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**TESTIMONY OF THE STATE FOUNDATION ON CULTURE AND THE ARTS
TO THE HOUSE COMMITTEE ON CULTURE, ARTS & INTERNATIONAL AFFAIRS
February 10, 2023 Conference Room 309 & Videoconference at 9:30AM
H.B. 476**

RELATING TO THE STATE FOUNDATION ON CULTURE AND THE ARTS

Chair Tam and members of the Committee, the State Foundation on Culture and the Arts (SFCA), is pleased to offer **COMMENTS** relating to H.B. 476 which: Allows the Works of Art Special Fund to be used for performing arts, under certain conditions. Provides that forty per-cent of the Works of Art Special Fund be used for performing arts. Defines performing arts.

The performing arts in Hawaii are a vital part of our community and currently receive SFCA support through General Fund appropriations from the legislature and Federal funding from the National Endowment for the Arts. Performing Arts represents 43% of the SFCA's Biennium Grants awards and 72% of total Artists in the Schools projects.

The Works of Art Special Fund was created in 1989 based on the intrinsic relationship between art and architecture, where art is included as an essential part of the architectural plan, providing access and education to the people of Hawaii. Hawaii was the first state in the nation to adopt a percent-for-art law in 1967 where 1% of the construction appropriation is set aside for art in State buildings per 103-8.5HRS.

HB476 Allows the Works of Art Special Fund to be used for performing arts, under certain conditions. While there is a great demand for the Works of Art Special Fund to support initiatives outside the parameters of 103-8.5HRS including performing arts, the fund does not allow for the broad use due to its source as bond revenue. The revenue of the special fund is from tax exempt bond issuances which requires that proceeds cannot be used for operational purposes. If we change the nature of the expenditure, the tax exempt status of the bonds could be lost, creating a significant negative impact on bondholders and the State, increasing debt service cost and tarnishing the State's reputation in the financial markets.

HB476 Provides that forty per-cent of the Works of Art Special Fund be used for performing arts. While H.B. 476 may appear to be an increase in funding for performing arts, in truth it will dilute funding for the visual arts by 40%.

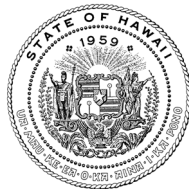
HB476 Defines performing arts. Performing Arts is already defined in Chapter 9 HRS.

Based on discussions with the Attorney General's Office on what is allowable and not permissible, the Department of Business Economic Development and Tourism's Creative Industries Division regarding copyright, and industry professionals regarding best practices, we believe the requirements in H.B. 476 complicate and limit funding and support for performing arts while placing the State's bond rating at risk.

SFCA recommends the legislature establish an annual performing arts general fund appropriation to the SFCA. The fund would be distributed to performing arts organizations statewide through a process with criteria developed by the SFCA in consultation with the performing arts organizations.

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

JOSH GREEN, M.D.
GOVERNOR



LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

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

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DEPARTMENT OF BUDGET AND FINANCE
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT

TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON CULTURE, ARTS & INTERNATIONAL AFFAIRS
ON
HOUSE BILL NO. 476

February 10, 2023
9:30 a.m.
Room 309 and Videoconference

RELATING TO THE STATE FOUNDATION ON CULTURE AND THE ARTS

The Department of Budget and Finance (B&F) opposes this bill.

House Bill No. 476: 1) allows the Works of Art Special Fund to be used for performing arts; 2) requires that 40% of the Works of Art Special Fund be used for performing arts; and 3) adds definitions and criteria to prescribe what would be qualifying performing arts.

It should be noted that the primary source of revenue for the Works of Art Special Fund comes from debt financing, such as general obligation bonds or revenue bonds. Based on sound public financial management practices, it is not appropriate to use debt financing for operating-type purposes or expenditures.

Thank you for your consideration of our comments.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**
KA 'OIHANA HO'OMOHALA PĀ'OIHANA, 'IMI WAIWAI
A HO'OMĀKA'IKĀ'I

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Statement of
CHRIS J. SADAYASU
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON CULTURE, ARTS AND INTERNATIONAL AFFAIRS
Friday, February 10, 2023
9:30 AM
State Capitol, Conference Room 309 and Video conference

In consideration of
HB 476
RELATING TO THE STATE FOUNDATION ON CULTURE AND THE ARTS.

Chair Tam, Vice Chair Martinez and members of the Committee. The Department of Business, Economic Development and Tourism (DBEDT) respectfully offers comments on HB 476, which allows the Works of Art Special Fund to be used for performing arts under certain conditions, provides that forty per cent of the Works of Art Special Fund be used for performing arts, and provides a definition of performing arts.

DBEDT and its Creative Industries Division agree that if the intent is to expand Works of Art Special fund beyond physical artworks to include performing arts. This is a vital sector of our creative economy and was Hawaii was one of five states in the U.S. that was disproportionately affected by the COVID-19 pandemic.

Of concern is the language regarding display, rebroadcasting or streaming performances, as noted in Section 2 on page 2 lines 8-21 and page 3, lines 1-9. This raises concerns regarding rights to the music, performers and any recordings which may not be covered by existing agreements with the performing arts organizations.

More specifically, on page 3, lines 1-9, Section 2, the taping, archiving and showcasing by various means of performing arts works on must also address a mechanism by SFCA to hire a team which is familiar with handling the legal aspects and compensation for licensing, royalties and related performing arts and entertainment industry standards. This would be required of the agency in order to properly compensate the artists, performers and writers of the content performed.

DBEDT defers to the DAGS and its State Foundation on Culture and the Arts, on these areas of the measure as well as the operational aspects required.

Thank you for the opportunity to testify.

HB-476

Submitted on: 2/9/2023 8:07:57 AM

Testimony for CAI on 2/10/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Evan Anderson	Hawai'i Arts Alliance	Comments	Remotely Via Zoom

Comments:

Aloha, Honorable Chairman and members of the committee-

I write today to share comments on behalf of the Hawai'i Arts Alliance regarding HB476 concerning the use of 40 percent of the State Foundation for Culture and the Arts' funds for the performing arts. While we applaud the aim of the bill, which is to support the performing arts, a vital sector of Hawai'i's economy and cultural life, we strongly believe that taking money away from the current funding stream supporting the work of the State Foundation for Culture and the Arts is not the solution. Instead, a separate, proportional appropriation should be made to support the performing arts in Hawai'i.

As we all know, the COVID-19 pandemic has had a devastating impact on the performing arts in Hawai'i and across the country. The performing arts industry in Hawai'i experienced a significant decline in revenue during the pandemic, and this decline has had a ripple effect, affecting not only the artists, but also the support staff, stagehands, musicians, and others who rely on this industry for their livelihoods.

In 2020, a national study by the National Endowment for the Arts found that the nonprofit theater industry was one of the hardest hit by the pandemic, with a loss of approximately \$4.5 billion in revenue. This not only represents a loss of income for artists and support staff, but also a loss of cultural richness and diversity for communities.

Resources to aid in the recovery of our creative industries are urgently needed, and federal rescue monies can no longer be counted on to buoy up our arts economy. It is only through a state-level commitment to and investment in the arts that we can provide a much-needed boost to the performing arts in Hawai'i. However, we must not take away from the essential programs around visual arts and arts education for our keiki that our current funding for the State Foundation supports. Rather than continuously trying to slice the pie of state arts resources ever thinner, we need to commit to a bigger pie.

We at the Hawai'i Arts Alliance understand the financial constraints faced by the state, but we believe that an investment in the performing arts is an investment in the cultural and economic well-being of our communities. We urge the committee to consider a separate, proportional appropriation to support the performing arts in Hawai'i, either through an amendment to this bill or through another means of appropriation, so that this vital sector can recover and thrive. Thank you for your consideration.

HB-476

Submitted on: 2/10/2023 2:32:48 AM

Testimony for CAI on 2/10/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Sean-Joseph T.K. Choo	Individual	Support	In Person

Comments:

Aloha to the members of the Hawai'i State House of Representatives Committee on Culture, Arts, and International Affairs,

Like its companion SB119 this bill is important to have funding directed towards artists, and especially toward performing artists, like myself. I have wondered in the past, after becoming aware of the origins of the Art in Public Places program, how much money goes to performing artists in addition to visual artists. Super support this bill! We must continue to support our artists and storytellers, that work with the brush, the word, but also the moving body and speaking + singing voice.

One question: why is there language about copyright? Perhaps it makes things easier, but I do believe the ownership should be retained by the artists, with a license to publish and share the recorded art.

Mahalo for your time and consideration,

Sean-Joseph Choo,

Lead Steward + Head Jester + Primary Theatre Advocate

Kamamo House

HB-476

Submitted on: 2/9/2023 8:13:52 AM

Testimony for CAI on 2/10/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Sherman Warner	Individual	Oppose	Written Testimony Only

Comments:

Testimony in opposition to HB 476 relating to the State Foundation on Culture and the Arts

Chair Gates, Vice Chair Tam and members of the Committee on Culture, Arts and International Affairs

Mahalo for the opportunity to present this testimony.

I am Sherman Warner, a resident of Hawaii Island and a retired performing arts professional. After earning a degree in theatre from the University of Hawaii in 1968, I began my career as a production stage manager in both commercial and non-profit theatre in Las Vegas, on national tours, and in Cincinnati before settling in New York where I continued to work in the areas of theatre, dance, opera and concerts. In the mid-1970s, I co-founded a non-profit theatre and subsequently a commercial producing company. I have produced and managed roughly two dozen Broadway shows and subsequent productions of those shows that toured the U.S. as well as being presented in the U.K., Europe, and Canada. As a producer of Broadway musicals, I won four Tony Awards. In retirement, I have served two terms as a commissioner with the State Foundation on Culture and the Arts and I have served as a board member, board president and interim artistic director at the Kahilu Theatre.

As an SFCA commissioner, I treasured the experience of being an advocate for Hawaii's percent-for-the-arts program, the first of its kind in the nation. Consistent with my lifetime support of and involvement with the performing arts, I am opposed to any effort to increase support for the performing arts by radically reducing the funding of other arts.

HB476 states that "The State [shall have] whole and exclusive copyrights in the performance and its recordings pursuant to the works made for hire doctrine under federal copyright laws," and that clause conflicts with the underlying principles of artists' rights to their creations and their intellectual property. In all of my producing and managing experience, I have never been involved with a stage production where the work of creative artists was a "work for hire."

Producers and presenting organizations license performance rights from playwrights, composers, lyricists, orchestrators, directors, choreographers, and stage designers. As a member of many labor negotiation committees for the Broadway industry's trade organization, I've participated in multiple negotiations with unions representing each of those creative fields. A defining issue for the guilds and unions that represent the rights of workers in the performing arts is the protection

of the right to be compensated fairly for the re-use of their creative works. In virtually every instance, the performing arts presenters and producers that HB476 intends to support simply don't own the rights to the works that they present — they license limited rights — and they do not have a legal right to convey recordings of live performances to the State.

Let me offer an example from my experience at Kahilu Theatre of the complexities of recording and exhibiting recorded performances. At Kahilu and other venues, annual license fees paid to ASCAP and BMI pay songwriting royalties for any song that is performed live, enabling a singer at those venues to perform songs written by others without obtaining prior permission. Early in the pandemic, Kahilu Theatre entered an agreement with an online streaming service (Vimeo) so that it could offer its performances in both live-streaming and, subsequently, on-demand formats. Kahilu Theatre can live-stream a concert in which performers sing compositions written both by themselves and others without obtaining additional rights, but the subsequent on-demand presentation of that concert is governed by very different licensing agreements known as synchronization rights. These rights cover any recording that combines audio and visual and they require negotiation with the rights holder, unlike “mechanical rights” for an audio-only recording. Synchronization rights are generally expensive and time consuming to obtain and are usually impossible to get. Before it makes a Kahilu concert available for on-demand viewing, Vimeo edits out every song that is neither in the public domain or composed by the performer.

What is certain in this complicated rights situation is that Kahilu Theatre does not have the right to transfer a concert recording to the State as a work-for-hire.

Another example: as one of the producers and investors in the original production of the Tony Award-winning Broadway musical “Titanic,” I receive a very small share of the authors’ royalties from exploitation of stock and amateur rights. When Diamond Head Theatre licensed the amateurs right to present “Titanic,” DHT paid royalties for the right to present a specified number of live performances but DHT did not have the right to record performances. Any filming or conveyance to the State of a filmed performance would violate the authors’ rights and the rights of others, like me, who benefit from those rights.

A highlight of my Broadway career was the original production of the Stephen Sondheim musical "Into the Woods." That production was recorded and broadcast by the PBS Great Performances series. The Broadway producers did not have the television rights; additional negotiations with the authors were required as well as with all of the creative staff, the performers and their unions. PBS assembled an A-level team to record a performance. When I watch that recording, it is with a mixture of pride and nostalgia, but there are also cringe-worthy moments when I turn away. When people tell me that they've seen that video, I respond by saying, "Yes, but..." and explain that the video couldn't capture the experience of being at a live performance.

In closing, I must add that a video or film recording of a live, three-dimensional piece of performance art is rarely a piece of art in itself; it is only the documentation that there was a piece of performance art. I appreciate that it is natural for the State to want to acquire something tangible when it spends our money, however the essence of the performing arts is the ephemeral experience of live performance in front of a live audience, and the difference between that

performance and a video recording is like the difference between a live animal and a stuffed one. The Hawaii State Art Museum doesn't display videos of sculptures or photos of painting, and it doesn't own the "whole and exclusive copyrights" to the visual art that it displays. Certainly, no one would suggest supporting the Honolulu Zoo by showing videos of animals.

I heartily endorse added support for the performing arts, but HB476 is not the way to do it.

Mahalo for your consideration of this testimony.

LATE

HB-476

Submitted on: 2/9/2023 11:42:17 AM

Testimony for CAI on 2/10/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Marcia Pasqua	Individual	Oppose	Written Testimony Only

Comments:

HB476 RELATING TO THE STATE FOUNDATION ON CULTURE AND THE ARTS

I am **NOT** in favor of this cut to arts funding i.e. cutting 40% of support for visual artists. Instead, increase the general fund support specifically for performing arts. Under HB476, the State holds whole and exclusive copyrights.

LATE

HB-476

Submitted on: 2/9/2023 12:50:59 PM

Testimony for CAI on 2/10/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Emily McIlroy	Individual	Oppose	Written Testimony Only

Comments:

I am NOT in favor of this cut to arts funding i.e. cutting 40% of support for visual artists.

Instead,

increase the general fund support specifically for performing arts. Under HB476, the State holds whole and exclusive copyrights.