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OFFICE OF FEDERAL AWARDS MANAGEMENT

WRITTEN ONLY

TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON CORRECTIONS, MILITARY, AND VETERANS
ON
HOUSE BILL NO. 2725

January 31, 2024
9:00 a.m.
Room 430 and Videoconference

RELATING TO CORRECTIONAL FACILITIES AUTHORITY

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

House Bill (H.B.) No. 2725 adds a new part to Chapter 353, HRS, to establish the Corrections Facilities Authority (CFA), within the Department of Corrections and Rehabilitation, as the body responsible for all public corrections development, planning, and construction related to capital improvement projects; establishes the CFA Board to head and oversee the authority; and establishes the Corrections Facilities Special Fund to fund any corrections development, planning, or construction project within the jurisdiction of the CFA. Furthermore, the bill necessitates the Department of Land and Natural Resources to transfer State lands in Kailua-Kona to the CFA for public corrections development. Lastly, the bill necessitates the CFA to apply for loans and grants from the United States Department of Agriculture's Community Facilities Direct Loan and Grant Program to fund the development of a correctional facility or community correctional center on land transferred to the CFA for purposes of this measure.

As a matter of general policy, B&F does not support the creation of any special fund which does not meet the requirements of Section 37-52.3, HRS. Special funds should: 1) serve a need as demonstrated by the purpose, scope of work, and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. Regarding H.B. No. 2725, it is difficult to determine whether the proposed special fund would be self-sustaining.

Furthermore, it is unclear how the proposed special fund intends to receive revenues to sustain the program. It is also unknown why this bill requires the Authority to submit certain documentation regarding the carry over of funds to B&F. Further, this bill does not provide a special fund appropriation to support the program as envisioned in the bill.

Thank you for your consideration of our comments.

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To: House Committee on Corrections, Military, & Veterans

From: Cheryl Kakazu Park, Director

Date: January 31, 2024, 9:00 a.m.
State Capitol, Conference Room 430

Re: Testimony on H.B. No. 2725
Relating to Corrections

Thank you for the opportunity to submit testimony on this bill, which would, among other things, establish a Corrections Facilities Authority Board and create a special permitted interaction for it. The Office of Information Practices (OIP) takes no position on the remainder of the bill, but offers **comments and recommends deletion** of the proposed permitted interaction at bill page 9, lines 7-12.

Proposed subsection 353-D(e), at bill pages 8-9, would allow the new Corrections Facilities Authority Board to form workgroups and subcommittees of less than a quorum of board members working together with non-board members, and provides that the members' participation in a work group or subcommittee will be a permitted interaction authorized under section 92-2.5, HRS, the Sunshine Law provision that sets out circumstances in which board members may discuss board business outside a board meeting.

Normally, a board's subcommittees operate as smaller versions of the board itself for the purpose of the Sunshine Law and are thus required to do their work through meetings: they post notice of and hold public meetings, accept public testimony, and keep written minutes. The proposed permitted interaction would

allow board members and subcommittees of the Corrections Facilities Authority Board to avoid those requirements, but at the same time would not include the reporting requirements or other restrictions that the existing permitted interactions provide under section 92-2.5, HRS. This bill does not include a purpose clause, and thus provides no explanation for why this board's members need to discuss board business outside a meeting without the requirements that would normally apply to either a board subcommittee or a temporary permitted interaction group (PIG) created under section 92-2.5(b).

It can sometimes make sense to create a board-specific permitted interaction similar to the one here, allowing less than a quorum of a board's members to discuss board business outside a meeting, when a board's membership is mostly drawn from government officials who must regularly discuss those same issues as part of their jobs; however, this board's five members are not agency heads or their designees but instead are to be appointed by the governor. As such, it seems unlikely that they would have a need to discuss the board's business together as part of their regular jobs. It also does not appear that this board will be focused on sensitive information about identifiable individuals that could be challenging to discuss in a Sunshine Law meeting. In fact, it appears that this board will be setting policy and strategies for the authority to carry out, and there is no apparent reason that it should need a partial Sunshine Law exemption to do so.

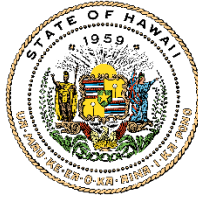
In the absence of any compelling reason for the special permitted interaction at bill page 9, lines 7-12, OIP recommends that this Committee delete it. Without the special permitted interaction, the board can still create regular board subcommittees that hold open meetings and otherwise follow the Sunshine Law's requirements, or temporary PIGs under section 92-2.5(b)(1) that follow the requirements set out in that subsection. Alternatively, if

this committee believes this special permitted interaction is necessary, **OIP recommends providing an explanation in the committee report** as to why the Corrections Facilities Authority Board cannot follow the Sunshine law's usual requirements for standing committees or PIGs.

Thank you for considering OIP's testimony.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
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CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
DAWN N. S. CHANG
Chairperson**

**Before the House Committee on
CORRECTIONS, MILITARY, & VETERANS**

**Wednesday, January 31, 2024
9:00 a.m.**

State Capitol, Conference Room 430 & Videoconference

**In consideration of
HOUSE BILL 2725
RELATING TO CORRECTIONAL FACILITIES AUTHORITY**

House Bill 2725 proposes to establish a new Correctional Facilities Authority (CFA) under Chapter 353, Hawaii Revised Statutes (HRS), to be governed by a five-member Board. Further, the measure directs the Department of Land and Natural Resources (Department) to transfer title to ten tax map key parcels in Kealakehe, North Kona (Kailua-Kona) to the CFA. **The Department provides the following comments on the bill.**

Most of the parcels listed in the bill have already been set aside by Governor's Executive Order (EO) to the County of Hawai'i (COH) or the Hawai'i Housing and Finance Development Corporation (HHFDC), or contractually committed to the Department of Hawaiian Home Lands (DHHL). The table below shows the size and current disposition of each parcel:

| Tax Map Key: | Acreage | Current Disposition |
|---------------------|----------------|--|
| (3) 7-4-020:004 | 7.060 | EO4575 to HHFDC for affordable housing related purposes. |
| (3) 7-4-020:005 | 21.453 | Subject to Transfer Agreement dated 12/30/2004, as amended, between HHFDC and DHHL. Legal title still with the Department. |
| (3) 7-4-020:006 | 27.067 | Subject to Transfer Agreement dated 12/30/2004, as amended, between HHFDC and DHHL. Legal title still with the Department. |
| (3) 7-4-020:007 | 190.547 | EO4355 to COH for Kealakehe wastewater reclamation field, North Kona golf course and/or public park. |

| Tax Map Key: | Acreage | Current Disposition |
|---------------------|----------------|--|
| (3) 7-4-020:016 | 30.139 | EO3381 to COH for police station purposes. |
| (3) 7-4-020:017 | 0.354 | Unencumbered. |
| (3) 7-4-020:021 | 10.000 | EO3381 to COH for police station purposes. |
| (3) 7-4-020:035 | 10.590 | EO4575 to HHFDC for affordable housing related purposes. |
| (3) 7-4-020:036 | 16.980 | EO4575 to HHFDC for affordable housing related purposes. |
| (3) 7-4-020:037 | 1.140 | EO4684 to COH for roadway purposes. |

With respect to the mechanics of land transfers to the CFA, page 9, line 13, through page 10, line 2, of this bill provides in part as follows:

§353-E Use of public lands; acquisition of state lands. (a) If state lands, other than public lands, under the control and management of another department or agency are required by the authority for purposes of this chapter, the department or agency having control and management of the required lands, upon a request by the authority and with the approval of the governor, shall convey title or lease those lands to the authority upon terms and conditions as may be agreed to by the parties; provided that at the request of the authority, the department shall transfer any land to which it holds title to the authority.

While non-ceded lands set-aside to HHFDC are excluded from the definition of “public lands” in Section 171-2, HRS, ceded lands set aside to HHFDC are not excluded. All of the lands in the table above are ceded lands and are therefore “public lands” under Section 171-2, HRS. Accordingly, the proposed subsection 353-E(a) of this bill cited above appears to be inapplicable to the lands listed in Section 2 of this bill. In any event, an agency holding an EO for public lands cannot convey title to the land to another State agency. Only the Board of Land and Natural Resources (BLNR) can convey title, and only after a decision to do so is taken at a public meeting.

Page 10, lines 3-7, of this bill goes on to provide as follows:

(b) If public land set-aside to a department or agency pursuant to section 171-11, is required by the authority for purposes of this chapter, the authority shall submit a request to the governor to withdraw the set-aside and to re-set-aside the land to the authority pursuant to section 171-11.

Most of the parcels listed in this bill would be covered by the above proposed subsection. The Department notes that a withdrawal and reset-aside of lands under an EO pursuant to Section 171-11, HRS, requires the approval of the BLNR at a public meeting, as well as Governor’s approval.

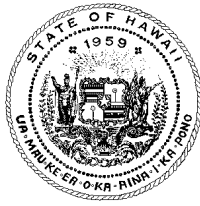
Page 10, lines 8-13, of this bill goes on to state:

(c) Notwithstanding the foregoing and section 353-C(c), no lands shall be conveyed or leased to the authority 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.

The Department notes that COH, HHFDC and DHHL would need to be consulted as to the potential impacts of requiring these agencies to surrender the EOs or other interests they have in the lands so that the lands could be set aside or otherwise conveyed to the CFA.

Mahalo for the opportunity to provide comments on this measure.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
**DEPARTMENT OF CORRECTIONS
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Rehabilitation Services
and
Programs

No. _____

**TESTIMONY ON HOUSE BILL 2725
RELATING TO CORRECTIONAL FACILITIES AUTHORITY**

by
Tommy Johnson, Director
Department of Corrections and Rehabilitation

House Committee on Corrections, Military, & Veterans
Representative Mark J. Hashem, Chair
Representative Cory M. Chun, Vice Chair

Wednesday, January 31, 2024; 9:00 a.m.
Conference Room 430 & via Videoconference

Chair Hashem, Vice Chair Chun, and Members of the Committee:

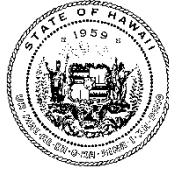
The Department of Corrections and Rehabilitation (DCR) opposes House Bill (HB) 2725, which proposes to establish the Correction Facilities Authority to be responsible for all public corrections development, planning, and construction related to capital improvement projects. This measure also seeks to require the Department of Land and Natural Resources to transfer state lands in Kailua-Kona to the Correction Facilities Authority for public corrections development. As written, this measure would also require the Correction Facilities Authority to apply for a loan or grant from the United States Department of Agriculture's Community Facilities Direct Loan and Grant Program.

PSD opposes this measure for the following reasons. House Bill 2725 is a bill looking for a problem that does not exist, needlessly expands governments by creating another separate agency, creates a new special fund, and adds additional bureaucratic layers to corrections and the procurement process. If enacted, this measure will effectively circumvent the authority vested with the Directors of the DCR and Budget and Finance, and the State Comptroller. For these reasons and many more, the DCR requests HB 2725 be deferred.

House Bill 2725 Relating to Correctional Facilities Authority
House Committee on Corrections, Military, & Veterans
January 31, 2024
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Thank you for the opportunity to provide testimony in opposition to HB 2725.

JOSH B. GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



BONNIE KAHAKUI
ACTING ADMINISTRATOR

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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
CORRECTIONS, MILITARY, & VETERANS
January 31, 2024, 9:00 a.m.

HOUSE BILL 2725
RELATING TO CORRECTIONAL FACILITIES AUTHORITY

Chair Hashem, Vice Chair Chun, and members of the committee, thank you for the opportunity to submit testimony on House Bill 2725. The State Procurement Office would like to offer comments on Section 1, page 3, lines 3 to 5:

“(C) The executive director shall:

(1) Serve as the authority’s chief executive officer and chief procurement officer;”

If it is the intent of the Legislature to establish a new Chief Procurement Officer, the State Procurement Office respectfully requests that Chapter 103D-203, Hawaii Revised Statutes (HRS), be amended to include the Executive Director of the Corrections Facilities Authority as a chief procurement officer.

Additionally, the SPO respectfully requests that 103D-203, HRS, be amended for housekeeping purposes to also include the Executive Director of the School Facilities Authority as established in Act 217, Session Laws of Hawaii 2021.

Thank you.