

**ACT 72**

S.B. NO. 3103

A Bill for an Act Relating to a School Facilities Agency.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

“ . School Facilities Agency

**§302A-A Definitions.** As used in this subpart, “agency” means the school facilities agency established by section 302A-B.

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

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

- (1) Exempt from chapter 76 and the term limitation in section 26-34;
- (2) Subject to the advice and consent of the senate; and
- (3) For a term of six years.

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

(c) The executive director shall:

- (1) Serve as the agency's chief executive officer;
- (2) Be responsible for carrying out the purposes of the agency; and
- (3) Serve on a full-time basis.

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

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

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

- (1) Have a seal and alter the same at its pleasure;
- (2) Subject to subsection (b), make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this subpart;
- (3) Make and alter bylaws for its organization and internal management;
- (4) Adopt rules pursuant to chapter 91 with respect to its projects, operations, properties, and facilities;
- (5) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold, hold title, clear, improve, and rehabilitate and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber the same;
- (6) Acquire or reacquire by condemnation real, personal, or mixed property or any interest therein for public facilities, including but not limited to streets, sidewalks, parks, schools, and other public improvements;
- (7) By itself, or in partnership with qualified persons, including public-private partnerships, acquire, reacquire, construct, reconstruct, rehabilitate, improve, alter, or provide for the construction, reconstruction, improvement, or alteration of any project; own, hold, hold title, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of or encumber any project, and in the case of the sale of any project, accept a purchase money mortgage in connection therewith; and repurchase or otherwise acquire any project that the

agency has theretofore sold or otherwise conveyed, transferred, or disposed of;

- (8) Arrange or contract for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, or other places, or for the furnishing of facilities or for the acquisition of property or property rights or for the furnishing of property or services in connection with a project;
  - (9) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on terms and conditions as it deems advisable;
  - (10) Prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction, reconstruction, rehabilitation, improvement, or alteration of any project, and from time to time to modify the plans, specifications, designs, or estimates;
  - (11) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, to carry out the purposes of this subpart, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
  - (12) Procure insurance against any loss in connection with its property and other assets and operations in amounts and from insurers as it deems desirable;
  - (13) Contract for and accept gifts or grants in any form from any public agency or from any other source, including gifts or grants from private individuals and private entities;
  - (14) Issue bonds for the purpose of financing any project; and
  - (15) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this subpart.
- (d) Prior to project approval, the agency shall consult with the Hawaii state public library system regarding any construction or renovation projects for school lands that are adjacent to or have Hawaii state public library facilities on them.

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

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

- (1) Be appointed by the governor pursuant to section 26-34;
- (2) Have an interest in school facilities; and
- (3) Include one member representing the construction industry.

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

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

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

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

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

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

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

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

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

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

**§302A-E Use of public lands; acquisition of state lands.** (a) If state lands under the control and management of another department are required by the agency for its purposes, the department having the control and management of those required lands, upon request by the agency and with the approval of the governor, may convey or lease those lands to the agency upon terms and conditions as may be agreed to by the parties; provided that any lands for which the department currently holds title that are agreed to be transferred shall be transferred to the agency no later than January 1, 2021.

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

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

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

- (1) All moneys appropriated by the legislature for any public school development, planning, or construction related to a capital improvement project;
- (2) Revenues pursuant to 302A-1608(a); provided that these moneys shall be deposited into the appropriate subaccount established pursuant to subsection (b);
- (3) Any other moneys received by the department in the form of a grant, gift, endowment, or donation for any public school development, planning, or construction related to a capital improvement project, including funds transferred to the special fund by the agency pursuant to subsection (e);

- (4) All moneys allocated to the special fund by the governor or board for a project;
  - (5) Any other appropriation by the legislature to the special fund; and
  - (6) Income and capital gains earned by the special fund.
- (b) The agency shall establish and appropriately name subaccounts within the school facilities special fund to accept deposits of revenues from school impact fees that are required to be expended within a specific school impact district pursuant to 302A-1608(a) or restricted to another specific purpose pursuant to part V, subpart B of this chapter.
- (c) The school facilities special fund shall be administered by the agency and used to fund any school development, planning, or construction project within the jurisdiction of the agency.
- (d) Subject to chapter 84, but any law to the contrary notwithstanding, the governor may authorize expenditures from the school facilities special fund of any donation, grant, bequest, and devise of money from any private institution, person, firm, or corporation for the purposes of funding the salaries of the executive director and any officers, agents, and employees of the agency. If all or any portion of any salary of the executive director or any officer, agent, or employee of the agency is funded pursuant to this subsection, the agency shall submit a report to the legislature detailing the use of any funds authorized under this subsection no later than twenty days prior to the convening of the next regular session following the expenditure authorization.
- (e) The agency may transfer any other unencumbered or unrestricted moneys received in the form of grants and donations for school development, planning, or construction to the school facilities special fund.
- (f) The agency shall submit to the director of finance a report that shall be prepared in the form prescribed by the director of finance and shall identify the total amount of funds in the school facilities special fund that will carry over to the next fiscal year. The agency shall submit the report to the director of finance within ninety days of the close of each fiscal year and a copy of the information contained in the report to the director of finance shall be included within the agency's report to the legislature pursuant to section 302A-G.
- (g) Within the school facilities special fund there shall be established accounts and subaccounts as may be necessary from time to time in order to ensure compliance with the Internal Revenue Code, as amended.

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

**SECTION 2.** Section 37D-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is hereby established and authorized the financing agreement program of the State. Any agency desiring to acquire or improve projects through the financing agreement program established and authorized by this chapter shall submit a written request to the department providing any information that the department shall require. Notwithstanding any other law to the contrary, and except for the Hawaii health systems corporation and its regional system boards, only with the approval by the attorney general as to form and legality and upon the written request of one or more agencies may the department enter into a financing agreement in accordance with this chapter, and only with the approval by the attorney general as to form and legality, and by the director as to fiscal responsibility, and upon the written request of an agency,

the agency may enter into a financing agreement in accordance with this chapter, [except that the department of education may enter into a financing agreement in accordance with section 36-32 with the concurrence of the director and with the approval of the attorney general as to form and legality;] and that the board of regents of the University of Hawaii may enter into a financing agreement in accordance with this chapter without the approval of the director and of the attorney general as to form and legality if the principal amount of the financing agreement does not exceed \$3,000,000. A financing agreement may be entered into by the department on behalf of one or more agencies, or by an agency, at any time (before or after commencement or completion of any improvements or acquisitions to be financed) and shall be upon terms and conditions the department finds to be advantageous. In each case of a written request by the judiciary to participate in the financing agreement program, the department shall implement the request; provided that the related financing agreement shall be upon terms and conditions the department finds to be advantageous. Any financing agreement entered into by the department without the approval, or by an agency without the approvals required by this section shall be void and of no effect. A single financing agreement entered into by the department may finance a single item or multiple items of property to be used by multiple agencies or may finance a single item or multiple items of property to be used by a single agency. If the financing agreement is by the department, the department shall bill any agency that benefits from property acquired with the proceeds of a financing agreement for the agency's pro rata share of:

- (1) The department's costs of administration of the financing agreement program; and
- (2) The financing costs, including the principal and interest components of the financing agreement and insurance premiums,

on a monthly or other periodic basis, and may deposit payments received in connection with the billings with a trustee as security for the financing agreement. Any agency receiving such a bill shall be authorized and shall pay the amounts billed from available moneys.

If a financing agreement is by an agency, the agency shall deposit on a monthly or other periodic basis with the department, payments from available moneys with respect to the agency's financing costs, including the principal and interest components of the financing agreement and insurance premiums, which payments the department may deposit with a trustee as security for the financing agreement. The department may bill an agency for the department's costs of administering the agency's payments and the agency receiving such a bill shall be authorized to and shall pay the amounts billed from available moneys."

SECTION 3. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The following persons shall file annually with the state ethics commission a disclosure of financial interests:

- (1) The governor, the lieutenant governor, the members of the legislature, and delegates to the constitutional convention; provided that delegates to the constitutional convention shall only be required to file initial disclosures;
- (2) The directors and their deputies, the division chiefs, the executive directors and the executive secretaries and their deputies, the purchasing agents and the fiscal officers, regardless of the titles by which the foregoing persons are designated, of every state agency and department;

- (3) The permanent employees of the legislature and its service agencies, other than persons employed in clerical, secretarial, or similar positions;
- (4) The administrative director of the State, and the assistants in the office of the governor and the lieutenant governor, other than persons employed in clerical, secretarial, or similar positions;
- (5) The hearings officers of every state agency and department;
- (6) The president, the vice presidents, assistant vice presidents, the chancellors, and the provosts of the University of Hawaii and its community colleges;
- (7) The superintendent, the deputy superintendent, the assistant superintendents, the complex area superintendents, the state librarian, and the deputy state librarian of the department of education;
- (8) The administrative director and the deputy director of the courts;
- (9) The members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory;
- (10) Candidates for state elective offices, including candidates for election to the constitutional convention, provided that candidates shall only be required to file initial disclosures;
- (11) The administrator and assistant administrator of the office of Hawaiian affairs; ~~and~~
- (12) The Hawaii unmanned aerial systems test site chief operating officer~~[-]~~ and
- (13) The members of the school facilities board appointed by the governor."

SECTION 4. Section 36-32, Hawaii Revised Statutes, is repealed.

SECTION 5. There are established seven full-time equivalent (7.0 FTE) administrative positions, exempt from chapter 76, Hawaii Revised Statutes, for the school facilities agency.

SECTION 6. On the effective date of this Act, any remaining balance in the state educational facilities improvement special fund repealed by section 3<sup>1</sup> of this Act shall be transferred to the school facilities special fund established by section 1 of this Act.

SECTION 7. Sections 302A-1602, 302A-1603, 302A-1604, 302A-1605, 302A-1606, 302A-1607, 302A-1609, 302A-1610, 302A-1611, and 302A-1612, Hawaii Revised Statutes, are amended by substituting the word "agency", or similar term, wherever the word "department", "department of education", or similar term, appears, as the context requires.

SECTION 8. This Act shall not be construed to transfer the department of education office of facilities and operation, including the facilities maintenance branch and auxiliary services branch and any general fund and position appropriations, to the school facilities agency.

SECTION 9. The development, planning, oversight, management, and responsibility of the capital improvement projects authorized by Act 155, Session Laws of Hawaii 2013; Act 115, Session Laws of Hawaii 2015; Act 206, Session Laws of Hawaii 2017; Act 210, Session Laws of Hawaii 2018; and Act



272, Session Laws of Hawaii 2019, are hereby transferred to the school facilities agency.

**SECTION 10.** The school facilities agency shall collaborate with the department of education and submit a report to the legislature, no later than twenty days prior to the convening of the regular session of 2021, identifying positions of the department of education that should be transferred to the school facilities agency established by section 1 of this Act, including positions responsible for public school development, planning, and construction related to capital improvement projects, along with proposed legislation to further implement the transfer of positions and related records and equipment to effectuate the purpose of this Act.

**SECTION 11.** In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

**SECTION 12.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

**SECTION 13.** This Act shall take effect upon its approval.

(Approved September 15, 2020.)

**Note**

1. Should probably be "section 4".