



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

**Date:** 02/23/2021

**Time:** 10:35 AM

**Location:** CR 211 & Videoconference

**Committee:** Senate Ways and Means  
Senate Judiciary

**Department:** Education

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

**Title of Bill:** SB 0808, SD1 RELATING TO THE SCHOOL FACILITIES AGENCY.

**Purpose of Bill:** Describes the powers and responsibilities of the school facilities agency by amending Act 72, Session Laws of Hawaii 2020. Transfers the total fund balance in the state educational improvement fund to the school facilities special fund by a certain date. Makes appropriation. (SD1)

**Department's Position:**

The Hawaii State Department of Education (Department) respectfully offers comments on SB 0808, SD1

The Department appreciates the legislature's commitment to addressing the needs of the students of Hawaii. SB 0808, SD1 provides further clarification of the School Facilities Agency and its role and responsibilities. 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 students and teachers of the Department.

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



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 COMMITTEES ON WAYS AND MEANS AND JUDICIARY  
ON  
SENATE BILL NO. 808, S.D. 1

**February 23, 2021**  
**10:35 a.m.**  
**Room 211 & Videoconference**

RELATING TO THE SCHOOL FACILITIES AGENCY

The Department of Budget and Finance offers comments on Senate Bill (S.B.) No. 808, S.D. 1.

S.B. No. 808, S.D. 1, describes the powers and responsibilities of the School Facilities Agency (SFA) and its Executive Director, school facilities board, and administrative staff by amending some of the provisions of Act 72, SLH 2020, which established the SFA and amends the School Facilities Special Fund (SFSF) so the fund would generate revenues through all moneys the SFA receives, including funds appropriated or transferred by the Legislature; funds collected pursuant to Section 302A-1608(a), HRS, provided that these moneys shall be deposited into the appropriate subaccount; any moneys received by the Department of Education (DOE) in the form of a grant, gift, endowment, or donation for the development, planning, or construction of new school facilities or major renovations of school facilities; and all other moneys received by the SFA and not deposited into a trust fund, including unrestricted grants, gifts and donations; proceeds from sales of property, lease, rent, and payments; and receipts, interest, refunds, and other payment of receipts.

It should be noted that the entire fund balance in the State Educational Facilities Improvement (SEFI) Special Fund is unavailable to be transferred to the SFSF since the SEFI funds are encumbered for contracts.

As a matter of general policy, the department does not support the creation of any special fund which does not meet the requirements of Section 37-52.3, HRS.

Special funds should: 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining.

Regarding S.B. No. 808, S.D. 1, it is difficult to determine whether the proposed special fund would be self-sustaining.

The department defers to DOE regarding program implementation and funding.

Thank you for your consideration of our comments.



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

**LATE**

**ON THE FOLLOWING MEASURE:**

S.B. NO. 808, S.D. 1, RELATING TO THE SCHOOL FACILITIES AGENCY.

**BEFORE THE:**

SENATE COMMITTEES ON WAYS AND MEANS AND ON JUDICIARY

**DATE:** Tuesday, February 23, 2021 **TIME:** 10:35 a.m.

**LOCATION:** State Capitol, Via Videoconference Conference Room 211

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

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Chairs Dela Cruz and Rhoads 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) describe the powers and responsibilities of the School Facilities Agency; and (2) transfer the total fund balance in the state educational improvement fund to the school facilities special fund by a certain date..

On page 8, lines 14 – 20 of this bill, a new paragraph (13) 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 (13) would allow the School Facilities Agency to hire private attorneys, who are independent of the Attorney General, to provide legal services for

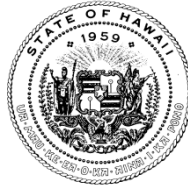
negotiations. While instances may arise in which the Attorney General hires and/or deputizes private attorneys who possess specific expertise not present within the Department, the Attorney General engages this representation pursuant to section 28-8.3, HRS. As drafted, paragraph (13) interferes with 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 8, lines 14 – 20, 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.



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

February 23, 2021  
10:35 A.M.  
State Capitol, Teleconference

**S.B. 808, S.D. 1**  
**RELATING TO THE SCHOOL FACILITIES AGENCY**

SENATE COMMITTEE ON WAYS AND MEANS AND JUDICIARY

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The Department of Transportation (DOT) Highways Division, as the Administration's lead for setting up the School Facilities Agency (SFA) and operationalizing the provisions of Act 72, Section Laws of Hawaii (SLH) 2020, **supports** the passage of this bill.

We have been working with the Department of Education (DOE), specifically with Assistant Superintendent Randall Tanaka of the DOE's Office of Facilities and Operations, to achieve as seamless a transfer of the responsibilities Act 72 reassigned to the SFA, from the DOE. To further that effort, we ask that an additional section be included in this bill to amend the definition of "public lands" in Section 171-2, Hawaii Revised Statutes, by adding a paragraph (13) that excepts "Lands to which the school facilities agency holds title."

Section 9 of Act 72 transferred the responsibility and management of projects originally assigned to the DOE to the SFA, including the responsibility to acquire the title to lands underlying schools on Oahu from the City and County of Honolulu pursuant to Act 210, SLH 2018. Act 210 included a provision excepting lands held by the DOE from the definition of "public lands" in Section 171-2, to further that act's purpose. See paragraph (12) of Section 171-2. Adding the same exception to Section 171-2 for lands to which the SFA holds title should ensure that the lands transferred to the SFA will be accorded the same status Act 210 conferred on them in 2018.

Thank you for the opportunity to testify in support of this measure.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

**LATE**

The Thirty-First Legislature, State of Hawaii  
The Senate  
Committee on Ways & Means  
Committee on Judiciary

Testimony by  
Hawaii Government Employees Association

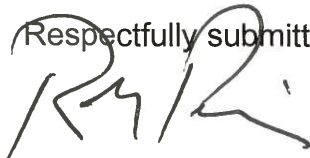
February 23, 2020

S.B. 808 — Relating To The School Facilities Agency

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO opposes S.B. 808, which describes the powers and responsibilities of the school facilities agency by Amending Act 72, Session Laws of Hawaii 2020. Specifically, we oppose the portion of the bill which exempts the full-time staff of the school facilities agency from chapter 76.

The Hawaii Government Employees Association represents 135 employees who currently work for the DOE's Office of Facilities and Operations. The employees we represent are already doing the jobs this agency will be responsible for, including but not limited to, public school development, planning, and construction related to capital improvement projects. Their status as civil service employees should not be adversely impacted when the positions are transferred to the agency. S.B 808 aims to circumvent the rights and protections of employees who currently hold civil service positions and their entitlements under the law.

Thank you for the opportunity to testify in opposition of S.B. 808.

Respectfully submitted,  
  
Randy Perreira  
Executive Director



**SB-808-SD-1**

Submitted on: 2/23/2021 12:36:40 AM

Testimony for WAM on 2/23/2021 10:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Amy Brinker	Individual	Support	No

Comments:

Support