

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

February 20, 2020

TO: Kenneth Uemura  
Committee Chairperson, Finance and Infrastructure Committee

FROM: Catherine Payne  
Chairperson, 2020 Legislative Ad Hoc Committee

AGENDA ITEM: Committee Action on recommendation concerning Board Policy positions for the 2020 Legislative Session: School Facilities Agency

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**I. BACKGROUND**

At its September 19, 2019 general business meeting, the Board of Education ("Board") adopted policy positions supporting proposed legislation that advances the Board and Department of Education's Strategic Priorities for School Year 2019-2020, policy positions relating to the Hawaii State Public Library System, policy positions relating to charter schools, and general policy positions.<sup>1</sup> At its October 3, 2019 meeting, the Board established an ad hoc committee to present, discuss, and negotiate its policy positions for the purposes of engaging in the 2020 Legislative Session ("Legislative Ad Hoc Committee").<sup>2</sup>

Currently, at least two bills, House Bill 2544 ("HB 2544")<sup>3</sup> and Senate Bill 3103, Senate Draft 1 ("SB 3103"),<sup>4</sup> relate to a new proposed School Facilities Agency, and the Board may want to authorize its Legislative Ad Hoc Committee to take positions

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<sup>1</sup> The policy positions the Board adopted at its September 19, 2019 general business meeting are available at:

[http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM\\_20190919\\_Action%20on%20Investigative%20Committee%20concerning%20Board%202020%20legislative%20policy%20positions.pdf](http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20190919_Action%20on%20Investigative%20Committee%20concerning%20Board%202020%20legislative%20policy%20positions.pdf).

<sup>2</sup> See this memorandum for more information on the Legislative Ad Hoc Committee:

[http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM\\_20191003\\_Action%20on%20Ad%20Hoc%20Committee%20re%202020%20Legislative%20Session.pdf](http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20191003_Action%20on%20Ad%20Hoc%20Committee%20re%202020%20Legislative%20Session.pdf).

<sup>3</sup> HB 2544, Relating to a School Facilities Agency, is attached as **Exhibit A** and available at: [https://www.capitol.hawaii.gov/session2020/bills/HB2544\\_.pdf](https://www.capitol.hawaii.gov/session2020/bills/HB2544_.pdf).

<sup>4</sup> SB 3103, Relating to a School Facilities Agency, is attached as **Exhibit B** and available at: [https://www.capitol.hawaii.gov/session2020/bills/SB3103\\_.pdf](https://www.capitol.hawaii.gov/session2020/bills/SB3103_.pdf).

on this matter. Therefore, I recommend amending the current Department of Education (“Department”) and general policy positions by adding policy positions relating to the proposed School Facilities Agency as described in more detail below.

## **II. DESCRIPTION**

The Board’s policy positions based on its strategic priorities are generally supportive of any structures to “advance equitable access to facilities” and provide “school facilities that support students’ mental, emotional, and physical wellbeing.” The concept of a separate agency devoted to school facilities does not conflict with these policy positions. On the contrary, it could potentially support the Board’s policy positions and strategic priorities if structured and organized appropriately.

HB 2544 and SB 3103 (hereafter referenced together as the “Bills”) propose to:

1. Establish the School Facilities Agency (“Agency”), a new agency attached to the Department that would be responsible for all public school development, planning, and construction related to capital improvement projects assigned by the Legislature, Governor, and Board, including projects authorized by Act 155, Session Laws of Hawaii, and subsequent acts amending Act 155; and
2. Place management of school impact fees with the Agency.

HB 2544 also proposes to transfer statutes pertaining to the Hawaii 3R’s and Hawaii 3T’s programs to the Agency’s statutory subpart. The latest Senate draft of SB 3103 does not transfer the Hawaii 3R’s and Hawaii 3T’s programs.

The Bills’ general proposals could potentially benefit school facilities and students, and the Office of the Governor submitted testimony supporting the overall concept of the Bills. In their current form, however, the Bills present some concerns that require the Board’s attention. Many other agencies, organizations, and individuals have already weighed in with their own comments and concerns through testimony on SB 3103 to the Senate Committee on Education, attached as **Exhibit C**. While many details in the Bills clearly need adjustments, the Board should consider only weighing in on the general concepts from the perspective of a policymaking and governance body and steering away from commenting on the specifics. If necessary, the Legislative Ad Hoc Committee, at its discretion, can use the Board’s broader policy positions to opine on any finer points in the Bills. Hence, I recommend the Board focus on the areas and proposed policy positions described below.

Delineation of Powers, Duties, and Responsibilities. While the Bills clearly give the general responsibility of public school development, planning, and construction to the Agency, the Agency’s precise duties and powers to execute its duties and

responsibilities are not entirely clear. Further, the Board and Department's powers and responsibilities related to school facilities and lands, if any, are unclear.

For example, the Bills allow the Agency to acquire real property<sup>5</sup> and "state lands under the control and management of another department [that] are required by the agency for its purposes[.]"<sup>6</sup> These provisions presumably allow the Agency to control and manage land. However, it is unclear how these provisions intersect with other existing parts of statute, such as Hawaii Revised Statutes ("HRS") Section 302A-1151 (which gives the Superintendent approval authority over the sale of lands and facilities "no longer necessary for school purposes")<sup>7</sup> and HRS Section 302A-1506 (which authorizes the Department to "enter into such contracts, leases, lease-purchase agreements, or other transactions as may be necessary for the acquisition of public school facilities, including any lands for these facilities").<sup>8</sup> Several more examples exist throughout HRS Chapter 302A. Read together with the totality of the statutory chapter, it is not clear how the Bills envision the delineation of the control and management of school facilities and land between the Agency and the Department.

A broader example of unclear powers, duties, and responsibilities lies in the fundamental purpose of the Agency as described in proposed new HRS Section

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<sup>5</sup> New proposed HRS Section 302A-C(c) states, in pertinent part, "[e]xcept as otherwise limited by this chapter, the agency may also:

- (6) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold, clear, improve, and rehabilitate and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber the same; [and]
- (7) Acquire or reacquire by condemnation real, personal, or mixed property or any interest therein for public facilities, including but not limited to streets, sidewalks, parks, schools, and other public improvements" (Page 3, Line 19 through Page 4, Line 8 of HB 2544).

New proposed HRS Section 302A-C(c) in SB 3103 has similar provisions but allows the Agency to hold title (Pages 4, Line 13 through Page 5, Line 2).

<sup>6</sup> New proposed HRS Section 302A-E(a) states, "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 of the governor, may convey or lease those lands to the agency upon terms and conditions as may be agreed to by the parties" (Page 9, Lines 2-7 of HB 2544; Page 10, Lines 11-16 of SB 3103).

<sup>7</sup> HRS Section 302A-1151 states, "The chairperson of the board of land and natural resources is hereby requested, upon the recommendation and approval of the superintendent, to sell any state lands, including the buildings thereon, once used but no longer necessary for school purposes; provided that no school facility or portion of a school facility shall be sold before that facility or portion of the facility is made available for use by the department or charter schools, pursuant to sections 302A-1151.5 and 302D-24."

<sup>8</sup> HRS Section 302A-1506 states, "The department may enter into such contracts, leases, lease-purchase agreements, or other transactions as may be necessary for the acquisition of public school facilities, including any lands for these facilities, on such terms as it may deem appropriate with the concurrence of the director of finance."

302A-C(a)<sup>9</sup>: “Except as otherwise limited by this chapter, the agency shall be responsible for all public school development, planning, and construction related to capital improvement projects assigned by the legislature, governor, or board of education.” While it is simple enough to deduce that the Legislature would “assign” capital improvement projects to the Agency through legislative appropriations, it is unclear how, and under what authority, the Governor or Board would “assign” capital improvement projects to the Agency. Further, if the Agency is responsible over only capital improvement projects assigned to it, it appears that the Department could continue to retain authority over any other capital improvement projects not assigned to the Agency, but it is not clear what kinds of projects those might be.

Moreover, the Bills appear to give broad powers to the Agency, although this too is unclear. The Bills propose a provision that would allow the Agency to “[d]o any and all things necessary to carry out its purposes and exercise the powers given and granted in this subpart.”<sup>10</sup> Without defining the Board’s powers, it appears these Bills could give the Agency the power to override the Board’s policies whenever it deems appropriate to fulfill its purposes.

The Bills should clearly delineate the powers, duties, and responsibilities of the Agency, the Department, and the Board as they relate to public school land and facilities, and the Board should adopt a policy position to this end. The Bills should also protect the Board’s education policymaking authority. The Board does not need an additional policy position for this purpose because the Board already has a general policy position that allows the Legislative Ad Hoc Committee to make statements about the importance of retaining the Board’s policymaking authority.<sup>11</sup>

Governance. The Bills appear to give governance and oversight of the Agency to the Governor, although the Board still has some decision-making authority in some areas under the Agency’s jurisdiction, such as impact fee districts, for example. The proposed new School Facilities Board evaluates the Executive Director of the Agency, but it does not have any real authority over the Agency and is primarily an advisory body. The Governor appoints both the Executive Director of the Agency and the members of the School Facilities Board. This structure is concerning and potentially ripe for contention.

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<sup>9</sup> See Page 2, Lines 11-15 of the Bills.

<sup>10</sup> See proposed new HRS Section 302A-C(c)(15) in HB 2544 (Pages 6, Lines 10-12) and proposed new HRS Section 302A-C(c)(17) in SB 3103 (Page 7, Lines 7-9).

<sup>11</sup> The policy position states, “The Board does not support proposed legislation that . . . [d]iminishes the Board’s power to formulate statewide educational policy as envisioned and established by Article X, Section 3, of the Constitution of the State of Hawaii[.]”

Under this governance structure, the Department and Agency are accountable to different bodies and individuals, yet responsibilities and jurisdiction of both entities undoubtedly intersect and overlap. The Bills do not contemplate any mechanism or structure to resolve conflicts in instances where the two agencies disagree and move in opposing directions. The Board is able to serve as the intermediary and ultimate decision maker when necessary to resolve conflicts between the Department, the Hawaii State Public Library System, and the charter school system. The Board should have oversight and governance authority over the Agency similar to that it has over the Department, the Hawaii State Public Library System, and the charter school system.

Moreover, the Board should retain its authority over school facilities as an important component of public education. A school is more than just buildings on a campus, and those buildings should meet the school's needs. Thus, moving authority over school facilities completely out of the public education governance structure is inadvisable.

In addition, with governance authority over both the Department and Agency, the Board can help ensure the transfer of positions, records, and equipment from the Department to the Agency, as envisioned in Section 13 of HB 2544 and Section 8 of SB 3103, to effectuate the purposes of the Bills.<sup>12</sup>

Transition. The Bills contemplate the establishment of the Agency in the 2020-2021 fiscal year,<sup>13</sup> which means duties and responsibilities related to capital improvement projects could transfer from the Department to the Agency as early as next school year. The transfer of any duties and responsibilities, however, does not necessarily mean the transfer of Department offices, funds, or positions to the Agency, at least not initially.<sup>14</sup>

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<sup>12</sup> Section 13 of HB 2544 (Page 36, Lines 5-15) and Section 8 of 3103 (Page 18, Lines 8-18) state, "The school facilities agency shall collaborate with the department of education and submit a report to the legislature, no later than twenty days prior to the convening of the regular session of 2021, identifying positions of the department of education that should be transferred to the school facilities agency established by section 1 of this Act, including positions responsible for public school development, planning, and construction related to capital improvement projects along with proposed legislation to further implement the transfer of positions and related records and equipment to effectuate the purpose of this Act."

<sup>13</sup> Section 9 of HB 2544 (Page 35, Lines 3-6) and Section 5 of SB 3103 (Page 17, Lines 11-14) state, "There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2020-2021 for the establishment of the school facilities agency."

<sup>14</sup> Section 10 of HB 2544 (Page 35, Lines 9-13) and Section 6 of HB 3103 (Page 17, Lines 17-21) state, "This Act shall not be construed to transfer the department of education office of facilities and operation, including the facilities maintenance branch and auxiliary services branch and any general fund and position appropriations, to the school facilities agency."

The Board should be wary of a transition that places responsibilities on the Agency to execute capital improvement projects in its first year of operations, which is unreasonable and could negatively affect schools and students in the short term. Rather, in its first year, the Agency should focus on hiring personnel, determining its needs, and setting up the rules, policies, and procedures necessary to execute its duties and responsibilities. Therefore, I recommend the Board adopt a policy position that ensures the transition of duties and responsibilities from the Department to the Agency does not interfere with operations, delay projects, or otherwise negatively affect the ongoing facilities needs of schools.

Based on the foregoing, I recommend that the Board add the following policy positions to the Department positions as shown below (amendments shown in red underlined text):

#### **DEPARTMENT OF EDUCATION POLICY POSITIONS**

The Board of Education ("Board") supports proposed legislation that advances the Board and Department of Education's ("Department") Strategic Priorities for the 2019-2020 school year ("Strategic Priorities"). The table below describes the Strategic Priorities and the Board's policy positions associated with each Strategic Priority. These policy positions also intend to support the Board's Committee Strategic Priorities for the 2019-2020 school year.

Strategic Priorities	The Board supports measures that...
<p><u>Equity and Access</u> Ensuring that the appropriate policies, structures, and resources are in place to guarantee the advancement of access and support structures that enable and inspire all students to succeed in school and life. This priority references special education and English Learners in particular, but does not preclude issues like civil rights and Title IX.</p>	<ul style="list-style-type: none"> <li>• Provide more resources for appropriate support structures that allow all students, especially those receiving special education or English learner services, to engage in learning</li> <li>• Provide more resources for appropriate support structures to provide access to Hawaiian language immersion education to all interested students</li> <li>• Protect students' civil rights</li> <li>• Advance equitable access to facilities and opportunities for all students, particularly at schools with the greatest socioeconomic and academic needs</li> <li>• Expand early college opportunities for all students</li> </ul>
<p><u>Safe Learning Environments that Support Students' Wellbeing</u></p>	<ul style="list-style-type: none"> <li>• Provide resources for appropriate structures and school facilities that</li> </ul>

Strategic Priorities	The Board supports measures that...
<p>Ensuring that the appropriate policies, structures, and resources, grounded in Nā Hopena A‘o are in place so learning environments that support all students’ emotional and physical wellbeing can be cultivated. A truly safe learning environment that supports students’ wellbeing is one that students themselves want to be in so they attend school regularly and willingly, thereby reducing chronic absenteeism.</p>	<p>support students’ mental, emotional, and physical wellbeing</p> <ul style="list-style-type: none"> <li>• Recognize the importance of addressing bullying, harassment, and discrimination in schools</li> </ul>
<p><u>Student-centered School Design</u> Ensuring that the appropriate policies, structures, and resources are in place to support schools designed to engage students in rigorous and innovative curriculum and encouraging students to strive beyond what is expected, while being mindful of the values, needs, and welfare of others, within a student and community designed learning environment that is aligned to college and careers. Design includes every aspect of a school: facilities, school models, themes, resources, partners (families, communities, and organizations), school day schedule, pedagogical approaches, allocation of teacher collaboration time, technology, governance, and organizational structure.</p>	<ul style="list-style-type: none"> <li>• Increase career and technical education</li> <li>• Advance or provide resources for innovative, student-centered school design</li> </ul>
<p><u>Staff Professional Development, Recruitment, and Retention</u> Ensuring that the appropriate policies, structures, and resources are in place to allow for the establishment of a dynamic learning community that is responsive to parent and student reflections on the quality and relevance of the student’s learning and designed to continuously develop staff capacity to lead the work that results in high student achievement and the development of clear leadership pathways, supports, and incentives that attract and retain talent.</p>	<ul style="list-style-type: none"> <li>• Support leadership pipeline development</li> <li>• Expand teacher recruitment and retention initiatives, which provide teachers with incentives and resources or support a teaching career path</li> <li>• Support teacher professional development that advances career and technical education</li> </ul>

Strategic Priorities	The Board supports measures that...
<p><u>Communication and Engagement</u> Ensuring that the appropriate policies, structures, and resources are in place so the Department and Board thoughtfully and intentionally engage with students, staff, families, and community stakeholders in two-way communications that will help to inform decision-making and priority setting (particularly with respect to the development of a new strategic plan) and improve transparency and access to information.</p>	<ul style="list-style-type: none"> <li>• Support informed decision-making and priority setting through thoughtful and intentional engagement with stakeholders</li> <li>• Improve transparency and access to information to encourage an informed and engaged community of citizens</li> </ul>

The Board supports proposed legislation that addresses the needs identified in the Department’s Board-approved supplemental operating and Capital Improvement Program budget requests for Fiscal Year 2021.

The Board supports proposed legislation that creates a separate attached agency responsible for the construction and maintenance of school facilities, provided that the legislation:

- Clearly delineates the powers, duties, and responsibilities of the agency, the Department, and the Board as they relate to public school land and facilities;
- Maintains the Board’s jurisdiction over school facilities by assigning governance authority over the agency to the Board; and
- Ensures a transition of duties and responsibilities from the Department to the agency that does not interfere with operations, delay projects, or otherwise negatively affect the ongoing facilities needs of public schools.

To conform with the proposed new policy position relating to governance authority, I also recommend that the Board amend its general policy positions to allow the Board to support a structure in which it has oversight over the Agency’s Executive Director, as shown below (amendments shown in red underlined text):

#### **GENERAL POLICY POSITIONS**

The Board **does not** support proposed legislation that:

- Prevents or hinders the Board or Department from addressing the Strategic Priorities;



- Diminishes the Board's power to formulate statewide educational policy as envisioned and established by Article X, Section 3, of the Constitution of the State of Hawaii;
- Requires the Board to assume management responsibilities over employees other than the Superintendent of Education and the State Librarian (or heads of other agencies over which the Board has governance authority) rather than remain focused on its constitutional responsibility of policymaking; or
- Creates additional duties or responsibilities for the Department or Board without appropriating adequate, commensurate resources to accomplish such duties or responsibilities.

The Board takes no position on legislation relating to the Board's governance structure, as the Board believes it is most appropriate for the Legislature and Governor to decide such matters. The Board will endeavor to provide the Legislature with any relevant information relating to Board governance matters to enable the Legislature to make informed decisions.

The Board's positions on proposed legislation are in regards to matters of public policy only, and the Board defers to the Department (or its administratively attached agencies when appropriate) on operational and implementation matters.

### **III. RECOMMENDATION**

I recommend that the Board approve the amendments described herein to the Board's policy positions it adopted at its September 19, 2020 general business meeting for the 2020 Legislative Session.

**Exhibit A**

**House Bill 2544, Relating to a School Facilities Agency**

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# A BILL FOR AN ACT

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RELATING TO A SCHOOL FACILITIES AGENCY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Chapter 302A, Hawaii Revised Statutes, is  
2       amended by adding a new subpart to part VI to be appropriately  
3       designated and to read as follows:

4                       "       . School Facilities Agency

5       **§302A-A Definitions.** As used in this subpart, "agency"  
6       means the school facilities agency established by  
7       section 302A-B.

8       **§302A-B School facilities agency; established.** (a) There  
9       is established the school facilities agency, which shall be a  
10       body corporate and a public instrumentality of the State, for  
11       the purpose of implementing this subpart. The agency shall be  
12       placed within the department for administrative purposes only.

13       (b) The governor shall appoint an executive director to  
14       enable the agency to perform its duties. The appointment shall  
15       be:

16       (1) Exempt from chapter 76 and the term limitation in  
17       section 26-34;



(2) Subject to the advice and consent of the senate; and

(3) For a term of six years.

If a vacancy occurs during a term, the governor shall appoint an executive director for a six-year term that shall begin on the first date of employment of the new executive director.

(c) The executive director shall:

(1) Serve as the agency's chief executive officer;

(2) Be responsible for carrying out the purposes of the agency; and

(3) Serve on a full-time basis.

**§302A-C Powers; generally.** (a) Except as otherwise limited by this chapter, the agency shall be responsible for all public school development, planning, and construction related to capital improvement projects assigned by the legislature, governor, or board of education.

(b) 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.

(c) Except as otherwise limited by this chapter, the agency may also:

(1) Have a seal and alter the same at its pleasure;

(2) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this subpart;

(3) Make and alter bylaws for its organization and internal management;

(4) Make rules with respect to its projects, operations, properties, and facilities, which rules shall be in conformance with chapter 91;

(5) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapter 76;

(6) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold,



1 clear, improve, and rehabilitate and to sell, assign,  
2 exchange, transfer, convey, lease, or otherwise  
3 dispose of or encumber the same;

4 (7) Acquire or reacquire by condemnation real, personal,  
5 or mixed property or any interest therein for public  
6 facilities, including but not limited to streets,  
7 sidewalks, parks, schools, and other public  
8 improvements;

9 (8) By itself, or in partnership with qualified persons,  
10 acquire, reacquire, construct, reconstruct,  
11 rehabilitate, improve, alter, or repair or provide for  
12 the construction, reconstruction, improvement,  
13 alteration, or repair of any project; own, hold, sell,  
14 assign, transfer, convey, exchange, lease, or  
15 otherwise dispose of or encumber any project, and in  
16 the case of the sale of any project, accept a purchase  
17 money mortgage in connection therewith; and repurchase  
18 or otherwise acquire any project that the agency has  
19 theretofore sold or otherwise conveyed, transferred,  
20 or disposed of;



- 1           (9) Arrange or contract for the planning, replanning,  
2           opening, grading, or closing of streets, roads,  
3           roadways, alleys, or other places, or for the  
4           furnishing of facilities or for the acquisition of  
5           property or property rights or for the furnishing of  
6           property or services in connection with a project;
- 7           (10) Grant options to purchase any project or to renew any  
8           lease entered into by it in connection with any of its  
9           projects, on terms and conditions as it deems  
10          advisable;
- 11          (11) Prepare or cause to be prepared plans, specifications,  
12          designs, and estimates of costs for the construction,  
13          reconstruction, rehabilitation, improvement,  
14          alteration, or repair of any project, and from time to  
15          time to modify the plans, specifications, designs, or  
16          estimates;
- 17          (12) Provide advisory, consultative, training, and  
18          educational services, technical assistance, and advice  
19          to any person, partnership, or corporation, either  
20          public or private, to carry out the purposes of this  
21          subpart, and engage the services of consultants on a



1 contractual basis for rendering professional and  
2 technical assistance and advice;

3 (13) Procure insurance against any loss in connection with  
4 its property and other assets and operations in  
5 amounts and from insurers as it deems desirable;

6 (14) Contract for and accept gifts or grants in any form  
7 from any public agency or from any other source,  
8 including gifts or grants from private individuals and  
9 private entities; and

10 (15) Do any and all things necessary to carry out its  
11 purposes and exercise the powers given and granted in  
12 this subpart.

13 **§302A-D School facilities board.** (a) There is  
14 established within the department of education for  
15 administrative purposes only a school facilities board.

16 (b) The school facilities board shall consist of eleven  
17 voting members. The superintendent of education, or the  
18 superintendent's designee, and a member of the board of  
19 education selected by the chairperson of the board of education  
20 shall serve as ex officio, voting members of the school  
21 facilities board. The other nine members shall:





(1) Be appointed by the governor pursuant to section 26-34;

(2) Not be subject to section 84-17; and

(3) Have an interest in school construction.

(c) The school facilities board shall advise the agency on policies relating to public school development, planning, and construction within the jurisdiction of the agency. The board shall be responsible for:

(1) Advising the agency on preferred strategies to complete construction projects of the agency; and

(2) Evaluating the executive director on an annual basis.

(d) The school facilities board shall select a chairperson by a majority vote of its voting members. A majority of the voting members serving on the board shall constitute a quorum to conduct business. The concurrence of the majority of the voting members serving on the board shall be necessary to make any action of the board valid.

(e) The school facilities board may form workgroups and subcommittees, including with individuals who are not school facilities board members, to:



- (1) Obtain resource information from construction and education professionals and other individuals as deemed necessary by the school facilities board;
- (2) Make recommendations to the school facilities board; and
- (3) Perform other functions as deemed necessary by the school facilities board to fulfill its duties and responsibilities.

Two or more school facilities board members, but less than a quorum, may discuss matters relating to official school facilities board business in the course of their participation in a workgroup or subcommittee, and these discussions shall be a permitted interaction as provided for in section 92-2.5.

(f) The school facilities board may testify before the legislature on any matter related to its duties and responsibilities.

(g) Members of the school facilities board shall serve without compensation but may be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.



1           **§302A-E Use of public lands; acquisition of state lands.**

2       (a) If state lands under the control and management of another  
3 department are required by the agency for its purposes, the  
4 department having the control and management of those required  
5 lands, upon request by the agency and with the approval of the  
6 governor, may convey or lease those lands to the agency upon  
7 terms and conditions as may be agreed to by the parties.

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

14           **§302A-F School facilities special fund.** (a) There is

15 established within the state treasury a special fund to be known  
16 as the school facilities special fund into which shall be  
17 deposited:

18       (1) All moneys appropriated by the legislature for any  
19 public school development, planning, or construction  
20 related to a capital improvement project;



1           (2) Revenues pursuant to 302A-1608(a); provided that these  
2           moneys shall be deposited into the appropriate  
3           subaccount established pursuant to subsection (b);

4           (3) Any other moneys received by the department in the  
5           form of a grant, gift, endowment, or donation for any  
6           public school development, planning, or construction  
7           related to a capital improvement project;

8           (4) All moneys allocated to the fund by the governor or  
9           board for a project;

10          (5) Any other appropriation by the legislature to the  
11          fund;

12          (6) Income and capital gains earned by the fund.

13          (b) The agency shall establish and appropriately name  
14          subaccounts within the fund to accept deposits of revenues from  
15          school impact fees that are required to be expended within a  
16          specific school impact district pursuant to 302A-1608(a) or  
17          restricted to another specific purpose pursuant to part V,  
18          subpart B of this chapter.

19          (c) The special fund shall be administered by the agency  
20          and used to fund any school construction, repair, or maintenance  
21          project within the jurisdiction of the agency.



1           (d) Any law to the contrary notwithstanding, the governor  
2 may authorize expenditures from the special fund of any  
3 donation, grant, bequest, and devise of money from any private  
4 institution, person, firm, or corporation for the purposes of  
5 funding the salaries of the executive director and any officers,  
6 agents, and employees of the agency. If all or any portion of  
7 any salary of the executive director or any officer, agent, or  
8 employee of the agency is funded pursuant to this subsection,  
9 the agency shall submit a report to the legislature detailing  
10 the use of any funds authorized under this subsection no later  
11 than twenty days prior to the convening of each regular session.

12           (e) The agency may transfer any other unencumbered or  
13 unrestricted moneys received in the form of grants and donations  
14 for school construction, repair, or maintenance to the Hawaii  
15 3R's school improvement fund established pursuant to section  
16 302A-H.

17           (f) The agency shall submit to the director of finance a  
18 report that shall be prepared in the form prescribed by the  
19 director of finance and shall identify the total amount of funds  
20 in the school facilities special fund that will carry over to  
21 the next fiscal year. The agency shall submit the report to the



1 director of finance within ninety days of the close of each  
2 fiscal year and a copy of the information contained in the  
3 report to the director of finance shall be included within the  
4 agency's report to the legislature pursuant to section 302A-F.

5 **§302A-G Annual report.** The agency shall submit to the  
6 governor, the board of education, and the legislature, at least  
7 twenty days prior to the start of any regular session, a  
8 complete and detailed report of its activities during the prior  
9 fiscal year. **§302A-H Hawaii 3R's school improvement fund.**

10 (a) There is established the Hawaii 3R's school improvement  
11 fund (hereinafter, "fund") as a separate restricted fund of  
12 Hawaii 3R's, a Hawaii nonprofit organization. Moneys received  
13 from the State, county, or federal government, private  
14 contributions of cash or other property, and the income and  
15 capital gains earned by the fund shall constitute the fund's  
16 assets.

17 (b) Hawaii 3R's shall expend moneys from the fund in the  
18 form of either grants to organizations or contracts with private  
19 vendors for the improvement of public schools and benefit of  
20 students in Hawaii in accordance with this section.



1 (c) The fund may receive contributions, grants,  
2 endowments, or gifts in cash or otherwise from all sources,  
3 including corporations or other businesses, foundations,  
4 government, individuals, and other interested parties. The fund  
5 shall also receive moneys transferred to it from the school-  
6 level minor repairs and maintenance special fund established  
7 under section 302A-1504.5. The legislature intends that public  
8 and private sectors review and investigate all potential funding  
9 sources. The State may appropriate moneys to the fund; provided  
10 that any appropriations made by the State are not intended to  
11 supplant the funding of any existing programs.

12 (d) Chapter 103D shall not apply to organizations or  
13 agencies that apply for grants or contracts under this section;  
14 provided that Hawaii 3R's shall be held accountable under a  
15 contract with the agency for the use of the funds.

16 (e) The fund shall not be placed in the state treasury,  
17 and the State shall not be liable for the operation or solvency  
18 of the fund or Hawaii 3R's.

19 **§302A-I Hawaii 3Ts school technology laboratories fund.**

20 (a) There is established the Hawaii 3Ts school technology  
21 laboratories fund (hereinafter, "fund") as a separate fund of



1 the Economic Development Alliance of Hawaii, Inc., a Hawaii  
2 nonprofit organization. Moneys received from the State, county,  
3 or federal government, private contributions of cash or other  
4 property, and the income and capital gains earned by the fund  
5 shall constitute its assets.

6 (b) The Economic Development Alliance of Hawaii, Inc.,  
7 shall expend moneys in the form of either grants to  
8 organizations or contracts with private vendors from the fund  
9 for the establishment and maintenance of technology laboratories  
10 in public schools in Hawaii. The expenditures shall be in  
11 accordance with this section and consistent with the criteria  
12 and recommendations of the Hawaii 3Ts school technology  
13 laboratories board.

14 (c) The fund may receive contributions, grants,  
15 endowments, or gifts in cash or otherwise from all sources,  
16 including corporations or other businesses, foundations,  
17 government, individuals, and other interested parties. The  
18 legislature intends that the public and private sectors work  
19 together as partners in securing contributions for the fund, and  
20 that the Economic Development Alliance of Hawaii, Inc., through  
21 its Hawaii 3Ts project, assist the public and private sectors in





1 reviewing and investigating all potential funding sources. The  
2 State may appropriate moneys to the fund; provided that any  
3 appropriations made by the State are not intended to supplant  
4 the funding of any existing public school programs for the  
5 establishment and maintenance of school technology laboratories.

6 (d) The Economic Development Alliance of Hawaii, Inc.,  
7 shall appoint the members of the Hawaii 3Ts school technology  
8 laboratories board, which shall be responsible for:

9 (1) Soliciting and otherwise raising moneys for the fund;

10 (2) Establishing criteria for proposals to be funded and  
11 the expenditure of funds;

12 (3) Reviewing grant proposals utilizing criteria  
13 established by Hawaii 3Ts school technology  
14 laboratories board; and

15 (4) Making recommendations for grants and other specific  
16 expenditures to the Economic Development Alliance of  
17 Hawaii, Inc.

18 Members of the advisory board shall be stakeholders in Hawaii's  
19 public education and workforce development entities, including  
20 students and parents, teachers and principals, business and  
21 community leaders, representatives from the county economic



1 development boards, and representatives from the department of  
2 education, the department of business, economic development, and  
3 tourism, and the department of accounting and general services.

4 (e) In managing the moneys in the fund, the Economic  
5 Development Alliance of Hawaii, Inc., shall exercise ordinary  
6 business care and prudence given the facts and circumstances  
7 prevailing at the time of action or decision. In doing so, the  
8 Economic Development Alliance of Hawaii, Inc., shall consider  
9 its long-term and short-term needs in carrying out its purposes,  
10 its present and anticipated financial requirements, expected  
11 total return on its investments, price trends, and general  
12 economic conditions.

13 (f) There may be an endowment component of the fund.

14 (g) The use of any state moneys may be restricted by the  
15 legislation appropriating these moneys to the fund.

16 (h) The Economic Development Alliance of Hawaii, Inc., may  
17 expend the principal from the fund for the purposes of the fund.

18 (i) At the time of application, an organization submitting  
19 a proposal to the Economic Development Alliance of Hawaii, Inc.,  
20 for fund moneys shall:



1           (1) Be a for-profit organization duly registered under the  
2           laws of the State, or be a nonprofit organization  
3           determined by the Internal Revenue Service to be  
4           exempt from the federal income tax, or be an agency of  
5           the State or a county;

6           (2) In the case of a nonprofit organization, have a  
7           governing board whose members have no material  
8           conflict of interest and serve without compensation;

9           (3) In the case of an applicant that is not a state or  
10          county government agency, have bylaws or policies that  
11          describe the manner in which business is conducted and  
12          policies that relate to the management of potential  
13          conflicts of interest;

14          (4) Have experience with the project or the program area  
15          for which the proposal is being made; and

16          (5) Be licensed and accredited, as applicable, in  
17          accordance with the requirements of federal, state,  
18          and county governments.

19          (j) All proposals approved by the Hawaii 3Ts school  
20          technology laboratories board and for which the Economic  
21          Development Alliance of Hawaii, Inc., intends to provide fund



1 moneys shall be approved by the director of business, economic  
2 development, and tourism for consistency in meeting the purposes  
3 of this section.

4 (k) Organizations or agencies to which fund moneys are  
5 awarded shall agree to comply with the following conditions  
6 before receiving the award:

7 (1) Employ or have under contract persons qualified to  
8 engage in the activity to be funded;

9 (2) Comply with applicable federal, state, and county  
10 laws; and

11 (3) Comply with any other requirements prescribed by the  
12 Economic Development Alliance of Hawaii, Inc., to  
13 ensure adherence by the recipient of the award with  
14 applicable federal, state, and county laws and with  
15 the purposes of this section.

16 (1) Chapter 103D shall not apply to organizations or  
17 agencies that apply for grants or contracts under this section;  
18 provided that the Economic Development Alliance of Hawaii, Inc.,  
19 shall be held accountable under a contract with the department  
20 of business, economic development, and tourism for the use of  
21 the funds.



1           (m) Any contracts awarded by the Economic Development  
2 Alliance of Hawaii, Inc., shall be executed pursuant to a  
3 process that encourages as much competition as practical to  
4 execute their purposes.

5           (n) The fund shall be audited annually by an independent  
6 auditor retained by the Economic Development Alliance of Hawaii,  
7 Inc. The auditor's report of each annual audit shall be  
8 submitted to the department of business, economic development,  
9 and tourism not later than thirty days from the date the audit  
10 report is received by the Economic Development Alliance of  
11 Hawaii, Inc. In addition, the Economic Development Alliance of  
12 Hawaii, Inc., shall retain for a period of three years, and  
13 permit the department of accounting and general services, the  
14 department of education, the department of business, economic  
15 development, and tourism, state legislators, and the auditor, or  
16 their duly authorized representatives, to inspect and have  
17 access to, any documents, papers, books, records, and other  
18 evidence that is pertinent to the fund.

19           (o) The fund shall not be placed in the state treasury,  
20 and the State shall not administer the fund, nor shall the State



1 be liable for the operation or solvency of the fund, the  
2 Economic Development Alliance of Hawaii, Inc., or Hawaii 3Ts.

3 (p) For every dollar granted to a recipient by the fund, a  
4 minimum of fifty cents in value shall be from private, federal,  
5 county, or community sources.

6 (q) For purposes of this section, "school technology  
7 laboratory" means a multi-station computer laboratory that  
8 offers students a variety of different types of hardware and  
9 software applications.

10 (r) The Economic Development Alliance of Hawaii, Inc.,  
11 shall submit an annual report for approval by the director of  
12 business, economic development, and tourism on the progress of  
13 the Hawaii 3Ts school technology laboratories fund by December 1  
14 of each year. The director of business, economic development,  
15 and tourism shall transmit the report along with comments from  
16 the department of business, economic development, and tourism to  
17 the legislature no later than twenty days prior to the convening  
18 of each regular session."

19 SECTION 2. Section 36-27, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:



1       "(a) Except as provided in this section, and  
2 notwithstanding any other law to the contrary, from time to  
3 time, the director of finance, for the purpose of defraying the  
4 prorated estimate of central service expenses of government in  
5 relation to all special funds, except the:

6       (1) Special out-of-school time instructional program fund  
7             under section 302A-1310;

8       (2) School cafeteria special funds of the department of  
9             education;

10      (3) Special funds of the University of Hawaii;

11      (4) State educational facilities improvement special fund;

12      (5) Convention center enterprise special fund under  
13             section 201B-8;

14      (6) Special funds established by section 206E-6;

15      (7) Aloha Tower fund created by section 206J-17;

16      (8) Funds of the employees' retirement system created by  
17             section 88-109;

18      (9) Hawaii hurricane relief fund established under  
19             chapter 431P;

20      (10) Hawaii health systems corporation special funds and  
21             the subaccounts of its regional system boards;



- 1       (11)   Tourism special fund established under section  
2               201B-11;
- 3       (12)   Universal service fund established under section  
4               269-42;
- 5       (13)   Emergency and budget reserve fund under section  
6               328L-3;
- 7       (14)   Public schools special fees and charges fund under  
8               section 302A-1130;
- 9       (15)   Sport fish special fund under section 187A-9.5;
- 10    [+](16)[+]   Neurotrauma special fund under section 321H-4;
- 11    [+](17)[+]   Glass advance disposal fee established by section  
12               342G-82;
- 13    [+](18)[+]   Center for nursing special fund under section  
14               304A-2163;
- 15    [+](19)[+]   Passenger facility charge special fund established  
16               by section 261-5.5;
- 17    [+](20)[+]   Solicitation of funds for charitable purposes  
18               special fund established by section 467B-15;
- 19    [+](21)[+]   Land conservation fund established by section  
20               173A-5;





1    [+] (22) [+]   Court interpreting services revolving fund under  
2                   section 607-1.5;

3    [+] (23) [+]   Trauma system special fund under section 321-22.5;

4    [+] (24) [+]   Hawaii cancer research special fund;

5    [+] (25) [+]   Community health centers special fund;

6    [+] (26) [+]   Emergency medical services special fund;

7    [+] (27) [+]   Rental motor vehicle customer facility charge  
8                   special fund established under section 261-5.6;

9    [+] (28) [+]   Shared services technology special fund under  
10                  section 27-43;

11   [+] (29) [+]   Automated victim information and notification system  
12                  special fund established under section 353-136;

13   [+] (30) [+]   Deposit beverage container deposit special fund  
14                  under section 342G-104;

15   [+] (31) [+]   Hospital sustainability program special fund under  
16                  [+]section 346G-4[+];

17   [+] (32) [+]   Nursing facility sustainability program special fund  
18                  under [+]section 346F-4[+];

19   [+] (33) [+]   Hawaii 3R's school improvement fund under section  
20                  [~~302A-1502.4~~+] 302A-G;



[+](34)[+] After-school plus program revolving fund under  
section 302A-1149.5; and

[+](35)[+] Civil monetary penalty special fund under section  
321-30.2,

shall deduct five per cent of all receipts of all other special  
funds, which deduction shall be transferred to the general fund  
of the State and become general realizations of the State. All  
officers of the State and other persons having power to allocate  
or disburse any special funds shall cooperate with the director  
in effecting these transfers. To determine the proper revenue  
base upon which the central service assessment is to be  
calculated, the director shall adopt rules pursuant to chapter  
91 for the purpose of suspending or limiting the application of  
the central service assessment of any fund. No later than  
twenty days prior to the convening of each regular session of  
the legislature, the director shall report all central service  
assessments made during the preceding fiscal year."

SECTION 3. Section 302A-1504.5, Hawaii Revised Statutes,  
is amended by amending subsection (a) to read as follows:

"(a) There is established within the state treasury a  
special fund to be known as the school-level minor repairs and



1 maintenance special fund, into which shall be deposited all  
2 moneys collected pursuant to section 235-102.5(b), and any other  
3 moneys received by the department in the form of grants and  
4 donations for school-level improvements and minor repairs and  
5 maintenance. The special fund shall be administered by the  
6 department and used to fund school-level minor repairs and  
7 maintenance. The department shall transfer moneys collected  
8 pursuant to section 235-102.5(b), and may transfer any other  
9 moneys received in the form of grants and donations for school-  
10 level improvements and minor repairs and maintenance to the  
11 Hawaii 3R's school improvement fund established pursuant to  
12 section [~~302A-1502.4.~~] 302A-G."

13 SECTION 4. Section 302A-1602, Hawaii Revised Statutes, is  
14 amended by adding a new definition to be appropriately inserted  
15 and to read as follows:

16 "Agency" means the school facility agency established  
17 pursuant to section 302A-B.

18 SECTION 5. Section 302A-1608, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) Each designated school impact district shall be a  
21 separate benefit district. Fees collected within each school



1 impact district shall be deposited into the school facilities  
2 special fund established pursuant to section 302A-F and spent  
3 only within the same school impact district for the purposes  
4 collected."

5 SECTION 6. Section 302A-1314, Hawaii Revised Statutes, is  
6 repealed.

7 ~~["**§302A-1314**—Hawaii 3Ts school technology laboratories~~  
8 ~~fund.~~ (a) ~~There is established the Hawaii 3Ts school~~  
9 ~~technology laboratories fund (hereinafter, "fund") as a separate~~  
10 ~~fund of the Economic Development Alliance of Hawaii Inc., a~~  
11 ~~Hawaii nonprofit organization. Moneys received from the state,~~  
12 ~~county, or federal government, private contributions of cash or~~  
13 ~~other property, and the income and capital gains earned by the~~  
14 ~~fund shall constitute its assets.~~

15 ~~(b) The Economic Development Alliance of Hawaii Inc. shall~~  
16 ~~expend moneys in the form of either grants to organizations or~~  
17 ~~contracts with private vendors from the fund for the~~  
18 ~~establishment and maintenance of technology laboratories in~~  
19 ~~public schools in Hawaii. Such expenditures shall be in~~  
20 ~~accordance with this section, and consistent with the criteria~~



1 ~~and recommendations of the Hawaii 3Ts school technology~~  
2 ~~laboratories board.~~

3 ~~(c) The fund may receive contributions, grants,~~  
4 ~~endowments, or gifts in cash or otherwise from all sources,~~  
5 ~~including corporations or other businesses, foundations,~~  
6 ~~government, individuals, and other interested parties. The~~  
7 ~~legislature intends that the public and private sectors work~~  
8 ~~together as partners in securing contributions for the fund, and~~  
9 ~~that the Economic Development Alliance of Hawaii Inc., through~~  
10 ~~its Hawaii 3Ts project, assist the public and private sectors in~~  
11 ~~reviewing and investigating all potential funding sources. The~~  
12 ~~State may appropriate moneys to the fund; provided that any~~  
13 ~~appropriations made by the State are not intended to supplant~~  
14 ~~the funding of any existing public school programs for the~~  
15 ~~establishment and maintenance of school technology laboratories.~~

16 ~~(d) The Economic Development Alliance of Hawaii Inc. shall~~  
17 ~~appoint the members of the Hawaii 3Ts school technology~~  
18 ~~laboratories board, which shall be responsible for:~~

19 ~~(1) Soliciting and otherwise raising moneys for the fund;~~

20 ~~(2) Establishing criteria for proposals to be funded and~~

21 ~~the expenditure of funds;~~



~~(3) Reviewing grant proposals utilizing criteria  
established by Hawaii 3Ts school technology  
laboratories board; and~~

~~(4) Making recommendations for grants and other specific  
expenditures to the Economic Development Alliance of  
Hawaii Inc.~~

~~Members of the advisory board shall be stakeholders in Hawaii's  
public education and workforce development entities, including  
students and parents, teachers and principals, business and  
community leaders, representatives from the county economic  
development boards, and representatives from the department of  
education, the department of business, economic development, and  
tourism, and the department of accounting and general services,  
who shall be represented on the advisory board.~~

~~(c) In managing the moneys in the fund, the Economic  
Development Alliance of Hawaii Inc. shall exercise ordinary  
business care and prudence given the facts and circumstances  
prevailing at the time of action or decision. In doing so, the  
Economic Development Alliance of Hawaii Inc. shall consider its  
long term and short term needs in carrying out its purposes, its  
present and anticipated financial requirements, expected total~~



1 ~~return on its investments, price trends, and general economic~~  
2 ~~conditions.~~

3 ~~(f) There may be an endowment component of the fund.~~

4 ~~(g) The use of any state moneys may be restricted by the~~  
5 ~~legislation appropriating these moneys to the fund.~~

6 ~~(h) The Economic Development Alliance of Hawaii Inc. is~~  
7 ~~authorized to expend the principal from the fund for the~~  
8 ~~purposes of the fund.~~

9 ~~(i) Any organization submitting a proposal to the Economic~~  
10 ~~Development Alliance of Hawaii Inc. for fund moneys shall meet~~  
11 ~~all of the following standards at the time of applications:~~

12 ~~(1) Be a for profit organization duly registered under the~~  
13 ~~laws of the State, or be a nonprofit organization~~  
14 ~~determined by the Internal Revenue Service to be~~  
15 ~~exempt from the federal income tax, or be an agency of~~  
16 ~~the State or a county;~~

17 ~~(2) In the case of a nonprofit organization, have a~~  
18 ~~governing board whose members have no material~~  
19 ~~conflict of interest and serve without compensation;~~

20 ~~(3) In the case of an applicant that is not a state or~~  
21 ~~county government agency, have bylaws or policies that~~



1 ~~describe the manner in which business is conducted and~~  
2 ~~policies that relate to the management of potential~~  
3 ~~conflict of interest situations;~~

4 ~~(4) Have experience with the project or in the program~~  
5 ~~area for which the proposal is being made; and~~

6 ~~(5) Be licensed and accredited, as applicable, in~~  
7 ~~accordance with the requirements of federal, state,~~  
8 ~~and county governments.~~

9 ~~(j) All proposals approved by the Hawaii 3Ts school~~  
10 ~~technology laboratories board and for which the Economic~~  
11 ~~Development Alliance of Hawaii Inc. intends to provide fund~~  
12 ~~moneys shall be approved by the director of business, economic~~  
13 ~~development, and tourism for consistency in meeting the purposes~~  
14 ~~of this section.~~

15 ~~(k) Organizations or agencies to which fund moneys are~~  
16 ~~awarded shall agree to comply with the following conditions~~  
17 ~~before receiving the award:~~

18 ~~(1) Employ or have under contract persons qualified to~~  
19 ~~engage in the activity to be funded;~~

20 ~~(2) Comply with applicable federal, state, and county~~  
21 ~~laws; and~~





~~(3) Comply with any other requirements prescribed by the Economic Development Alliance of Hawaii Inc. to ensure adherence by the recipient of the award with applicable federal, state, and county laws and with the purposes of this section.~~

~~(1) Chapter 103D shall not apply to organizations or agencies that apply for grants or contracts under this section, provided that the Economic Development Alliance of Hawaii Inc. shall be held accountable for the use of the funds under a contract with the department of business, economic development, and tourism.~~

~~(m) Any contracts awarded by the Economic Development Alliance of Hawaii Inc. shall be made under as much competition as practical to execute its purposes.~~

~~(n) The fund shall be audited annually by an independent auditor retained by the Economic Development Alliance of Hawaii Inc. The auditor's report of each annual audit shall be submitted to the department of business, economic development, and tourism not later than thirty days from the date the audit report is received by the Economic Development Alliance of Hawaii Inc. In addition, the Economic Development Alliance of~~



~~Hawaii Inc. shall retain for a period of three years, and permit the department of accounting and general services, the department of education, the department of business, economic development, and tourism, state legislators, and the auditor, or their duly authorized representatives, to inspect and have access to, any documents, papers, books, records, and other evidence that is pertinent to the fund.~~

~~(o) The fund shall not be placed in the state treasury, and the State shall not administer the fund, nor shall the State be liable for the operation or solvency of the fund, the Economic Development Alliance of Hawaii Inc., or Hawaii 3Ts.~~

~~(p) For every dollar granted to a recipient by the fund, a minimum of 50 cents in value shall be from private, federal, county, or community sources.~~

~~(q) For purposes of this section, "school technology laboratory" means a multi-station computer laboratory that offers students a variety of different types of hardware and software applications.~~

~~[(r)] The Economic Development Alliance of Hawaii Inc. shall submit an annual report for approval by the director of business, economic development, and tourism on the progress of~~



~~the Hawaii 3Ts school technology laboratories fund by December 1 of each year. The director of business, economic development, and tourism shall transmit the report along with comments from the department of business, economic development, and tourism to the legislature no later than twenty days prior to the convening of each regular session." ]~~

SECTION 7. Section 302A-1502.4, Hawaii Revised Statutes, is repealed.

~~[ "**§302A-1502.4 Hawaii 3R's school improvement fund.** (a) There is established the Hawaii 3R's school improvement fund (hereinafter, "fund") as a separate restricted fund of Hawaii 3R's, a Hawaii nonprofit organization. Moneys received from the State, county, or federal government, private contributions of cash or other property, and the income and capital gains earned by the fund shall constitute its assets.~~

~~(b) Hawaii 3R's shall expend moneys from the fund in the form of either grants to organizations or contracts with private vendors for the improvement of public schools and benefit of students in Hawaii in accordance with this section.~~

~~(c) The fund may receive contributions, grants, endowments, or gifts in cash or otherwise from all sources,~~



~~1 including corporations or other businesses, foundations,  
2 government, individuals, and other interested parties. The fund  
3 shall also receive moneys transferred to it from the school-  
4 level minor repairs and maintenance special fund established  
5 under section 302A-1504.5. The legislature intends that public  
6 and private sectors review and investigate all potential funding  
7 sources. The State may appropriate moneys to the fund, provided  
8 that any appropriations made by the State are not intended to  
9 supplant the funding of any existing programs.~~

~~10 (d) Chapter 103D shall not apply to organizations or  
11 agencies that apply for grants or contracts under this section,  
12 provided that Hawaii 3R's shall be held accountable for the use  
13 of the funds under a contract with the department.~~

~~14 (e) The fund shall not be placed in the state treasury,  
15 and the State shall not be liable for the operation or solvency  
16 of the fund or Hawaii 3R's." ]~~

17 SECTION 8. Sections 302A-1602, 302A-1603, 302A-1604,  
18 302A-1605, 302A-1606, 30A-1607, 302A-1609, 302A-1610, 302A-1611,  
19 and 302A-1612, Hawaii Revised Statutes, are amended by  
20 substituting the word "agency", or similar term, wherever the



1 word "department", "department of education", or similar term,  
2 appears, as the context requires.

3 SECTION 9. There is appropriated out of the general  
4 revenues of the State of Hawaii the sum of \$1,500,000 or so much  
5 thereof as may be necessary for fiscal year 2020-2021 for the  
6 establishment of the school facilities agency.

7 The sum appropriated shall be expended by the school  
8 facilities agency for the purposes of this Act.

9 SECTION 10. This Act shall not be construed to transfer  
10 the department of education office of facilities and operation,  
11 including the facilities maintenance branch and auxiliary  
12 services branch and any general fund and position  
13 appropriations, to the school facilities agency.

14 SECTION 11. The balances and obligations of the Hawaii 3Ts  
15 school technology laboratories fund and the Hawaii 3R's school  
16 improvement fund shall not be affected by the repeal of those  
17 funds in sections 6 and 7 of this Act and reenactment of those  
18 funds by the provisions of section 1 of this Act.

19 SECTION 12. The development, planning, oversight,  
20 management, and responsibility of the capital improvement  
21 projects authorized by Act 155, Session Laws of Hawaii 2013; Act



1 115, Session Laws of Hawaii 2015; Act 206, Session Laws of  
2 Hawaii 2017; Act 210, Session Laws of Hawaii 2018; and Act 272,  
3 Session Laws of Hawaii 2019, are hereby transferred to the  
4 school facilities agency.

5 SECTION 13. The school facilities agency shall collaborate  
6 with the department of education and submit a report to the  
7 legislature, no later than twenty days prior to the convening of  
8 the regular session of 2021, identifying positions of the  
9 department of education that should be transferred to the school  
10 facilities agency established by section 1 of this Act,  
11 including positions responsible for public school development,  
12 planning, and construction related to capital improvement  
13 projects along with proposed legislation to further implement  
14 the transfer of positions and related records and equipment to  
15 effectuate the purpose of this Act.

16 SECTION 14. In codifying the new sections added by section  
17 1 of this Act, the revisor of statutes shall substitute  
18 appropriate section numbers for the letters used in designating  
19 the new sections in this Act.

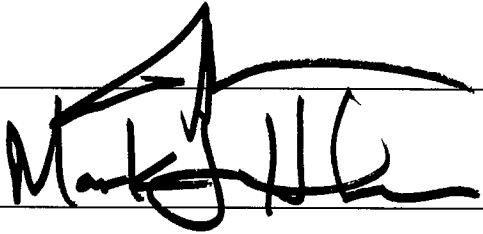
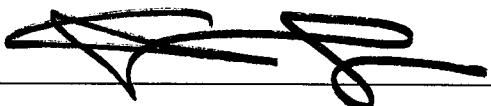
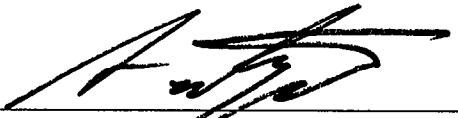

20 SECTION 15. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 16. This Act shall take effect on July 1, 2020.

2

INTRODUCED BY:

	<u>Scott K. Parker</u>
	<u>Hakushima</u>
<u>C. J. K. Cuen</u>	<u>John A. Keatti</u>
<u>Yang. John</u>	<u>John</u>
<u>R. D. De</u>	<u>David Carnas</u>
<u>Allen</u>	<u>Nicole E. Lowen</u>
	<u>My. A. Allen</u>
<u>Jahar Olin</u>	<u>Melanie K. Parker</u>
<u>Alan Todd</u>	
<u>Bill Kobayashi</u>	<u>Isakitagawa</u>
	<u>Robert Lehinger</u>
	<u>Joseph M. [unclear]</u>



*Shirley Ann*

*Gregory*

*Shirley Ann*

*Rida Cabonilla Ana Kawa*

*Lyn DeCote*

*Shirley Ann*

*Tim Winger*

*John M. [unclear]*

*Ruth [unclear]*

*Shirley Ann*

*S. O. L.*

*Shirley Ann*

*Don Helt*

*Calvin K. [unclear]*

*Shirley Ann*

*Shirley Ann*

*Shirley Ann*

*Bial*

*Che [unclear]*

*Shirley Ann*

*Shirley Ann*

JAN 23 2020





# H.B. NO. 2544

**Report Title:**

School Facilities Agency; BOE; DOE; Facility; Maintenance;  
Construction; Repair; Appropriation

**Description:**

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 summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



**Exhibit B**

**Senate Bill 3103, Senate Draft 1, Relating to a School Facilities Agency**

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# A BILL FOR AN ACT

RELATING TO A SCHOOL FACILITIES AGENCY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Chapter 302A, Hawaii Revised Statutes, is  
2       amended by adding a new subpart to part VI to be appropriately  
3       designated and to read as follows:

4                       "       . School Facilities Agency

5       **§302A-A Definitions.** As used in this subpart, "agency"  
6       means the school facilities agency established by  
7       section 302A-B.

8       **§302A-B School facilities agency; established.** (a) There  
9       is established the school facilities agency, which shall be a  
10      body corporate and a public instrumentality of the State, for  
11      the purpose of implementing this subpart. The agency shall be  
12      placed within the department for administrative purposes only.

13      (b) The governor shall appoint an executive director to  
14      enable the agency to perform its duties. The appointment shall  
15      be:

16      (1) Exempt from chapter 76 and the term limitation in  
17      section 26-34;



1 (2) Subject to the advice and consent of the senate; and

2 (3) For a term of six years.

3 If a vacancy occurs during a term, the governor shall appoint an  
4 executive director for a six-year term that shall begin on the  
5 first date of employment of the new executive director.

6 (c) The executive director shall:

7 (1) Serve as the agency's chief executive officer;

8 (2) Be responsible for carrying out the purposes of the  
9 agency; and

10 (3) Serve on a full-time basis.

11 **§302A-C Powers; generally.** (a) Except as otherwise  
12 limited by this chapter, the agency shall be responsible for all  
13 public school development, planning, and construction related to  
14 capital improvement projects assigned by the legislature,  
15 governor, or board of education.

16 (b) The projects of the agency shall be exempt from  
17 chapters 6E, 37, 76, 103, 103D, and 343 and all county  
18 ordinances except the respective building codes; provided that  
19 the agency shall establish and publish transparency initiatives  
20 as prescribed by the agency to ensure that the public is  
21 properly informed of its activities, to deter fraud and



1 malfeasance, and to allow for public input; provided further  
2 that the agency shall adopt rules that provide substantially  
3 similar protections to those required by chapter 343; provided  
4 further that the creation of the agency shall not effect  
5 existing civil service positions; and provided further that any  
6 invitation for bids for construction shall specify that all bids  
7 include the name of each person or firm to be engaged by the  
8 bidder as a joint contractor or subcontractor in the performance  
9 of the contract and the nature and scope of the work to be  
10 performed by each. Construction bids that do not comply with  
11 this requirement may be accepted if acceptance is in the best  
12 interest of the State and the value of the work to be performed  
13 by the joint contractor or subcontractor is equal to or less  
14 than one percent of the total bid amount; and provided further  
15 that professional services contracts for licensees under chapter  
16 464 shall be procured in accordance with section 103D-304.

17 (c) Except as otherwise limited by this chapter, the  
18 agency may also:

19 (1) Have a seal and alter the same at its pleasure;



- 1           (2)   Make and execute contracts and all other instruments  
2                necessary or convenient for the exercise of its powers  
3                and functions under this subpart;
- 4           (3)   Make and alter bylaws for its organization and  
5                internal management;
- 6           (4)   Make rules with respect to its projects, operations,  
7                properties, and facilities, which rules shall be in  
8                conformance with chapter 91;
- 9           (5)   Through its executive director appoint officers,  
10               agents, and employees, prescribe their duties and  
11               qualifications, and fix their salaries, without regard  
12               to chapter 76;
- 13          (6)   Acquire, reacquire, or contract to acquire or  
14               reacquire by grant or purchase real, personal, or  
15               mixed property or any interest therein; to own, hold,  
16               hold title, clear, improve, and rehabilitate and to  
17               sell, assign, exchange, transfer, convey, lease, or  
18               otherwise dispose of or encumber the same;
- 19          (7)   Acquire or reacquire by condemnation real, personal,  
20               or mixed property or any interest therein for public  
21               facilities, including but not limited to streets,



1 sidewalks, parks, schools, and other public  
2 improvements;

3 (8) By itself, or in partnership with qualified persons,  
4 including public-private partnerships, acquire,  
5 reacquire, construct, reconstruct, rehabilitate,  
6 improve, alter, or provide for the construction,  
7 reconstruction, improvement, or alteration of any  
8 project; own, hold, hold title, sell, assign,  
9 transfer, convey, exchange, lease, or otherwise  
10 dispose of or encumber any project, and in the case of  
11 the sale of any project, accept a purchase money  
12 mortgage in connection therewith; and repurchase or  
13 otherwise acquire any project that the agency has  
14 theretofore sold or otherwise conveyed, transferred,  
15 or disposed of;

16 (9) Arrange or contract for the planning, replanning,  
17 opening, grading, or closing of streets, roads,  
18 roadways, alleys, or other places, or for the  
19 furnishing of facilities or for the acquisition of  
20 property or property rights or for the furnishing of  
21 property or services in connection with a project;



1       (10) Grant options to purchase any project or to renew any  
2            lease entered into by it in connection with any of its  
3            projects, on terms and conditions as it deems  
4            advisable;

5       (11) Prepare or cause to be prepared plans, specifications,  
6            designs, and estimates of costs for the construction,  
7            reconstruction, rehabilitation, improvement, or  
8            alteration of any project, and from time to time to  
9            modify the plans, specifications, designs, or  
10           estimates;

11      (12) Provide advisory, consultative, training, and  
12           educational services, technical assistance, and advice  
13           to any person, partnership, or corporation, either  
14           public or private, to carry out the purposes of this  
15           subpart, and engage the services of consultants on a  
16           contractual basis for rendering professional and  
17           technical assistance and advice;

18      (13) Procure insurance against any loss in connection with  
19           its property and other assets and operations in  
20           amounts and from insurers as it deems desirable;





1       (14)   Contract for and accept gifts or grants in any form  
2           from any public agency or from any other source,  
3           including gifts or grants from private individuals and  
4           private entities;

5       (15)   Issue bonds for the purpose of financing any project;

6       (16)   Enter into public-private partnerships; and

7       (17)   Do any and all things necessary to carry out its  
8           purposes and exercise the powers given and granted in  
9           this subpart.

10       (d)   Prior to project approval, the agency shall consult  
11 with the Hawaii state public library system regarding any  
12 construction or renovation projects for school lands that are  
13 adjacent to or have Hawaii state public library facilities on  
14 them.

15       **§302A-D   School facilities board.**   (a)   There is  
16 established within the department of education for  
17 administrative purposes only a school facilities board.

18       (b)   The school facilities board shall consist of seven  
19 voting members.   The superintendent of education, or the  
20 superintendent's designee, and a member of the board of  
21 education selected by the chairperson of the board of education



1 shall serve as ex officio, voting members of the school  
2 facilities board. The other five members shall:

3 (1) Be appointed by the governor pursuant to section  
4 26-34;

5 (2) Be subject to section 84-17; provided that board  
6 members shall file confidential financial disclosure  
7 statements; and

8 (3) Have an interest in school construction.

9 (c) The school facilities board shall advise the agency on  
10 policies relating to public school development, planning, and  
11 construction within the jurisdiction of the agency. The board  
12 shall be responsible for:

13 (1) Advising the agency on preferred strategies to  
14 complete construction projects of the agency; and

15 (2) Evaluating the executive director on an annual basis.

16 (d) The school facilities board shall select a chairperson  
17 by a majority vote of its voting members. A majority of the  
18 voting members serving on the board shall constitute a quorum to  
19 conduct business. The concurrence of the majority of the voting  
20 members serving on the board shall be necessary to make any  
21 action of the board valid.



1 (e) The school facilities board may form workgroups and  
2 subcommittees, including with individuals who are not school  
3 facilities board members, to:

4 (1) Obtain resource information from construction and  
5 education professionals and other individuals as  
6 deemed necessary by the school facilities board;

7 (2) Make recommendations to the school facilities board;  
8 and

9 (3) Perform other functions as deemed necessary by the  
10 school facilities board to fulfill its duties and  
11 responsibilities.

12 Two or more school facilities board members, but less than  
13 a quorum, may discuss matters relating to official school  
14 facilities board business in the course of their participation  
15 in a workgroup or subcommittee, and these discussions shall be a  
16 permitted interaction as provided for in section 92-2.5;  
17 provided that all other provisions of chapter 92 shall apply.

18 (f) The school facilities board may testify before the  
19 legislature on any matter related to its duties and  
20 responsibilities.



1 (g) Members of the school facilities board shall serve  
2 without compensation but may be reimbursed for expenses,  
3 including travel expenses, necessary for the performance of  
4 their duties.

5 (h) No member of the school facilities board shall have:

6 (A) Any financial interest in any entity that bids on  
7 projects authorized by the agency; or

8 (B) Bid on any project within the last twelve months  
9 prior to their appointment.

10 **§302A-E Use of public lands; acquisition of state lands.**

11 (a) If state lands under the control and management of another  
12 department are required by the agency for its purposes, the  
13 department having the control and management of those required  
14 lands, upon request by the agency and with the approval of the  
15 governor, may convey or lease those lands to the agency upon  
16 terms and conditions as may be agreed to by the parties.

17 (b) Notwithstanding the foregoing and section 302A-C(c),  
18 no public lands shall be conveyed or leased to the agency as  
19 provided in this section if the conveyance or lease would impair  
20 any covenant between the State or any county or any department



1 or board thereof and the holders of bonds issued by the State or  
2 county, department, or board.

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

7 **§302A-F School facilities special fund.** (a) There is  
8 established within the state treasury a special fund to be known  
9 as the school facilities special fund into which shall be  
10 deposited:

11 (1) All moneys appropriated by the legislature for any  
12 public school development, planning, or construction  
13 related to a capital improvement project;

14 (2) Revenues pursuant to 302A-1608(a); provided that these  
15 moneys shall be deposited into the appropriate  
16 subaccount established pursuant to subsection (b);

17 (3) Any other moneys received by the department in the  
18 form of a grant, gift, endowment, or donation for any  
19 public school development, planning, or construction  
20 related to a capital improvement project;



1 (4) All moneys allocated to the fund by the governor or  
2 board for a project;

3 (5) Any other appropriation by the legislature to the  
4 fund; and

5 (6) Income and capital gains earned by the fund.

6 (b) The agency shall establish and appropriately name  
7 subaccounts within the fund to accept deposits of revenues from  
8 school impact fees that are required to be expended within a  
9 specific school impact district pursuant to 302A-1608(a) or  
10 restricted to another specific purpose pursuant to part V,  
11 subpart B of this chapter.

12 (c) The special fund shall be administered by the agency  
13 and used to fund any school development, planning, or  
14 construction project within the jurisdiction of the agency.

15 (d) Any law to the contrary notwithstanding, the governor  
16 may authorize expenditures from the special fund of any  
17 donation, grant, bequest, and devise of money from any private  
18 institution, person, firm, or corporation for the purposes of  
19 funding the salaries of the executive director and any officers,  
20 agents, and employees of the agency. If all or any portion of  
21 any salary of the executive director or any officer, agent, or



1 employee of the agency is funded pursuant to this subsection,  
2 the agency shall submit a report to the legislature detailing  
3 the use of any funds authorized under this subsection no later  
4 than twenty days prior to the convening of each regular session.

5 (e) The agency may transfer any other unencumbered or  
6 unrestricted moneys received in the form of grants and donations  
7 for school development, planning, or construction to the school  
8 facilities special fund established by section 302A-B.

9 (f) The agency shall submit to the director of finance a  
10 report that shall be prepared in the form prescribed by the  
11 director of finance and shall identify the total amount of funds  
12 in the school facilities special fund that will carry over to  
13 the next fiscal year. The agency shall submit the report to the  
14 director of finance within ninety days of the close of each  
15 fiscal year and a copy of the information contained in the  
16 report to the director of finance shall be included within the  
17 agency's report to the legislature pursuant to section 302A-F.

18 (g) Within the school facilities special fund there shall  
19 be established such accounts and subaccounts as may be necessary  
20 from time to time in order to ensure compliance with the  
21 Internal Revenue Code.



1 (h) Section 87-17 shall not apply to gifts and  
2 contributions to the school facilities special fund.

3 §302A-G Annual report. The agency shall submit to the  
4 governor, the board of education, and the legislature, at least  
5 twenty days prior to the start of any regular session, a  
6 complete and detailed report of its activities during the prior  
7 fiscal year."

8 SECTION 2. Section 36-32, Hawaii Revised Statutes, is  
9 repealed.

10 [~~"§36-32 State educational facilities improvement special~~  
11 ~~fund.~~ (a) ~~There is created in the treasury of the State the~~  
12 ~~state educational facilities improvement special fund. The~~  
13 ~~special fund shall be used solely to plan, design, acquire lands~~  
14 ~~for, and to construct public school facilities and to provide~~  
15 ~~equipment and technology infrastructure to improve public~~  
16 ~~schools and other facilities under the jurisdiction of the~~  
17 ~~department of education, except public libraries. In addition,~~  
18 ~~activities of the department of education intended to eliminate~~  
19 ~~the gap between the facility needs of schools and available~~  
20 ~~resources shall be eligible for funding from the special fund.~~  
21 ~~Expenditures from the special fund shall be limited to projects~~





~~1 authorized by the legislature for fiscal years ending prior to~~  
~~2 July 1, 2016, and shall be subject to sections 37-31, and 37-33~~  
~~3 through 37-40. Appropriations or authorizations from the~~  
~~4 special fund shall be expended by the superintendent of~~  
~~5 education.~~

~~6 (b) There is established within the state educational~~  
~~7 facilities improvement special fund a separate account, to be~~  
~~8 known as the lease payments for schools account, for lease~~  
~~9 payments required by financing agreements entered into prior to~~  
~~10 July 1, 2013, by the department of education pursuant to this~~  
~~11 section and sections 37D-2 and 302A-1506. The lease payments~~  
~~12 for schools account shall be funded by legislative~~  
~~13 appropriations and expended by the superintendent of education.~~  
~~14 Expenditures from the lease payments for schools account shall~~  
~~15 be exempt from chapters 103 and 103D and are restricted to lease~~  
~~16 payments on new schools included within the department of~~  
~~17 education's current six year capital improvement programs and~~  
~~18 for which.~~

~~19 (1) The legislature adopted a concurrent resolution~~  
~~20 directing the department of education to:~~



1           ~~(A) Build a new school in a specific geographic area~~  
2           ~~using the design-build method; and~~  
3           ~~(B) Pursue the use of a financing agreement to build~~  
4           ~~the new school; or~~  
5       ~~(2) The legislature appropriated planning and design funds~~  
6           ~~and specified that the remainder of the costs~~  
7           ~~necessary to complete the project are eligible for~~  
8           ~~funding through a financing agreement;~~  
9       ~~provided that any school to which the legislature has~~  
10       ~~appropriated planning and design funds prior to July 1, 2007,~~  
11       ~~and for which a private developer is willing to enter into a~~  
12       ~~lease-purchase agreement with the department of education within~~  
13       ~~twelve months of July 1, 2007, is exempt from the requirements~~  
14       ~~of paragraphs (1) and (2).~~  
15       ~~(c) The department of education shall annually post on the~~  
16       ~~department's website information related to a financial~~  
17       ~~statement of the special fund, the lease payments for schools~~  
18       ~~account established under subsection (b), and the status of~~  
19       ~~projects undertaken pursuant to this section, no later than~~  
20       ~~twenty days prior to the convening of each regular session." ]~~



1       SECTION 3. Any remaining balance in the state educational  
2 facilities improvement special fund at the time of repeal, shall  
3 be transferred into the school facilities special fund as  
4 established by section 4 of this Act.

5       SECTION 4. Sections 302A-1602, 302A-1603, 302A-1604,  
6 302A-1605, 302A-1606, 30A-1607, 302A-1609, 302A-1610, 302A-1611,  
7 and 302A-1612, Hawaii Revised Statutes, are amended by  
8 substituting the word "agency", or similar term, wherever the  
9 word "department", "department of education", or similar term,  
10 appears, as the context requires.

11       SECTION 5. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$1,500,000 or so much  
13 thereof as may be necessary for fiscal year 2020-2021 for the  
14 establishment of the school facilities agency.

15       The sum appropriated shall be expended by the school  
16 facilities agency for the purposes of this Act.

17       SECTION 6. This Act shall not be construed to transfer the  
18 department of education office of facilities and operation,  
19 including the facilities maintenance branch and auxiliary  
20 services branch and any general fund and position  
21 appropriations, to the school facilities agency.



1       SECTION 7. The development, planning, oversight,  
2 management, and responsibility of the capital improvement  
3 projects authorized by Act 155, Session Laws of Hawaii 2013; Act  
4 115, Session Laws of Hawaii 2015; Act 206, Session Laws of  
5 Hawaii 2017; Act 210, Session Laws of Hawaii 2018; and Act 272,  
6 Session Laws of Hawaii 2019, are hereby transferred to the  
7 school facilities agency.

8       SECTION 8. The school facilities agency shall collaborate  
9 with the department of education and submit a report to the  
10 legislature, no later than twenty days prior to the convening of  
11 the regular session of 2021, identifying positions of the  
12 department of education that should be transferred to the school  
13 facilities agency established by section 1 of this Act,  
14 including positions responsible for public school development,  
15 planning, and construction related to capital improvement  
16 projects along with proposed legislation to further implement  
17 the transfer of positions and related records and equipment to  
18 effectuate the purpose of this Act.

19       SECTION 9. In codifying the new sections added by section  
20 1 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 10. Statutory material to be repealed is bracketed  
4 and stricken.

5 SECTION 11. This Act shall take effect on July 1, 2020.



**Report Title:**

School Facilities Agency; BOE; DOE; Construction; Appropriation

**Description:**

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. Places management of school impact fees with the agency. Appropriates funds.  
(SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



**Exhibit C**

**Testimony on Senate Bill 3103, Relating to a School Facilities Agency**



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 21<sup>st</sup> 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](http://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**

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**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

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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  
NO. 1 CAPITOL DISTRICT BUILDING  
250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
TELEPHONE: 808-586-1400 FAX: 808-586-1412  
EMAIL: [oiip@hawaii.gov](mailto:oiip@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

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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**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 586-0554  
email: [state.procurement.office@hawaii.gov](mailto:state.procurement.office@hawaii.gov)  
<http://spo.hawaii.gov>  
Twitter: [@hawaiispo](https://twitter.com/hawaiispo)

**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.

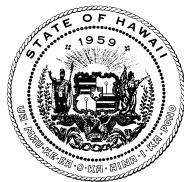
Article XIV of the Hawai'i Constitution provides, among other things, that "public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures." (emphasis added)). Article XIV requires that elected officials file public financial disclosure 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,

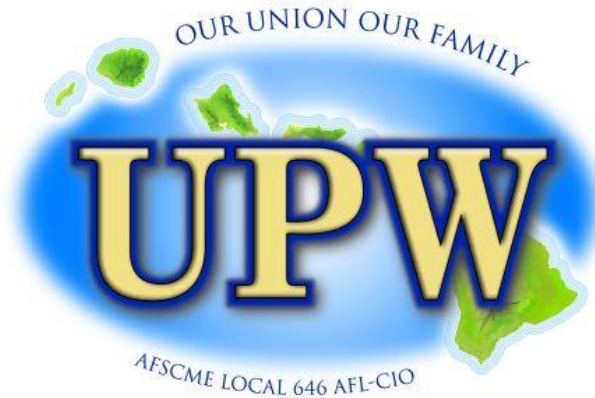


sometimes school construction projects at or near our libraries have negatively impacted library operations and the public's access to the library. In some cases, there is a temporary loss of power, water, internet connectivity and building access. In other cases, there is a more prolonged impact on 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 21<sup>st</sup> 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 21<sup>st</sup> 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 21<sup>st</sup> 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 21<sup>st</sup> 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 21<sup>st</sup> 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 21<sup>st</sup> century schools. 21<sup>st</sup> 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.

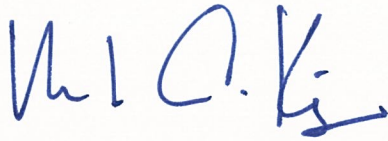
Additionally, there is also a pressing need to construct pre-K classrooms. In Hawai'i, there are approximately 20,000 (54%) 3- and 4-year olds who are without access to early learning opportunities. As such, approximately 1,000 classrooms are needed to meet the demand for pre-K education.

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 legible 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,

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.<sup>1</sup> 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.

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<sup>1</sup> 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).*<sup>1</sup> 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.

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<sup>1</sup> 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 21<sup>st</sup> 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'.





**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.



2019 - 2020

**President**

Ken Kawahara, P.E.  
Akinaka & Associates, Ltd.  
Ph: (808) 836-1900

**President-Elect**

Garret Masuda, P.E.  
InSynergy Engineering, Inc.  
Ph: (808) 521-3773

**Treasurer**

Derek Mukai, P.E.  
Community Planning  
& Engineering, Inc.  
Ph: (808) 531-4252

**Secretary**

Michele Adolpho, P.E.  
ECS, Inc.  
Ph: (808) 591-8181

**Past President**

Sean K. Sugai, P.E.  
Ronald N.S. Ho & Associates, Inc.  
Ph: (808) 941-0577

**National Director**

Terrance Arashiro, P.E.  
Austin, Tsutsumi & Associates,  
Inc.  
Ph: (808) 533-3646

**Directors**

Nimr Tamimi, P.E.  
Engineering Partners  
Ph: (808) 930-7823

Kyle Kaneshiro, P.E.  
The Limtiaco Consulting Group  
Ph: (808) 586-7790

Shannon Holman, P.E.  
Orion Engineers & Associates,  
Inc.  
(808) 282-7986

Ginny M. Wright  
ACECH Executive Director  
350 Ward Ave. Ste. #106-83  
Honolulu, Hawaii 96814  
Ph: (808) 741-4772  
Email: [gwright@acechawaii.org](mailto:gwright@acechawaii.org)  
Website: [www.acechawaii.org](http://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 21<sup>st</sup> 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 7<sup>th</sup>, 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.

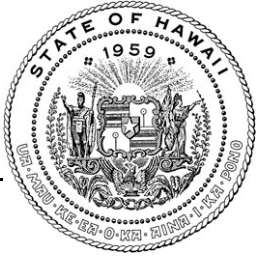
The State of Hawaii has one of the largest and most geographically diverse single district school systems in the United States. The management of facilities for such a complex system is, needless to say, extraordinarily difficult. While a great deal of progress has been made in improving the quality 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 HIDOE. It is simply too much to ask of HIDOE to possess expertise in 21<sup>st</sup> 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](http://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

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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); Kawanānakoā 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

1286 Kalani Street, Suite B-203

Honolulu, Hawai'i 96817

PH: (808) 847-7306

FX: (808) 841-8096

Email: [ecah@ecahi.com](mailto:ecah@ecahi.com)



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 21<sup>st</sup> 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', written in a cursive style.

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