
A BILL FOR AN ACT

RELATING TO A SCHOOL FACILITIES AGENCY.

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

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

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

6 . School Facilities Agency

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

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

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



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

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

4 (3) For a term of six years.

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

8 (c) The executive director shall:

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

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

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

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

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



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

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

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



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

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

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



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



- 1 contractual basis for rendering professional and
2 technical assistance and advice;
- 3 (12) Procure insurance against any loss in connection with
4 its property and other assets and operations in
5 amounts and from insurers as it deems desirable;
- 6 (13) Contract for and accept gifts or grants in any form
7 from any public agency or from any other source,
8 including gifts or grants from private individuals and
9 private entities;
- 10 (14) Issue bonds for the purpose of financing any project;
11 [and]
- 12 (15) Use the department of human resources development to
13 recruit, hire, and retain exempt employees,
14 architects, engineers, existing civil service
15 position, and other technical positions for the
16 development, planning, and construction related to
17 capital improvement projects; and
- 18 [~~+15+~~] (16) Do any and all things necessary to carry out its
19 purposes and exercise the powers given and granted in
20 this subpart.



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

6 **§302A-D School facilities board.** (a) There is
7 established within the department for administrative purposes
8 only a school facilities board.

9 (b) The school facilities board shall consist of five
10 voting members. The five voting members shall:

11 (1) Be appointed by the governor pursuant to section
12 26-34;

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

14 (3) Include one member representing the construction
15 industry.

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

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



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

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

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

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

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

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

19 Two or more school facilities board members, but less than
20 a quorum, may discuss matters relating to official school
21 facilities board business in the course of their participation



1 in a workgroup or subcommittee, and these discussions shall be a
2 permitted interaction as provided for in section 92-2.5;
3 provided that all other provisions of chapter 92 shall apply.

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

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

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

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

18 **§302A-E Use of public lands; acquisition of state lands.**

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



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

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

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

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



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



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

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

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

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



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

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

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

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



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

3 "SECTION 7. Sections 302A-1602, 302A-1603, 302A-1604,
4 302A-1605, 302A-1606, 302A-1607, 302A-1609, 302A-1610,
5 302A-1611, and 302A-1612, Hawaii Revised Statutes, are amended
6 by substituting the word "agency", or similar term, wherever the
7 word "department", "department of education", or similar term,
8 appears, as the context requires. Section 302A-1508, Hawaii
9 Revised Statutes, is amended by substituting the word "agency"
10 or similar term, wherever the word "department", "department of
11 education", or similar term, appears, as the context requires,
12 and the word "executive director", or similar term, wherever the
13 word "superintendent", or similar term, appears, as the context
14 requires."

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

17 "SECTION 10. The school facilities agency shall
18 collaborate with the department of education and submit a report
19 to the legislature, no later than twenty days prior to the
20 convening of the regular session of [~~2021,~~] 2022, identifying
21 positions of the department of education that should be



1 transferred to the school facilities agency established by
2 section 1 of this Act, including positions responsible for
3 public school development, planning, and construction related to
4 capital improvement projects, along with proposed legislation to
5 further implement the transfer of positions, offices spaces, and
6 related records and equipment to effectuate the purpose of this
7 Act. The executive director of the school facilities agency
8 shall have authority on these matters."

9 SECTION 4. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

School Facilities Agency; Department of Education; Construction

Description:

Amends Act 72, Session Laws of Hawaii 2020, to require that the school facilities agency complies with the Hawaii Public Procurement Code. Authorizes the school facilities agency to have additional powers and duties. Specifies additional uses for the school facilities special fund. Provides the executive director of the school facilities agency with authority relating to capital improvement projects for the school facilities agency. Effective 7/1/2050. (SD2)

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