



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

Date: 02/12/2021

Time: 03:10 PM

Location: 229

Committee: Senate Education
Senate Government Operations

Department: Education

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

Title of Bill: SB 0466 RELATING TO A SCHOOL FACILITIES AGENCY.

Purpose of Bill: Amends Act 72, Session Laws of Hawaii 2020, to require that the school facilities agency complies with the Hawaii Public Procurement Code. Authorizes the school facilities agency to have additional powers and duties. Specifies additional uses for the school facilities special fund. Provides the executive director of the school facilities agency with authority relating to capital improvement projects for the school facilities agency.

Department's Position:

The Hawaii State Department of Education (Department) respectfully offers comments on SB 0466.

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

Thank you for the opportunity to provide testimony on this measure.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher

collaboration. Detailed information is available at www.hawaiipublicschools.org.

DAVID Y. IGE
GOVERNOR



BONNIE KAHAKUI
ACTING 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
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEES ON
EDUCATION
AND
GOVERNMENT OPERATIONS
FEBRUARY 12, 2021, 3:10 P.M.

SENATE BILL 466
RELATING TO A SCHOOL FACILITIES AGENCY

Chair Kidani, Chair Moriwaki, Vice Chair Kim, Vice Chair Dela Cruz, and members of the committees, thank you for the opportunity to submit testimony on SB 466. The State Procurement Office (SPO) supports the intent of the bill, specifically Section 1, page 3, line 4:

" The agency shall comply with chapter 103D. "

The SPO believes that if the original requirement remains as stated below:

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

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

As it stands, Act 72 (SLH 2020) does not address the methodology of applying such a local construction preference. This act is not clear as to what local preference the agency will be applying, if it will any of the following:

- Act 17 (SLH 2009) – Apprenticeship Program
- Act 68 (SLH 2010) – Employment of State Residents on Construction Procurement Contracts
- §103D-1002, HRS, – Hawaii Products

It is unclear if the DOE will create a new preference exclusive for the school facilities agency.

The implementation of a new DOE construction preference may cause undue confusion and frustration among agencies and construction companies. Chapter 103D, HRS, the Hawaii Public Procurement Code, should be universally applied to all agencies statewide.

Thank you.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 466, RELATING TO A SCHOOL FACILITIES AGENCY.

BEFORE THE:

SENATE COMMITTEES ON EDUCATION AND ON
GOVERNMENT OPERATIONS

DATE: Friday, February 12, 2021 **TIME:** 3:10 p.m.

LOCATION: State Capitol, Via Videoconference Conference Room 229

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Melissa J. Kolonie,
Deputy Attorney General, at 586-1255)

Chairs Kidani and Moriwaki and Members of the Committees:

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

The purpose of this bill is to amend the subpart of part VI of chapter 302A, Hawaii Revised Statutes (HRS), that established the School Facilities Agency, as enacted by Act 72, Session Laws of Hawaii 2020, to (1) require that the School Facilities Agency comply with the Hawaii Public Procurement Code; (2) authorize the School Facilities Agency to have additional powers and duties; (3) specify additional uses for the School Facilities Special Fund; and (4) provide the executive director of the School Facilities Agency with authority relating to capital improvement projects for the School Facilities Agency.

On page 6, lines 12 – 18, of this bill, a new paragraph (15) is added to section 302A-C(c) to authorize the School Facilities Agency to:

“[a]ppoint or retain by contract one or more attorneys who are independent of the attorney general to provide legal services solely in cases of negotiations in which the attorney general lacks the sufficient expertise; provided that the independent attorney shall

consult and work in conjunction with the designated deputy attorney general assigned[.]”

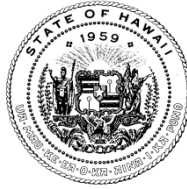
The new paragraph (15) would allow the School Facilities Agency to hire private attorneys, who are independent of the Attorney General, to provide legal services for negotiations. While instances may arise in which the Attorney General hires and/or deputizes private attorneys who possess specific expertise not present within the Department, the Attorney General engages this representation pursuant to section 28-8.3, HRS. As drafted, paragraph (15) interferes with the legal obligation of the Attorney General to its state agency clients, particularly in areas where representation previously has been provided by deputy attorneys general. The Department has deputies with the experience, knowledge, and training necessary to represent the School Facilities Agency, and continues to be willing and able to provide legal services in cases where negotiations are involved. If specialized expertise becomes necessary for negotiations, the Department has the legal expertise to make this determination – as opposed to the School Facilities Agency – and will exercise its authority accordingly to contract with private attorneys for assistance. Because the School Facilities Agency has yet to be established, the Department has not had the opportunity to represent the agency and thus to consider whether private attorneys are necessary for the agency to accomplish its mandate.

By locating attorneys representing state agencies within the Department, state agencies benefit from a wide range of experience and expertise. The division assigned to represent the School Facilities Agency can seek the advice of other divisions, including those with experience in particular areas. Private attorneys retained by the School Facilities Agency are unlikely to have the necessary breadth of knowledge and experience available in the Department. Additionally, because state agencies are regulated by a variety of laws not applicable in private practice – including the Code of Ethics for state employees and Collective Bargaining in Public Employment – the Department has a depth of expertise in representing state agencies that would be difficult for private attorneys to duplicate, and certainly not without additional expense. Finally, because the deputy attorneys general, and any private attorneys contracted by

the Attorney General to serve as special deputy attorneys general, are separate and apart from the agencies they represent, they are insulated from political issues that may arise within an agency. This insulation permits the Department to provide objective and high-quality legal counsel. However, as discussed above, if specialized expertise is desired for a particular negotiation or litigation, the Attorney General is authorized to contract with private attorneys to serve as special deputy attorneys general.

We respectfully recommend the Committee amend the bill by removing the amendment on page 6, lines 12 – 18, of this bill that would authorize the School Facilities Agency to hire by contract private attorneys who are independent of the Attorney General.

Thank you for the opportunity to provide testimony.



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

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

LATE

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

February 12, 2021
3:10 P.M.
State Capitol, Teleconference

S.B. 466
RELATING TO THE SCHOOL FACILITIES AGENCY

Senate Committee(s) on Education & Government Operations

The Department of Transportation (DOT) Highways Division, **supports the intent** of S.B. 466.

The DOT is the Administration's lead for setting up the School Facilities Agency (SFA) and we appreciate the legislature's commitment to addressing the needs of the students of Hawaii.

S.B. 466 provides further clarification of the SFA and its role and responsibilities. We have been working with the Department of Education (DOE), specifically with the Assistant Superintendent Randall Tanaka, to ensure that the SFA and the DOE operate seamlessly to improve DOE facilities and provide Hawaii students and teachers the learning environments they deserve.

However, we prefer the language in S.B. 808 with the addition of proposed amendments to Section 10 of Act 72 SLH 2020 included in S.B. 466.

Thank you for the opportunity to provide testimony on this measure.

SB-466

Submitted on: 2/9/2021 11:09:47 AM

Testimony for EDU on 2/12/2021 3:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dr. Jim Shon	Individual	Oppose	No

Comments:

Chairs, Members of the Committees. I strongly oppose this bill because it is likely to significantly inflate the cost of facilities, and can potentially slow down CIP construction with protests from losing bidders.

Having sensible ethical and conflict of interest regulations is important. However, the current procurement code, especially in education, has greatly exaggerated costs at a time when we need to resist inflating costs to boost the financial health of favored or selected contractors. We have seen the procurement code cost \$100K to cool single classrooms. We have seen the difference between building a new (procurement code free) charter school for 300 costing \$30 million, and a DOE school for the same enrollment for \$500K.

Last year there was a spirited debate over a future Airport Authority bill that was stalled because many DID want it free of the Code, yet some wanted it. If the current Procurement Code were studied and revised, and streamlined, retaining its essential ethical elements, this would be a different story.

To cripple the facilities agency as envisioned by this bill would be to negate its original purpose.

Sincerely

Jim Shon