



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 7, 2020
2:45 p.m., Conference Room 229

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

Chair Kidani, Vice Chair Kim, and committee members:

On behalf of Governor David Ige, thank you for the opportunity to provide comments on Senate Bill 3103. 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. This bill also transfers statutes pertaining to Hawaii 3R's and 3T's programs to the new School Facilities Agency statute and places management of school impact fees within the agency.

The Governor fully appreciates and joins with the Legislature on programs to improve school facilities. Therefore, we strongly support the bill in concept and recognize the significant need for all of our keiki and families to have access to a high-quality learning environments system that will give our keiki the head start needed to prepare them 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.

However, we are concerned that the task goes far beyond the capacity and expertise of Hawaii 3Rs and suggest that it be removed from the bill and an alternative entity be assigned or created.

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



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

Date: 02/07/2020
Time: 02:45 PM
Location: 229
Committee: Senate Education

Department: Education

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

Title of Bill: SB 3103 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. Transfers statutes pertaining to the Hawaii 3R's and 3T's programs to a new School Facilities Agency statutory subpart. Places management of school impact fees with the agency. Appropriates funds.

Department's Position:

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

**Friday, February 7, 2020
2:45 PM
State Capitol, Conference Room 229**

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

Senate Bill 3103 proposes to 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 of Education. This measure also proposes to transfer statutes pertaining to the Hawaii 3R's and 3T's programs to a new School Facilities Agency statutory subpart and places management of school impact fees with the agency. The bill also appropriates funds. **The Department of Land and Natural Resources (Department) offers the following comments and proposed amendment.**

The measure proposes that the Agency shall be placed within the Department of Education for administrative purposes only. The Department notes that some of the School Facility Agency's lands would be public trust lands that it manages under either a deed or executive order recommended by the Board of Land and Natural Resources and approved by the Governor. Any lands no longer needed by the School Facility Agency for public school development purposes should be returned to the public trust administered by the Department. Therefore, the Department recommends amending this measure by adding the following new subsection (c) under Section 302A-E, Hawaii Revised Statutes on page 9 of this measure.

§302A-E Use of public lands; acquisition of state

lands. (a) If state lands under the control and management of another department are required by the agency for its purposes, the department having the control and management of those required lands, upon request by the agency and with the approval

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

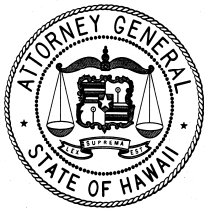
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

of the governor, may convey or lease those lands to the agency upon terms and conditions as may be agreed to by the parties.

(b) Notwithstanding the foregoing and section 302A-C(c), no public lands shall be conveyed or leased to the agency as provided in this section if the conveyance or lease would impair any covenant between the State or any county or any department or board thereof and the holders of bonds issued by the State or county, department, or board.

(c) **Lands no longer needed.** Should state lands held by the agency no longer be needed for school facilities purposes, said lands should be returned to the public trust administered by the department of land and natural resources.

Thank you for the opportunity to comment on this measure.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 3103, RELATING TO A SCHOOL FACILITIES AGENCY.

BEFORE THE:

SENATE COMMITTEE ON EDUCATION

DATE: Friday, February 7, 2020

TIME: 2:45 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Clare E. Connors, Attorney General, or
Melissa J. Kolonie, Deputy Attorney General

Chair Kidani 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 to be responsible for all public school development, planning, and construction, related to capital improvement projects assigned by the Legislature, the Governor, or the Board of Education; (2) transfer statutes pertaining to the Hawaii 3R's and 3T's programs to a new School Facilities Agency statutory subpart; (3) place management of school impact fees with the School Facilities Agency; and (4) appropriate funds.

We propose the following amendments to ensure that moneys received by the subject fund and entities remain in compliance with the Internal Revenue Code.

On page 12, after subsection (f), add a new subsection (g) to section 302A-F after line 4 to read as follows:

(g) Further, within such school facilities special fund there shall be established such accounts and subaccounts as may be necessary from time to time in order to ensure compliance with section 302A-J.

On page 13, after subsection (e), add a new subsection (f) to section 302A-H after line 18 to read as follows:

(f) Further, within such Hawaii 3R's school improvement fund there shall be established such accounts and subaccounts as

may be necessary from time to time in order to ensure compliance with section 302A-J.

On page 20, after subsection (r), add a new subsection (s) to section 302A-I after line 18 to read as follows:

(s) Further, within such Hawaii 3Ts school technology laboratories fund there shall be established such accounts and sub-accounts as may be necessary from time to time in order to ensure compliance with section 302A-J.

On page 20, after section 302A-I, add a new section 302A-J to read as follows:

§302A-J Agency action. Anything within this chapter to the contrary notwithstanding, the agency shall not take any action, nor permit any action to be taken, which would impair any covenant between the State or any county or any department or board thereof and the holders of bonds issued by the State, county, department, or board.

Thank you for the opportunity to provide comments.

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 SENATE COMMITTEE ON EDUCATION
ON
SENATE BILL NO. 3103

February 7, 2020
2:45 p.m.
Room 229

RELATING TO A SCHOOL FACILITIES AGENCY

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

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; and the School Facilities Special Fund. S.B. No. 3103 also transfers statutes pertaining to the Hawai'i 3R's and 3T's programs to a new SFA statutory subpart and places the management of school impact fees within SFA. In addition, the 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 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.
- 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 the bill is silent on this critical issue.
- How will SFA be funded regarding: 1) school facility projects; and 2) staffing and operational expenses?
 - The 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.

- How will responsibility for repairs and maintenance (R&M) be coordinated between DOE and SFA?
 - The bill specifies in Section 302A-C, HRS, that SFA is responsible for CIP but, in other sections, also mentions responsibility for R&M. R&M encompasses major R&M, which has been G.O. bond-funded, as well as minor R&M, which is an operating expenditure.

As a matter of general policy, B&F does not support 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.

OFFICE OF INFORMATION PRACTICES

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

To: Senate Committee on Education

From: Cheryl Kakazu Park, Director

Date: February 7, 2020, 2:45 p.m.
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 3103
Relating to a School Facilities Agency

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.

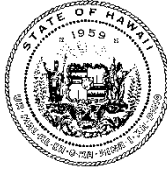
OIP therefore recommends that this Committee either (1) explain in its Committee Report on this bill why it finds that the School Facilities Board’s workgroups or subcommittees should be excused from the Sunshine Law requirements normally applicable to subcommittees of a board, **or (2) delete the language at bill page 8, lines 9-13,** that allows such workgroups or subcommittees to operate as a permitted interaction.

OIP also notes that the proposed 3Ts School Technology Laboratories Board created on page 15 of this bill may or may not meet the definition of a “board” subject to the Sunshine Law, depending upon how the Board ends up operating in

practice. **To avoid confusion on this point, OIP recommends that this Committee add a statement clarifying its status under the Sunshine Law, by adding language “The board shall be subject to part I of chapter 92” or “The board shall not be subject to part I of chapter 92.”** Given that the proposed Board will be part of a public-private hybrid initiative and will be considering the distribution of what is expected to be a mix of public and private funds, OIP does not make a recommendation one way or the other. The degree of public participation and scrutiny appropriate for such a group is a policy question for the Legislature to determine.

Thank you for considering OIP’s testimony and recommendations.

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
EDUCATION
Friday, February 7, 2020 at 2:45 PM

S.B. 3103
RELATING TO SCHOOL FACILITIES AGENCY

Chair Kidani, Vice Chair Kim, and members of the committee, thank you for the opportunity to submit testimony on S.B. 3103. 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.



HAWAI‘I STATE ETHICS COMMISSION

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

Committee: Committee on Education
Bill Number: S.B. 3103
Hearing Date/Time: Friday, February 7, 2020, 2:45 p.m.
Re: Testimony of the Hawai‘i State Ethics Commission
with **COMMENTS AND PROPOSED AMENDMENT** to
S.B. 3103, Relating to a School Facilities Agency

Chair Kidani, Vice Chair Kim, and Members of the Committee on Education:

The Hawai‘i State Ethics Commission (“Commission”) respectfully suggests the deletion of the language of Section 1, the proposed HRS § 302A-D(b)(2): “Not be subject to section 84-17[.]” This carve-out to the Ethics Code is likely unconstitutional.

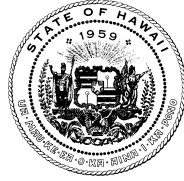
Article XIV of the Hawai‘i Constitution provides, among other things, that “public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures.” (emphasis added)). Article XIV requires that elected officials file public financial disclosure statements, and it generally authorizes the Legislature to determine which other state officials shall file public financial disclosure statements (leaving the rest to file confidential disclosures with the Ethics Commission). However, article XIV still requires that other state officials with “significant discretionary or fiscal powers” file financial disclosure statements (which are kept confidential by the Ethics Commission). As such, any provision that creates an agency (such as a School Facilities Agency) that is not purely advisory – and then purports to exempt its governing board from the requirements of the financial disclosure statute (as S.B. 3103 does) – is likely unconstitutional pursuant to article XIV.

As such, the Commission recommends that the Committee amend this measure to delete the phrase “Not be subject to section 84-17,” after which, in keeping with article XIV, the School Facilities Agency Board members will file confidential financial disclosure statements with the Commission.

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

Very truly yours,

Daniel Gluck
Executive Director and General Counsel



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

SENATE COMMITTEE ON EDUCATION

Friday, February 7, 2020

2:45 pm

State Capitol, Room 229

**By Stacey A. Aldrich
State Librarian**

S.B. 3103 Relating to a School Facilities Agency

To: Chair Michelle N. Kidani
Vice Chair Donna Mercado Kim
Members of the Senate Committee on Education

The Hawaii State Public Library System (HSPLS) appreciates the opportunity to provide comments related to S.B. 3103 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.

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, Pahoa, 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.

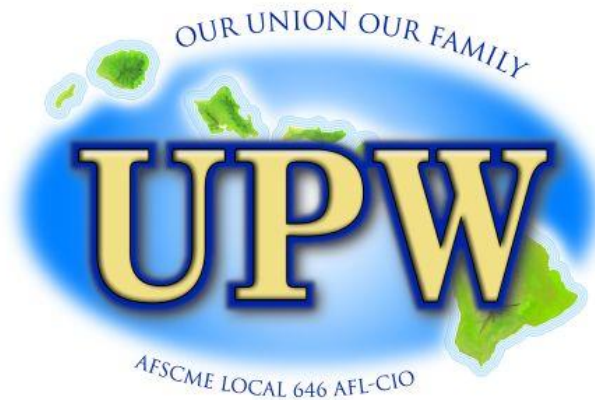
The Hawaii State Public Library System is responsible for the complete management and maintenance of library properties. Because we are a separate space on or adjacent to DOE property, we do face challenges. Over the last several years,

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. For that reason, we do have concerns about the responsiveness of a new agency and board to address HSPLS issues, particularly if they no longer directly report to the Superintendent or the BOE.

We would like to ensure that there is language within the bill that recognizes the need for the new agency to effectively communicate and work with the Hawaii State Public Library System 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.



THE HAWAII STATE SENATE
The Thirtieth Legislature
Regular Session of 2020

COMMITTEE ON EDUCATION
Senator Michelle N. Kidani Chair
Senator Donna Mercado Kim, Vice Chair

DATE OF HEARING: Friday, February 7, 2020
TIME OF HEARING: 2:45 PM
PLACE OF HEARING: State Capitol
415 South Beretania Street
Conference Room 229

TESTIMONY ON SENATE BILL 3103

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

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO. 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 various counties. The UPW also represents about 1,500 members of the private sector.

SB3103 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. Transfers statutes pertaining to the Hawaii 3R's and 3T's programs to a new School Facilities Agency statutory subpart. Places management of school impact fees with the agency. Appropriates funds.

The UPW strongly opposes the provisions of SB3103 that waive or bypass the collective bargaining rights and civil service system. This is contrary to Hawaii State Constitution Article XIII (collective bargaining) and Article XVI the civil service merit system HRS 76.

Thank you for the opportunity to submit this testimony.



February 7, 2020

Senator Michelle Kidani
Chair, Committee on Education
State Capitol
Honolulu, Hawai`i 96813

RE: SB3103 RELATING TO A SCHOOL FACILITIES AGENCY

Hearing Date: Friday, February 7, 2020, 2:45 pm

Dear Chair Kidani and members of the Committee on Education:

My name is Alan Oshima, Chair of the Board of the Hawai`i Institute for Public Affairs. HIPA strongly supports SB3103 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 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 recommends the following amendments:

- Enabling the school facilities authority to issue municipals bonds; and
- Authorizing the school facilities authority to engage in public-private partnerships.

HIPA strongly supports SB3103, 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



HAWAI'I COMMUNITY FOUNDATION
Amplify the Power of Giving

BEFORE THE

SENATE COMMITTEE ON EDUCATION
Senator Michelle N. Kidani, Chair
Senator Donna Mercado Kim, Vice Chair

SB3103 RELATING TO A SCHOOL FACILITIES AGENCY

TESTIMONY BY

Micah A. Kane
CEO & President
Hawai'i Community Foundation

Thursday, February 7, 2020, 2:45 pm

Dear Chair Kidani, Vice Chair Kim and members of the Committee on Education:

My name is Micah Kane, CEO and President of the Hawai'i Community Foundation (HCF). HCF strongly supports SB3103 which establishes a School Facilities Agency.

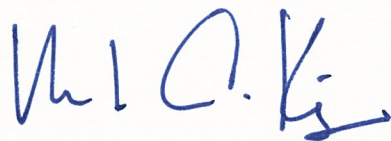
The Department of Education (DOE) has reported that the average age of a public school is 60+ years old; with an estimated 50 schools over 100 years old. Currently, the DOE has a significant backlog in repair and maintenance, without any capacity or resources to construct or renovate 21st century schools. 21st Century schools are state-of-the art facilities which provide students with innovative and inspiring learning environments for students to thrive and achieve their learning potentials.

Additionally, there is also a pressing need to construct pre-K classrooms. In Hawai'i, there are approximately 20,000 (54%) 3- and 4-year olds who are without access to early learning opportunities. As such, approximately 1,000 classrooms are needed to meet the demand for pre-K education.

Creating a school facilities agency to focus primarily on new construction and major renovations is essential to meet the need to build and renovate school facilities. SB3103 empowers the new agency, which would be separate from the DOE, to plan, design, and construct large-scale educational facilities and projects that are separate from routine repair and maintenance. Also, SB3103 would enable the school facilities authority to address the need for additional pre-K classrooms.

HCF strongly supports SB3103 and urges the Committee's passage of the bill.
Thank you for the opportunity to testify on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Micah A. Kane". The signature is fluid and cursive, with the first name "Micah" and last name "Kane" being the most prominent parts.

Micah A. Kāne, CEO & President
Hawai'i Community Foundation



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

February 6, 2020

SB 3103: SUPPORT

Senator Michelle N. Kidani, Chair, Committee on Education
Senator Donna Mercado Kim, Vice Chair, Committee on Education

Hearing: February 7, 2020; Hearing Time 2:45 PM; Conference Room 229

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

Aloha United Way supports SB 3103 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 than 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 to 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 will expedite the creation of the facilities needed to provide the added early learning capacity.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Norm Baker".

Norm Baker
Interim President & CEO

Testimony of
Pacific Resource Partnership

Senate Committee on Education
The Honorable Michelle N. Kidani, Chair
The Honorable Donna Mercado Kim, Vice Chair

SB 3103 Relating to a School Facilities Agency

Thursday, February 7, 2020
2:45 P.M.
Conference Room 229

Aloha Chair Kidani, Vice Chair Kim, and Members of the Committees:

Pacific Resource Partnership (PRP) writes in support of SB3103, 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 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 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



841 Bishop St., Suite 301
Honolulu, Hawaii 96813



Telephone: 808 926-1530
Contact@HEECoalition.org

Committee on Education
Senator Michelle Kidani, Chair
Senator Donna Mercado Kim, Vice Chair

February 7, 2020

Dear Chair Kidani, Vice Chair Kim and Committee Members,

This testimony is submitted in **support of SB3103.**

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
*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
Hawai'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
*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.*

SB-3103

Submitted on: 2/6/2020 11:23:47 AM

Testimony for EDU on 2/7/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kalowena Komeiji	Testifying for Hawaii 3R's	Comments	No

Comments:

February 6, 2020

The Honorable Michelle Kidani, Chair

Senate Committee on Education

Dear Chairwoman Kidani and Committee Members:

Testimony for SB3103 – Relating to a School Facilities Agency

While I can appreciate the legislative intent of SB 3103, Relating to a School Facilities Agency, to address the failings of the DOE's facilities and maintenance branch, I would like to respectfully ask for the removal of Hawaii 3R's from this legislation. We may not be the appropriate fix for the department's broken R&M system.

Hawaii 3R's was established by the late Senator Daniel Inouye to help the DOE with its repair and maintenance **backlog**, a need that, after more than 20 years in business, seems perpetual. The proposed legislation is not within the current mission and scope of Hawaii 3Rs. Further, we also lack capacity to take on current R&M projects in addition to the backlog. This proposed legislation may also jeopardize our understanding with local unions who agreed early on that Hawaii 3R's would only focus

on the DOE's backlog. It is an agreement we are proud to say we have honored throughout the life of this organization.

I can understand the legislature's frustration with a system that is obviously broken and which seems to have only gotten worse over the last 2-3 years. I support movement of this measure, without the inclusion of Hawaii 3R's, if for no other reason than to encourage constructive discussion on this important function for our public schools. Thank you for your consideration.

Sincerely yours,

Kalowena Komeiji

Interim Executive Director



Feb. 7, 2020

Sen. Michelle Kidani
Senate Education Committee
State Capitol
Honolulu, HI 96813

Re: SB 3103

Sen. Kidani and Committee Members:

This bill creates a school facilities board and also allows board members to skate around the Sunshine Law, or open meetings law, when they don't make up a quorum in scheduled meetings of subcommittees or work task forces.

We ask you to remove the portion of the bill that permits working groups and subcommittees of the board with less than quorum as permitted interactions with no requirements under the Sunshine Law.

Two or more members should not be allowed to work outside the Sunshine Law when there is no quorum. When there is no quorum, there is no meeting. Is the state suddenly changing decades of public agency meeting procedures to go ahead and meet without quorums?

We ask you to amend this bill to remove the provision about permitted interactions of subcommittees or task forces meeting without a quorum.

Sincerely,

Stirling Morita
President, Hawaii Chapter SPJ

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
Fax: (808) 380-3580
info@civilbeatlawcenter.org

Senate Committee on Education
Honorable Michelle N. Kidani, Chair
Honorable Donna Mercado Kim, Vice Chair

RE: Testimony Commenting on S.B. 3103, Relating to a School Facilities Agency
Hearing: February 7, 2020 at 2:45 p.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.

By operation of law, the newly created School Facilities Board would be subject to the Sunshine Law. But the bill proposes to exempt the Board's subcommittees and working groups from any open meetings requirements. Unlike most other permitted interactions under the Sunshine Law, the bill does not impose any restrictions or reporting requirements on the subcommittees. The subcommittees and working groups 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 a practical matter, all substantive policy work of the School Facilities Board will occur in secret. Such an exemption is antithetical to the principles of transparency that Hawai'i has embraced for decades.

If the Legislature wants a subset of the Board to have flexibility to consult with experts and make recommendations without the limitations of the Sunshine Law, *such flexibility already exists with the permitted interaction groups under HRS § 92-2.5(b)(1)*.¹ That permitted interaction, however, 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.

¹ The Law Center considers certain procedural aspects of this 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.



TESTIMONY TO THE COMMITTEE ON EDUCATION

Friday, February 7, 2020, 2:45 p.m.

State Capitol, Conference Room 229

TO: The Honorable Michelle Kidani, Chair
The Honorable Donna Mercado Kim, Vice Chair
Education Committee Members

TESTIMONY IN SUPPORT OF SB3103 RELATING TO A SCHOOL FACILITIES AGENCY

I am Peter Ho, Chairman, President and CEO of Bank of Hawaii, testifying in support of SB3103 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 would also be beneficial to give the Agency the ability to enter into public-private partnerships to maximize open or underutilized spaces on DOE lands.

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 SB3103. Thank you for the opportunity to testify.

A handwritten signature in black ink that reads 'Peter Ho'.

LATE



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE
COMMITTEE ON EDUCATION**

S.B. 3103

Relating to a School Facilities Agency

Friday, February 7, 2020

2:45 p.m.

State Capitol, Conference Room 229

Written Testimony Only

Shannon Asato
Treasurer
Hawaiian Electric Company, Inc.

Dear Chair Kidani, Vice Chair Kim 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, 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.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the Senate Committee on Education
Friday, February 7, 2020 at 2:45 P.M.
Conference Room 229, State Capitol**

LATE

RE: SB 3103, RELATING TO A SCHOOL FACILITIES AGENCY

Chair Kidani, Vice Chair Kim, and Members of the Committee:

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



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

**HEARING BEFORE THE SENATE COMMITTEE ON EDUCATION
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 229
FRIDAY, FEBRUARY 7, 2020 AT 2:45 P.M.**

To The Honorable Michelle N. Kidani, Chair;
The Honorable Donna Mercado Kim, Vice Chair; and
Members of the Committee on Education,

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

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.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

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Honolulu, Hawaii 96814
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Email: gwright@acechawaii.org
Website: www.acechawaii.org

LATE

Senate Committee on Education

Hearing Date: February 7, 2020, Conference Room 229

Time: 2:45p.m.

Subject: SB 3103 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 Kidani, Vice-Chair Kim, 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 support the intent of this bill to establish a school facilities agency that may improve the delivery of public-school development, planning, and construction.

However, the proposed school facilities agency needs to 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.

Therefore, we request that the bill be amended as follows on page 2, line 16 to page 3, line 3

The projects of the agency shall be exempt from chapters 6E, 37, 76, 103, 103D, and 343 and all county ordinances except the respective building codes; provided 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 malfeasance, and to allow for public input; provided further that the agency shall adopt rules that provide substantially similar protections to those required by chapter 343 and provided further that Professional services contracts for licensees under chapter 464 shall be procured in accordance with section 103D-304.

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

LATE

February 7, 2020

Re: Testimony SB3103, School Facilities Agency

Dear Senators, Kouchi, Baker, English, Fevella, Gabbard, Ihara, Inouye, Kahele, Kanuha, Keith-Agaran, Keohokalole, Kidani, Kim, Moriwaki, Nishihara, Rivere, Ruderman, Shimabukuro, Theilen and Wakai.

I am writing in support of SB 3103 to provide an agency to support the future development of educational facilities in Hawaii that support the specific needs of the community. As a recently retired architect whose firm designed LEED rated, HICHPS and 21st Century public and charter schools that related to the specific needs of the student population. Recent examples include Stevenson STEM addition, Kohala STEM classrooms, East Kapolei Middle School, and the West Hawaii Explorers Academy. In the 38 years of my practice here in Hawaii, I am greatly aware of the strained resources that have faced the DOE's design and construction group in development of new school facilities. It currently takes nine years to plan and develop a school in the DOE system. When the facility is finally constructed it stands a good chance of being outdated.

I applaud and support any initiative such as this bill provides that will shorten this process and provide a better educational environment for students, faculty and the community. I also endorse the selection of the best design, engineering and construction professionals currently at the DOE facilities department to be a part of the new agency in order to allow it to hit the ground running.

Thank you for your work and support of our schools and for the development and sponsorship of this bill.

Joe Ferraro, FAIA, LEED AP

February 7th, 2020

LATE

Senator Michelle Kidani

Chair, Committee on Education

Testimony in support of SB3103 Relating to a Schools Facility Agency

Madame Chair,

We write in strong support of SB3103, 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.

The State of Hawaii has one of the largest and most geographically diverse single district school systems in the United States. The management of facilities for such a complex system is, needless to say, extraordinarily difficult. While a great deal of progress has been made in improving the quality of Hawaii's public schools, the improvement of our school facilities has consistently lagged behind the improvement of our student outcomes.

As you and your colleagues no doubt appreciate, Hawaii's economy is as dynamic as it is challenging, and this reality necessitates a degree of unprecedented innovation and creativity from HIDO. It is simply too much to ask of HIDO to possess expertise in 21st century curricular innovation while also competently optimizing the Department's vast land holdings and prioritizing and overseeing large scale development projects in a cost effective and timely manner.

Simply put, we feel the State of Hawaii will get far more out of our Superintendent and her team by holding them accountable for what is going on **inside** classrooms as opposed to the construction of those classrooms. That was not the skill set for which the Board of Education selected her, and it is not the best use of her talents. We feel the leveraging of external expertise to assist DOE in the oversight of large scale facilities development projects, as envisioned by SB3103, should actually lead to improved student outcomes over time as DOE capacity is freed to better implement the strategic plan as approved by the Board of Education.

SB 3103 builds upon years of work by yourself and this legislative body, as is evidenced by the passage of Act 309, Act 155 and Act 210, and we fully support its passage.

Bill Reeves and Debbie Berger



DAVID Y. IGE
GOVERNOR

MIKE MCCARTNEY
DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

LATE

Written Statement
of
MIKE MCCARTNEY
Director

Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON EDUCATION

Friday, February 07, 2020
2:45pm
State Capitol, Conference Room 229

In consideration of
SB3103
RELATING TO A SCHOOL FACILITIES AGENCY.

Chair Kidani, Vice Chair Kim and members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) supports SB3103 which seeks to establish a school facilities agency to expedite much needed facilities repair and development for our Department of Education schools through the State.

We call to the committee's attention **§302A-I Hawaii 3Ts school technology laboratories fund**. In section (r), page 20, the current statute references the obligation of DBEDT for annual reporting of the Hawaii 3Ts school technology laboratory fund. The department requests your consideration of naming the School Facilities Agency, or another appropriate education related body as the responsible entity best suited to provide oversight of the 3T's program.

Thank you for the opportunity to comment.

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 Senate Committee on Education
Hearing on Senate Bill 3103 Relating To A School Facilities Agency
Date: February 7, 2018
Time: 2:45 p.m.
Location: Room 229

Chair Kidani and Members of the 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. 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 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. The proposed agency will be exempt from the state procurement code, Chapter 103D, Hawaii Revised Statutes in the construction of capital improvement projects.

We understand and appreciate the desire to improve Hawaii's public schools. Many of our members and signatory contractors have keiki that attend public schools. The Painters Union, Local 1791 and its parent organization, the International Union of Painters and Allied Trades, District Council 50, participates in an annual school beautification project in collaboration with the Hawaii State AFL-CIO, known as "Labor of Love." About two weeks ago, over 150 painting apprentices from Local 1791 participated in this year's Labor of Love, at Kalihi Elementary School. In the past seven years, DC50 and/or Local 1791 have also participated in volunteer beautification projects at Waimanalo Elementary School (2013); Mountain View Elementary School (2015); Wailuku Elementary School (2016); Maui High School (2017); Waianae Elementary School (2018); Kawanakoa Middle School (2018); and Chiefess Kapiolani Elementary School (2019).

While we understand the need to streamline the delivery of construction projects, completely exempting the proposed school facilities agency from Chapter 103D is a

significant concern for us, because subcontractors rely on the protections afforded to them by Chapter 103D. One prominent example is the requirement that all subcontractors be listed on invitations for bids. This process protects subcontractors from the undesirable, unethical and harmful practice of bid shopping.

We believe there is a misconception that Chapter 103D, and the subcontractor listing provision in particular, contributes to delay and cost increases on public construction projects. A task force convened pursuant to Senate Concurrent Resolution 92, S.D.2 (2013) studied the issue of bid protests related to subcontractor listing. The 16 page report and 91 pages of attachments can be found online at the Department of Accounting and General Services' website at:

<https://ags.hawaii.gov/wp-content/uploads/2012/09/ProcurementTaskForceReportLS2013.pdf>

In the report, the Task Force found that, in general, bid protests did **not** result in any significant delays or increased costs. See Task Force Report at 8-9. The work of the Task Force revealed that protests related to the subcontractor listing requirement increased costs to the State by 0.06% in FY2013 and 0.34% in FY2014. See id. at 13. The Task Force recommended no changes be made to Chapter 103D with respect to the subcontractor listing requirement. See id. at 10-11.

Given the findings and conclusions of the Task Force and the importance of the subcontractor listing requirements of Chapter 103D to our trades, we respectfully request that this portion of the law be preserved for the proposed school facilities agency. We therefore request that the Committee amend SB3103 by adding the following specific language to the end of subsection (b) of §302A-C:

... provided further that any invitation for bids for construction shall specify that all bids include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each. Construction bids that do not comply with this requirement may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent of the total bid amount.

This change clarifying that the school facilities agency remains subject to Chapter 103D's subcontractor listing requirement will allow for streamlining of the procurement process while still protecting our trades.

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



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

NECA Hawai'i Chapter

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February 7, 2020

To: Senate Committee on Education
Honorable Chairperson Michelle Kidani & Vice Chairman Donna Mercado Kim

From: Al Itamoto, Executive Director
Electrical Contractors Association of Hawaii
National Electrical Contractors Association, Hawaii Chapter

Subject: SB 3103 Relating to School Facilities Agency

Notice of Hearing

Date: Friday, February 7, 2020
Time: 2:45 PM
Place: Conference Room 229
State Capitol
415 South Beretania Street

Dear Chairperson Kidani, Vice Chairperson Mercado Kim and Committee members:

The Electrical Contractors Association of Hawaii (ECAH) is a non-profit association representing over 100 electrical contractors doing business in the State of Hawaii. ECAH is the Hawaii Chapter of the National Contractors Association (NECA). ECAH submits comments to this measure regarding the creation of another agency that primarily exempts itself from existing procurement procedures in HRS, Chapter 103D. The current State procurement procedures standardizes the process for all departments and agencies that allows for the most equitable and even playing field in securing services and contracts from vendors and contractors. This is particularly true for the

construction industry. Electrical contractors among other subtrade contractors are primarily subcontractors in the procurement process and requires the protections that HRS, Chapter 103D provides including but not limited to the subcontractors listing.

The creation of this School Facilities Agency creates another agency seeking independence from established procurement rules governing the procurement of services and construction contracts. Establishing a new agency allowing the formulation their own procurement rules and procedures could ultimately eliminate the very protections that HRS, Chapter 103D provides as this measure cites.

For those reasons, we ask that this committee stop this measure from moving forward in its present form and delete the exemption from HRS, Chapter 103D.

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



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

The Thirtieth Legislature, State of Hawaii
The Senate
Committee on Education

LATE

Testimony by
Hawaii Government Employees Association
February 7, 2020

S.B. 3103 – RELATING TO A SCHOOL FACILITIES AGENCY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO opposes specific portions of S.B. 3103 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 is 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 10 of S.B. 3103 specifically states that this measure shall not be construed to transfer positions from the DOE to the SFA, it is unclear which employees will carry out the duties of the agency.

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 in its current form.

Respectfully submitted,

Randy Perreira
Executive Director



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

To: Honorable Michelle N. Kidani, Chair of Education
From: Lorraine Minatoishi, Ph.D., AIA
Hearing: Senate Committee on Education 2:45PM in Room 229.
Subject: **Support** SB3103, Relating to School Facilities

LATE

Dear Chair Kidani,

I am in **opposition** to bill SB3103.

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 Minatoishi'.

Lorraine Minatoishi, Ph.D., AIA

LATE

SB-3103

Submitted on: 2/7/2020 11:45:38 AM

Testimony for EDU on 2/7/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara J. Tanabe	Individual	Support	No

Comments:

Dear Chair Kidani and members of the Committee on Education:

My name is Barbara Tanabe, past chair of the Board of the Hawai`i Institute for Public Affairs.

I strongly support SB3103 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.

Hawaii students and teachers have long suffered from inadequate facilities which have not kept up with the infrastural requirements of a 21st century learning. Establishing a School Facilities Agency is a positive step forward to address this critical need. We owe it to our children to do the best we can today and continue our efforts through the next few years.

Sincerely,

Barbara J. Tanabe