

DAVID Y. IGE
GOVERNOR



BONNIE KAHAKUI
ACTING ADMINISTRATOR

STATE OF HAWAII
STATE PROCUREMENT OFFICE

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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEES
ON
EDUCATION
AND
ENERGY & ENVIRONMENTAL PROTECTION
March 18, 2021 2:00 P.M.

SENATE BILL 808, SD2
RELATING TO THE SCHOOL FACILITIES AGENCY

Chair Woodson, Chair Lowen, Vice Chair Kapela, Vice Chair Marten, and members of the committees, thank you for the opportunity to submit testimony on SB 808, SD2. The State Procurement Office (SPO) provides the following comments regarding section 2, page 4, lines 15 to 18, which states:

“Any award of a contract for construction shall be subject to the requirements of section 103D-302; provided that the agency shall give preference to construction bids submitted by a contractor or subcontractor domiciled within the State.”

Following this requirement may be problematic for the Department of Education (DOE) to implement. Restricting construction contracts to section 103D-302, Competitive Sealed Bidding, will eliminate the benefits of awarding contracts pursuant to Small Purchase and Competitive Sealed Proposals - specifically design build. This may cause confusion as DOE's Facilities and Operations Auxiliary Service Branch are not bound by this requirement and will continue to use the RFP method to award contracts.

In addition, Act 72, SLH 2020, does not address the methodology of applying such a local construction preference. The bill is not clear as to what local preference the agency will use, will they continue to utilize either Act 17, SLH 2009 – Apprenticeship Program, Act 68, SLH 2010 – Employment of State Residents on Construction Procurement Contracts, and HRS §103D-1002 – Hawaii Products, or will the DOE create a new preference exclusive to the school facilities agency?

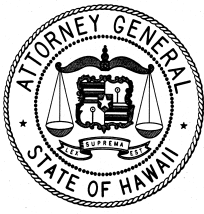
The implementation of a new DOE construction preference may cause undue confusion and frustration among agencies and construction companies, because of this, the SPO favors the language used in SB466, SD2, Section 1, page 3, line 4, which states, **“The agency shall comply with chapter 103D.”**

It is the SPO’s position that the Hawaii Public Procurement Code is to be universally applied to all agencies statewide.

Thank you.

((CONTINUATION OF TESTIMONY))

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**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 808, S.D. 2, RELATING TO THE SCHOOL FACILITIES AGENCY.

BEFORE THE:

HOUSE COMMITTEE ON EDUCATION

DATE: Thursday, March 18, 2021

TIME: 2:00 p.m.

LOCATION: State Capitol, Via Videoconference Conference Rooms 309 & 430

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

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

Chair Woodson and Members of the Committee:

The Department of the Attorney General (Department) opposes the provision of this bill that allows the School Facilities Agency to hire private attorneys.

The purpose of this bill is to clearly describe the powers and responsibilities of the School Facilities Agency by amending part VI, subpart C of chapter 302A, Hawaii Revised Statutes (HRS).

On page 8, lines 12 – 18 of this bill, a new paragraph (13) is added to section 302A-1703(c) to authorize the School Facilities Agency to:

“[a]ppoint or retain by contract one or more attorneys who are independent of the attorney general to provide legal services solely in cases of negotiations in which the attorney general lacks the sufficient expertise; provided that the independent attorney shall consult and work in conjunction with the designated deputy attorney general assigned[.]”

Section 5 of the bill, at page 18, line 20, through page 21, line 13, would amend section 28-8.3(a), HRS, to authorize the school facilities agency to employ or retain attorneys.

The new section 302A-1703(c)(13), HRS, and the amended section 28-8.3(a), HRS, would allow the School Facilities Agency to hire private attorneys, who are independent of the Attorney General, to provide legal services for negotiations. While

instances may arise in which the Attorney General hires and/or deputizes private attorneys who possess specific expertise not present within the Department, the Attorney General engages this representation pursuant to section 28-8.3, HRS. As drafted, paragraph (13) interferes with the legal obligation of the Attorney General to its state agency clients, particularly in areas where representation previously has been provided by deputy attorneys general. The Department has deputies with the experience, knowledge, and training necessary to represent the School Facilities Agency, and continues to be willing and able to provide legal services in cases where negotiations are involved. If specialized expertise becomes necessary for negotiations, the Department has the legal expertise to make this determination – as opposed to the School Facilities Agency – and will exercise its authority accordingly to contract with private attorneys for assistance. Because the School Facilities Agency has yet to be established, the Department has not had the opportunity to represent the agency and thus to consider whether private attorneys are necessary for the agency to accomplish its mandate.

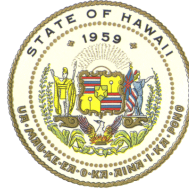
By locating attorneys representing state agencies within the Department, state agencies benefit from a wide range of experience and expertise. The division assigned to represent the School Facilities Agency can seek the advice of other divisions, including those with experience in particular areas. Private attorneys retained by the School Facilities Agency are unlikely to have the necessary breadth of knowledge and experience available in the Department. Additionally, because state agencies are regulated by a variety of laws not applicable in private practice – including the Code of Ethics for state employees and Collective Bargaining in Public Employment – the Department has a depth of expertise in representing state agencies that would be difficult for private attorneys to duplicate, and certainly not without additional expense. Finally, because the deputy attorneys general, and any private attorneys contracted by the Attorney General to serve as special deputy attorneys general, are separate and apart from the agencies they represent, they are insulated from political issues that may arise within an agency. This insulation permits the Department to provide objective and high-quality legal counsel. However, as discussed above, if specialized expertise is

desired for a particular negotiation or litigation, the Attorney General is authorized to contract with private attorneys to serve as special deputy attorneys general.

We respectfully recommend the Committee amend the bill by removing the amendment on page 8, lines 12 – 18, and section 5, on page 18, line 20, through page 21, line 13, of this bill that would authorize the School Facilities Agency to hire by contract private attorneys who are independent of the Attorney General.

Thank you for the opportunity to provide testimony.

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 House Committee on
EDUCATION**

**Thursday, March 18, 2021
2:00 PM**

State Capitol, Via Videoconference, Conference Room 309

**In consideration of
SENATE BILL 808, SENATE DRAFT 2
RELATING TO THE SCHOOL FACILITIES AGENCY**

Senate Bill 808, Senate Draft 2 proposes to describe the powers and responsibilities of the School Facilities Agency (Agency) by amending Chapter 302A, part VI, subpart C, Hawaii Revised Statutes (HRS), and Act 72, Session Laws of Hawaii 2020 and transfer the total fund balance in the State Educational Improvement Fund to the School Facilities Special Fund by a certain date. **The Department of Land and Natural Resources (Department) supports this measure.**

The State has a policy, as reflected in Section 171-64.7, HRS, requiring a heightened level of scrutiny on selling or alienating the fee simple interest of public lands as it would deplete the limited public trust corpus. This measure proposes to require legislative approval via a supermajority in both houses for any sale of lands held by the Agency pursuant to Section 171-64.7, HRS. The Department appreciates the robust oversight governing any potential sale of lands administered by the Agency proposed by Senate Bill 808, Senate Draft 2.

Thank you for the opportunity to comment on this measure.

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

SB-808-SD-2

Submitted on: 3/17/2021 10:11:35 AM

Testimony for EDN on 3/18/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Moore	DLNR	Support	No

Comments:

I am available for questions. Please allow me Zoom access. Thank you.



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

Date: 03/18/2021
Time: 02:00 PM
Location: 309 & 430 Via
Videoconference
Committee: House Education

Department: Education

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

Title of Bill: SB 0808, SD2 RELATING TO THE SCHOOL FACILITIES AGENCY.

Purpose of Bill: Describes the powers and responsibilities of the school facilities agency by amending chapter 302A, part VI, subpart C and Act 72, Session Laws of Hawaii 2020. Transfers the total fund balance in the state educational improvement fund to the school facilities special fund by a certain date. Makes appropriation. Effective 7/1/2050. (SD2)

Department's Position:

The Hawaii State Department of Education (Department) respectfully offers comments on SB 0808, SD2.

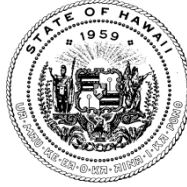
The Department appreciates the legislature's commitment to addressing the needs of Hawaii's K-12 public school students. This measure further clarifies the roles and responsibilities of the School Facilities Agency. The Department looks forward to working with the School Facilities Agency and its Executive Director in determining how to best address the facilities needs for the Department's students and schools.

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



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 18, 2021
2:00 P.M.
State Capitol, Teleconference

**S.B. 808, S.D. 2
RELATING TO THE SCHOOL FACILITIES AGENCY**

House Committee on Education and Energy & Environmental Protection

The Department of Transportation (DOT), Highways Division, as the Administration's lead for setting up the School Facilities Agency (SFA), and operationalizing the provisions of Act 72, Session Laws of Hawaii (SLH) 2020, **supports** the passage of S.B. 808, as the single means of amending Act 72 to more clearly describe the powers and responsibilities of the SFA it established, and the School Facilities Board and Executive Director it created to implement its provisions.

To assure a strong start for the SFA, and for the following reasons, we again respectfully request that all amendments to Act 72 be considered and made by means of S.B. 808: (1) S.B. 466, S.D. 2 makes some only some, but not all of the amendments this bill makes to Act 72; (2) S.B. 466, S.D. 2 amends Act 72's provisions in its session law format, which will require the Revisor of Statutes to recodify the provisions of Act 72, whereas S.B. 808 revises Act 72 in its codified, Hawaii Revised Statutes (HRS) format; (3) most importantly, amending Act 72 by one rather than two bills will avoid losing the amendments S.B. 808 would have made to HRS Ch. 302A, Part VI, Subpart C, if S.B. 466 was enacted after S.B. 808.

We also respectfully request that S.B. 808, S.D. 2 be revised to include these additional amendments to HRS Ch. 302A, Part I, Subpart C, HRS § 302A-1701 - HRS § 302A-1707:

1. To make clear that the School Facilities Board is to "oversee" the SFA, as Standing Committee Reports SSCR No. 3069, HSCR No. 1215-20, and HSCR No. 1276 to Act 72 provide,
 - (a) Delete the first sentence of HRS § 302A-1702(b) by bracketing and striking through that sentence, and
 - (b) Revise the first sentence of HRS § 302A-1704(a) to provide instead:
“(a) There is established within the department for administrative purposes only, a school facilities board which shall oversee the agency.”

2. To adhere more closely to the constitutional requirement that agencies of the State be allocated to the principal department of the State with common purposes and related functions, assign the SFA for administrative purposes only to the Department of Business, Economic Development and Tourism instead of the Department of Education (DOE) by
 - (a) Revising the last sentence of HRS § 302A-1702(a) by inserting “of business, economic development and tourism” between “department” and “for administrative” and
 - (b) Revising HRS § 302A-1704(a) by inserting “of business, economic development and tourism” between “department” and “for administrative” in the second line of that subsection.
3. To complete the transfer of responsibilities for implementing Act 155, SLH 2013, Act 115, SLH 2015, Act 206, SLH 2017, and Act 272, SLH 2019, and HRS § 302A-1151.1, Pilot program for lease of public school land, from the DOE to the SFA, required by Section 9 of Act 72, add a new section to Part IV of S.B. 808, to substitute “school facilities agency” for every reference in HRS § 302A-1151.1, to “department.” Every reference in HRS § 302A-1151.1 to the Board of Education and “board” should also be changed to “school facilities agency” if the Legislature intended that the decisions made by the Board of Education should now be made by the SFA or its board.

Because Act 72 transferred all of the DOE’s responsibilities for administering the provisions of HRS Ch. 302A, Part VI, Subpart B’s School Impact Fees, as well as its responsibility to implement Act 155, SLH 2013, Act 115, SLH 2015, Act 206, SLH 2017, and Act 272, SLH 2019, and HRS § 302A-1151.1, pilot program for lease of public school land, to the SFA, without funds to appoint an Executive Director or staff to assume those responsibilities, we respectfully request that appropriations for the current fiscal year be included in S.B. 808, for that purpose.

Additional non-substantive revisions we suggest the Committee make to S.B. 808, S.D. 2, are described in Attachment 1 to this testimony.

Thank you for the opportunity to testify on this measure.

ATTACHMENT 1 To Testimony of the DOT, Highways Division on S.B. 808, S.D. 2

1. Insert “of” between “subpart C,” and “chapter” on line 6 of page 1
2. Insert a comma after “real” and delete “property,” on line 9, of page 2
3. Bracket and strike through all of HRS § 302A-1703(b) at lines 15 – 21, and insert “The agency shall comply with chapter 103D.” in its place at line 15 of page 4
4. Replace the semi-colon with a comma after “donations” on line 10, insert a comma after “property” on line 11, and insert a comma after “like” on line 12 of page 15
5. Bracket and strike through “but” and insert “other” between “any” and “law” on line 5 of page 16
6. Insert a comma after “positions” and insert “office space,” between “positions,” and “and related” on line 10 of page 18
7. Insert a comma after “agency” and insert “executive director of the school facilities agency” between “agency,” and “or school” on line 6 of page 41
8. Insert “board of education” after “education,” on line 15 of page 41
9. Insert a comma after “agency” on line 20 of page 41
10. Bracket and strike through “or school agencies” on line 20 of page 41
11. Insert “school facilities” before “board,” and “chairperson of the school facilities board” or “executive director of the school facilities agency” between “board,” and “as appropriate.” on line 20 of page 41



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

The Thirty-First Legislature, State of Hawaii
House of Representatives
Committee on Education
Committee on Energy & Environmental Protection

Testimony by
Hawaii Government Employees Association

March 18, 2021

S.B. 808, S.D. 2 — Relating to The School Facilities Agency

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO opposes S.B. 808, S.D. 2, which describes the powers and responsibilities of the school facilities agency by Amending Act 72, Session Laws of Hawaii 2020. Specifically, we oppose the portion of the bill which exempts the full-time staff of the school facilities agency from the civil service requirements under chapter 76.

The Hawaii Government Employees Association represents 135 employees who currently work for the DOE's Office of Facilities and Operations. The employees we represent are already doing the jobs this agency will be responsible for, including but not limited to, public school development, planning, and construction related to capital improvement projects. Their status as civil service employees should not be adversely impacted when the positions are transferred to the agency. S.B 808 aims to circumvent the rights and protections of employees who currently hold civil service positions and their entitlements under the law.

Thank you for the opportunity to testify in opposition of S.B. 808, S.D. 2.

Respectfully submitted,

Randy Perreira
Executive Director