
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. The agency shall act as its
16 procurement officer.

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

21 Notwithstanding subsection (a), professional services contracts



1 for licensees under chapter 464 shall be procured in accordance
2 with section 103D-304.

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

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

6 (2) Subject to subsection (b), make and execute contracts
7 and all other instruments necessary or convenient for
8 the exercise of its powers and functions under this
9 subpart;

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

12 (4) Adopt rules pursuant to chapter 91 with respect to its
13 projects, operations, properties, and facilities;

14 (5) Through its executive director, appoint officers,
15 agents, and employees, prescribe their duties and
16 qualifications, and fix their salaries, without regard
17 to chapter 76; provided that the creation of the
18 agency shall not affect existing civil service
19 positions;

20 (6) Acquire, reacquire, or contract to acquire or
21 reacquire by grant or purchase real, personal, or



- 1 mixed property or any interest therein; to own, hold,
2 hold title, clear, improve, and rehabilitate and to
3 sell, assign, exchange, transfer, convey, lease, or
4 otherwise dispose of or encumber the same;
- 5 (7) Acquire or reacquire by condemnation real, personal,
6 or mixed property or any interest therein for public
7 facilities, including but not limited to streets,
8 sidewalks, parks, schools, and other public
9 improvements;
- 10 (8) By itself, or in partnership with qualified persons,
11 including public-private partnerships, acquire,
12 reacquire, construct, reconstruct, rehabilitate,
13 improve, alter, or provide for the construction,
14 reconstruction, improvement, or alteration of any
15 project; own, hold, hold title, sell, assign,
16 transfer, convey, exchange, lease, or otherwise
17 dispose of or encumber any project, and in the case of
18 the sale of any project, accept a purchase money
19 mortgage in connection therewith; and repurchase or
20 otherwise acquire any project that the agency has



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



1 public or private, to carry out the purposes of this
2 subpart, and engage the services of consultants on a
3 contractual basis for rendering professional and
4 technical assistance and advice;

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

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

12 (15) Issue bonds for the purpose of financing any project;
13 and

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

17 (d) Prior to project approval, the agency shall consult
18 with the Hawaii state public library system regarding any
19 construction or renovation projects for school lands that are
20 adjacent to or have Hawaii state public library facilities on
21 them.



1 **§302A-D School facilities board.** (a) There is
2 established within the department for administrative purposes
3 only a school facilities board.

4 (b) The school facilities board shall consist of five
5 voting members. The superintendent, or the superintendent's
6 designee, and a member of the board of education selected by the
7 chairperson of the board of education shall serve as ex officio,
8 non-voting members of the school facilities board. The five
9 voting members shall:

10 (1) Be appointed by the governor pursuant to section
11 26-34; and

12 (2) Have an interest in school facilities; and

13 (3) Include one member of the Hawaii Construction
14 Alliance.

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

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

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



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

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

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

18 Two or more school facilities board members, but less than
19 a quorum, may discuss matters relating to official school
20 facilities board business in the course of their participation
21 in a workgroup or subcommittee, and these discussions shall be a



1 permitted interaction as provided for in section 92-2.5;
2 provided that all other provisions of chapter 92 shall apply.

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

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

10 (h) No member of the school facilities board shall have
11 any financial interest in any entity that bids on projects
12 authorized by the agency.

13 (i) No individual shall be appointed as a member of the
14 school facilities board less than one year after the individual,
15 or an entity having a financial interest owned by the
16 individual, has submitted a bid on a project of the agency.

17 **§302A-E Use of public lands; acquisition of state lands.**

18 (a) If state lands under the control and management of another
19 department are required by the agency for its purposes, the
20 department having the control and management of those required
21 lands, upon request by the agency and with the approval of the



1 governor, may convey or lease those lands to the agency upon
2 terms and conditions as may be agreed to by the parties;
3 provided that any lands for which the department of education
4 currently holds title that are agreed to be transferred shall be
5 transferred to the agency no later than January 1, 2021.

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

12 (c) If state lands held by the agency are no longer needed
13 for school facilities purposes, those lands shall be returned to
14 the public trust administered by the department of land and
15 natural resources.

16 **§302A-F School facilities special fund.** (a) There is
17 established within the state treasury a special fund to be known
18 as the school facilities special fund into which shall be
19 deposited:



- 1 (1) All moneys appropriated by the legislature for any
2 public school development, planning, or construction
3 related to a capital improvement project;
- 4 (2) Revenues pursuant to 302A-1608(a); provided that these
5 moneys shall be deposited into the appropriate
6 subaccount established pursuant to subsection (b);
- 7 (3) Any other moneys received by the department in the
8 form of a grant, gift, endowment, or donation for any
9 public school development, planning, or construction
10 related to a capital improvement project, including
11 funds transferred to the special fund by the agency
12 pursuant to subsection (e);
- 13 (4) All moneys allocated to the special fund by the
14 governor or board for a project;
- 15 (5) Any other appropriation by the legislature to the
16 special fund; and
- 17 (6) Income and capital gains earned by the special fund.
- 18 (b) The agency shall establish and appropriately name
19 subaccounts within the school facilities special fund to accept
20 deposits of revenues from school impact fees that are required
21 to be expended within a specific school impact district pursuant



1 to 302A-1608(a) or restricted to another specific purpose
2 pursuant to part V, subpart B of this chapter.

3 (c) The school facilities special fund shall be
4 administered by the agency and used to fund any school
5 development, planning, or construction project within the
6 jurisdiction of the agency.

7 (d) Subject to chapter 84, but any law to the contrary
8 notwithstanding, the governor may authorize expenditures from
9 the school facilities special fund of any donation, grant,
10 bequest, and devise of money from any private institution,
11 person, firm, or corporation for the purposes of funding the
12 salaries of the executive director and any officers, agents, and
13 employees of the agency. If all or any portion of any salary of
14 the executive director or any officer, agent, or employee of the
15 agency is funded pursuant to this subsection, the agency shall
16 submit a report to the legislature detailing the use of any
17 funds authorized under this subsection no later than twenty days
18 prior to the convening of the next regular session following the
19 expenditure authorization.

20 (e) The agency may transfer any other unencumbered or
21 unrestricted moneys received in the form of grants and donations



1 for school development, planning, or construction to the school
2 facilities special fund.

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

12 (g) Within the school facilities special fund there shall
13 be established accounts and subaccounts as may be necessary from
14 time to time in order to ensure compliance with the Internal
15 Revenue Code, as amended.

16 **§302A-G Annual report.** The agency shall submit to the
17 governor, board of education, and legislature, at least twenty
18 days prior to the convening of each regular session, a complete
19 and detailed report of its activities during the prior fiscal
20 year."



1 SECTION 2. Section 84-17, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) The following persons shall file annually with the
4 state ethics commission a disclosure of financial interests:

5 (1) The governor, the lieutenant governor, the members of
6 the legislature, and delegates to the constitutional
7 convention; provided that delegates to the
8 constitutional convention shall only be required to
9 file initial disclosures;

10 (2) The directors and their deputies, the division chiefs,
11 the executive directors and the executive secretaries
12 and their deputies, the purchasing agents and the
13 fiscal officers, regardless of the titles by which the
14 foregoing persons are designated, of every state
15 agency and department;

16 (3) The permanent employees of the legislature and its
17 service agencies, other than persons employed in
18 clerical, secretarial, or similar positions;

19 (4) The administrative director of the State, and the
20 assistants in the office of the governor and the



- 1 lieutenant governor, other than persons employed in
2 clerical, secretarial, or similar positions;
- 3 (5) The hearings officers of every state agency and
4 department;
- 5 (6) The president, the vice presidents, assistant vice
6 presidents, the chancellors, and the provosts of the
7 University of Hawaii and its community colleges;
- 8 (7) The superintendent, the deputy superintendent, the
9 assistant superintendents, the complex area
10 superintendents, the state librarian, and the deputy
11 state librarian of the department of education;
- 12 (8) The administrative director and the deputy director of
13 the courts;
- 14 (9) The members of every state board or commission whose
15 original terms of office are for periods exceeding one
16 year and whose functions are not solely advisory;
- 17 (10) Candidates for state elective offices, including
18 candidates for election to the constitutional
19 convention, provided that candidates shall only be
20 required to file initial disclosures;



- 1 (11) The administrator and assistant administrator of the
2 office of Hawaiian affairs; [and]
- 3 (12) The Hawaii unmanned aerial systems test site chief
4 operating officer[-] and
- 5 (13) The members of the school facilities board appointed
6 by the governor."

7 SECTION 3. Section 36-32, Hawaii Revised Statutes, is
8 repealed.

9 ~~["§36-32 State educational facilities improvement special~~
10 ~~fund. (a) There is created in the treasury of the State the~~
11 ~~state educational facilities improvement special fund. The~~
12 ~~special fund shall be used solely to plan, design, acquire lands~~
13 ~~for, and to construct public school facilities and to provide~~
14 ~~equipment and technology infrastructure to improve public~~
15 ~~schools and other facilities under the jurisdiction of the~~
16 ~~department of education, except public libraries. In addition,~~
17 ~~activities of the department of education intended to eliminate~~
18 ~~the gap between the facility needs of schools and available~~
19 ~~resources shall be eligible for funding from the special fund.~~
20 ~~Expenditures from the special fund shall be limited to projects~~
21 ~~authorized by the legislature for fiscal years ending prior to~~



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

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

18 ~~(1) The legislature adopted a concurrent resolution~~
19 ~~directing the department of education to:~~
20 ~~(A) Build a new school in a specific geographic area~~
21 ~~using the design-build method; and~~



1 ~~(B) Pursue the use of a financing agreement to build~~
2 ~~the new school; or~~

3 ~~(2) The legislature appropriated planning and design funds~~
4 ~~and specified that the remainder of the costs~~
5 ~~necessary to complete the project are eligible for~~
6 ~~funding through a financing agreement;~~

7 ~~provided that any school to which the legislature has~~
8 ~~appropriated planning and design funds prior to July 1, 2007,~~
9 ~~and for which a private developer is willing to enter into a~~
10 ~~lease-purchase agreement with the department of education within~~
11 ~~twelve months of July 1, 2007, is exempt from the requirements~~
12 ~~of paragraphs (1) and (2).~~

13 ~~(c) The department of education shall annually post on the~~
14 ~~department's website information related to a financial~~
15 ~~statement of the special fund, the lease payments for schools~~
16 ~~account established under subsection (b), and the status of~~
17 ~~projects undertaken pursuant to this section, no later than~~
18 ~~twenty days prior to the convening of each regular session."]~~

19 SECTION 4. There is established seven full-time equivalent
20 (7.0 FTE) administrative positions, exempt from chapter 76,
21 Hawaii Revised Statutes, for the school facilities agency.



1 SECTION 5. On the effective date of this Act, any
2 remaining balance in the state educational facilities
3 improvement special fund repealed by section 3 of this Act shall
4 be transferred to the school facilities special fund established
5 by section 1 of this Act.

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

12 SECTION 7. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$ or so
14 much thereof as may be necessary for fiscal year 2020-2021 for
15 the establishment of the school facilities agency.

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

18 SECTION 8. This Act shall not be construed to transfer the
19 department of education office of facilities and operation,
20 including the facilities maintenance branch and auxiliary



1 services branch and any general fund and position
2 appropriations, to the school facilities agency.

3 , SECTION 9. The development, planning, oversight,
4 management, and responsibility of the capital improvement
5 projects authorized by Act 155, Session Laws of Hawaii 2013; Act
6 115, Session Laws of Hawaii 2015; Act 206, Session Laws of
7 Hawaii 2017; Act 210, Session Laws of Hawaii 2018; and Act 272,
8 Session Laws of Hawaii 2019, are hereby transferred to the
9 school facilities agency.

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



1 SECTION 11. In codifying the new sections added by section
2 1 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 12. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 13. This Act shall take effect on July 1, 2051.



Report Title:

School Facilities Agency; BOE; Department of Education;
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. Effective 7/1/2051. (HD1)

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