



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 1103, RELATING TO COMMUNITY DISTRICTS.

BEFORE THE:

SENATE COMMITTEES ON WATER AND LAND AND ON GOVERNMENT
OPERATIONS

DATE: Tuesday, February 11, 2025 **TIME:** 3:05 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Kevin C. Tongg or Christopher J.I. Leong, Deputy Attorneys
General

Chairs Inouye and McKelvey and Members of the Committees:

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

This bill adds a new part to the Hawaii Revised Statutes (HRS) that would: (1) authorize the Legislature to establish community districts by concurrent resolution; (2) establish a nine-member board for each community district established by concurrent resolution; (3) require that each board create and implement a community plan for improving each district, and adopt certain guidance policies; (4) allow each board to assess land users for their fair share of costs required to administer and operate each district; (5) allow each board to secure financial aid from the federal government for any planning, design, building, construction, and maintenance work; (6) establish a special fund for each community district established under this bill to be used by the community development board for the purposes described in part I of this bill; and (7) establish an election process for the election of community district board members.

The Department has concerns that this bill may be challenged as violating (1) article III, section 14, of the Hawai'i State Constitution by establishing law through concurrent resolution, and (2) section 37-52.3, HRS, by failing to satisfy the requirements to establish a special fund.

Article III, section 14, of the Hawai'i State Constitution provides that "[n]o law shall be passed except by bill." Concurrent resolutions are not bills. Therefore, concurrent resolutions do not have the force and effect of law.

This bill may violate article III, section 14, of the Hawai'i State Constitution because it proposes to establish law by concurrent resolution. This bill attempts to allow the Legislature to establish community districts by concurrent resolution and sets forth a statutory framework for the regulation of community districts. Although concurrent resolutions do not have the force and effect of law, the proposed statutory framework appears to treat the establishment of community districts in this manner as having the force and effect of law. If the statutory framework depends on the establishment of community districts by concurrent resolution, then this bill may not have the legal effect the Legislature intends. To address this constitutional concern, we recommend that the Legislature establish each community district by bill instead of concurrent resolution.

We also have concerns that by directing the Director of Finance to establish a special fund for each community district established pursuant to concurrent resolution (See proposed section 206E-K, page 13, line 13, through page 14, line 8), this bill does not comply with the requirements of section 37-52.3, HRS. Currently, this bill does not explain why each community district could not be implemented with general funds. Section 37-52.3, HRS, provides that the Legislature "shall ensure that the special fund: (1) [s]erves a need, as demonstrated by: . . . (C) [a]n explanation of why the program cannot be implemented successfully under the general fund appropriation process[.]" Thus, we recommend amending this bill to include an explanation of why each community district cannot be implemented successfully with general funds and must instead utilize the community district special funds.

Finally, on page 2, line 2, we recommend changing the word "may" to "map".

Thank you for the opportunity to provide comments.



**HAWAII COMMUNITY
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Statement of
CRAIG K. NAKAMOTO
Executive Director
Hawai'i Community Development Authority
before the
SENATE COMMITTEE ON GOVERNMENT OPERATIONS
And the
SENATE COMMITTEE ON WATER AND LAND

Tuesday, February 11, 2025
3:05 p.m.
State Capitol, Conference Room 225 & Videoconference

In consideration of
SB 1103
RELATING TO COMMUNITY DEVELOPMENT DISTRICTS.

Chairs McKelvey and Inouye, Vice Chairs Gabbard and Elefante, and members of the Committees.

The Hawai'i Community Development Authority (HCDA) **supports this measure and respectfully offers comments** for the committees' consideration.

For the purposes of this testimony, the term, "Board", refers to the applicable nine-member elected district board, and the term, "Authority", refers to the HCDA At-Large board.

This bill contains the following significant terms:

1. Establishes, within Chapter 206E, Hawaii Revised Statutes, the enabling statute for the Legislature's establishment of community districts [Page 1, Line 13];
2. Creates a nine-member elected board that has sole jurisdiction [Page 4, Line 13, Page 15, Line 11];
3. The board shall have the powers and responsibilities that would otherwise be assigned to the authority under Section 206E-4, HRS [Page 2, Line 14];

4. Except as provided in Section 206E-E, the authority shall have no jurisdiction over the established districts [Page 4, Line 13];
5. The board shall create a community plan [Page 5, Line 12];
6. The board shall adopt certain policies and guidelines [Page 6, Line 1];
7. The board has additional powers under Section 206E-H [Page 8, Line 3];
8. The board may assess landowners for operating costs [Page 11, Line 4];
9. The board may secure financial aid from the federal government [Page 12, Line 5]; and
10. The board may adopt rules [Page 14, Line 14].

General Comments

We support the vision and concept of legislatively established community districts, governed by elected Boards, and placed under HCDA for administrative purposes. With the technical assistance of HCDA staff, the Boards lead community planning and possible development that will facilitate economic development, and community building.

Should this bill become law, however, it is hoped that in the near-term specific districts will not be established by the Legislature, thereby affording the Authority and the staff the time to critically examine the agency's existing governance and management structure to determine what governance and management is optimally suited to implement this bill.

Finally, noting that two bills, SB 1669, and HB 1484, Relating to Transit Oriented Development, proposing to establish a transit-oriented community partnership within the Department of Transportation, currently overlap somewhat with this bill, we offer a suggestion. The primary focus of these bills is to prioritize and implement community improvements. Perhaps, the purposes of SB 1669 and HB 1484 and the current bill can be harmonized to avoid duplication of efforts and promote government efficiency.

Specific Comments

1. Page 1, Lines 13 to 17, Page 2, Lines 1 to 5. “Establishment of community districts.”

A. The legality of establishing districts by concurrent resolution has been raised by HCDA’s Deputy Attorney General and we defer to their comments.

B. Notwithstanding the comment above, the concurrent resolution should contain, as conditions to the establishment of a district, the following: (1) at least one (1) FTE for a planner dedicated to the district for the duration of the district; and (2) funding necessary to complete the community plan. We believe the success of the effort to create and implement the “community plan” [Page 5, Line 12] depends on having a dedicated “city planner” who interfaces with the stakeholders.

C. Thus, we suggest that new subsections (4) and (5) be added to Section 206E-B as follows:

*“ (4) Establish at least one (1) dedicated FTE position for the district; and
(5) Appropriate the sum of \$_____ or so much as necessary to carry out the purposes of this Part. . . . ”*

2. Page 2, Line 2: Correct the typographical error by replacing the word, “may”, with the word, “map”.

3. Page 2, Lines 16 to 17, 206E-C. Community district board; established; members; terms. This section of the bill provides that each district will be governed by a Board; however, the relationship between each Board and the Authority is unclear. Thus, we suggest that Section 206E-C(b) of the bill be amended, for clarity, as follows:

“ except powers and responsibilities that bear no relation to the district, and as provided for in Section 206E-E. [new language underlined]

4. Page 2, Lines 20 to 21, Page 3, Lines 1 to 2, Section 206E-C, Community district board; established; members; terms. We suggest the following revision to subsection (d):

“Pursuant to section 92-15, a majority of all members ~~of the board currently elected or appointed to the board~~ shall constitute a quorum to do business, and the concurrence of a majority of all ~~board members currently elected or appointed to the board~~ shall be necessary to make any action of the board valid.”

5. Page 4, Line 13-19, Section 206E-E, Board, Hawaii community development authority; relationship. The relationship between the Board and the Authority, especially given the elected Board, could raise operational and/or governance questions, not contemplated or known at this time. For example, will the exercise of eminent domain by the Board require approval by the Authority? Further, even if Authority approval is not required, the Authority may, nonetheless, prefer approval over certain matters. The suggested language, below, subsections (3), (4), and (5) to Section 206E-E, attempt to address those situations:

*“ (3) As necessary to carry out the purposes of this Part;
(4) As to matters brought before the Authority by the Executive Director; and
(5) As to matters upon which the Authority has not accepted delegation by the Board.”*

6. Page 5, Line 19, Section 206E-F, Community Plan. The word, “recovery”, should, perhaps, be changed to the word, “development”, as the intent of this bill appears to be more than recovery.

7. Page 8, Line 3. 206E-H, Board; powers. In addition to seeking legislative funding and funding from federal sources [Page 12, Line 5 to 20], it may be desirable to give the Board the power to implement alternative methods of funding improvements for the district, such as, but not limited to, tax increment financing.

8. Page 10, Line 11, further to our suggested language under items 5 above, modify subsection (12) as follows:

“.....(12) Delegate any tasks and duties to the authority necessary to carry out the purposes of this part, subject to the discretion of the Authority.”

9. Page 11, Lines 4 to 21, Section 206E-I, Assessment for operating costs. Is it contemplated that these “assessments” will also include landowners sharing in the proportionate cost of improvements that benefit landowners?

Thank you for the opportunity to provide our thoughts.



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SCOTT T. NAGO
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**TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS AND THE
SENATE COMMITTEE ON WATER AND LAND
ON SENATE BILL NO. 1103
RELATING TO COMMUNITY DISTRICTS**

February 11, 2025

Chair McKelvey and members of the Senate Committee on Government Operations and Chair Inouye and members of the Senate Committee on Water and Land, thank you for the opportunity to provide comments on Senate Bill No. 1103. This bill establishes a process by which the Legislature may establish community districts by concurrent resolution and requires the board members of the community districts to be elected by residents of the community district.

As it relates to proposed Section 206E-B in Section 1 of the bill regarding the establishment of boundaries of the community district, we would request that it provide that the district shall correspond to a designated map in the State of Hawaii geographical information system database that follows U.S. Census Bureau census tracts and blocks. Census tracts and blocks are used to establish the boundaries for redistricting, reapportionment, and precincting to assign voters to the associated ballot type containing the contests they will be eligible to vote on. The boundaries of all precincts must conform to census tracts or blocks and a proposed boundary cannot break an existing census block in order to timely assign voters to the proper district.

Additionally, related to the timing of conducting an election, following the establishment of precincts, and assignment of voters for the community district, candidate filing would open on the first working day of February in every even-numbered year. As such, any concurrent resolution establishing a new community district should occur during the legislative session of a non-election year to account for candidate filing and the mailing of yellow card which tells the voters they are registered and which contest they are eligible to vote for.

We would also like to provide the following technical comments regarding the mechanics of the electoral process in Section 2 of the bill.

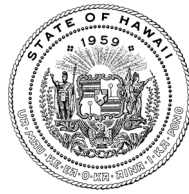
Proposed section __-1, concerning the election of district board members, we would suggest that the number of board members be explicitly stated in subsection (a) on page 15, lines 11-17, and that it be indicated that the board members will be elected at-large in a single contest. We understand this is addressed, in part, in proposed Section 206E-C, which is in Section 1 of the bill, but we ask that matters concerning the election should be addressed in Section 2 of the bill.

We would suggest that proposed section __-1(a) be clarified to indicate that the first election to take place will be held in conjunction with the general election in every even-numbered year. As currently written, the language “shall take place in the election cycle following the adoption of the concurrent resolution” could be interpreted by some as meaning within the two-year election cycle as opposed to the immediately following General Election. If the interpretation is to hold the first election as a stand-alone election, we estimate that cost to be at least \$250,000, depending on the number of districts established.

We would note that proposed section __-1(b) requires candidates to apply for a nomination paper with the county clerk. For other offices, candidates for state offices apply and receive the nomination papers at the Office of Elections or at a neighbor island Office of the County Clerk, pursuant to HRS §12-6. Given this, we would propose that subsection (b) be removed as an established process already exists.

Finally, we would note that you may wish to amend HRS § 12-6 to establish a specific candidate filing fee for these new offices. Otherwise, HRS § 12-6 is currently written broadly to establish a filing fee of \$250 for “all other offices,” along with a discount of \$225 for those that comply with certain Campaign Spending Commission requirements.

Thank you for the opportunity to provide comments on Senate Bill No. 1103.



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WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON GOVERNMENT OPERATIONS
AND WATER AND LAND
ON
SENATE BILL NO. 1103

February 11, 2025
3:05 p.m.
Room 225 and Videoconference

RELATING TO COMMUNITY DISTRICTS

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

Senate Bill (S.B.) No. 1103: 1) establishes a process that allows the Legislature to establish community districts by concurrent resolution, including provisions related to the community district board (CDB), the transfer of State-owned lands to the Hawai'i Community Development Authority, and land user assessments within the district; 2) requires the Director of Finance to establish a Community District Special Fund (CDSF) for each community district and sets the allowable sources of revenue for the funds; 3) establishes provisions related to the election of CDB members; and 4) specifies annual reporting requirements.

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. 1103, it is difficult to determine whether the proposed CDSFs would be self-sustaining and its impact on the proliferation of special funds.

Thank you for your consideration of our comments.

Testimony of Dr. Danny de Gracia, Th.D., D.Min.
In Opposition to
S.B. 1103 Relating to Community Districts

Before the joint hearing of the
Senate Committee on Government Operations and Senate Committee on Water and Land

Tuesday, February 11, 2025
3:05 p.m., Conference Room 225

Chair McKelvey, Co-Chair Inouye, Honorable Senators:

Thank you for the opportunity to submit testimony in opposition in my personal capacity for this measure. Senate Bill 1103 proposes to allow for the creation, by resolution of the legislature, of boards that will in effect serve as elected public administrators over designated geographic regions of Hawaii. It further gives these boards authority to make and execute contracts, engage in procurement, and manage grants, among other functions.

I oppose this measure on the grounds that it is highly problematic. To begin:

1. The proposed boards have no qualifications except for residency requirements within the district that may be created. Procurement in the State of Hawaii is governed by an extensive set of rules and ethical considerations that take not only significant training to complete, but also necessarily involve general experience in government procedures and law and ethics.

- a. **Are we honestly going to leave to chance the possibility that the people who get elected to these boards may not be able to understand HRS 103D, 103F procurement?** There are many highly qualified employees of the Executive Branch and the University of Hawaii possessing significant experience and education who have difficulty navigating the complex rules governing state procurement as it is. What happens if someone or multiple individuals gets elected to these boards that neither have the patience to submit to this training or the knowledge to perform it well?
- b. **Grant management is one of the toughest things to do and is even more complex than procurement. With respect, most legislators and city council members wouldn't know how to manage a grant themselves.**
 - i. Will the community board members have staff? Or will they be made to personally keep track of numerous uniform accounting codes to use as funding sources, object codes to use for the generation of purchase orders and pCard authorization forms, and remain

organized for all the myriad tasks that are part of grant management for the State?

- ii. How many people fresh off the street, elected because they're nice people we'd like to have a beer with, could tell you how to apply for a federal Notice Of Funding Opportunity, develop a proposal, including a timeline for completion of a workplan?
- iii. The task for which this involves in an existing State agency would likely require for one grant alone a program specialist, a planner, an accountant, and an office assistant for just one grant alone, not including the additional other staff needed to review and ensure compliance with applicable laws or correct form. Are board members going to do this by themselves? How many individuals in the State of Hawaii do you trust to be able to do this?

2. The scope of authority that is suggested for these community boards would require significant coordination with community stakeholders, other government agencies, and presumably require a close relationship with the Attorney General's office for approval of their contracts. Do you honestly believe that there are people seeking elected office to community boards who would be willing to spend that level of work on a daily basis?

- a. How many listen-story or informant interviews would the average board member be willing to engage in?
- b. How many focus group sessions would the average board member be willing to schedule?
- c. How much education and knowledge is required to write a Request For Information or a Request for Quote, along with developing specifications and selecting the correct mode of procurement, followed by convening review committees, scoring proposals, and then making awards? Do you really want to leave this up to democratic elections to select someone who can do all this, reliably? Do you want someone fresh off the street conducting emergency procurement, should the situation arise? Would that even be ethically and morally sound to do?

3. By contrast, if placed in a position where you, the legislature, with your expertise and knowledge were called upon to do this, could you do it without support staff? Clearly, the answer is no. This bill, if passed, would have extremely programmatic responsibilities invested in people who essentially want to get elected to office just to say they held a title or use it as a stepping stone to get elected to another office. It would put trust and confidence, not to mention significant fiscal responsibility in unproven people who may or may not have the ability to discharge the duties of this office.

My recommendation is that the committees vote to HOLD this measure and not allow it to proceed any further. We already have a civil service that works tirelessly to perform these tasks within the Executive Branch that is recruited and employed for their talent, devotion, experience, and demonstrated capability.

Please don't create additional confusion, micromanagement, and workload for the process that is already in place in our state. Hold this measure.

Thank you for the opportunity to testify.

Aloha Committee Members,

I am writing to make COMMENTS on these proposed community boards.

After reviewing the bill, I would like to state I admire the attempt to create more responsive community boards to help bolster and coordinate economic strategy and development. Getting this right could help bolster inclusive and sustainable growth for all of Hawaii.

But we must get this *right* first. I am confused by some of the relationships and proposed powers. I do think placing these boards under the Department of Business, Economic Development and Tourism (DBEDT) is not the right administrative move. This creates more complicated and complex issues between the broader state government and the counties.

Additionally, there is much left unclear about the relationship between DBEDT and the Hawaii Community Development Authority (HCDA) that can lead to further complications and challenges. HCDA has a unique mission set delegated to it by the state legislature and while these proposed community boards are meant to *compliment* what HCDA does, I fear that is not the result we will get.

If we get this right, we can boost Hawaii and address the diverse challenges the counties face. But this proposal is not yet ready for prime time. I recommend the Committee consider the following ideas:

1. Move oversight and direction of these community boards from DBEDT to the county councils
2. Deconflict the potential role of these community boards with the process for forming business improvement districts, along with other special districts allowed in Hawaii
3. Further clarify the powers delegated to community boards and relationships with key state government bodies; to include HCDA
4. Provide greater clarity to the formation process for community boards and allow greater flexibility regarding internal governance; for instance, allow greater flexibility in choosing the geographic boundaries of the boards and how many board members are allowed to serve.

These community boards have tremendous potential. But we need to pause and consider this on a deeper level. I urge this Committee to keep an *open mind* on this proposal but it is best to reconsider it before moving onward through the legislative process.