July 10, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB986 HD1 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB986 HD1 SD1 CD1 A BILL FOR AN ACT RELATING TO PUBLIC SCHOOL FACILITIES.

Sincerely,

LINDA LINGLE
STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 986

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 986, entitled "A Bill for an Act Relating to Public School Facilities."

The purpose of this bill is to upgrade the energy efficiency of school buildings by requiring the adoption of Collaborative for High Performance Schools (CHPS) standards, as well as existing Leadership in Energy and Environmental Design (LEED) standards, for all Department of Education projects, including renovations and repairs of less than 5,000 square feet.

Although this bill may be well-intended to help save energy and create green jobs, the legislation is not well thought out, presents operational challenges that are impractical and difficult to carry out, and will have immediate increased fiscal impacts.

Current law, as codified in Section 196-9 of Hawaii Revised Statutes, and the State Building Code already require energy efficiency and environmental standards for State facilities, motor vehicles, and transportation fuel. Nine detailed, specific criteria are embodied in our state statutes to include such energy-efficiency measures as installing R-19 insulation in walls and roofs, switching to solar water heating systems, recycling and reusing water, and incorporating ENERGY STAR appliances.
The Collaborative for High Performance Schools uses methodologies, evaluation criteria, and design factors that are contradictory to and different from the standards already codified in State law. For example, building codes encourage the use of white roofs to reflect heat and lower internal temperatures. But CHPS discourages their use out of concern for the heat they transmit back into the atmosphere. The LEED standard encourages the use of maximum open space in building designs. CHPS requires a reduced footprint for buildings. Attempts to reconcile these conflicting standards would likely lead to legal challenges and delays in building school facilities.

Both the Department of Education and the Department of Budget and Finance have correctly pointed out that the CHPS criteria will add an estimated 8-15% to the costs of construction projects undertaken by the Department of Education. Given the existing backlog of work and dwindling State resources, it is imperative that we embark on projects that are both energy efficient and cost effective with paybacks that can be realized within acceptable time periods. This does not appear to be the case for the Collaborative for High Performance Schools.

Furthermore, this bill is also troubling in the manner in which it mandates the Department of Education to prioritize its capital improvement projects. For example, it requires the DOE to use local and regional job creation criteria and gives higher priority to projects that promote Science Technology Engineering and Math (STEM) education. While these are laudable goals, the Department of Education correctly noted that they must prioritize projects that impact the health and safety of school children and to superimpose other vague standards makes their prioritization process impractical and ineffective.
For the foregoing reasons, I am returning House Bill No. 986 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii
HB986 CD1 HMS 2009-4104
(1) The remaining useful life of the school facility and its major components;
(2) The adjusted life of the school facility and its major components after repair or maintenance; [and]
(3) The current and future repair and maintenance requirements of the school facility and its components based on established industry standards or product manufacturer recommendations; and
(4) Energy efficiency and environmental standards as provided in section 196-9(c) to achieve high performance classrooms;
provided that demolition of a facility or any of its components may be recommended if the cost of the repairs do not justify the adjusted life or remaining life of the facility."
2. By amending subsection (f) to read:
"(f) The superintendent of education shall ensure that all repair and maintenance projects achieve maximum cost-efficiency by emphasizing functional or performance criteria, uniformity of design, and commonality of products, and by avoiding unique or custom requirements that increase costs[ ]; provided that energy efficiency and environmental standards as required under section 196-9(c) shall be maintained. The superintendent of education
shall develop project specifications based on generic
specifications or prescriptive specifications using standard
commercial products. Prescriptive specifications may include a
qualified product list.

For the purposes of this subsection:

"Generic specification" means a technical specification
that is written in a clear, unambiguous, and nonrestrictive
manner establishing:

1. Design, performance, or functional requirements to
   identify the work to be performed; and
2. Material standards to be used on a project.

"Prescriptive specification" means a technical
specification:

1. Establishing that the required work to be performed is
   written in a clear, unambiguous, and nonrestrictive
   manner; and
2. Listing manufacturers or products that are acceptable
   for use on the project.

"Standard commercial product" means a product or material
that in the normal course of business is customarily maintained
in stock by, or readily available for marketing from a
manufacturer, distributor, or dealer.
This subsection shall not apply to any school facility designated a historic property pursuant to section 6E-5.5."

SECTION 3. Section 196-9, Hawaii Revised Statutes, is amended to read as follows:

"[§196-9] Energy efficiency and environmental standards for state facilities, motor vehicles, and transportation fuel. (a) Each agency is directed to implement, to the extent possible, the following goals during planning and budget preparation and program implementation.

(b) With regard to buildings and facilities, each agency shall:

(1) Design and construct buildings meeting the Leadership in Energy and Environmental Design silver or two green globes rating system or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, except when the guideline, standard, or system interferes or conflicts with the use of the building or facility as an emergency shelter;

(2) Incorporate energy-efficiency measures to prevent heat gain in residential facilities up to three stories in height to provide R-19 or equivalent on roofs, R-11 or
equivalent in walls, and high-performance windows to minimize heat gain and, if air conditioned, minimize cool air loss. R-value is the constant time rate resistance to heat flow through a unit area of a body induced by a unit temperature difference between the surfaces. R-values measure the thermal resistance of building envelope components such as roof and walls. The higher the R-value, the greater the resistance to heat flow. Where possible, buildings shall be oriented to maximize natural ventilation and daylighting without heat gain and to optimize solar for water heating. This provision shall apply to new residential facilities built using any portion of state funds or located on state lands;

(3) Install solar water heating systems where it is cost-effective, based on a comparative analysis to determine the cost-benefit of using a conventional water heating system or a solar water heating system. The analysis shall be based on the projected life cycle costs to purchase and operate the water heating system. If the life cycle analysis is positive, the facility shall incorporate solar water heating. If
water heating entirely by solar is not cost-effective, the analysis shall evaluate the life cycle, cost-
benefit of solar water heating for preheating water. If a multi-story building is centrally air
conditioned, heat recovery shall be employed as the primary water heating system. Single family
residential clients of the department of Hawaiian home lands and any agency or program that can take advantage of utility rebates shall be exempted from the requirements of this paragraph so they may continue to qualify for utility rebates for solar water heating;

(4) Implement water and energy efficiency practices in operations to reduce waste and increase conservation;

(5) Incorporate principles of waste minimization and pollution prevention, such as reducing, revising, and recycling as a standard operating practice in programs, including programs for waste management in construction and demolition projects and office paper and packaging recycling programs;

(6) Use life cycle cost-benefit analysis to purchase energy efficient equipment such as ENERGY STAR
products and use utility rebates where available to reduce purchase and installation costs; and

(7) Procure environmentally preferable products, including recycled and recycled-content, bio-based, and other resource-efficient products and materials.

(c) With regard to public school facilities, in addition to the requirements of subsection (b), agencies shall:

(1) Design and construct all public school facilities, including renovation projects under five thousand square feet, to meet the Collaborative for High Performance Schools rating system, except when the guidelines conflict with the use of the facility as an emergency shelter; and

(2) Prioritize public school facilities projects described in paragraph (1), to the extent that they:

(A) Promote energy efficiency by requiring forty percent less energy demands compared to the International Energy Conservation Code;

(B) Incorporate renewable energy resources;

(C) Prioritize local and regional jobs;

(D) Are deployable within twelve months of funding;
(E) Improve science, technology, engineering, and
math education, and provide increased hands-on
learning opportunities; and

(F) Anticipate twenty-five per cent lower life-cycle
costs than traditional buildings.

[(e)] (d) With regard to motor vehicles and transportation
fuel, each agency shall:

(1) Comply with Title 10, Code of Federal Regulations,
Part 490, Subpart C, "Mandatory State Fleet Program",
if applicable;

(2) Comply with all applicable state laws regarding
vehicle purchases;

(3) Once federal and state vehicle purchase mandates have
been satisfied, purchase the most fuel-efficient
vehicles that meet the needs of their programs;
providing that life cycle cost-benefit analysis of
vehicle purchases shall include projected fuel costs;

(4) Purchase alternative fuels and ethanol blended
gasoline when available;

(5) Evaluate a purchase preference for biodiesel blends,
as applicable to agencies with diesel fuel purchases;

(6) Promote efficient operation of vehicles;
(7) Use the most appropriate minimum octane fuel; provided that vehicles shall use 87-octane fuel unless the owner's manual for the vehicle states otherwise or the engine experiences knocking or pinging;

(8) Beginning with fiscal year 2005-2006 as the baseline, collect and maintain, for the life of each vehicle acquired, the following data:

(A) Vehicle acquisition cost;

(B) United States Environmental Protection Agency rated fuel economy;

(C) Vehicle fuel configuration, such as gasoline, diesel, flex-fuel gasoline/E85, and dedicated propane;

(D) Actual in-use vehicle mileage;

(E) Actual in-use vehicle fuel consumption; and

(F) Actual in-use annual average vehicle fuel economy; [and]

and

(9) Beginning with fiscal year 2005-2006 as the baseline with respect to each agency that operates a fleet of thirty or more vehicles, collect and maintain, in addition to the data in paragraph (8), the following:
(A) Information on the vehicles in the fleet, including vehicle year, make, model, gross vehicle weight rating, and vehicle fuel configuration;
(B) Fleet fuel usage, by fuel;
(C) Fleet mileage; and
(D) Overall annual average fleet fuel economy and average miles per gallon of gasoline and diesel."

SECTION 4. Section 302A-1312, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:
"(a) The department of education shall prepare a six-year program and financial plan for school repair and maintenance that shall be:
(1) Based on:
(A) Estimated preventive and scheduled maintenance costs;
(B) Budgeted recurring maintenance;
(C) Health and safety requirements; [and]
(D) Legal mandates; and
(E) Energy efficiency and environmental standards as required under section 196-9(c);
(2) Insofar as is practical, prepared in accordance with the principles and procedures contained in section 514A-83.6 or 514B-148; and

(3) Submitted initially to the legislature not less than thirty days prior to the convening of the 2002 regular session, with annual funding requirements for the physical plant operations and maintenance account submitted not less than thirty days prior to the convening of the 2002 regular session and each regular session thereafter;

provided that the governor may incorporate the six-year program and financial plan required by this subsection into the six-year program and financial plan required by section 37-69, if the plan required by this subsection is incorporated without reductions or restrictions."

SECTION 5. Section 302A-1505, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) In prioritizing a school's repair and maintenance needs, the department and the school's principal shall consider energy efficiency and environmental standards as required under section 196-9(c), as well as the availability of donated and discounted repair and maintenance services and materials that
will be provided by community groups, volunteers, and businesses."

SECTION 6. This Act shall apply to all school construction, repair, and maintenance contracts executed after its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2009.