A BILL FOR AN ACT

RELATING TO A SCHOOL FACILITIES AGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new subpart to part VI to be appropriately designated and to read as follows:

"School Facilities Agency

§302A-A Definitions. As used in this subpart, "agency" means the school facilities agency established by section 302A-B.

§302A-B School facilities agency; established. (a) There is established the school facilities agency, which shall be a body corporate and a public instrumentality of the State, for the purpose of implementing this subpart. The agency shall be placed within the department for administrative purposes only.

(b) The governor shall appoint an executive director to enable the agency to perform its duties. The appointment shall be:

(1) Exempt from chapter 76 and the term limitation in section 26-34;
(2) Subject to the advice and consent of the senate; and
(3) For a term of six years.
If a vacancy occurs during a term, the governor shall appoint an
executive director for a six-year term that shall begin on the
first date of employment of the new executive director.
(c) The executive director shall:
(1) Serve as the agency's chief executive officer;
(2) Be responsible for carrying out the purposes of the
agency; and
(3) Serve on a full-time basis.
§302A-C Powers; generally. (a) Except as otherwise
limited by this chapter, the agency shall be responsible for all
public school development, planning, and construction related to
capital improvement projects assigned by the legislature,
governor, or board of education.
(b) The projects of the agency shall be exempt from
chapters 6E, 37, 76, 103, 103D, and 343 and all county
ordinances except the respective building codes; provided that
the agency shall establish and publish transparency initiatives
as prescribed by the agency to ensure that the public is
properly informed of its activities, to deter fraud and
malfeasance, and to allow for public input; provided further that the agency shall adopt rules that provide substantially similar protections to those required by chapter 343; provided further that the creation of the agency shall not effect existing civil service positions; and provided further that any invitation for bids for construction shall specify that all bids include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each. Construction bids that do not comply with this requirement may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent of the total bid amount; and provided further that professional services contracts for licensees under chapter 464 shall be procured in accordance with section 103D-304. 

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

(1) Have a seal and alter the same at its pleasure;
(2) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this subpart;

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

(4) Make rules with respect to its projects, operations, properties, and facilities, which rules shall be in conformance with chapter 91;

(5) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapter 76;

(6) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold, hold title, clear, improve, and rehabilitate and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber the same;

(7) Acquire or reacquire by condemnation real, personal, or mixed property or any interest therein for public facilities, including but not limited to streets,
sidewalks, parks, schools, and other public
improvements;

(8) By itself, or in partnership with qualified persons,
including public-private partnerships, acquire,
reacquire, construct, reconstruct, rehabilitate,
improve, alter, or provide for the construction,
reconstruction, improvement, or alteration of any
project; own, hold, hold title, sell, assign,
transfer, convey, exchange, lease, or otherwise
dispose of or encumber any project, and in the case of
the sale of any project, accept a purchase money
mortgage in connection therewith; and repurchase or
otherwise acquire any project that the agency has
theretofore sold or otherwise conveyed, transferred,
or disposed of;

(9) Arrange or contract for the planning, replanning,
opening, grading, or closing of streets, roads,
roadways, alleys, or other places, or for the
furnishing of facilities or for the acquisition of
property or property rights or for the furnishing of
property or services in connection with a project;
(10) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on terms and conditions as it deems advisable;

(11) Prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction, reconstruction, rehabilitation, improvement, or alteration of any project, and from time to time to modify the plans, specifications, designs, or estimates;

(12) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, to carry out the purposes of this subpart, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;

(13) Procure insurance against any loss in connection with its property and other assets and operations in amounts and from insurers as it deems desirable;
(14) Contract for and accept gifts or grants in any form from any public agency or from any other source, including gifts or grants from private individuals and private entities;

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

(16) Enter into public-private partnerships; and

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

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

§302A-D School facilities board. (a) There is established within the department of education for administrative purposes only a school facilities board.

(b) The school facilities board shall consist of seven voting members. The superintendent of education, or the superintendent's designee, and a member of the board of education selected by the chairperson of the board of education
shall serve as ex officio, voting members of the school
facilities board. The other five members shall:
(1) Be appointed by the governor pursuant to section
26-34;
(2) Be subject to section 84-17; provided that board
members shall file confidential financial disclosure
statements; and
(3) Have an interest in school construction.
(c) The school facilities board shall advise the agency on
policies relating to public school development, planning, and
construction within the jurisdiction of the agency. The board
shall be responsible for:
(1) Advising the agency on preferred strategies to
complete construction projects of the agency; and
(2) Evaluating the executive director on an annual basis.
(d) The school facilities board shall select a chairperson
by a majority vote of its voting members. A majority of the
voting members serving on the board shall constitute a quorum to
conduct business. The concurrence of the majority of the voting
members serving on the board shall be necessary to make any
action of the board valid.
(e) The school facilities board may form workgroups and subcommittees, including with individuals who are not school facilities board members, to:

(1) Obtain resource information from construction and education professionals and other individuals as deemed necessary by the school facilities board;

(2) Make recommendations to the school facilities board; and

(3) Perform other functions as deemed necessary by the school facilities board to fulfill its duties and responsibilities.

Two or more school facilities board members, but less than a quorum, may discuss matters relating to official school facilities board business in the course of their participation in a workgroup or subcommittee, and these discussions shall be a permitted interaction as provided for in section 92-2.5; provided that all other provisions of chapter 92 shall apply.

(f) The school facilities board may testify before the legislature on any matter related to its duties and responsibilities.
(g) Members of the school facilities board shall serve without compensation but may be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(h) No member of the school facilities board shall have:

(A) Any financial interest in any entity that bids on projects authorized by the agency; or

(B) Bid on any project within the last twelve months prior to their appointment.

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

(a) If state lands under the control and management of another department are required by the agency for its purposes, the department having the control and management of those required lands, upon request by the agency and with the approval of the governor, may convey or lease those lands to the agency upon terms and conditions as may be agreed to by the parties.

(b) Notwithstanding the foregoing and section 302A-C(c), no public lands shall be conveyed or leased to the agency 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.

(c) Should state lands held by the agency no longer be 
needed for school facilities purposes, said lands shall be 
returned to the public trust administered by the department of 
land and natural resources.

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

(1) All moneys appropriated by the legislature for any 
public school development, planning, or construction 
related to a capital improvement project;

(2) Revenues pursuant to 302A-1608(a); provided that these 
moneys shall be deposited into the appropriate 
subaccount established pursuant to subsection (b);

(3) Any other moneys received by the department in the 
form of a grant, gift, endowment, or donation for any 
public school development, planning, or construction 
related to a capital improvement project;
(4) All moneys allocated to the fund by the governor or
board for a project;
(5) Any other appropriation by the legislature to the
fund; and
(6) Income and capital gains earned by the fund.
(b) The agency shall establish and appropriately name
subaccounts within the fund to accept deposits of revenues from
school impact fees that are required to be expended within a
specific school impact district pursuant to 302A-1608(a) or
restricted to another specific purpose pursuant to part V,
subpart B of this chapter.
(c) The special fund shall be administered by the agency
and used to fund any school development, planning, or
construction project within the jurisdiction of the agency.
(d) Any law to the contrary notwithstanding, the governor
may authorize expenditures from the special fund of any
donation, grant, bequest, and devise of money from any private
institution, person, firm, or corporation for the purposes of
funding the salaries of the executive director and any officers,
agents, and employees of the agency. If all or any portion of
any salary of the executive director or any officer, agent, or
employee of the agency is funded pursuant to this subsection, the agency shall submit a report to the legislature detailing the use of any funds authorized under this subsection no later than twenty days prior to the convening of each regular session.

(e) The agency may transfer any other unencumbered or unrestricted moneys received in the form of grants and donations for school development, planning, or construction to the school facilities special fund established by section 302A-B.

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

(g) Within the school facilities special fund there shall be established such accounts and subaccounts as may be necessary from time to time in order to ensure compliance with the Internal Revenue Code.
(h) Section 87-17 shall not apply to gifts and contributions to the school facilities special fund.

§302A-G Annual report. The agency shall submit to the governor, the board of education, and the legislature, at least twenty days prior to the start of any regular session, a complete and detailed report of its activities during the prior fiscal year."

SECTION 2. Section 36-32, Hawaii Revised Statutes, is repealed.

["§36-32—State educational facilities improvement special fund. (a) There is created in the treasury of the State the state educational facilities improvement special fund. The special fund shall be used solely to plan, design, acquire lands for, and to construct public school facilities and to provide equipment and technology infrastructure to improve public schools and other facilities under the jurisdiction of the department of education, except public libraries. In addition, activities of the department of education intended to eliminate the gap between the facility needs of schools and available resources shall be eligible for funding from the special fund. Expenditures from the special fund shall be limited to projects

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authorized by the legislature for fiscal years ending prior to July 1, 2016, and shall be subject to sections 37-31, and 37-33 through 37-40. Appropriations or authorizations from the special fund shall be expended by the superintendent of education.

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

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

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

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

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

(c) The department of education shall annually post on the department's website information related to a financial statement of the special fund, the lease payments for schools account established under subsection (b), and the status of projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session."
SECTION 3. Any remaining balance in the state educational facilities improvement special fund at the time of repeal, shall be transferred into the school facilities special fund as established by section 4 of this Act.

SECTION 4. Sections 302A-1602, 302A-1603, 302A-1604, 302A-1605, 302A-1606, 30A-1607, 302A-1609, 302A-1610, 302A-1611, and 302A-1612, Hawaii Revised Statutes, are amended by substituting the word "agency", or similar term, wherever the word "department", "department of education", or similar term, appears, as the context requires.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of $1,500,000 or so much thereof as may be necessary for fiscal year 2020-2021 for the establishment of the school facilities agency.

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

SECTION 6. This Act shall not be construed to transfer the department of education office of facilities and operation, including the facilities maintenance branch and auxiliary services branch and any general fund and position appropriations, to the school facilities agency.

SECTION 8. The school facilities agency shall collaborate with the department of education and submit a report to the legislature, no later than twenty days prior to the convening of the regular session of 2021, identifying positions of the department of education that should be transferred to the school facilities agency established by section 1 of this Act, including positions responsible for public school development, planning; and construction related to capital improvement projects along with proposed legislation to further implement the transfer of positions and related records and equipment to effectuate the purpose of this Act.

SECTION 9. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute
appropriate section numbers for the letters used in designating
the new sections in this Act.

SECTION 10. Statutory material to be repealed is bracketed
and stricken.

SECTION 11. This Act shall take effect on July 1, 2020.
Report Title:
School Facilities Agency; BOE; DOE; 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. (SD1)

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