
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 school facilities authority board,
6 executive director, and administrative staff by amending part
7 VI, 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.

16 "Facilities" includes school classrooms, auditoriums,
17 libraries, office and maintenance buildings, gymnasiums, and
18 athletic fields.



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

10 ~~[+]§302A-1702[+]~~ School facilities ~~[agency,]~~ authority;
11 established. (a) There is established the school facilities
12 ~~[agency,]~~ authority, which shall be a body corporate and a
13 public instrumentality of the State~~[, for the purpose of~~
14 ~~implementing this subpart]~~. The ~~[agency]~~ authority shall be
15 placed within the department for administrative purposes only.

16 (b) The authority shall employ an executive director
17 exempt from chapters 76 and 89. The governor shall appoint ~~[an]~~
18 the executive director ~~[to enable the agency to perform its~~
19 ~~duties. The appointment shall be:~~

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



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

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

3 ~~If a vacancy occurs during a term, the governor shall appoint an~~
4 ~~executive director for a six year term that shall begin on the~~
5 ~~first date of employment of the new executive director.] in the~~
6 ~~manner prescribed in section 26-34; provided that the executive~~
7 ~~director's term shall be for six years, which shall commence on~~
8 ~~the day the senate advises and consents to the executive~~
9 ~~director's nomination and the executive director shall not be~~
10 ~~limited in the number of terms served. If a vacancy occurs~~
11 ~~during a term, the governor shall appoint an interim executive~~
12 ~~director whose appointment shall expire if the senate does not~~
13 ~~advise and consent to the nomination of an executive director at~~
14 ~~the next regular session of the legislature after the vacancy~~
15 ~~occurs. The salary of the executive director shall be set by~~
16 ~~the school facilities board and the executive director shall be~~
17 ~~included in any benefit program generally applicable to the~~
18 ~~officers and employees of the State.~~

19 (c) The executive director shall:

20 (1) Serve as the [agency's] authority's chief executive
21 officer[+] and chief procurement officer;



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

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

4 [~~§~~§302A-1703 [~~§~~] **Powers; generally.** (a) Except as
5 otherwise limited by this chapter, the [~~agency~~] authority shall
6 be responsible for all public school development, planning, and
7 construction related to capital improvement projects assigned by
8 the legislature, governor, or board of education. [~~The agency~~
9 ~~shall act as its procurement officer.~~]

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

18 (c) Except as otherwise limited by this chapter, the
19 [~~agency~~] authority may also:

20 (1) Have a seal and alter the same at its pleasure;



- 1 (2) Subject to subsection (b), make and execute contracts
2 and all other instruments necessary or convenient for
3 the exercise of its powers and functions under this
4 subpart;
- 5 (3) Make and alter bylaws for its organization and
6 internal management;
- 7 (4) Adopt rules pursuant to chapter 91 with respect to its
8 projects, operations, properties, and facilities[~~7~~],
9 including qualifications for persons and entities
10 wishing to enter into a public-private partnership
11 with the authority, as permitted in paragraph (7);
- 12 (5) Acquire [~~7~~, ~~reacquire~~,] or contract to acquire [~~er~~
13 ~~reacquire~~] by grant or purchase real, personal, or
14 mixed property or any interest therein; to [~~own, hold,~~
15 ~~hold title,~~] clear, improve, and rehabilitate and to
16 sell, assign, exchange, transfer, convey, lease, or
17 otherwise dispose of or encumber the same;
- 18 (6) [~~Acquire or reacquire by condemnation real, personal,~~
19 ~~or mixed property or any interest therein for public~~
20 ~~facilities, including but not limited to streets,~~
21 ~~sidewalks, parks, schools, and other public~~



1 ~~improvements,]~~ Acquire property by condemnation
2 pursuant to chapter 101;
3 (7) ~~[By itself, or in partnership]~~ Enter into partnerships
4 with qualified persons, including public-private [7]
5 partnerships, as defined in the authority's rules, to
6 acquire, [reacquire,] construct, reconstruct,
7 rehabilitate, improve, alter, or provide for the
8 construction, reconstruction, improvement, or
9 alteration of any project; ~~[own, hold, hold title,]~~
10 and sell, assign, transfer, convey, exchange, lease,
11 or otherwise dispose of or encumber any project [7];
12 and in the case of the sale of any project, accept a
13 purchase money mortgage in connection therewith; [and
14 ~~repurchase or otherwise acquire any project that the~~
15 ~~agency has theretofore sold or otherwise conveyed,~~
16 ~~transferred, or disposed of,~~
17 ~~(8) Arrange or contract for the planning, replanning,~~
18 ~~opening, grading, or closing of streets, roads,~~
19 ~~roadways, alleys, or other places, or for the~~
20 ~~furnishing of facilities or for the acquisition of~~



1 ~~property or property rights or for the furnishing of~~
2 ~~property or services in connection with a project;~~

3 ~~(9)~~ (8) Grant options to purchase any project or to renew
4 any lease entered into by it in connection with any of
5 its projects, on terms and conditions as it deems
6 advisable;

7 ~~[(10)]~~ (9) Prepare or cause to be prepared plans,
8 specifications, designs, and estimates of costs for
9 the construction, reconstruction, rehabilitation,
10 improvement, or alteration of any project, and from
11 time to time to modify the plans, specifications,
12 designs, or estimates;

13 ~~[(11)]~~ ~~Provide advisory, consultative, training, and~~
14 ~~educational services, technical assistance, and advice~~
15 ~~to any person, partnership, or corporation, either~~
16 ~~public or private, to carry out the purposes of this~~
17 ~~subpart, and engage the services of consultants on a~~
18 ~~contractual basis for rendering professional and~~
19 ~~technical assistance and advice;~~



1 ~~(12)~~ (10) Procure insurance against any loss in connection
2 with its property and other assets and operations in
3 amounts and from insurers as it deems desirable;

4 ~~(13)~~ (11) [~~Contract~~] Apply for and accept gifts or grants
5 in any form from any public agency or from any other
6 source, including gifts or grants from private
7 individuals and private entities;

8 ~~(14)~~ ~~Issue bonds for the purpose of financing any project;~~
9 and]

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

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

19 (B) Shall repay indebtedness incurred pursuant to
20 this section, including any interest thereon;



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



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

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

9 [~~§~~§302A-1704~~§~~] School facilities authority board. (a)
10 There is established [~~within the department for administrative~~
11 ~~purposes only a~~] the school facilities authority board~~[-]~~, which
12 shall head and oversee the authority.

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

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

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

18 (3) Include one member [~~representing~~] actively or
19 previously engaged in the construction industry~~[-]~~ for
20 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 on preferred strategies to~~
9 ~~complete construction projects of the agency;~~] All
10 matters related to the projects the authority is
11 authorized and responsible for initiating and
12 completing under this subpart, including preferred
13 strategies to complete those projects; and

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

16 (d) The [~~school facilities~~] board shall select a
17 chairperson by a majority vote of its voting members. A
18 majority of the voting members serving on the board shall
19 constitute a quorum to conduct business. The concurrence of the
20 majority of the voting members serving on the board shall be
21 necessary to make any action of the board valid.



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

4 (1) Obtain resource information from construction and
5 education professionals and other individuals as
6 deemed necessary by the [~~school facilities~~] board;

7 (2) Make recommendations to the [~~school facilities~~] board;
8 and

9 (3) Perform other functions as deemed necessary by the
10 [~~school facilities~~] board to fulfill its duties and
11 responsibilities.

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

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



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

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

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

12 ~~[]§302A-1705[]~~ Use of public lands; acquisition of state
13 lands. (a) If state lands, other than public lands, under the
14 control and management of another department or agency are
15 required by the [agency] authority for [its] purposes[7] of this
16 chapter, the department or agency having [the] control and
17 management of [those] the required lands, upon a request by the
18 [agency] authority and with the approval of the governor, [may]
19 shall convey title or lease those lands to the [agency]
20 authority upon terms and conditions as may be agreed to by the
21 parties; provided that [any lands for which] at the request of



1 the authority, the department [currently] shall transfer any
2 land to which it holds title [that are agreed to be transferred
3 shall be transferred] to the [agency no later than January 1,
4 2021.] authority.

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

10 ~~[(b)]~~ (c) Notwithstanding the foregoing and section
11 302A-1703(c), no ~~[publie]~~ lands shall be conveyed or leased to
12 the ~~[agency]~~ authority as provided in this section if the
13 conveyance or lease would impair any covenant between the State
14 or any county or any department or board thereof and the holders
15 of bonds issued by the State or county, department, or board.

16 ~~[(e)]~~ (d) ~~[If state]~~ When public lands ~~[held by]~~
17 transferred to the [agency] authority are no longer needed for
18 school facilities purposes, title to those lands shall be
19 ~~[returned to the public trust administered by]~~ transferred to
20 the department of land and natural resources~~[-]~~ and the lands
21 shall be reclassified as public lands.



1 ~~[§]~~302A-1706~~[§]~~ School facilities special fund. (a)

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

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

10 (2) ~~[Revenues]~~ Funds collected pursuant to section
11 302A-1608(a); provided that these moneys shall be
12 deposited into the appropriate subaccount established
13 pursuant to subsection (b);

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



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

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

20 (c) The school facilities special fund shall be
21 administered by the [agency] authority and used to fund any



1 school development, planning, or construction project within the
2 jurisdiction of the [agency-] authority.

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

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



1 ~~(f)~~ (e) The [agency] authority shall submit to the
2 director of finance a report that shall be prepared in the form
3 prescribed by the director of finance and shall identify the
4 total amount of funds in the school facilities special fund that
5 will carry over to the next fiscal year. The [agency] authority
6 shall submit the report to the director of finance within ninety
7 days of the close of each fiscal year and a copy of the
8 information contained in the report to the director of finance
9 shall be included within the [~~agency's~~] authority's report to
10 the legislature pursuant 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]
17 authority shall submit to the governor, board of education, and
18 legislature, a complete and detailed report of its activities
19 during the prior fiscal year."

20 SECTION 3. Act 72, Session Laws of Hawaii 2020, is amended
21 by amending section 5 to read as follows:



1 "SECTION 5. There are established seven full-time
2 equivalent (7.0 FTE) administrative positions, exempt from
3 chapter 76, Hawaii Revised Statutes, and excluded from chapter
4 89, Hawaii Revised Statutes, for the school facilities [~~agency~~]
5 authority."

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

8 "SECTION 10. The school facilities [~~agency~~] authority
9 shall collaborate with the department of education and submit a
10 report to the legislature, no later than twenty days prior to
11 the convening of the regular session of [~~2021,~~] 2022,
12 identifying positions of the department of education that should
13 be transferred to the school facilities [~~agency~~] authority
14 [~~established by section 1 of this Act,~~] including positions
15 responsible for [~~public school~~] implementing the provisions of
16 sections 302A-1151.1 and 302A-1151.2, Hawaii Revised Statutes,
17 subpart B, part VI of chapter 302A, Hawaii Revised Statutes, and
18 the development, planning, and construction [~~related to capital~~
19 ~~improvement projects,~~] of public school facilities that the
20 school facilities authority is authorized to undertake and
21 complete, along with proposed legislation to further implement



1 the transfer of positions and related records and equipment to
2 effectuate the purpose of this Act."

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 and
17 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; [œ]
- 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 executive director and seven full-time
 11 administrative positions of the school facilities
 12 authority.

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

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

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

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



1 reserved by the government upon or subsequent to that date by
2 purchase, exchange, escheat, or the exercise of the right of
3 eminent domain, or in any other manner; including lands accreted
4 after May 20, 2003, and 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, except:

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



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



1 (11) Lands that are set aside by the governor to the
2 agribusiness development corporation; lands leased to
3 the agribusiness development corporation by any
4 department or agency of the State; or lands to which
5 the agribusiness development corporation in its
6 corporate capacity holds title;

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

10 (13) Lands to which the department of education holds
11 title; and

12 (14) Lands to which the school facilities authority holds
13 title;

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

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



1 "(a) This section applies to all lands or interest therein
2 owned or under the control of state departments and agencies
3 classed as government or crown lands previous to August 15,
4 1895, or acquired or reserved by the government upon or
5 subsequent to that date by purchase, exchange, escheat, or the
6 exercise of the right of eminent domain, or any other manner,
7 including accreted lands not otherwise awarded, submerged lands,
8 and lands beneath tidal waters that are suitable for
9 reclamation, together with reclaimed lands that have been given
10 the status of public lands under this chapter, including:

- 11 (1) Land set aside pursuant to law for the use of the
12 United States;
- 13 (2) Land to which the United States relinquished the
14 absolute fee and ownership under section 91 of the
15 Organic Act prior to the admission of Hawaii as a
16 state of the United States;
- 17 (3) Land to which the University of Hawaii holds title;
- 18 (4) Land to which the Hawaii housing finance and
19 development corporation in its corporate capacity
20 holds title;



- 1 (5) Land to which the department of agriculture holds
2 title by way of foreclosure, voluntary surrender, or
3 otherwise, to recover moneys loaned or to recover
4 debts otherwise owed the department under chapter 167;
- 5 (6) Land that is set aside by the governor to the Aloha
6 Tower development corporation; or land to which the
7 Aloha Tower development corporation holds title in its
8 corporate capacity;
- 9 (7) Land that is set aside by the governor to the
10 agribusiness development corporation; or land to which
11 the agribusiness development corporation in its
12 corporate capacity holds title;
- 13 (8) Land to which the Hawaii technology development
14 corporation in its corporate capacity holds title;
- 15 (9) Land to which the department of education holds title;
16 [and]
- 17 (10) Land to which the Hawaii public housing authority in
18 its corporate capacity holds title[-]; and
- 19 (11) Land to which the school facilities authority holds
20 title."



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

3 1. By adding a new definition to be appropriately inserted
4 and to read:

5 "Authority" means the school facilities authority
6 established by section 302A-1702."

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

9 "School facilities" means the facilities owned or operated
10 by the [~~agency,~~] authority or the department, or the facilities
11 included in the [~~agency]~~ authority or the department's capital
12 budget or capital facilities plan."

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

15 **"§302A-1603 Applicability and exemptions.** (a) Except as
16 provided in subsection (b), any person who seeks to develop a
17 new residential development within a designated school impact
18 district requiring:

19 (1) A county subdivision approval;

20 (2) A county building permit; or



1 (3) A condominium property regime approval for the
2 project,
3 shall be required to fulfill the land component impact fee or
4 fee in lieu requirement and construction cost component impact
5 fee requirement of the [~~agency,~~] authority, including all
6 government housing projects and projects processed pursuant to
7 sections 46-15.1 and 201H-38.

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

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

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

14 (3) All nonresidential development; and

15 (4) Any development with an executed education
16 contribution agreement or other like document with the
17 [~~agency~~] authority or the department for the
18 contribution of school sites or payment of fees for
19 school land or school construction."

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



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

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

10 (A) Agreed to designate an area to be dedicated for
11 one or more schools for the development, subject
12 to approval by the [agency~~7~~] authority; or

13 (B) Agreed to pay to the [agency~~7~~] authority, at a
14 time specified in the agreement, a fee in lieu of
15 land dedication;

16 (2) A new residential development with less than fifty
17 units shall include a written agreement between the
18 owner or the developer of the property and the
19 [agency~~7~~] authority, executed prior to the issuance of
20 the building permit, under which the owner or



1 developer has agreed to a time specified for payment
2 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] authority shall notify the approving
10 [agency] entity of its determination on whether it
11 will require the development to dedicate land, pay a
12 fee in lieu thereof, or a combination of both for the
13 provision of new school facilities;

14 (4) The [agency's] authority's determination to require
15 land dedication or the payment of a fee in lieu, or a
16 combination of both, shall be guided by the following
17 criteria:

18 (A) The topography, geology, access, value, and
19 location of the land available for dedication;

20 (B) The size and shape of the land available for
21 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] authority as to
5 whether lands shall be dedicated or whether a fee in
6 lieu shall be paid, or a combination of both, shall be
7 final;
- 8 (6) When land dedication is required, the land shall be
9 conveyed to the State upon completion of the
10 subdivision improvements and any offsite
11 infrastructure necessary to serve the land; and
- 12 (7) When the payment of a fee in lieu is required, the fee
13 in lieu shall be paid based on the terms contained in
14 the written agreement.
- 15 (d) In determining the value per acre for any new
16 residential development, the fee simple value of the land
17 identified for the new or expanded school facility shall be
18 based on the appraised fair market value of improved, vacant
19 land, zoned for residential use, and serviced by roads,
20 utilities, and drainage. An appraiser, licensed pursuant to
21 chapter 466K, who is selected and paid for by the developer,



1 shall determine the value of the land. If the [agency]
2 authority does not agree with the developer's appraisal, the
3 [agency] authority may engage another licensed appraiser at its
4 own expense, and resolve, through negotiation between the two
5 appraisers, a fair market value. If neither party agrees, the
6 first two appraisers shall select the third appraiser, with the
7 cost of the third appraisal being shared equally by the [agency]
8 authority and the developer, and the third appraisal shall be
9 binding on both parties."

10 SECTION 12. Sections 302A-1604, 302A-1605, 302A-1607,
11 302A-1609, 302A-1610, 302A-1611, and 302A-1612, Hawaii Revised
12 Statutes, are amended by substituting the word "authority"
13 wherever the word "agency" appears.

14 SECTION 13. Section 302A-1151.1, Hawaii Revised Statutes,
15 is amended as follows:

16 1. By substituting the term "school facilities authority",
17 or similar term, wherever the word "department" appears.

18 2. By substituting the term "school facilities authority"
19 wherever the word "board" or "board of education" appears.

20 PART IV



1 SECTION 14. All rules, policies, procedures, guidelines,
2 and other materials relating to the school impact fees adopted
3 or developed by the department of education to implement
4 provisions of the Hawaii Revised Statutes that are reenacted or
5 made applicable to the school facilities authority by Act 72,
6 Session Laws of Hawaii 2020, shall remain in full force and
7 effect until amended or repealed by the school facilities
8 authority pursuant to chapter 91, Hawaii Revised Statutes. In
9 the interim, every reference to the department of education,
10 board of education, chairperson of the board of education, or
11 superintendent of education relating to the school impact fees
12 in those rules, policies, procedures, guidelines, and other
13 material is amended to refer to the school facilities authority,
14 executive director of the school facilities authority, school
15 facilities board, or chairperson of the school facilities board,
16 as appropriate.

17 SECTION 15. All deeds, lease, contracts, loans,
18 agreements, permits, or other documents relating to the school
19 impact fees executed or entered into by or on behalf of the
20 department of education, pursuant to the provisions of the
21 Hawaii Revised Statutes, that are reenacted or made applicable



1 to the school facilities board by Act 72, Session Laws of Hawaii
2 2020, shall remain in full force and effect. Effective July 1,
3 2021, every reference to the department of education, board of
4 education, chairperson of the board of education, or
5 superintendent of education relating to the school impact fees
6 in those deeds, leases, contracts, loans, agreements, permits,
7 or other documents shall be construed as a reference to the
8 school facilities authority, executive director of the school
9 facilities authority, school facilities board, or chairperson of
10 the school facilities board, as appropriate.

11 SECTION 16. The department of education shall transfer the
12 total fund balance in the state educational facilities
13 improvement fund as of September 15, 2020, and all encumbrances
14 against that fund open and outstanding as of that date, to the
15 school facilities special fund no later than one hundred eighty
16 days of the effective date 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, 2021.



Report Title:

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

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.
(CD1)

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