

**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 3328, S.D. 1, RELATING TO EDUCATION.

BEFORE THE:

SENATE COMMITTEES ON WAYS AND MEANS AND ON JUDICIARY

DATE: Thursday, February 22, 2024 **TIME:** 9:46 a.m.

LOCATION: State Capitol, Room 211 and Videoconference

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

(For more information, contact Anne T. Horiuchi,
Deputy Attorney General, at (808) 586-1255)

Chairs Dela Cruz and Rhoads and Members of the Committees:

The Department of the Attorney General (Department) provides the following comments.

The bill: (1) clarifies the Department of Education's (DOE) authority to oversee public education facilities and real estate development; (2) establishes the Office of Facilities and Real Estate Development and the Office of School Operations and Services; (3) repeals the School Facilities Authority; (4) reorganizes the DOE's organizational structure for facilities and real estate development; (5) establishes positions; and (6) repeals the Office of Facilities and Real Estate Development and Office of School Operations and Services on July 1, 2031.

The Department objects to proposed section 302A-B(6), Hawaii Revised Statutes (HRS), in section 2 of this bill on page 11, lines 6-12, which will allow the Office of Facilities and Real Estate Development to:

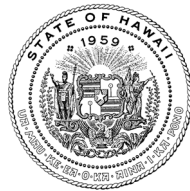
Appoint or retain by contract one or more attorneys who are independent of the attorney general to provide legal services solely in cases of negotiations in which the attorney general lacks the sufficient expertise; provided that the independent attorney shall consult and work in conjunction with the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

The Attorney General is the chief legal officer under the Hawai'i Constitution, serves as legal counsel to the State of Hawai'i, and has statutory legal obligations including providing legal advice to state agencies. Because it has been called the largest "law firm" in Hawai'i, with diverse subject-matter divisions, the Department of the Attorney General is best suited to provide legal advice to its state clients on a broad array of matters and, therefore, as a general matter, state agencies are best served by deputy attorneys general. By utilizing deputy attorneys general, state agencies benefit from the wide range of experience and expertise in a cost-effective and conflict-free manner.

The Department has substantial experience in negotiations. However, to the extent that certain matters require attorneys with a specific kind of experience, the Attorney General can already appoint under section 28-8(b), HRS, special deputy attorneys general who can address specific issues as they arise. Therefore, the provision on page 11, lines 6-12, is unnecessary because attorneys with specific experience can already be employed through the special deputy process.

For these reasons, the Department respectfully requests that the proposed section 302A-B(6) on page 11, lines 6-12, be deleted.

Thank you for the opportunity to provide comments on this bill.



JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
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
Ka 'Oihana Mālama Mo'ohelu a Kālā
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

WRITTEN ONLY

TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON WAYS AND MEANS AND JUDICIARY
ON
SENATE BILL NO. 3328, S.D. 1

February 22, 2024
9:46 a.m.
Room 211 and Videoconference

RELATING TO EDUCATION

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill (S.B.) No. 3328, S.D. 1:

- Adds a new section to Section 26-12, HRS, that the Department of Education (DOE) shall establish, maintain, and operate the public education facilities of the State, including public schools and other educational facilities authorized by law; and the DOE may enter into service-level agreements, memoranda of agreement, or memoranda of understanding with other departments for these responsibilities if the agreement or understanding is beneficial for the State.
- The measure adds three new sections to Chapter 302A, HRS, to establish: 1) the Office of Facilities and Real Estate Development (OFRED), which shall be responsible for the development, construction, repairs, maintenance, and other activities necessary for public education facilities as authorized by law or deemed necessary by the Board of Education (BOE) policy; 2) the Office of School Operations and Services (OSOS), which shall be responsible for service operations, including school meals, transportation, and other activities as may be required by law or deemed necessary by BOE policy; and 3) the Educational Facilities and Real Estate Development Special Fund (EFREDSF) into which shall be deposited: 1) all

moneys appropriated or transferred by the Legislature or counties for deposit into the EFREDSF; 2) any moneys received by DOE in the form of a grant, gift, endowment, or donation for the development, planning, or construction of new educational facilities or major renovations of educational facilities; and 3) all other moneys received by DOE and not deposited into a trust fund or trust account, including unrestricted grants, gifts, and donations; proceeds from sales of property; rents and other receipts from leases, rights of entry, and the like; and interest, refunds, and other receipts and payments.

- The measure amends Chapter 302A, Part VI, Subpart C, HRS, to repeal the School Facilities Authority.
- The measure declares that the general fund expenditure ceiling is exceeded in FY 25 by an undetermined amount.
- The measure establishes two full-time equivalent positions, including an Assistant Superintendent of Facilities and Real Estate Development and a secretary position and appropriates an undetermined amount of general funds in FY 25.
- Lastly, the measure repeals OFRED and OSOS on July 1, 2031.

As a matter of general policy, B&F does not support the creation of any special fund which 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. 3328, S.D. 1, it is difficult to determine whether the proposed EFREDSF would be self-sustaining.

Thank you for your consideration of our comments.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/22/2024

Time: 09:46 AM

Location: CR 211 & Videoconference

Committee: Senate Ways and Means
Senate Judiciary

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: SB 3328, SD1 RELATING TO EDUCATION.

Purpose of Bill: Clarifies the Department of Education's authority to oversee public education facilities and real estate development. Establishes the Office of Facilities and Real Estate Development and the Office of School Operations and Services. Repeals the School Facilities Authority. Reorganizes the Department of Education's organizational structure for facilities and real estate development. Establishes positions. Makes conforming amendments. Declares that the general fund expenditure ceiling is exceeded. Makes an appropriation. Repeals the Office of Facilities and Real Estate Development and Office of School Operations and Services 7/1/2031. Takes effect 7/1/2050. (SD1)

Department's Position:

The Hawaii State Department of Education (Department) supports Senate Bill 3328, SD1.

The Department looks forward to working with all agencies in the expansion of pre-kindergarten programs at schools statewide as well as the ability to work with other agencies on the Department's facilities priorities.

The Department recognizes the importance and urgency of improving its facilities operations which are referenced in Part II of the bill. The Department is working with the Board of Education and industry advisors and experts on an approach for overall real estate optimization which includes reorganization, as appropriate. The Department

believes that optimization is best accomplished through existing processes, rather than through statutory change. The Department is working closely with the Board of Education and labor partners on reorganization.

The Department is currently working with the Board of Education to establish a baseline of its facilities and operations to better understand which functions need greater attention. SB 3328 supports this endeavor by providing necessary resources and funds to revitalize the organization to operate more efficiently.

The Department looks forward to continue working with the Legislature and the Board of Education on this matter.

Thank you for the opportunity to support SB 3328, SD1.



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

Testimony of Warren Haruki
Chairperson, Board of Education
Chairperson, 2024 Legislative Ad Hoc Committee

Senate Committee on Ways and Means
Senate Committee on Judiciary
Thursday, February 22, 2024
9:46 a.m.
Hawaii State Capitol, Room 211

Measure: SB3328 SD1, Relating to Education

Aloha Chairs Dela Cruz and Rhoads, Vice Chairs Moriwaki and Gabbard, and Members of the Committees:

The Board of Education (Board) **strongly supports** this measure as it provides greater clarity regarding the Department of Education's authority over facilities.

The Board is encouraged that the measure provides the opportunity for the Department to reorganize its facilities and operations team. The Superintendent has made it a priority to examine opportunities to increase effectiveness and efficiency in completing capital improvements, deferred maintenance, and repairs across the 250+ campuses statewide. SB3328 SD1 is an enabler to implementing the changes that are much needed.

The Board respectfully requests amendments to the timeframes established in sections 5(c) and (d), to allow at least three additional months for both deadlines – no earlier than November and December 2024, respectively. More time will likely be needed for the Board to work with the Department and School Facilities Authority to determine the numerous implementation details. Only after the myriad of tasks and actions are identified could this matter then be brought to the Board for anticipated approval.

The Board defers to the Department and/or its administratively attached agencies, when appropriate, on operational and implementation matters, while maintaining strategic oversight and guidance.

Mahalo for this opportunity to testify on behalf of the Board.



Cade Watanabe, Financial Secretary-Treasurer

Gemma G. Weinstein, President

Eric W. Gill, Senior Vice-President

February 21, 2024

Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Testimony in opposition to SB 3328

Chairs Dela Cruz and Rhoads, Vice Chairs Moriwaki and Gabbard, and Members of the Committees,

UNITE HERE Local 5 represents working people throughout Hawaii's hotel, food service and health care industries. **We oppose SB 3328** because we believe that it is bad policy to expand the power of state agencies to sell or otherwise dispose of public land. This bill is a gift to developers and those who would make corrupt deals with them.

The bill currently would allow a newly-created Office of Facilities and Real Estate Development within the Department of Education to sell, assign, exchange, transfer, convey, lease, dispose of or encumber any property it owns or acquires, alone or in public-private partnerships. It would also allow the DOE to acquire land, including via the use of condemnation. This could allow DOE to, for example, take over land by condemnation and then turn around and sell it to developers. Regardless of what powers the School Facilities Authority currently has with regard to these same issues, doling out this power is not a practice that should be continued or expanded. It creates the ability for the Department of Education to become a department of real estate privatization. This is not in the public's best interest.

Allowing public agencies to sell public land with minimal oversight opens the door for corruption and deals that are not in the public's best interest.

Please oppose SB 3328.

Thank you for your consideration.

SB-3328-SD-1

Submitted on: 2/21/2024 7:59:10 AM

Testimony for WAM on 2/22/2024 9:46:00 AM

Submitted By	Organization	Testifier Position	Testify
Glen Kagamida	Individual	Support	Written Testimony Only

Comments:

SUPPORT.

TIME FOR A CHANGE TO SOMETHING THAT MIGHT WORK BETTER.