in 2018, shows that 47% of Hawaii residents are not financially stable. ALICE is an acronym standing for Asset Limited Income Constrained Employed and the report provides insight into the plight of those living above the federal poverty level but below a self-sufficient income. They struggle to make ends meet and are vulnerable to minor personal financial setbacks and unable to weather broad economic downturns. For example, during the great recession, 27,000 of Hawaii's households fell from financial stability into ALICE and, more significantly, they have not yet recovered. As a result, Hawaii has seen three consecutive years of population decreases as families leave in pursuit of increased financial stability.

Child care is a major expense for ALICE families. The monthly cost of child care is approximately the same as monthly rent – as a matter of fact, child care is more expensive the housing on Kauai and Hawaii Island. Universal early learning opportunities for our 3- and 4-year olds would provide our ALICE families a win-win-win. Child care costs would decrease, parents would be able work to add to family income and the children would benefit from the early exposure to learning which has been proven to increase long term educational achievement.

The actions proposed in SB 3103, SD1 will expedite the creation of the facilities needed to provide the added early learning capacity. Additionally, this bill will enable the implementation of Acts 309 (SLH 2012), Act 155 (SLH 2013) and Act 210 (SLH 2018) for the development of 21st Century Schools.

Finally, when combined with other pending legislation intended to stabilize this vulnerable population, the cumulative effect will be a substantial increase in the financial health of our community.

Thank you for the opportunity to submit testimony. We urge your favorable consideration of SB 3103, SD1.

Sincerely,

Norm Baker
Interim President & CEO



**Hawaiian
Electric**

LATE

**TESTIMONY BEFORE THE SENATE
COMMITTEE ON WAYS AND MEANS**

**S.B. 3103, SD1
Relating to a School Facilities Agency**

Wednesday, February 19, 2020
10:00 a.m., Agenda Item #17
State Capitol, Conference Room 211

Written Testimony Only

Shannon Asato
Treasurer
Hawaiian Electric Company, Inc.

Dear Chair Dela Cruz, Vice Chair Keith-Agaran and 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, SD1, Relating to a School Facilities Agency.

Hawaiian Electric believes that one of the foundational elements to building a better Hawaii is investing in our keiki. Hawaiian Electric is supportive of this bill that will create an agency dedicated to planning, designing and constructing modern schools. This bill 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 preserve our culture while improving our economic future.

Thank you for this opportunity to testify.

LATE



February 19, 2020

Senator Donovan M. Dela Cruz
Chair, Committee on Ways and Means
State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: SB3103, SD1 RELATING TO A SCHOOL FACILITIES AGENCY

Hearing Date: Wednesday, February 19, 2020, 10:00 am

Dear Chair Dela Cruz and members of the Committee on Ways and Means:

My name is Alan Oshima, Chair of the Board of the Hawai'i Institute for Public Affairs. HIPA strongly supports SB3103, SD1 which establishes a 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.

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, SD1 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.

HIPA strongly supports SB3103, SD1 and encourages the passage of this measure. Thank you for the opportunity to testify on this matter.

Sincerely,

/S/

ALAN M. OSHIMA
Chair, Board of Directors

TESTIMONY TO THE COMMITTEE ON WAYS AND MEANS

**Wednesday, February 19, 2020, 10:00 a.m.
State Capitol, Conference Room 211**

TO: The Honorable Donovan Dela Cruz, Chair
The Honorable Gilbert Keith-Agaran, Vice Chair
WAM Committee Members

TESTIMONY IN SUPPORT OF SB3103 SD1 RELATING TO A SCHOOL FACILITIES AGENCY

I am Peter Ho, Chairman, President and CEO of Bank of Hawaii, testifying in support of SB3103 SD1 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. It is also beneficial by giving the Agency the ability to enter into public-private partnerships to maximize open or underutilized spaces on DOE lands and to issue its own bond financing.

The new Agency will 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,



LATE



841 Bishop St., Suite 301
Honolulu, Hawaii 96813

Telephone: 808 926-1530
Contact@HEECoalition.org

Committee on Ways and Means
Senator Donovan Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

February 19, 2020

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Committee Members,

This testimony is submitted in **support of SB3103 SD1**, establishing a 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.

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	Kamehameha Schools
After-School All-Stars Hawai'i	Kanu Hawai'i
Alliance for Place Based Learning	*Kaua'i Ho'okele Council
*Castle Complex Community Council	Keiki to Career Kaua'i
*Castle-Kahuku Principal and CAS	Kupu A'e
Coalition for Children with Special Needs	*Leaders for the Next Generation
Education Institute of Hawai'i	Learning First
*Faith Action for Community Equity	McREL's Pacific Center for Changing the Odds
Fresh Leadership LLC	*Native Hawaiian Education Council
Girl Scouts Hawaii	Our Public School
Harold K.L. Castle Foundation	*Pacific Resources for Education and Learning
*HawaiiKidsCAN	*Parents and Children Together
*Hawai'i Afterschool Alliance	*Parents for Public Schools Hawai'i
*Hawai'i Appleseed Center for Law and Economic Justice	Punahou School PUEO Program
*Hawai'i Association of School Psychologists	*Teach for America
Hawai'i Athletic League of Scholars	The Learning Coalition
*Hawai'i Charter School Network	US PACOM
*Hawai'i Children's Action Network	University of Hawai'i College of Education
Hawa'i Education Association	YMCA of Honolulu
Hawai'i Nutrition and Physical Activity Coalition	<i>Voting Members (*) Voting member organizations vote on action items while individual and non-voting participants may collaborate on all efforts within the coalition.</i>
* 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	

Testimony of
Pacific Resource Partnership

LATE

Senate Committee on Ways and Means
The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair

SB 3103 SD1 Relating to a School Facilities Agency

Wednesday, February 19, 2020
10:00 A.M.
Conference Room 211

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committees:

Pacific Resource Partnership (PRP) writes in support of SB3103 SD1, which represents a collective effort by government and community stakeholders to facilitate the development, planning and construction of Hawaii's public schools.

Hawaii Department of Education's (HIDOE) more than 20 million square feet of public schools average 60 years old, requiring repairs and maintenance that far exceed current funding levels. Most HIDOE school buildings 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 SD1 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 SD1 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



ACEC

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2019 - 2020

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

Senate Committee on Ways and Means

Hearing Date: February 19, 2020, Conference Room 211

Time: 10a.m.

Subject: **SB 3103, SD1 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 Dela Cruz, Vice-Chair Keith-Agaran, 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 SD1 (p. 3, lines 14-16) 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.

Without the inclusion of QBS, we would have serious concerns about 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.

LATE



Hawaii's Thousand Friends

300 Kuulei Road Unit A #281*Kailua HI 96734* Phone/Fax 808-262-0682 E-mail htf3000@gmail.com

February 19, 2020

COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Members of the committee

SB 3103 SD1

RELATING TO A SCHOOL FACILITIES AGENCY

Hawaii's Thousand Friends, a non-profit organization dedicated to ensuring that growth is reasonable and responsible and that planning and land use decisions protect natural and cultural resources and human health and are implemented in conformity with the law, opposes the exemptions granted to the School Facilities Agency and board in SB 3103 SD1.

It is unclear why this Agency and board or any state and county agency or board should be **exempt from laws** that are in place to protect the public's interest, health, safety, welfare and our islands finite and fragile natural and cultural resources.

What is the purpose of exempting the School Facilities Agency and board from all county ordinances, HRS §6E Historic Preservation, HRS §343 Environmental Impact Statements, HRS §76 Civil Service Law, and HRS §103D Public Procurement Code?

County ordinances are in place to encourage orderly development and protect the public health, safety and welfare.

HRS §6E Historic Preservation, which was passed by the legislature because:

- The constitution recognizes the value of conserving and developing the historic and cultural property within the State for the public good.
- The historic and cultural heritage of the State is among its important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage.
- It is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure, and enrichment of its citizens.

Exempting the Agency and board from HRS §6E contradicts the public policy of the State, which is to provide leadership in preserving, restoring, and maintaining historic and cultural property, to ensure the administration of such historic and cultural property in a spirit of stewardship and trusteeship for future generations, and to conduct activities, plans, and

programs in a manner consistent with the preservation and enhancement of historic and cultural property.

HRS §343 Environmental Impact Statements was created by the legislature that found:

- “The quality of humanity's environment is critical to humanity's well being, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions.”
- That the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.
- That establishing a “system of environmental review...will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.”

HRS §76 Civil Service Law established the “merit principle” to ensure that the selection of persons was “based on their fitness and ability for public employment and the retention of employees based on their demonstrated appropriate conduct and productive performance.”

HRS §103D Public Procurement Code was established to ensure that “all public employees conduct and participate in public procurement in an **ethical manner.**”

HRS §91 Public Proceedings and Records. SB 2103 SD1 is silent on whether the Agency and the board will **adhere to** or as stated in the bill create it's own “transparency initiatives as agreed to by the agency...”

HRS §92 Public Agency Meetings and Records. SB 3103 SD1 is silent on whether the Agency and board will adhere to Hawaii's Sunshine Law that states “In a democracy the people are vested with the ultimate decision making power” that “Governmental agencies exist to aid the people in the formation and conduct of public policy” and “**Opening governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest.**” (Emphasis added)

Creating an Agency and board that is exempt from governmental processes does not open government to the public but shuts people out.

To preserve and protect the democratic open government we pride ourselves on we urge you to hold SB 3103 SD1 in committee.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

LATE

The Thirtieth Legislature, State of Hawaii
The Senate
Committee on Ways and Means
Testimony by
Hawaii Government Employees Association

February 19, 2020

S.B. 3103, S.D. 1 – RELATING TO A SCHOOL FACILITIES AGENCY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO opposes specific portions of S.B. 3103, S.D. 1 which establishes the School Facilities Agency to be responsible for all public school development, planning, and construction capital improvement projects as assigned by the Legislature, Governor, or Board of Education.

While 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 remains unclear how incumbent employees and potential new-hire employees would be affected. We represent nearly 140 employees in the Department of Education Office of Facilities and Operation, including architects, planners, building inspectors, and engineers, who may be adversely impacted by the creation of the School Facility Agency (SFA). While Section 6 of the measure specifically states that it shall not be construed to transfer positions from the DOE to the SFA, Section 8 requires a report that identifies positions that should be transferred, including positions responsible for public school development, planning, and construction. At this time, it is unclear which employees will carry out the duties of the agency and how a transfer will impact the employees.

Additionally, we strongly oppose all blanket exemptions to civil service law 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 the opportunity to testify in opposition to S.B. 3103, S.D. 1 in its current form.

Respectfully submitted,

Randy Perreira
Executive Director

SB-3103-SD-1

Submitted on: 2/17/2020 10:54:22 PM

Testimony for WAM on 2/19/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Oppose	No

Comments:

SB 3103 SD1 exempts the agency and governor-appointed executive director and 6-member voting board from too many laws. I oppose this bill.

SB-3103-SD-1

Submitted on: 2/18/2020 3:50:28 AM

Testimony for WAM on 2/19/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Robin Kaye	Individual	Oppose	No

Comments:

While the creation of this Agency may be a good idea, exempting it from so many laws, and especially Chapter 343, is not a good idea.