

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

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

PART I

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

PART II

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

“[[C.]] School Facilities [Agency] Authority

[[§302A-1701]] Definitions. As used in this subpart, [“agency”] unless the context clearly requires otherwise:

“Authority” means the school facilities [agency] authority established by section 302A-1702.

“Facilities” includes school classrooms, auditoriums, libraries, office and maintenance buildings, gymnasiums, and athletic fields.

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

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

(b) The authority shall employ an executive director exempt from chapters 76 and 89. The governor shall appoint [an] the 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;] in the manner prescribed in section 26-34; provided that the executive director’s term shall be for six years, which shall commence on the day the senate advises and consents to the executive director’s nomination and the executive director shall not be limited in the number of terms served. If a vacancy occurs during a term, the governor shall appoint an interim executive director whose appointment shall expire if the senate does not advise and consent to the nomination of an executive director at the next regular session of the legislature after the vacancy occurs. The salary of the executive director shall be set by the

school facilities board and the executive director shall be included in any benefit program generally applicable to the officers and employees of the State.

- (c) The executive director shall:
- (1) Serve as the [agency's] authority's chief executive officer[;] and chief procurement officer;
 - (2) Be responsible for carrying out the purposes of the [agency;] au-
thority; and
 - (3) Serve on a full-time basis.

§§302A-1703 Powers; generally. (a) Except as otherwise limited by this chapter, the [agency] authority 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.] The authority shall comply with chapter 103D.~~

(c) Except as otherwise limited by this chapter, the [agency] authority 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[;], including qualifications for persons and entities wishing to enter into a public-private partnership with the authority, as permitted in paragraph (7);
- (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;]~~ Acquire property by condemnation pursuant to chapter 101;
- (7) ~~[By itself, or in partnership]~~ Enter into partnerships with qualified persons, including public-private[;] partnerships, as defined in the authority's rules, to acquire, [reacquire,] construct, reconstruct, rehabilitate, improve, alter, or provide for the construction, reconstruction, improvement, or alteration of any project; [own, hold, hold title,] and 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)] (8) 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;
- [(40)] (9) 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;
- [(41)] ~~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;~~
- [(42)] (10) Procure insurance against any loss in connection with its property and other assets and operations in amounts and from insurers as it deems desirable;
- [(43)] (11) ~~[Contract]~~ Apply 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;
- [(44)] ~~Issue bonds for the purpose of financing any project; and]~~
- (12) Borrow money or procure loan guarantees from the federal government for or in aid of any project the authority is authorized to undertake pursuant to this chapter. Additionally, in connection with borrowing or procurement of loan guarantees, the authority:
 - (A) Shall comply with conditions required by the federal government pursuant to applicable regulation or required in any contract for federal assistance;
 - (B) Shall repay indebtedness incurred pursuant to this section, including any interest thereon;
 - (C) May execute loan and security agreements and related contracts with the federal government;
 - (D) May issue bonds pledging revenues, assessments, or other taxes as security for indebtedness incurred pursuant to this section; and
 - (E) May enter into financing agreements as that term is defined in section 37D-1;
- (13) Appoint or retain by contract one or more attorneys who are independent of the attorney general to provide legal services solely in cases of negotiations in which the attorney general lacks the sufficient expertise: provided that the independent attorney shall consult and work in conjunction with the designated deputy attorney general;
- (14) Use the department of human resources development to recruit, hire, and retain exempt employees, architects, engineers, existing civil service positions, and other technical positions for the development, planning, and construction related to capital improvement projects; 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]~~ authority 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-1704]]~~ **School facilities authority board.** (a) There is established ~~[within the department for administrative purposes only a]~~ the school facilities authority board[-], which shall head and oversee the authority.

(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 public school facilities; ~~[and]~~
- (3) Include one member ~~[representing]~~ actively or previously engaged in the construction industry[-] for at least five years; and
- (4) Serve without compensation but may be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(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;]~~ All matters related to the projects the authority is authorized and responsible for initiating and completing under this subpart, including preferred strategies to complete those projects; and
- (2) Evaluating the performance of the authority's 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] that include 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-1705 Use of public lands; acquisition of state lands. (a)

If state lands, other than public lands, under the control and management of another department or agency are required by the [agency] authority for [its] purposes[-] of this chapter, the department or agency having [the] control and management of [those] the required lands, upon a request by the [agency] authority and with the approval of the governor, [may] shall convey title or lease those lands to the [agency] authority upon terms and conditions as may be agreed to by the parties; provided that [any lands for which] at the request of the authority, the department [currently] shall transfer any land to which it holds title [that are agreed to be transferred shall be transferred] to the [agency no later than January 1, 2021.] authority.

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

~~(b)~~ (c) Notwithstanding the foregoing and section 302A-1703(c), no [public] lands shall be conveyed or leased to the [agency] authority 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.

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

§302A-1706 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 the authority receives, including funds appropriated or transferred by the legislature for [any public school development, planning, or construction related to a capital improvement project;] deposit into the special fund;
- (2) [Revenues] Funds collected pursuant to section 302A-1608(a); provided that these moneys shall be deposited into the appropriate sub-account 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] the development, planning, or construction [related to a capital improvement project, including funds transferred to the special fund by the agency pursuant to subsection (e);] of new school facilities or major renovations of school facilities; and
- ~~(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.]
- (4) All other moneys received by the authority and not deposited into a trust fund or trust account, including unrestricted grants, gifts, and donations; proceeds from sales of property; rents and other receipts from leases, rights of entry, and the like; and interest, refunds, and other receipts and payments.

(b) The [agency] authority shall establish and appropriately name sub-accounts 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 section 302A-1608(a) or restricted ~~[to another specific]~~ for a specified purpose pursuant to part V, subpart B of this chapter.

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

(d) Subject to chapter 84, ~~[but]~~ any other 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.]~~ authority. If all or any portion of any salary of the executive director or any officer, agent, or employee of the ~~[agency]~~ authority is funded pursuant to this subsection, the ~~[agency]~~ authority 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)]~~ (e) The ~~[agency]~~ authority 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]~~ authority 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]~~ authority's report to the legislature pursuant to section 302A-1707.

~~[(g)]~~ (f) 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-1707]] Annual report. At least twenty days prior to the convening of each regular session, the ~~[agency]~~ authority shall submit to the governor, board of education, and legislature, a complete and detailed report of its activities during the prior fiscal year.”

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

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

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

“SECTION 10. The school facilities ~~[agency]~~ authority 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,]~~ 2022, identifying positions of the department of education that should be transferred to the school facilities ~~[agency]~~ authority ~~[established by section 1 of this Act,]~~ including positions responsible for ~~[public school]~~ implementing the provisions of sections 302A-1151.1 and 302A-1151.2, Hawaii Revised Statutes, subpart B, part VI of chapter 302A, Hawaii Revised Statutes, and the development, planning, and construction ~~[related to capital improvement projects,]~~ of public

school facilities that the school facilities authority is authorized to undertake and complete, along with proposed legislation to further implement the transfer of positions and related records and equipment to effectuate the purpose of this Act.”

PART III

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

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

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State; provided that if the attorney general is requested to provide representation to a court or judicial office by the chief justice or the chief justice’s designee, or to a legislative office by the speaker of the house of representatives and the president of the senate jointly, and the attorney general declines to provide such representation on the grounds of conflict of interest, the attorney general shall retain an attorney for the court, judicial, or legislative office, subject to approval by the court, judicial, or legislative office;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the office of Hawaiian affairs;
- (8) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485A;
- (9) As grand jury counsel;
- (10) By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;
- (11) By the auditor;
- (12) By the office of ombudsman;
- (13) By the insurance division;
- (14) By the University of Hawaii;
- (15) By the Kahoolawe island reserve commission;
- (16) By the division of consumer advocacy;
- (17) By the office of elections;
- (18) By the campaign spending commission;
- (19) By the Hawaii tourism authority, as provided in section 201B-2.5;
- (20) By the division of financial institutions;
- (21) By the office of information practices; ~~or~~
- (22) By the school facilities authority; or
- ~~[(22)]~~ (23) By a department, if the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ

or retain an attorney for a department; provided that the governor waives the provision of this section.”

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

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

- (1) Commissioned and enlisted personnel of the Hawaii National Guard as such, and positions in the Hawaii National Guard that are required by state or federal laws or regulations or orders of the National Guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each

- department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
 - (11) (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work;
 - (B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;
 - (C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and
 - (D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
 - (12) Employees engaged in special, research, or demonstration projects approved by the governor;
 - (13) (A) Positions filled by inmates, patients of state institutions, persons with severe physical or mental disabilities participating in the work experience training programs;
 - (B) Positions filled with students in accordance with guidelines for established state employment programs; and
 - (C) Positions that provide work experience training or temporary public service employment that are filled by persons entering the workforce or persons transitioning into other careers under programs such as the federal Workforce Investment Act of 1998, as amended, or the Senior Community Service Employment Program of the Employment and Training Administration of the United States Department of Labor, or under other similar state programs;
 - (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;
 - (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
 - (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, article V, of the Hawaii State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the ap-

- proval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;
- (17) Positions specifically exempted from this part by any other law; provided that:
 - (A) Any exemption created after July 1, 2014, shall expire three years after its enactment unless affirmatively extended by an act of the legislature; and
 - (B) All of the positions defined by paragraph (9) shall be included in the position classification plan;
 - (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
 - (19) Household employees at the official residence of the president of the University of Hawaii;
 - (20) Employees in the department of education engaged in the supervision of students during meal periods in the distribution, collection, and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;
 - (21) Employees hired under the tenant hire program of the Hawaii public housing authority; provided that not more than twenty-six per cent of the authority's workforce in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
 - (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
 - (23) Positions filled by persons with severe disabilities who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
 - (24) The sheriff;
 - (25) A gender and other fairness coordinator hired by the judiciary;
 - (26) Positions in the Hawaii National Guard youth and adult education programs;
 - (27) In the state energy office in the department of business, economic development, and tourism, all energy program managers, energy program specialists, energy program assistants, and energy analysts;
 - (28) Administrative appeals hearing officers in the department of human services;
 - (29) In the Med-QUEST division of the department of human services, the division administrator, finance officer, health care services branch administrator, medical director, and clinical standards administrator;
 - (30) In the director's office of the department of human services, the enterprise officer, information security and privacy compliance officer, security and privacy compliance engineer, and security and privacy compliance analyst; ~~and~~
 - (31) The Alzheimer's disease and related dementia services coordinator in the executive office on aging[-]; and

(32) The executive director and seven full-time administrative positions of the school facilities authority.

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

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

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

“§171-2 **Definition of public lands.** “Public lands” means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including lands accreted after May 20, 2003, and not otherwise awarded, submerged lands, and lands beneath tidal waters that are suitable for reclamation, together with reclaimed lands that have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands set aside by the governor to the Hawaii public housing authority or lands to which the Hawaii public housing authority in its corporate capacity holds title;
- (9) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (10) Lands that are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;
- (11) Lands that are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title;
- (12) Lands to which the Hawaii technology development corporation in its corporate capacity holds title; ~~and~~
- (13) Lands to which the department of education holds title; and
- (14) Lands to which the school facilities authority holds title;

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

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

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

- (1) Land set aside pursuant to law for the use of the United States;
- (2) Land to which the United States relinquished the absolute fee and ownership under section 91 of the Organic Act prior to the admission of Hawaii as a state of the United States;
- (3) Land to which the University of Hawaii holds title;
- (4) Land to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (5) Land to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (6) Land that is set aside by the governor to the Aloha Tower development corporation; or land to which the Aloha Tower development corporation holds title in its corporate capacity;
- (7) Land that is set aside by the governor to the agribusiness development corporation; or land to which the agribusiness development corporation in its corporate capacity holds title;
- (8) Land to which the Hawaii technology development corporation in its corporate capacity holds title;
- (9) Land to which the department of education holds title; ~~and~~
- (10) Land to which the Hawaii public housing authority in its corporate capacity holds title~~[-]; and~~
- (11) Land to which the school facilities authority holds title.”

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

1. By adding a new definition to be appropriately inserted and to read: “‘‘Authority’’ means the school facilities authority established by section 302A-1702.”

2. By amending the definition of “school facilities” to read: “‘‘School facilities’’ means the facilities owned or operated by the [~~agen-~~ey,] authority or the department, or the facilities included in the [~~agency~~] authority or the department’s capital budget or capital facilities plan.”

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

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

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

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

- (1) Any form of housing permanently excluding school-aged children, with the necessary covenants or declarations of restrictions recorded on the property;
- (2) Any form of housing that is or will be paying the transient accommodations tax under chapter 237D;
- (3) All nonresidential development; and
- (4) Any development with an executed education contribution agreement or other like document with the [agency] authority or the department for the contribution of school sites or payment of fees for school land or school construction.”

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

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

- (1) A new residential development with fifty or more units shall include a written agreement between the owner or developer of the property and the [agency;] authority, executed prior to issuance of a building permit, under which the owner or developer has:
 - (A) Agreed to designate an area to be dedicated for one or more schools for the development, subject to approval by the [agency;] authority; or
 - (B) Agreed to pay to the [agency;] authority, at a time specified in the agreement, a fee in lieu of land dedication;
- (2) A new residential development with less than fifty units shall include a written agreement between the owner or the developer of the property and the [agency;] authority, executed prior to the issuance of the building permit, under which the owner or developer has agreed to a time specified for payment for the fee in lieu;
- (3) Prior to approval of any change of zoning, subdivision, or any other approval for a:
 - (A) Residential development with fifty or more units; or
 - (B) Condominium property regime development of fifty or more units,
 the [agency] authority shall notify the approving [agency] entity of its determination on whether it will require the development to dedicate land, pay a fee in lieu thereof, or a combination of both for the provision of new school facilities;
- (4) The [agency’s] authority’s determination to require land dedication or the payment of a fee in lieu, or a combination of both, shall be guided by the following criteria:
 - (A) The topography, geology, access, value, and location of the land available for dedication;
 - (B) The size and shape of the land available for dedication;
 - (C) The location of existing or proposed schooling facilities; and

- (D) The availability of infrastructure;
- (5) The determination of the [agency] authority as to whether lands shall be dedicated or whether a fee in lieu shall be paid, or a combination of both, shall be final;
 - (6) When land dedication is required, the land shall be conveyed to the State upon completion of the subdivision improvements and any offsite infrastructure necessary to serve the land; and
 - (7) When the payment of a fee in lieu is required, the fee in lieu shall be paid based on the terms contained in the written agreement.
- (d) In determining the value per acre for any new residential development, the fee simple value of the land identified for the new or expanded school facility shall be based on the appraised fair market value of improved, vacant land, zoned for residential use, and serviced by roads, utilities, and drainage. An appraiser, licensed pursuant to chapter 466K, who is selected and paid for by the developer, shall determine the value of the land. If the [agency] authority does not agree with the developer's appraisal, the [agency] authority may engage another licensed appraiser at its own expense, and resolve, through negotiation between the two appraisers, a fair market value. If neither party agrees, the first two appraisers shall select the third appraiser, with the cost of the third appraisal being shared equally by the [agency] authority and the developer, and the third appraisal shall be binding on both parties."

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

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

1. By substituting the term "school facilities authority", or similar term, wherever the word "department" appears.
2. By substituting the term "school facilities authority" wherever the word "board" or "board of education" appears.

PART IV

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

SECTION 15. All deeds, lease, contracts, loans, agreements, permits, or other documents relating to the school impact fees executed or entered into by or on behalf of the department of education, pursuant to the provisions of the Hawaii Revised Statutes, that are reenacted or made applicable to the school facilities board by Act 72, Session Laws of Hawaii 2020, shall remain in full force

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and effect. Effective July 1, 2021, every reference to the department of education, board of education, chairperson of the board of education, or superintendent of education relating to the school impact fees in those deeds, leases, contracts, loans, agreements, permits, or other documents shall be construed as a reference to the school facilities authority, executive director of the school facilities authority, school facilities board, or chairperson of the school facilities board, as appropriate.

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

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

SECTION 18. This Act shall take effect on July 1, 2021.

(Approved July 6, 2021.)