

JAN 22 2021

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. Act 72, Session Laws of Hawaii 2020, is amended
2 by amending section 1 to read as follows:

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

6 " . School Facilities Agency

7 §302A-A Definitions. As used in this subpart, "agency"
8 means the school facilities agency established by
9 section 302A-B.

10 §302A-B School facilities agency; established. (a) There
11 is established the school facilities agency, which shall be a
12 body corporate and a public instrumentality of the State, for
13 the purpose of implementing this subpart. The agency shall be
14 placed within the department for administrative purposes only.

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



1 (1) Exempt from chapter 76 and the term limitation in
2 section 26-34;

3 (2) Subject to the advice and consent of the senate; and

4 (3) For a term of six years.

5 If a vacancy occurs during a term, the governor shall appoint an
6 executive director for a six-year term that shall begin on the
7 first date of employment of the new executive director.

8 (c) The executive director shall:

9 (1) Serve as the agency's chief executive officer;

10 (2) Be responsible for carrying out the purposes of the
11 agency; and

12 (3) Serve on a full-time basis.

13 **§302A-C Powers; generally.** (a) Except as otherwise
14 limited by this chapter, the agency shall be responsible for all
15 public school development, planning, and construction related to
16 capital improvement projects assigned by the legislature,
17 governor, or board of education. The agency shall act as its
18 chief procurement officer[-] pursuant to section 103D-203.

19 ~~(b) [Any award of a contract for construction shall be~~
20 ~~subject to the requirements of section 103D-302; provided that~~
21 ~~the agency shall give preference to construction bids submitted~~



1 ~~by a contractor or subcontractor domiciled within the State.~~
2 ~~Notwithstanding subsection (a), professional services contracts~~
3 ~~for licensees under chapter 464 shall be procured in accordance~~
4 ~~with section 103D-304.] The agency shall comply with chapter~~
5 103D.

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

- 8 (1) Have a seal and alter the same at its pleasure;
- 9 (2) Subject to subsection (b), make and execute contracts
10 and all other instruments necessary or convenient for
11 the exercise of its powers and functions under this
12 subpart;
- 13 (3) Make and alter bylaws for its organization and
14 internal management;
- 15 (4) Adopt rules pursuant to chapter 91 with respect to its
16 projects, operations, properties, and facilities;
- 17 (5) Acquire, reacquire, or contract to acquire or
18 reacquire by grant or purchase real, personal, or
19 mixed property or any interest therein; to own, hold,
20 hold title, clear, improve, and rehabilitate and to



1 sell, assign, exchange, transfer, convey, lease, or
2 otherwise dispose of or encumber the same;

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

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



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



1 contractual basis for rendering professional and
2 technical assistance and advice;

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

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

10 (14) Issue bonds for the purpose of financing any project;
11 [and]

12 (15) Appoint or retain by contract one or more attorneys
13 who are independent of the attorney general to provide
14 legal services solely in cases of negotiations in
15 which the attorney general lacks the sufficient
16 expertise; provided that the independent attorney
17 shall consult and work in conjunction with the
18 designated deputy attorney general assigned;

19 (16) Use the department of human resources development to
20 recruit, hire, and retain exempt employees,
21 architects, engineers, existing civil service



1 position, and other technical positions for the
2 development, planning, and construction related to
3 capital improvement projects; and

4 [~~(15)~~] (17) Do any and all things necessary to carry out its
5 purposes and exercise the powers given and granted in
6 this subpart.

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

12 **§302A-D School facilities board.** (a) There is
13 established within the department for administrative purposes
14 only a school facilities board.

15 (b) The school facilities board shall consist of five
16 voting members. The five voting members shall:

17 (1) Be appointed by the governor pursuant to section
18 26-34;

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

20 (3) Include one member representing the construction
21 industry.



1 (c) The school facilities board shall advise the agency on
2 policies relating to public school development, planning, and
3 construction within the jurisdiction of the agency. The board
4 shall be responsible for:

- 5 (1) Advising the agency on preferred strategies to
6 complete construction projects of the agency; and
- 7 (2) Evaluating the executive director on an annual basis.

8 (d) The school facilities board shall select a chairperson
9 by a majority vote of its voting members. A majority of the
10 voting members serving on the board shall constitute a quorum to
11 conduct business. The concurrence of the majority of the voting
12 members serving on the board shall be necessary to make any
13 action of the board valid.

14 (e) The school facilities board may form workgroups and
15 subcommittees, including with individuals who are not school
16 facilities board members, to:

- 17 (1) Obtain resource information from construction and
18 education professionals and other individuals as
19 deemed necessary by the school facilities board;
- 20 (2) Make recommendations to the school facilities board;
- 21 and



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

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

10 (f) The school facilities board may testify before the
11 legislature on any matter related to its duties and
12 responsibilities.

13 (g) Members of the school facilities board shall serve
14 without compensation but may be reimbursed for expenses,
15 including travel expenses, necessary for the performance of
16 their duties.

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

20 (i) No individual shall be appointed as a member of the
21 school facilities board less than one year after the individual,



1 or an entity having a financial interest owned by the
2 individual, has submitted a bid on a project of the agency.

3 **§302A-E Use of public lands; acquisition of state lands.**

4 (a) If state lands under the control and management of another
5 department are required by the agency for its purposes, the
6 department having the control and management of those required
7 lands, upon request by the agency and with the approval of the
8 governor, may convey or lease those lands to the agency upon
9 terms and conditions as may be agreed to by the parties;
10 provided that any lands for which the department currently holds
11 title that are agreed to be transferred shall be transferred to
12 the agency no later than January 1, 2021.

13 (b) Notwithstanding the foregoing and section 302A-C(c),
14 no public lands shall be conveyed or leased to the agency as
15 provided in this section if the conveyance or lease would impair
16 any covenant between the State or any county or any department
17 or board thereof and the holders of bonds issued by the State or
18 county, department, or board.

19 (c) If state lands held by the agency are no longer needed
20 for school facilities purposes, those lands shall be returned to



1 the public trust administered by the department of land and
2 natural resources.

3 §302A-F School facilities special fund. (a) There is
4 established within the state treasury a special fund to be known
5 as the school facilities special fund into which shall be
6 deposited:

- 7 (1) All moneys appropriated by the legislature for any
8 public school development, planning, or construction
9 related to a capital improvement project;
- 10 (2) Revenues pursuant to 302A-1608(a); provided that these
11 moneys shall be deposited into the appropriate
12 subaccount established pursuant to subsection (b);
- 13 (3) Any other moneys received by the department in the
14 form of a grant, gift, endowment, or donation for any
15 public school development, planning, or construction
16 related to a capital improvement project, including
17 funds transferred to the special fund by the agency
18 pursuant to subsection (e);
- 19 (4) All moneys allocated to the special fund by the
20 governor or board for a project;



1 (5) Any other appropriation by the legislature to the
2 special fund; and

3 (6) Income and capital gains earned by the special fund.

4 (b) The agency shall establish and appropriately name
5 subaccounts within the school facilities special fund to accept
6 deposits of revenues from school impact fees that are required
7 to be expended within a specific school impact district pursuant
8 to 302A-1608(a) or restricted to another specific purpose
9 pursuant to part V, subpart B of this chapter.

10 (c) The school facilities special fund shall be
11 administered by the agency and used to fund operations,
12 policies, and initiatives for any school development, planning,
13 or construction project within the jurisdiction of the agency.

14 (d) Subject to chapter 84, but any law to the contrary
15 notwithstanding, the governor may authorize expenditures from
16 the school facilities special fund [~~of any donation, grant,~~
17 ~~bequest, and devise of money from any private institution,~~
18 ~~person, firm, or corporation]~~ for the purposes of funding the
19 salaries of the executive director and any officers, agents, and
20 employees of the agency. If all or any portion of any salary of
21 the executive director or any officer, agent, or employee of the



1 agency is funded pursuant to this subsection, the agency shall
2 submit a report to the legislature detailing the use of any
3 funds authorized under this subsection no later than twenty days
4 prior to the convening of the next regular session following the
5 expenditure authorization.

6 (e) The agency may transfer any other unencumbered or
7 unrestricted moneys received in the form of grants and donations
8 for school development, planning, or construction to the school
9 facilities special fund.

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

19 (g) Within the school facilities special fund there shall
20 be established accounts and subaccounts as may be necessary from



1 time to time in order to ensure compliance with the Internal
2 Revenue Code, as amended.

3 **§302A-G Annual report.** At least twenty days prior to the
4 convening of each regular session, the agency shall submit to
5 the governor, board of education, and legislature, a complete
6 and detailed report of its activities during the prior fiscal
7 year.""

8 SECTION 2. Act 72, Session Laws of Hawaii 2020, is amended
9 by amending section 7 to read as follows:

10 "SECTION 7. Sections 302A-1602, 302A-1603, 302A-1604,
11 302A-1605, 302A-1606, 302A-1607, 302A-1609, 302A-1610,
12 302A-1611, and 302A-1612, Hawaii Revised Statutes, are amended
13 by substituting the word "agency", or similar term, wherever the
14 word "department", "department of education", or similar term,
15 appears, as the context requires. Section 302A-1508, Hawaii
16 Revised Statutes, is amended by substituting the word "agency"
17 or similar term, wherever the word "department", "department of
18 education", or similar term, appears, as the context requires,
19 and the word "executive director", or similar term, wherever the
20 word "superintendent", or similar term, appears, as the context
21 requires."



1 SECTION 3. Act 72, Session Laws of Hawaii 2020, is amended
2 by amending section 10 to read as follows:

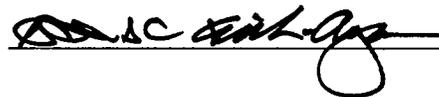
3 "SECTION 10. The school facilities agency shall
4 collaborate with the department of education and submit a report
5 to the legislature, no later than twenty days prior to the
6 convening of the regular session of 2021, identifying positions
7 of the department of education that should be transferred to the
8 school facilities agency established by section 1 of this Act,
9 including positions responsible for public school development,
10 planning, and construction related to capital improvement
11 projects, along with proposed legislation to further implement
12 the transfer of positions, offices spaces, and related records
13 and equipment to effectuate the purpose of this Act. The
14 executive director of the school facilities agency shall have
15 authority on these matters."

16 SECTION 4. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect upon its approval.

19

INTRODUCED BY:





S.B. NO. 466

Report Title:

School Facilities Agency; Department of Education; Construction

Description:

Amends Act 72, Session Laws of Hawaii 2020, to require that the school facilities agency complies with the Hawaii Public Procurement Code. Authorizes the school facilities agency to have additional powers and duties. Specifies additional uses for the school facilities special fund. Provides the executive director of the school facilities agency with authority relating to capital improvement projects for the school facilities agency.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

