
A BILL FOR AN ACT

RELATING TO THE SCHOOL FACILITIES AGENCY.

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

1 PART I

2 SECTION 1. The purpose of this Act is to rename the school
3 facilities agency to the school facilities authority and clearly
4 describe the powers and responsibilities of the school
5 facilities authority and its executive director, school
6 facilities board, and administrative staff by amending part VI,
7 subpart C, chapter 302A, Hawaii Revised Statutes.

8 PART II

9 SECTION 2. Chapter 302A, part VI, subpart C, Hawaii
10 Revised Statutes, is amended to read as follows:

11 "[+]C.[+] School Facilities [~~Agency~~] Authority

12 [~~§302A-1701~~] **Definitions.** As used in this subpart,
13 [~~"agency"~~] unless the context clearly requires otherwise:

14 "Authority" means the school facilities [~~agency~~] authority
15 established by section 302A-1702.



1 "Facilities" includes school classrooms, auditoriums,
2 libraries, office and maintenance buildings, gymnasiums, and
3 athletic fields.

4 "Project" means the development and construction of new
5 school facilities, including infrastructure; access and other
6 support for new school facilities; major renovation of school
7 facilities; public-private partnership projects; new capital
8 improvement projects funded by the legislature for completion by
9 the authority; acquisition of real property, personal, or mixed
10 property for new school facilities; and planning, development
11 and leasing of public school land or facilities to private
12 partners pursuant to section 302A-1151.1.

13 ~~[+]§302A-1702[+]~~ **School facilities** ~~[agency;]~~ authority;
14 **established.** (a) There is established the school facilities
15 ~~[agency;]~~ authority, which shall be a body corporate and a
16 public instrumentality of the State, for the purpose of
17 implementing this subpart. The ~~[agency]~~ authority shall be
18 placed within the department for administrative purposes only.

19 (b) To enable the authority to perform its duties, the
20 authority shall be headed by an executive director exempt from
21 chapters 76 and 89. The governor shall appoint ~~[an]~~ the



1 executive director [~~to enable the agency to perform its duties.~~

2 ~~The appointment shall be:~~

3 (1) ~~Exempt from chapter 76 and the term limitation in~~

4 ~~section 26-34;~~

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

6 (3) ~~For a term of six years.~~

7 ~~If a vacancy occurs during a term, the governor shall appoint an~~

8 ~~executive director for a six-year term that shall begin on the~~

9 ~~first date of employment of the new executive director.] in the~~

10 manner prescribed in section 26-34; provided that the executive

11 director's term shall be for six years, which shall commence on

12 the day the senate advises and consents to the executive

13 director's nomination and the executive director shall not be

14 limited in the number of terms served. If a vacancy occurs

15 during a term, the governor shall appoint an interim executive

16 director whose appointment shall expire if the senate does not

17 advise and consent to the nomination of an executive director at

18 the next regular session of the legislature after the vacancy

19 occurs. The salary of the executive director shall be set by

20 the school facilities board and the executive director shall be



1 included in any benefit program generally applicable to the
2 officers and employees of the State.

3 (c) The executive director shall:

4 (1) Serve as the [~~agency's~~] authority's chief executive
5 officer[~~;~~] and chief procurement officer;

6 (2) Be responsible for carrying out the purposes of the
7 [~~agency;~~] authority; and

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

9 [~~§~~]**S302A-1703**[~~§~~] **Powers; generally.** (a) Except as
10 otherwise limited by this chapter, the [~~agency~~] authority shall
11 be responsible for all public school development, planning, and
12 construction related to capital improvement projects assigned by
13 the legislature, governor, or board of education. [~~The agency~~
14 ~~shall act as its procurement officer.~~]

15 (b) Any award of a contract for construction shall be
16 subject to the requirements of section 103D-302; provided that
17 the [~~agency~~] authority shall give preference to construction
18 bids submitted by a contractor or subcontractor domiciled within
19 the State. Notwithstanding subsection (a), professional
20 services contracts for licensees under chapter 464 shall be
21 procured in accordance with section 103D-304.



- 1 (c) Except as otherwise limited by this chapter, the
- 2 ~~[agency]~~ authority may also:
 - 3 (1) Have a seal and alter the same at its pleasure;
 - 4 (2) Subject to subsection (b), make and execute contracts
 - 5 and all other instruments necessary or convenient for
 - 6 the exercise of its powers and functions under this
 - 7 subpart;
 - 8 (3) Make and alter bylaws for its organization and
 - 9 internal management;
 - 10 (4) Adopt rules pursuant to chapter 91 with respect to its
 - 11 projects, operations, properties, and facilities~~[+]~~,
 - 12 including qualifications for persons and entities
 - 13 wishing to enter into a public-private partnership
 - 14 with the authority, as permitted in paragraph (7);
 - 15 (5) Acquire~~[, reacquire,]~~ or contract to acquire ~~[or~~
 - 16 ~~reacquire]~~ by grant or purchase real, personal, or
 - 17 mixed property or any interest therein; to ~~[own, hold,~~
 - 18 ~~hold title,]~~ clear, improve, and rehabilitate and to
 - 19 sell, assign, exchange, transfer, convey, lease, or
 - 20 otherwise dispose of or encumber the same;



- 1 (6) ~~[Acquire or reacquire by condemnation real, personal,~~
2 ~~or mixed property or any interest therein for public~~
3 ~~facilities, including but not limited to streets,~~
4 ~~sidewalks, parks, schools, and other public~~
5 ~~improvements;]~~ Acquire property by condemnation
6 pursuant to chapter 101;
- 7 (7) ~~[By itself, or in partnership]~~ Enter into partnerships
8 with qualified persons, including public-private~~[,~~
9 partnerships, as defined in the authority's rules, to
10 acquire, ~~[reacquire,~~ construct, reconstruct,
11 rehabilitate, improve, alter, or provide for the
12 construction, reconstruction, improvement, or
13 alteration of any project; ~~[own, hold, hold title,~~
14 and sell, assign, transfer, convey, exchange, lease,
15 or otherwise dispose of or encumber any project~~[,~~
16 and in the case of the sale of any project, accept a
17 purchase money mortgage in connection therewith; ~~[and~~
18 ~~repurchase or otherwise acquire any project that the~~
19 ~~agency has theretofore sold or otherwise conveyed,~~
20 ~~transferred, 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)] (8) Grant options to purchase any project or to renew
 8 any lease entered into by it in connection with any of
 9 its projects, on terms and conditions as it deems
 10 advisable;

11 [~~(10)~~] (9) Prepare or cause to be prepared plans,
 12 specifications, designs, and estimates of costs for
 13 the construction, reconstruction, rehabilitation,
 14 improvement, or alteration of any project, and from
 15 time to time to modify the plans, specifications,
 16 designs, or 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)]~~ (10) Procure insurance against any loss in connection
4 with its property and other assets and operations in
5 amounts and from insurers as it deems desirable;

6 ~~[(13)]~~ (11) ~~[Contract]~~ Apply for and accept gifts or grants
7 in any form from any public agency or from any other
8 source, including gifts or grants from private
9 individuals and private entities;

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

12 (12) Borrow money or procure loan guarantees from the
13 federal government for or in aid of any project the
14 authority is authorized to undertake pursuant to this
15 chapter. Additionally, in connection with borrowing
16 or procurement of loan guarantees, the authority:

17 (A) Shall comply with conditions required by the
18 federal government pursuant to applicable
19 regulation or required in any contract for
20 federal assistance;



- 1 (B) Shall repay indebtedness incurred pursuant to
- 2 this section, including any interest thereon;
- 3 (C) May execute loan and security agreements and
- 4 related contracts with the federal government;
- 5 (D) May issue bonds pledging revenues, assessments,
- 6 or other taxes as security for indebtedness
- 7 incurred pursuant to this section; and
- 8 (E) May inter into financing agreements as that term
- 9 is defined in section 37D-1;
- 10 (13) Appoint or retain by contract one or more attorneys
- 11 who are independent of the attorney general to provide
- 12 legal services solely in cases of negotiations in
- 13 which the attorney general lacks the sufficient
- 14 expertise; provided that the independent attorney
- 15 shall consult and work in conjunction with the
- 16 designated deputy attorney general;
- 17 (14) Use the department of human resources development to
- 18 recruit, hire, and retain exempt employees,
- 19 architects, engineers, existing civil service
- 20 positions, and other technical positions for the



1 development, planning, and construction related to
2 capital improvement projects; and

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

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

11 [+]§302A-1704[+] **School facilities board.** (a) There is
12 established within the department for administrative purposes
13 only a school facilities board.

14 (b) The school facilities board shall consist of five
15 voting members. The [~~five voting~~] members shall:

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

18 (2) Have an interest in public school facilities; [~~and~~]

19 (3) Include one member [~~representing~~] actively or
20 previously engaged in the construction industry[-] for
21 at least five years; and



1 (4) Serve without compensation but may be reimbursed for
2 expenses, including travel expenses, necessary for the
3 performance of their duties.

4 (c) The school facilities board shall [~~advise the agency~~
5 ~~on policies relating to public school development, planning, and~~
6 ~~construction within the jurisdiction of the agency. The board~~
7 ~~shall~~] be responsible for:

8 (1) Advising the [agency] authority on [~~preferred~~
9 ~~strategies to complete construction projects of the~~
10 ~~agency;~~] any matter related to the development and
11 capital improvement projects the authority is
12 authorized and responsible for initiating and
13 completing under this subpart, including preferred
14 strategies to complete those projects; and

15 (2) Evaluating the performance of the authority's
16 executive director on an annual basis.

17 (d) The school facilities board shall select a chairperson
18 by a majority vote of its voting members. A majority of the
19 voting members serving on the board shall constitute a quorum to
20 conduct business. The concurrence of the majority of the voting



1 members serving on the board shall be necessary to make any
2 action of the board valid.

3 (e) The school facilities board may form workgroups and
4 subcommittees [~~, including with~~] that include individuals who are
5 not school facilities board members, to:

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

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



1 ~~[(f) The school facilities board may testify before the~~
2 ~~legislature on any matter related to its duties and~~
3 ~~responsibilities.~~

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

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

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

15 ~~{}~~**§302A-1705**~~{}~~ **Use of public lands; acquisition of state**
16 **lands.** (a) If state lands, other than public lands, under the
17 control and management of another department are required by the
18 [agency] authority for [its] purposes~~[r]~~ of this subpart, the
19 department or authority having [the] control and management of
20 [those] the required lands, upon a request by the [agency]
21 authority and with the approval of the governor, [may] shall



1 convey title or lease those lands to the [~~agency~~] authority upon
2 terms and conditions as may be agreed to by the parties;
3 provided that [~~any lands for which~~] at the request of the
4 authority, the department [~~currently~~] shall transfer any land to
5 which it holds title [~~that are agreed to be transferred shall be~~
6 ~~transferred~~] to the [~~agency no later than January 1, 2021.~~]
7 authority.

8 (b) If public land set-aside to a department or authority
9 pursuant to section 171-11, is required by the authority for
10 purposes of this subpart, the authority shall submit a request
11 to the governor to withdraw the set-aside and to re-set-aside
12 the land to the authority pursuant to section 171-11.

13 [~~(b)~~] (c) Notwithstanding the foregoing and
14 section 302A-1703(c), no [~~public~~] lands shall be conveyed or
15 leased to the [~~agency~~] authority as provided in this section if
16 the conveyance or lease would impair any covenant between the
17 State or any county or any department or board thereof and the
18 holders of bonds issued by the State or county, department, or
19 board.

20 [~~(c)~~] (d) [~~If state~~] When public lands [~~held by~~]
21 transferred to the [~~agency~~] authority are no longer needed for



1 school facilities purposes, title to those lands shall be
 2 ~~[returned to the public trust administered by]~~ transferred to
 3 the department of land and natural resources~~[=]~~ and the lands
 4 shall be reclassified as public lands.

5 ~~[=]~~**\$302A-1706**~~[=]~~ **School facilities special fund.** (a)

6 There is established within the state treasury a special fund to
 7 be known as the school facilities special fund into which shall
 8 be deposited:

9 (1) All moneys the authority receives, including funds
 10 appropriated or transferred by the legislature for
 11 ~~[any public school development, planning, or~~
 12 ~~construction related to a capital improvement~~
 13 ~~project;]~~ deposit into the special fund;

14 (2) ~~[Revenues]~~ Funds collected pursuant to
 15 section 302A-1608(a); provided that these moneys shall
 16 be deposited into the appropriate subaccount
 17 established pursuant to subsection (b);

18 (3) Any ~~[other]~~ moneys received by the department in the
 19 form of a grant, gift, endowment, or donation for ~~[any~~
 20 ~~public school]~~ the development, planning, or
 21 construction ~~[related to a capital improvement~~



1 ~~project, including funds transferred to the special~~
2 ~~fund by the agency pursuant to subsection (e);~~ of new
3 school facilities or major renovations of school
4 facilities; and

5 ~~[(4) All moneys allocated to the special fund by the~~
6 ~~governor or board for a project;~~

7 ~~(5) Any other appropriation by the legislature to the~~
8 ~~special fund; and~~

9 ~~(6) Income and capital gains earned by the special fund.]~~

10 (4) All other moneys received by the authority and not
11 deposited into a trust fund or trust account,
12 including unrestricted grants, gifts, and donations;
13 proceeds from sales of property; rents and other
14 receipts from leases, rights of entry, and the like;
15 and interest, refunds, and other receipts and
16 payments.

17 (b) The [~~agency~~] authority shall establish and
18 appropriately name subaccounts within the school facilities
19 special fund to accept deposits of revenues from school impact
20 fees that are required to be expended within a specific school
21 impact district pursuant to 302A-1608(a) or restricted [~~te~~



1 ~~another specific]~~ for a specified purpose pursuant to part V,
2 subpart B of this chapter.

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

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-]~~ authority. If all or any portion of
14 any salary of the executive director or any officer, agent, or
15 employee of the [~~agency]~~ authority is funded pursuant to this
16 subsection, the [~~agency]~~ authority shall submit a report to the
17 legislature detailing the use of any funds authorized under this
18 subsection no later than twenty days prior to the convening of
19 the next regular session following the expenditure
20 authorization.



1 ~~[(e) The agency may transfer any other unencumbered or~~
2 ~~unrestricted moneys received in the form of grants and donations~~
3 ~~for school development, planning, or construction to the school~~
4 ~~facilities special fund.~~

5 ~~(f)]~~ (e) The [agency] authority shall submit to the
6 director of finance a report that shall be prepared in the form
7 prescribed by the director of finance and shall identify the
8 total amount of funds in the school facilities special fund that
9 will carry over to the next fiscal year. The [agency] authority
10 shall submit the report to the director of finance within ninety
11 days of the close of each fiscal year and a copy of the
12 information contained in the report to the director of finance
13 shall be included within the [agency's] authority's report to
14 the legislature pursuant to section 302A-1707.

15 ~~[(g)]~~ (f) Within the school facilities special fund there
16 shall be established accounts and subaccounts as may be
17 necessary from time to time in order to ensure compliance with
18 the Internal Revenue Code, as amended.

19 [+]§302A-1707[+] **Annual report.** At least twenty days
20 prior to the convening of each regular session, the [agency]
21 authority shall submit to the governor, board of education, and



1 legislature, a complete and detailed report of its activities
2 during the prior fiscal year."

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

5 "SECTION 10. The school facilities [~~agency~~] authority
6 shall collaborate with the department of education and submit a
7 report to the legislature, no later than twenty days prior to
8 the convening of the regular session of [~~2021,~~] 2022,
9 identifying positions of the department of education that should
10 be transferred to the school facilities [~~agency~~] authority
11 established by section 1 of this Act, including positions
12 responsible for public school development, planning, and
13 construction related to capital improvement projects, along with
14 proposed legislation to further implement the transfer of
15 positions and related records and equipment to effectuate the
16 purpose of this Act."

17 SECTION 4. Act 210, Session Laws of Hawaii 2018, is
18 amended by amending part II to substitute "school facilities
19 authority" for every reference to the "department of education"
20 to require the city and county of Honolulu to convey fee simple
21 interest in the properties listed therein not previously



1 conveyed to the department of education to the school facilities
2 authority instead.

3 PART III

4 SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) No department of the State other than the attorney
7 general may employ or retain any attorney, by contract or
8 otherwise, for the purpose of representing the State or the
9 department in any litigation, rendering legal counsel to the
10 department, or drafting legal documents for the department;
11 provided that the foregoing provision shall not apply to the
12 employment or retention of attorneys:

13 (1) By the public utilities commission, the labor and
14 industrial relations appeals board, and the Hawaii
15 labor relations board;

16 (2) By any court or judicial or legislative office of the
17 State; provided that if the attorney general is
18 requested to provide representation to a court or
19 judicial office by the chief justice or the chief
20 justice's designee, or to a legislative office by the
21 speaker of the house of representatives and the



1 president of the senate jointly, and the attorney
2 general declines to provide such representation on the
3 grounds of conflict of interest, the attorney general
4 shall retain an attorney for the court, judicial, or
5 legislative office, subject to approval by the court,
6 judicial, or legislative office;

7 (3) By the legislative reference bureau;

8 (4) By any compilation commission that may be constituted
9 from time to time;

10 (5) By the real estate commission for any action involving
11 the real estate recovery fund;

12 (6) By the contractors license board for any action
13 involving the contractors recovery fund;

14 (7) By the office of Hawaiian affairs;

15 (8) By the department of commerce and consumer affairs for
16 the enforcement of violations of chapters 480
17 and 485A;

18 (9) As grand jury counsel;

19 (10) By the Hawaii health systems corporation, or its
20 regional system boards, or any of their facilities;

21 (11) By the auditor;



- 1 (12) By the office of ombudsman;
2 (13) By the insurance division;
3 (14) By the University of Hawaii;
4 (15) By the Kahoolawe island reserve commission;
5 (16) By the division of consumer advocacy;
6 (17) By the office of elections;
7 (18) By the campaign spending commission;
8 (19) By the Hawaii tourism authority, as provided in
9 section 201B-2.5;
10 (20) By the division of financial institutions;
11 (21) By the office of information practices; [~~or~~]
12 (22) By the school facilities authority; or
13 [~~+22~~] (23) By a department, if the attorney general, for
14 reasons deemed by the attorney general to be good and
15 sufficient, declines to employ or retain an attorney
16 for a department; provided that the governor waives
17 the provision of this section."

18 SECTION 6. Section 76-16, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) The civil service to which this chapter applies shall
21 comprise all positions in the State now existing or hereafter



1 established and embrace all personal services performed for the
2 State, except the following:

3 (1) Commissioned and enlisted personnel of the Hawaii
4 National Guard as such, and positions in the Hawaii
5 National Guard that are required by state or federal
6 laws or regulations or orders of the National Guard to
7 be filled from those commissioned or enlisted
8 personnel;

9 (2) Positions filled by persons employed by contract where
10 the director of human resources development has
11 certified that the service is special or unique or is
12 essential to the public interest and that, because of
13 circumstances surrounding its fulfillment, personnel
14 to perform the service cannot be obtained through
15 normal civil service recruitment procedures. Any such
16 contract may be for any period not exceeding one year;

17 (3) Positions that must be filled without delay to comply
18 with a court order or decree if the director
19 determines that recruitment through normal recruitment
20 civil service procedures would result in delay or



- 1 noncompliance, such as the Felix-Cayetano consent
2 decree;
- 3 (4) Positions filled by the legislature or by either house
4 or any committee thereof;
- 5 (5) Employees in the office of the governor and office of
6 the lieutenant governor, and household employees at
7 Washington Place;
- 8 (6) Positions filled by popular vote;
- 9 (7) Department heads, officers, and members of any board,
10 commission, or other state agency whose appointments
11 are made by the governor or are required by law to be
12 confirmed by the senate;
- 13 (8) Judges, referees, receivers, masters, jurors, notaries
14 public, land court examiners, court commissioners, and
15 attorneys appointed by a state court for a special
16 temporary service;
- 17 (9) One bailiff for the chief justice of the supreme court
18 who shall have the powers and duties of a court
19 officer and bailiff under section 606-14; one
20 secretary or clerk for each justice of the supreme
21 court, each judge of the intermediate appellate court,



1 and each judge of the circuit court; one secretary for
2 the judicial council; one deputy administrative
3 director of the courts; three law clerks for the chief
4 justice of the supreme court, two law clerks for each
5 associate justice of the supreme court and each judge
6 of the intermediate appellate court, one law clerk for
7 each judge of the circuit court, two additional law
8 clerks for the civil administrative judge of the
9 circuit court of the first circuit, two additional law
10 clerks for the criminal administrative judge of the
11 circuit court of the first circuit, one additional law
12 clerk for the senior judge of the family court of the
13 first circuit, two additional law clerks for the civil
14 motions judge of the circuit court of the first
15 circuit, two additional law clerks for the criminal
16 motions judge of the circuit court of the first
17 circuit, and two law clerks for the administrative
18 judge of the district court of the first circuit; and
19 one private secretary for the administrative director
20 of the courts, the deputy administrative director of
21 the courts, each department head, each deputy or first



- 1 assistant, and each additional deputy, or assistant
2 deputy, or assistant defined in paragraph (16);
- 3 (10) First deputy and deputy attorneys general, the
4 administrative services manager of the department of
5 the attorney general, one secretary for the
6 administrative services manager, an administrator and
7 any support staff for the criminal and juvenile
8 justice resources coordination functions, and law
9 clerks;
- 10 (11) (A) Teachers, principals, vice-principals, complex
11 area superintendents, deputy and assistant
12 superintendents, other certificated personnel,
13 not more than twenty noncertificated
14 administrative, professional, and technical
15 personnel not engaged in instructional work;
- 16 (B) Effective July 1, 2003, teaching assistants,
17 educational assistants, bilingual/bicultural
18 school-home assistants, school psychologists,
19 psychological examiners, speech pathologists,
20 athletic health care trainers, alternative school
21 work study assistants, alternative school



1 educational/supportive services specialists,
2 alternative school project coordinators, and
3 communications aides in the department of
4 education;

5 (C) The special assistant to the state librarian and
6 one secretary for the special assistant to the
7 state librarian; and

8 (D) Members of the faculty of the University of
9 Hawaii, including research workers, extension
10 agents, personnel engaged in instructional work,
11 and administrative, professional, and technical
12 personnel of the university;

13 (12) Employees engaged in special, research, or
14 demonstration projects approved by the governor;

15 (13) (A) Positions filled by inmates, patients of state
16 institutions, persons with severe physical or
17 mental disabilities participating in the work
18 experience training programs;

19 (B) Positions filled with students in accordance with
20 guidelines for established state employment
21 programs; and



- 1 (C) Positions that provide work experience training
2 or temporary public service employment that are
3 filled by persons entering the workforce or
4 persons transitioning into other careers under
5 programs such as the federal Workforce Investment
6 Act of 1998, as amended, or the Senior Community
7 Service Employment Program of the Employment and
8 Training Administration of the United States
9 Department of Labor, or under other similar state
10 programs;
- 11 (14) A custodian or guide at Iolani Palace, the Royal
12 Mausoleum, and Hulihee Palace;
- 13 (15) Positions filled by persons employed on a fee,
14 contract, or piecework basis, who may lawfully perform
15 their duties concurrently with their private business
16 or profession or other private employment and whose
17 duties require only a portion of their time, if it is
18 impracticable to ascertain or anticipate the portion
19 of time to be devoted to the service of the State;
- 20 (16) Positions of first deputies or first assistants of
21 each department head appointed under or in the manner



1 provided in section 6, article V, of the Hawaii State
2 Constitution; three additional deputies or assistants
3 either in charge of the highways, harbors, and
4 airports divisions or other functions within the
5 department of transportation as may be assigned by the
6 director of transportation, with the approval of the
7 governor; four additional deputies in the department
8 of health, each in charge of one of the following:
9 behavioral health, environmental health, hospitals,
10 and health resources administration, including other
11 functions within the department as may be assigned by
12 the director of health, with the approval of the
13 governor; an administrative assistant to the state
14 librarian; and an administrative assistant to the
15 superintendent of education;

16 (17) Positions specifically exempted from this part by any
17 other law; provided that:

18 (A) Any exemption created after July 1, 2014, shall
19 expire three years after its enactment unless
20 affirmatively extended by an act of the
21 legislature; and



1 (B) All of the positions defined by paragraph (9)
2 shall be included in the position classification
3 plan;

4 (18) Positions in the state foster grandparent program and
5 positions for temporary employment of senior citizens
6 in occupations in which there is a severe personnel
7 shortage or in special projects;

8 (19) Household employees at the official residence of the
9 president of the University of Hawaii;

10 (20) Employees in the department of education engaged in
11 the supervision of students during meal periods in the
12 distribution, collection, and counting of meal
13 tickets, and in the cleaning of classrooms after
14 school hours on a less than half-time basis;

15 (21) Employees hired under the tenant hire program of the
16 Hawaii public housing authority; provided that not
17 more than twenty-six per cent of the authority's
18 workforce in any housing project maintained or
19 operated by the authority shall be hired under the
20 tenant hire program;



- 1 (22) Positions of the federally funded expanded food and
2 nutrition program of the University of Hawaii that
3 require the hiring of nutrition program assistants who
4 live in the areas they serve;
- 5 (23) Positions filled by persons with severe disabilities
6 who are certified by the state vocational
7 rehabilitation office that they are able to perform
8 safely the duties of the positions;
- 9 (24) The sheriff;
- 10 (25) A gender and other fairness coordinator hired by the
11 judiciary;
- 12 (26) Positions in the Hawaii National Guard youth and adult
13 education programs;
- 14 (27) In the state energy office in the department of
15 business, economic development, and tourism, all
16 energy program managers, energy program specialists,
17 energy program assistants, and energy analysts;
- 18 (28) Administrative appeals hearing officers in the
19 department of human services;
- 20 (29) In the Med-QUEST division of the department of human
21 services, the division administrator, finance officer,



1 health care services branch administrator, medical
 2 director, and clinical standards administrator;
 3 (30) In the director's office of the department of human
 4 services, the enterprise officer, information security
 5 and privacy compliance officer, security and privacy
 6 compliance engineer, and security and privacy
 7 compliance analyst; [~~and~~
 8 {]} (31) [{}] The Alzheimer's disease and related dementia services
 9 coordinator in the executive office on aging[~~-~~]; and
 10 (32) The positions of the executive director and the full
 11 time staff of the school facilities authority.

12 The director shall determine the applicability of this
 13 section to specific positions.

14 Nothing in this section shall be deemed to affect the civil
 15 service status of any incumbent as it existed on July 1, 1955."

16 SECTION 7. Section 171-2, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 "**§171-2 Definition of public lands.** "Public lands" means
 19 all lands or interest therein in the State classed as government
 20 or crown lands previous to August 15, 1895, or acquired or
 21 reserved by the government upon or subsequent to that date by



1 purchase, exchange, escheat, or the exercise of the right of
2 eminent domain, or in any other manner; including lands accreted
3 after May 20, 2003, and not otherwise awarded, submerged lands,
4 and lands beneath tidal waters that are suitable for
5 reclamation, together with reclaimed lands that have been given
6 the status of public lands under this chapter, except:

- 7 (1) Lands designated in section 203 of the Hawaiian Homes
8 Commission Act, 1920, as amended;
- 9 (2) Lands set aside pursuant to law for the use of the
10 United States;
- 11 (3) Lands being used for roads and streets;
- 12 (4) Lands to which the United States relinquished the
13 absolute fee and ownership under section 91 of the
14 Hawaiian Organic Act prior to the admission of Hawaii
15 as a state of the United States unless subsequently
16 placed under the control of the board of land and
17 natural resources and given the status of public lands
18 in accordance with the state constitution, the
19 Hawaiian Homes Commission Act, 1920, as amended, or
20 other laws;
- 21 (5) Lands to which the University of Hawaii holds title;



- 1 (6) Lands to which the Hawaii housing finance and
2 development corporation in its corporate capacity
3 holds title;
- 4 (7) Lands to which the Hawaii community development
5 authority in its corporate capacity holds title;
- 6 (8) Lands set aside by the governor to the Hawaii public
7 housing authority or lands to which the Hawaii public
8 housing authority in its corporate capacity holds
9 title;
- 10 (9) Lands to which the department of agriculture holds
11 title by way of foreclosure, voluntary surrender, or
12 otherwise, to recover moneys loaned or to recover
13 debts otherwise owed the department under chapter 167;
- 14 (10) Lands that are set aside by the governor to the Aloha
15 Tower development corporation; lands leased to the
16 Aloha Tower development corporation by any department
17 or agency of the State; or lands to which the Aloha
18 Tower development corporation holds title in its
19 corporate capacity;
- 20 (11) Lands that are set aside by the governor to the
21 agribusiness development corporation; lands leased to



1 the agribusiness development corporation by any
2 department or agency of the State; or lands to which
3 the agribusiness development corporation in its
4 corporate capacity holds title;

5 (12) Lands to which the Hawaii technology development
6 corporation in its corporate capacity holds title;
7 [and]

8 (13) Lands to which the department of education holds
9 title; and

10 (14) Lands to which the school facilities authority holds
11 title;

12 provided that, except as otherwise limited under federal law and
13 except for state land used as an airport as defined in
14 section 262-1, public lands shall include the air rights over
15 any portion of state land upon which a county mass transit
16 project is developed after July 11, 2005."

17 SECTION 8. Section 171-64.7, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) This section applies to all lands or interest therein
20 owned or under the control of state departments and agencies
21 classed as government or crown lands previous to August 15,



1 1895, or acquired or reserved by the government upon or
2 subsequent to that date by purchase, exchange, escheat, or the
3 exercise of the right of eminent domain, or any other manner,
4 including accreted lands not otherwise awarded, submerged lands,
5 and lands beneath tidal waters that are suitable for
6 reclamation, together with reclaimed lands that have been given
7 the status of public lands under this chapter, including:

- 8 (1) Land set aside pursuant to law for the use of the
9 United States;
- 10 (2) Land to which the United States relinquished the
11 absolute fee and ownership under section 91 of the
12 Organic Act prior to the admission of Hawaii as a
13 state of the United States;
- 14 (3) Land to which the University of Hawaii holds title;
- 15 (4) Land to which the Hawaii housing finance and
16 development corporation in its corporate capacity
17 holds title;
- 18 (5) Land to which the department of agriculture holds
19 title by way of foreclosure, voluntary surrender, or
20 otherwise, to recover moneys loaned or to recover
21 debts otherwise owed the department under chapter 167;



- 1 (6) Land that is set aside by the governor to the Aloha
2 Tower development corporation; or land to which the
3 Aloha Tower development corporation holds title in its
4 corporate capacity;
- 5 (7) Land that is set aside by the governor to the
6 agribusiness development corporation; or land to which
7 the agribusiness development corporation in its
8 corporate capacity holds title;
- 9 (8) Land to which the Hawaii technology development
10 corporation in its corporate capacity holds title;
- 11 (9) Land to which the department of education holds title;
12 [and]
- 13 (10) Land to which the Hawaii public housing authority in
14 its corporate capacity holds title~~[and]~~; and
- 15 (11) Land to which the school facilities authority holds
16 title."

17 SECTION 9. Section 302A-1602, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By adding a new definition to be appropriately inserted
20 and to read:



1 "Authority" means the school facilities authority
2 established by section 302A-1702."

3 2. By amending the definition of "school facilities" to
4 read:

5 ""School facilities" means the facilities owned or operated
6 by the [~~agency,~~] authority or the department, or the facilities
7 included in the [~~agency]~~ authority or the department's capital
8 budget or capital facilities plan."

9 SECTION 10. Section 302A-1603, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§302A-1603 Applicability and exemptions.** (a) Except as
12 provided in subsection (b), any person who seeks to develop a
13 new residential development within a designated school impact
14 district requiring:

15 (1) A county subdivision approval;

16 (2) A county building permit; or

17 (3) A condominium property regime approval for the
18 project,

19 shall be required to fulfill the land component impact fee or
20 fee in lieu requirement and construction cost component impact
21 fee requirement of the [~~agency,~~] authority, including all



1 government housing projects and projects processed pursuant to
2 sections 46-15.1 and 201H-38.

3 (b) The following shall be exempt from this section:

4 (1) Any form of housing permanently excluding school-aged
5 children, with the necessary covenants or declarations
6 of restrictions recorded on the property;

7 (2) Any form of housing that is or will be paying the
8 transient accommodations tax under chapter 237D;

9 (3) All nonresidential development; and

10 (4) Any development with an executed education
11 contribution agreement or other like document with the
12 [agency] authority or the department for the
13 contribution of school sites or payment of fees for
14 school land or school construction."

15 SECTION 11. Section 302A-1606, Hawaii Revised Statutes, is
16 amended by amending subsections (c) and (d) to read as follows:

17 "(c) The procedure for determining whether the dedication
18 of land is required or a payment of a fee in lieu is required
19 for a new school facility or to satisfy the land component
20 impact fee shall be as follows:



- 1 (1) A new residential development with fifty or more units
2 shall include a written agreement between the owner or
3 developer of the property and the [~~agency,~~] authority,
4 executed prior to issuance of a building permit, under
5 which the owner or developer has:
- 6 (A) Agreed to designate an area to be dedicated for
7 one or more schools for the development, subject
8 to approval by the [~~agency,~~] authority; or
9 (B) Agreed to pay to the [~~agency,~~] authority, at a
10 time specified in the agreement, a fee in lieu of
11 land dedication;
- 12 (2) A new residential development with less than fifty
13 units shall include a written agreement between the
14 owner or the developer of the property and the
15 [~~agency,~~] authority, executed prior to the issuance of
16 the building permit, under which the owner or
17 developer has agreed to a time specified for payment
18 for the fee in lieu;
- 19 (3) Prior to approval of any change of zoning,
20 subdivision, or any other approval for a:



- 1 (A) Residential development with fifty or more units;
2 or
3 (B) Condominium property regime development of fifty
4 or more units,
5 the [~~agency~~] authority shall notify the approving
6 [~~agency~~] entity of its determination on whether it
7 will require the development to dedicate land, pay a
8 fee in lieu thereof, or a combination of both for the
9 provision of new school facilities;
- 10 (4) The [~~agency's~~] authority's determination to require
11 land dedication or the payment of a fee in lieu, or a
12 combination of both, shall be guided by the following
13 criteria:
- 14 (A) The topography, geology, access, value, and
15 location of the land available for dedication;
16 (B) The size and shape of the land available for
17 dedication;
18 (C) The location of existing or proposed schooling
19 facilities; and
20 (D) The availability of infrastructure;



- 1 (5) The determination of the [agency] authority as to
2 whether lands shall be dedicated or whether a fee in
3 lieu shall be paid, or a combination of both, shall be
4 final;
- 5 (6) When land dedication is required, the land shall be
6 conveyed to the State upon completion of the
7 subdivision improvements and any offsite
8 infrastructure necessary to serve the land; and
- 9 (7) When the payment of a fee in lieu is required, the fee
10 in lieu shall be paid based on the terms contained in
11 the written agreement.
- 12 (d) In determining the value per acre for any new
13 residential development, the fee simple value of the land
14 identified for the new or expanded school facility shall be
15 based on the appraised fair market value of improved, vacant
16 land, zoned for residential use, and serviced by roads,
17 utilities, and drainage. An appraiser, licensed pursuant to
18 chapter 466K, who is selected and paid for by the developer,
19 shall determine the value of the land. If the [agency]
20 authority does not agree with the developer's appraisal, the
21 [agency] authority may engage another licensed appraiser at its



1 own expense, and resolve, through negotiation between the two
2 appraisers, a fair market value. If neither party agrees, the
3 first two appraisers shall select the third appraiser, with the
4 cost of the third appraisal being shared equally by the [agency]
5 authority and the developer, and the third appraisal shall be
6 binding on both parties."

7 SECTION 12. Sections 302A-1604, 302A-1605, 302A-1607,
8 302A-1609, 302A-1610, 302A-1611, and 302A-1612, Hawaii Revised
9 Statutes, are amended by substituting the word "authority", or
10 similar term, wherever the word "agency", or similar term,
11 appears, as the context requires.

12 PART IV

13 SECTION 13. All rules, policies, procedures, guidelines,
14 and other materials relating to the school impact fees adopted
15 or developed by the department of education to implement
16 provisions of the Hawaii Revised Statutes that are reenacted or
17 made applicable to the school facilities authority by Act 72,
18 Session Laws of Hawaii 2020, shall remain in full force and
19 effect until amended or repealed by the school facilities
20 authority pursuant to chapter 91, Hawaii Revised Statutes. In
21 the interim, every reference to the department of education,



1 chairperson of the board of education, or superintendent of
2 education relating to the school impact fees in those rules,
3 policies, procedures, guidelines, and other material is amended
4 to refer to the school facilities authority or school facilities
5 board, as appropriate.

6 SECTION 14. All deeds, lease, contracts, loans,
7 agreements, permits, or other documents relating to the school
8 impact fees executed or entered into by or on behalf of the
9 department of education, pursuant to the provisions of the
10 Hawaii Revised Statutes, that are reenacted or made applicable
11 to the school facilities board by Act 72, Session Laws of Hawaii
12 2020, shall remain in full force and effect. Effective July 1,
13 2021, every reference to the department of education,
14 chairperson of the board of education, or superintendent of
15 education relating to the school impact fees in those deeds,
16 leases, contracts, loans, agreements, permits, or other
17 documents shall be construed as a reference to the school
18 facilities authority or school facilities board, as appropriate.

19 SECTION 15. The department of education shall transfer the
20 total fund balance in the state educational facilities
21 improvement fund as of September 15, 2020, to the school



1 facilities special fund no later than days of the
2 effective date of this Act.

3 SECTION 16. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2021-2022 to be
6 deposited into the school facilities special fund established
7 pursuant to section 302A-1706, Hawaii Revised Statutes.

8 SECTION 17. There is appropriated out of the school
9 facilities special fund the sum of \$ or so much
10 thereof as may be necessary for fiscal year 2021-2022 for the
11 purpose of this Act.

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

14 SECTION 18. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 19. This Act shall take effect on July 1, 2051.



Report Title:

School Facilities Agency; School Facilities Authority;
Department of Education; Transfer; Appropriation

Description:

Renames the school facilities agency as the school facilities authority. Describes the powers and responsibilities of the school facilities authority by amending chapter 302A, part VI, subpart C and 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 an unspecified date. Appropriates funds. Effective 7/1/2051. (HD1)

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