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# 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 clearly describe  
3 the powers and responsibilities of the school facilities agency  
4 and its executive director, school facilities board, and  
5 administrative staff by amending some of the provisions of part  
6 VI, subpart C, chapter 302A, Hawaii Revised Statutes, which  
7 establishes the school facilities agency.

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

12 **[+]§302A-1701[+] Definitions.** As used in this subpart,

13 [#"agency"] unless the context clearly requires otherwise:

14 "Agency" means the school facilities agency established by

15 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; capital  
8 improvement projects funded by the legislature for completion by  
9 the agency; 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; established.**

14       (a) There is established the school facilities agency, which  
15 shall be a body corporate and a public instrumentality of the  
16 State, for the purpose of implementing this subpart. The agency  
17 shall be placed within the department for administrative  
18 purposes only.

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



1 ~~[to enable the agency to perform its duties. The appointment~~  
2 ~~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 neither the~~  
11 ~~number of terms, nor the number of consecutive years served~~  
12 ~~specified in section 26-34 shall apply to the executive~~  
13 ~~director, and the executive director's term shall be for six~~  
14 ~~years, which shall commence on the day the senate advises and~~  
15 ~~consents to the executive director's nomination. If a vacancy~~  
16 ~~occurs during a term, the governor shall appoint an interim~~  
17 ~~executive director whose appointment shall expire if the senate~~  
18 ~~does not advise and consent to the nomination of an executive~~  
19 ~~director at the next regular session of the legislature after~~  
20 ~~the vacancy occurs. The salary of the executive director shall~~  
21 ~~be set by the school facilities agency board and the executive~~



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

3 (c) The executive director shall:

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

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

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

9 **[+]§302A-1703[+]** Powers; generally. (a) Except as  
10 otherwise limited by this chapter, the agency shall be  
11 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 shall give preference to construction bids submitted  
18 by a contractor or subcontractor domiciled within the State.

19 Notwithstanding subsection (a), professional services contracts  
20 for licensees under chapter 464 shall be procured in accordance  
21 with section 103D-304.



- 1 (c) Except as otherwise limited by this chapter, the  
2 agency 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 agency, 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[~~7~~] as  
9           defined in the agency's rules, to 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,]~~ and sell, assign,  
14          transfer, convey, exchange, lease, or otherwise  
15          dispose of or encumber any project[~~7~~]; and in the case  
16          of 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)~~ (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) Contract]~~ (11) 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)]~~ (12) Issue bonds for the purpose of financing any  
11           project; ~~[and]~~  
12       (13) 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       (14) Use the department of human resources development to  
20           recruit, hire, and retain exempt employees,  
21           architects, engineers, existing civil service



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

4           (15) 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-1704[+] **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 public school facilities; [~~and~~]



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

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

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

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

18 (2) Evaluating the performance of the agency's executive  
19 director on an annual basis.

20 (d) The school facilities board shall select a chairperson  
21 by a majority vote of its voting members. A majority of the



1 voting members serving on the board shall constitute a quorum to  
2 conduct business. The concurrence of the majority of the voting  
3 members serving on the board shall be necessary to make any  
4 action of the board valid.

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

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

16 Two or more school facilities board members, but less than  
17 a quorum, may discuss matters relating to official school  
18 facilities board business in the course of their participation  
19 in a workgroup or subcommittee, and these discussions shall be a  
20 permitted interaction as provided for in section 92-2.5;  
21 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 for ~~[its]~~ purposes~~[.]~~ of this chapter, the department or  
19 agency having ~~[the]~~ control and management of ~~[those]~~ the  
20 required lands, upon a request by the agency and with the  
21 approval of the governor, ~~[may]~~ shall convey title or lease



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

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

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

18 ~~[(e) If state]~~ (d) When public lands ~~[held by]~~  
19 transferred to the agency are no longer needed for school  
20 facilities purposes, title to those lands shall be ~~[returned to~~  
21 ~~the public trust administered by]~~ transferred to the department



1 of land and natural resources[-] and the lands shall be  
2 reclassified as public lands.

3 **[+]§302A-1706[+] School facilities special fund. (a)**

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

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

12 (2) ~~[Revenues]~~ Funds collected pursuant to section  
13 302A-1608(a); provided that these moneys shall be  
14 deposited into the appropriate subaccount established  
15 pursuant to subsection (b);

16 (3) Any ~~[other]~~ moneys received by the department in the  
17 form of a grant, gift, endowment, or donation for ~~[any~~  
18 ~~public school]~~ the development, planning, or  
19 construction ~~[related to a capital improvement~~  
20 ~~project, including funds transferred to the special~~  
21 ~~fund by the agency pursuant to subsection (e);]~~ of new



1           school facilities or major renovations of school  
2           facilities; and  
3       ~~[(4) All moneys allocated to the special fund by the~~  
4           ~~governor or board for a project;~~  
5       ~~(5) Any other appropriation by the legislature to the~~  
6           ~~special fund; and~~  
7       ~~(6) Income and capital gains earned by the special fund.]~~  
8       (4) All other moneys received by the agency and not  
9           deposited into a trust fund or trust account,  
10           including unrestricted grants, gifts, and donations;  
11           proceeds from sales of property; rents and other  
12           receipts from leases, rights of entry, and the like;  
13           and interest, refunds, and other receipts and  
14           payments.

15           (b) The agency shall establish and appropriately name  
16 subaccounts within the school facilities special fund to accept  
17 deposits of revenues from school impact fees that are required  
18 to be expended within a specific school impact district pursuant  
19 to 302A-1608(a) or restricted ~~[to another specific]~~ for a  
20 specified purpose pursuant to part V, subpart B of this chapter.



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

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

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



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

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

15       ~~{}~~§302A-1707~~{}~~ **Annual report.** At least twenty days  
16 prior to the convening of each regular session, the agency shall  
17 submit to the governor, board of education, and legislature, a  
18 complete and detailed report of its activities during the prior  
19 fiscal year."

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





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

8           (1) By the public utilities commission, the labor and  
9 industrial relations appeals board, and the Hawaii  
10 labor relations board;

11           (2) By any court or judicial or legislative office of the  
12 State; provided that if the attorney general is  
13 requested to provide representation to a court or  
14 judicial office by the chief justice or the chief  
15 justice's designee, or to a legislative office by the  
16 speaker of the house of representatives and the  
17 president of the senate jointly, and the attorney  
18 general declines to provide such representation on the  
19 grounds of conflict of interest, the attorney general  
20 shall retain an attorney for the court, judicial, or



- 1 legislative office, subject to approval by the court,
- 2 judicial, or legislative office;
- 3 (3) By the legislative reference bureau;
- 4 (4) By any compilation commission that may be constituted
- 5 from time to time;
- 6 (5) By the real estate commission for any action involving
- 7 the real estate recovery fund;
- 8 (6) By the contractors license board for any action
- 9 involving the contractors recovery fund;
- 10 (7) By the office of Hawaiian affairs;
- 11 (8) By the department of commerce and consumer affairs for
- 12 the enforcement of violations of chapters 480 and
- 13 485A;
- 14 (9) As grand jury counsel;
- 15 (10) By the Hawaii health systems corporation, or its
- 16 regional system boards, or any of their facilities;
- 17 (11) By the auditor;
- 18 (12) By the office of ombudsman;
- 19 (13) By the insurance division;
- 20 (14) By the University of Hawaii;
- 21 (15) By the Kahoolawe island reserve commission;



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

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

16 "(b) The civil service to which this chapter applies shall  
 17 comprise all positions in the State now existing or hereafter  
 18 established and embrace all personal services performed for the  
 19 State, except the following:

- 20 (1) Commissioned and enlisted personnel of the Hawaii
- 21 National Guard as such, and positions in the Hawaii



1 National Guard that are required by state or federal  
2 laws or regulations or orders of the National Guard to  
3 be filled from those commissioned or enlisted  
4 personnel;

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

13 (3) Positions that must be filled without delay to comply  
14 with a court order or decree if the director  
15 determines that recruitment through normal recruitment  
16 civil service procedures would result in delay or  
17 noncompliance, such as the Felix-Cayetano consent  
18 decree;

19 (4) Positions filled by the legislature or by either house  
20 or any committee thereof;



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



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

20 (10) First deputy and deputy attorneys general, the  
21 administrative services manager of the department of



1 the attorney general, one secretary for the  
2 administrative services manager, an administrator and  
3 any support staff for the criminal and juvenile  
4 justice resources coordination functions, and law  
5 clerks;

6 (11) (A) Teachers, principals, vice-principals, complex  
7 area superintendents, deputy and assistant  
8 superintendents, other certificated personnel,  
9 not more than twenty noncertificated  
10 administrative, professional, and technical  
11 personnel not engaged in instructional work;

12 (B) Effective July 1, 2003, teaching assistants,  
13 educational assistants, bilingual/bicultural  
14 school-home assistants, school psychologists,  
15 psychological examiners, speech pathologists,  
16 athletic health care trainers, alternative school  
17 work study assistants, alternative school  
18 educational/supportive services specialists,  
19 alternative school project coordinators, and  
20 communications aides in the department of  
21 education;



1 (C) The special assistant to the state librarian and  
2 one secretary for the special assistant to the  
3 state librarian; and

4 (D) Members of the faculty of the University of  
5 Hawaii, including research workers, extension  
6 agents, personnel engaged in instructional work,  
7 and administrative, professional, and technical  
8 personnel of the university;

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

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

15 (B) Positions filled with students in accordance with  
16 guidelines for established state employment  
17 programs; and

18 (C) Positions that provide work experience training  
19 or temporary public service employment that are  
20 filled by persons entering the workforce or  
21 persons transitioning into other careers under



1 programs such as the federal Workforce Investment  
2 Act of 1998, as amended, or the Senior Community  
3 Service Employment Program of the Employment and  
4 Training Administration of the United States  
5 Department of Labor, or under other similar state  
6 programs;

7 (14) A custodian or guide at Iolani Palace, the Royal  
8 Mausoleum, and Hulihee Palace;

9 (15) Positions filled by persons employed on a fee,  
10 contract, or piecework basis, who may lawfully perform  
11 their duties concurrently with their private business  
12 or profession or other private employment and whose  
13 duties require only a portion of their time, if it is  
14 impracticable to ascertain or anticipate the portion  
15 of time to be devoted to the service of the State;

16 (16) Positions of first deputies or first assistants of  
17 each department head appointed under or in the manner  
18 provided in section 6, article V, of the Hawaii State  
19 Constitution; three additional deputies or assistants  
20 either in charge of the highways, harbors, and  
21 airports divisions or other functions within the



1 department of transportation as may be assigned by the  
2 director of transportation, with the approval of the  
3 governor; four additional deputies in the department  
4 of health, each in charge of one of the following:  
5 behavioral health, environmental health, hospitals,  
6 and health resources administration, including other  
7 functions within the department as may be assigned by  
8 the director of health, with the approval of the  
9 governor; an administrative assistant to the state  
10 librarian; and an administrative assistant to the  
11 superintendent of education;

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

14 (A) Any exemption created after July 1, 2014, shall  
15 expire three years after its enactment unless  
16 affirmatively extended by an act of the  
17 legislature; and

18 (B) All of the positions defined by paragraph (9)  
19 shall be included in the position classification  
20 plan;



- 1           (18) Positions in the state foster grandparent program and  
2           positions for temporary employment of senior citizens  
3           in occupations in which there is a severe personnel  
4           shortage or in special projects;
- 5           (19) Household employees at the official residence of the  
6           president of the University of Hawaii;
- 7           (20) Employees in the department of education engaged in  
8           the supervision of students during meal periods in the  
9           distribution, collection, and counting of meal  
10          tickets, and in the cleaning of classrooms after  
11          school hours on a less than half-time basis;
- 12          (21) Employees hired under the tenant hire program of the  
13          Hawaii public housing authority; provided that not  
14          more than twenty-six per cent of the authority's  
15          workforce in any housing project maintained or  
16          operated by the authority shall be hired under the  
17          tenant hire program;
- 18          (22) Positions of the federally funded expanded food and  
19          nutrition program of the University of Hawaii that  
20          require the hiring of nutrition program assistants who  
21          live in the areas they serve;



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



1           and privacy compliance officer, security and privacy  
2           compliance engineer, and security and privacy  
3           compliance analyst; [~~and~~  
4   +] (31) [+] The Alzheimer's disease and related dementia services  
5           coordinator in the executive office on aging[-]; and  
6           (32) The positions of the executive director and the full  
7           time staff of the school facilities agency.

8           The director shall determine the applicability of this  
9           section to specific positions.

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

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

14          "**§171-2 Definition of public lands.** "Public lands" means  
15         all lands or interest therein in the State classed as government  
16         or crown lands previous to August 15, 1895, or acquired or  
17         reserved by the government upon or subsequent to that date by  
18         purchase, exchange, escheat, or the exercise of the right of  
19         eminent domain, or in any other manner; including lands accreted  
20         after May 20, 2003, and not otherwise awarded, submerged lands,  
21         and lands beneath tidal waters that are suitable for



1 reclamation, together with reclaimed lands that have been given  
2 the status of public lands under this chapter, except:

3 (1) Lands designated in section 203 of the Hawaiian Homes  
4 Commission Act, 1920, as amended;

5 (2) Lands set aside pursuant to law for the use of the  
6 United States;

7 (3) Lands being used for roads and streets;

8 (4) Lands to which the United States relinquished the  
9 absolute fee and ownership under section 91 of the  
10 Hawaiian Organic Act prior to the admission of Hawaii  
11 as a state of the United States unless subsequently  
12 placed under the control of the board of land and  
13 natural resources and given the status of public lands  
14 in accordance with the state constitution, the  
15 Hawaiian Homes Commission Act, 1920, as amended, or  
16 other laws;

17 (5) Lands to which the University of Hawaii holds title;

18 (6) Lands to which the Hawaii housing finance and  
19 development corporation in its corporate capacity  
20 holds title;



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



- 1           the agribusiness development corporation in its  
2           corporate capacity holds title;
- 3       (12) Lands to which the Hawaii technology development  
4           corporation in its corporate capacity holds title;  
5           [and]
- 6       (13) Lands to which the department of education holds  
7           title; and
- 8       (14) Lands to which the school facilities agency holds  
9           title;

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

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

17       "(a) This section applies to all lands or interest therein  
18 owned or under the control of state departments and agencies  
19 classed as government or crown lands previous to August 15,  
20 1895, or acquired or reserved by the government upon or  
21 subsequent to that date by purchase, exchange, escheat, or the



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

6 (1) Land set aside pursuant to law for the use of the  
7 United States;

8 (2) Land to which the United States relinquished the  
9 absolute fee and ownership under section 91 of the  
10 Organic Act prior to the admission of Hawaii as a  
11 state of the United States;

12 (3) Land to which the University of Hawaii holds title;

13 (4) Land to which the Hawaii housing finance and  
14 development corporation in its corporate capacity  
15 holds title;

16 (5) Land to which the department of agriculture holds  
17 title by way of foreclosure, voluntary surrender, or  
18 otherwise, to recover moneys loaned or to recover  
19 debts otherwise owed the department under chapter 167;

20 (6) Land that is set aside by the governor to the Aloha  
21 Tower development corporation; or land to which the



1 Aloha Tower development corporation holds title in its  
2 corporate capacity;

3 (7) Land that is set aside by the governor to the  
4 agribusiness development corporation; or land to which  
5 the agribusiness development corporation in its  
6 corporate capacity holds title;

7 (8) Land to which the Hawaii technology development  
8 corporation in its corporate capacity holds title;

9 (9) Land to which the department of education holds title;  
10 [~~and~~]

11 (10) Land to which the Hawaii public housing authority in  
12 its corporate capacity holds title[~~-~~]; and

13 (11) Land to which the school facilities agency holds  
14 title."

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

17 1. By adding a new definition to be appropriately inserted  
18 and to read:

19 "Agency" means the school facilities agency established by  
20 section 302A-1702."



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

3           ""School facilities" means the facilities owned or operated  
4 by the agency[7] or the department, or the facilities included  
5 in the agency or the department of education capital budget or  
6 capital facilities plan."

7           SECTION 10. Section 302A-1603, Hawaii Revised Statutes, is  
8 amended by amending subsection (b) to read as follows:

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

- 10           (1) Any form of housing permanently excluding school-aged  
11 children, with the necessary covenants or declarations  
12 of restrictions recorded on the property;
- 13           (2) Any form of housing that is or will be paying the  
14 transient accommodations tax under chapter 237D;
- 15           (3) All nonresidential development; and
- 16           (4) Any development with an executed education  
17 contribution agreement or other like document with the  
18 agency or the department of education for the  
19 contribution of school sites or payment of fees for  
20 school land or school construction."



1 SECTION 11. Section 302A-1606, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

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

7 (1) A new residential development with fifty or more units  
8 shall include a written agreement between the owner or  
9 developer of the property and the agency, executed  
10 prior to issuance of a building permit, under which  
11 the owner or developer has:

12 (A) Agreed to designate an area to be dedicated for  
13 one or more schools for the development, subject  
14 to approval by the agency; or

15 (B) Agreed to pay to the agency, at a time specified  
16 in the agreement, a fee in lieu of land  
17 dedication;

18 (2) A new residential development with less than fifty  
19 units shall include a written agreement between the  
20 owner or the developer of the property and the agency,  
21 executed prior to the issuance of the building permit,



1 under which the owner or developer has agreed to a  
2 time specified for payment for the fee in lieu;  
3 (3) Prior to approval of any change of zoning,  
4 subdivision, or any other approval for a:  
5 (A) Residential development with fifty or more units;  
6 or  
7 (B) Condominium property regime development of fifty  
8 or more units,  
9 the agency shall notify the approving [~~agency~~] entity  
10 of its determination on whether it will require the  
11 development to dedicate land, pay a fee in lieu  
12 thereof, or a combination of both for the provision of  
13 new school facilities;  
14 (4) The agency's determination to require land dedication  
15 or the payment of a fee in lieu, or a combination of  
16 both, shall be guided by the following criteria:  
17 (A) The topography, geology, access, value, and  
18 location of the land available for dedication;  
19 (B) The size and shape of the land available for  
20 dedication;



- 1 (C) The location of existing or proposed schooling
- 2 facilities; and
- 3 (D) The availability of infrastructure;
- 4 (5) The determination of the agency as to whether lands
- 5 shall be dedicated or whether a fee in lieu shall be
- 6 paid, or a combination of both, shall be final;
- 7 (6) When land dedication is required, the land shall be
- 8 conveyed to the State upon completion of the
- 9 subdivision improvements and any offsite
- 10 infrastructure necessary to serve the land; and
- 11 (7) When the payment of a fee in lieu is required, the fee
- 12 in lieu shall be paid based on the terms contained in
- 13 the written agreement."

14 PART IV

15 SECTION 12. All rules, policies, procedures, guidelines,  
16 and other materials relating to the school impact fees adopted  
17 or developed by the department of education to implement  
18 provisions of the Hawaii Revised Statutes that are reenacted or  
19 made applicable to the school facilities agency by Act 72,  
20 Session Laws of Hawaii 2020, shall remain in full force and  
21 effect until amended or repealed by the school facilities agency



1 pursuant to chapter 91, Hawaii Revised Statutes. In the  
2 interim, every reference to the department of education,  
3 chairperson of the board of education, or superintendent of  
4 education relating to the school impact fees in those rules,  
5 policies, procedures, guidelines, and other material is amended  
6 to refer to the school facilities agency or school facilities  
7 board, as appropriate.

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



1 SECTION 14. The department of education shall transfer the  
2 total fund balance in the state educational facilities  
3 improvement fund as of September 15, 2020, to the school  
4 facilities special fund no later than days of the  
5 effective date of this Act.

6 SECTION 15. There is appropriated out of the general  
7 revenues of the State of Hawaii the sum of \$ or so  
8 much thereof as may be necessary for fiscal year 2021-2022 to be  
9 deposited into the school facilities special fund established  
10 pursuant to section 302A-1706, Hawaii Revised Statutes.

11 SECTION 16. There is appropriated out of the school  
12 facilities special fund the sum of \$ or so much  
13 thereof as may be necessary for fiscal year 2021-2022 for the  
14 purpose of this Act.

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

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

19 SECTION 18. This Act shall take effect on July 1, 2050.



**Report Title:**

School Facilities Agency; Department of Education; Transfer; Appropriation

**Description:**

Describes the powers and responsibilities of the school facilities agency 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 a certain date. Makes appropriation. Effective 7/1/2050. (SD2)

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

