



DEPT. COMM. NO. 116

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

November 5, 2019

The Honorable Ronald D. Kouchi, President
and Members of the Senate
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of Representative
State Capitol, Room 431
Honolulu, Hawaii 96183

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Annual Report on the Pilot Project for Lease of Public School Lands, pursuant to Section 302A-1151.1, Hawaii Revised Statutes (HRS) 2013 (Note: L 2013, c 155, §4). In accordance with section 93-16, HRS, I am also informing you that the report may be viewed electronically at <http://www.hawaiipublicschools.org/VisionForSuccess/SchoolDataAndReports/StateReports/Pages/Legislative-reports.aspx>.

Sincerely,

Dr. Christina M. Kishimoto
Superintendent

CMK:kgm
Enclosures

c: Legislative Reference Bureau
Office of Facilities and Operations



State of Hawaii
Department of Education

Annual Report on Pilot Project for Lease of Public School Lands

November 2019

§302A-1151.1 (Note: L 2013, c 155, §4) Hawaii Revised Statutes (HRS) requires the Department of Education (DOE) to report on the Public School Land Pilot Program until completion of projects.

The Pilot Project for Lease of Public School Lands, §302A-1151.1 HRS, was enacted on June 21, 2013 as a pilot program to allow the DOE to explore the possibility of managing public school properties to generate revenue for modern improvements to its educational facilities. This is the sixth report to the legislature documenting DOE activities to date.

Annual Report on Pilot Project for Lease of Public School Lands

(1) Project Timeline:

§302A-1151.1 HRS requires the Department of Education (DOE) to focus on underutilized assets to increase the educational benefit to students statewide.

Since the enactment of §302A-1151.1 HRS, the DOE has been working:

- With the Hawaii Housing Finance Development Corporation (HHFDC) to establish a process that will allow HHFDC to assist DOE in the redevelopment of DOE facilities using the HHFDC existing staff and procedures;
- Through issues related to each unique project site;
- With a demographer to establish projected student enrollments along the transit corridor;
- To develop a process specific to public private projects; and
- With the legislature to transfer City and County of Honolulu (City)-owned school lands to the State of Hawaii (State), to enable the DOE to hold fee title on property, and to transfer fee for State public school lands to the DOE.

2019 Actions

The Board of Education (BOE), Finance and Infrastructure Committee (FIC) asked the DOE to proceed with due diligence on four (4) sites:

- 475 22nd Avenue
- 1106 Koko Head Avenue
- 3633 Waialae Avenue
- 4087 Diamond Head Road

The DOE re-initiated consultant due diligence work on the four (4) sites.

The DOE met with HHFDC to discuss the transfer the fee from City and the Department of Land and Natural Resources (DLNR) public school lands (pursuant to Act 206 SLH 2017 and Act 201 SLH 2018) to the DOE. It was concluded that the DOE should seek a legislative amendment that would enable the DOE to lease public school lands for up to 99 years, extending the lease from 55 years to accommodate greater flexibility in project type and development funding. SB1303, identified the need/value for the 99 year lease authority, was supported by the DOE and became law in August 2019.

The DOE and HHFDC met to examine the possibility of a development model to support low cost teacher housing. The initial issue was that of land value in areas where teacher housing might attract teachers to local schools, verses the placement of teacher housing in a Transit Oriented Development area. In both cases it was determined that the land value would only provide a modest reduction in a limited number of rental unit within a larger

housing development. To build a structure specifically for teacher housing would require a substantial capital investment from the State.

February 2019, the DOE sent a letter to the Department of the Attorney General (AG) asking for clarification on the DOE's authority to enter into a direct lease on the 3633 Waialae Avenue property. The AG advised that this would not be allowed under current State law.

March 2019, a DOE request, to transfer fee on the four (4) identified sites to the DOE, was approved by the Board of Land and Natural Resources.

April 2019, the DOE negotiated an easement-based solution for the quit-claim deed transfer of City lands to the State/DOE (pursuant to Act 206 SLH 2017 and Act 210 SLH 2018), allowing accessibility to City systems and improvements on public school lands.

Continued due diligence, on the remaining candidate sites, determined there was a sewer capacity issue with two of the sites. The DOE asked the consultant engineers to estimate the area of improvement and the associated cost. Discussions with the City determined the DOE, or project developers, would need to bear the initial cost of these improvements. The City did offer, that once the sewer improvements were made, connection fees could be collected to repay the cost.

August 2019, as the initial work began on a draft Request for Proposals (RFP) for one of the four (4) sites, the DOE received a letter for the Department of Budget and Finance (B&F) indicating that *“entering into a long-term lease of public school land and related improvements with a private developer pursuant to Act 155, is problematic in any case where appropriations of proceeds of outstanding tax-exempt G.O. Bonds were used for the acquisition, construction, or improvement of such land. Federal tax law imposes restrictions on the private use, including a lease to a private developer, of property financed with tax-exempt G.O. Bonds. These restrictions apply for as long as the tax-exempt G.O. Bonds are outstanding. Failure to comply with federal rules on the private use of bond-financed property could jeopardize the tax-exempt status of the G.O. Bonds, resulting in significant adverse consequences to bondholders or forcing the State to incur costly measures to remediate the tax law violations.”*

The DOE subsequently met with the University of Hawaii Development Branch to discuss this issue and their process for developing public land. A response memo to B&F was drafted, citing the conditions under which the DOE would hope to proceed with Act 155. Based on the memo from B&F, the properties that the DOE hopes to pursue for pilot projects will be:

- Public school lands not acquired using appropriations of tax- exempt General Obligation (G.O.) Bonds; and,
- State-owned properties with no bond-financed improvements, or properties where such improvements have exceeded their life-cycle utility and are scheduled to be demolished.

(2) Summary of the DOE activities, results, and recommendations to optimize the use of public school lands as a means to build or renovate 21st century schools and school-centered communities:

Since the enactment of §302A-1151.1 HRS, the DOE has worked to create a process for how sites are selected and subsequently developed.

I. Site Selection:

The DOE initially developed site selection criteria for all school lands, in anticipation of the results of a Strategic Master Plan (SMP). When the SMP was redirected to a gap analysis the issue of site selection was refocused on non-school sites, which would provide the most viable candidates for development. Meetings have been held with numerous private developers to better understand what investors consider in developing or redeveloping sites. Through these discussions it was determined that site location, site size, zoning, market demand, and community support are facets that developers consider most important.

The DOE has also consulted with government regulatory agencies to determine the process for compliance with Chapter 343 HRS, county zoning, and the disposition of public lands (i.e. DOE Facilities). This fact finding and analysis will be used in the development, or redevelopment, of the pilot project sites.

Given the non-school nature of the initial pilot project selection, the DOE has yet to formally engage in community discussions. The intent is, to work out the mechanics of the process, to determine each site's development potential, to forecast potential obstacles, so as to ensure the viability of the projects before engaging with stakeholders.

II. Program Communication:

The DOE shall develop a communication plan for each project once the short list of sites has been finalized. The DOE's Communications Branch will initiate public relations efforts and will coordinate outreach with the identified communities.

III. On-going Consultation:

The DOE will continue its efforts to involve all pertinent entities on the site selection and development/redevelopment process. This includes conversations with specific communities once the short-list of sites has been fully established, as well as a representation of stakeholders, educators, community leaders, community program providers, real estate developers and investors, elected officials, and municipal leaders, etc. This group will review the short-list of sites, the process and criteria for selection, and make recommendations for final three (3) sites to be selected. The BOE will take recommendations under advisement and will make final site approvals.

(3) Summary of all school and community engagement efforts undertaken or that will be undertaken by the DOE in carryout of the pilot program:

Once the final candidate pilot project sites are approved by the BOE, community engagement will begin. Since the initial enactment of §302A-1151.1 HRS, it has been understood that community engagement is key to the success of the program.

(4) Summary of the DOE's current and project budgeted expenses, including the identification of any contracts with third parties and the creation of temporary positions within the DOE in carrying out the pilot program.

§302A-1151.1 HRS provided \$100,000 in appropriations for the first year of the program. To date, an additional \$835,694.34 has been obligated for consultant support services. Given the effective scope of the program, extended appropriations **for an additional \$500,000 for Fiscal Year 2021 is requested.** This funding will be used to support the balance of the program requirements leading to the successful implementation of the three (3) pilot projects.

The additional funds requested will support the preparation of an environmental assessment or environmental impact statement for each of the three (3) pilot sites (per Chapter 343 HRS), cost associated with additional site due diligence, and the cost of developing and managing the RFP process.

(5) Summary of any capacity and funding issues or challenges the DOE has encountered in carrying out the pilot project:

Since the enactment of the program, the DOE has been able to effectively move the program forward with the help of consultants specialized in property development. As the program begins to take on a greater dimension there will be a greater demand on DOE staff. Funding levels, as described in paragraph four (4), will allow the DOE to continue to receive support from consultants throughout the program. Should the program be extended beyond the three (3) pilot sites, the DOE will require additional staffing to support.

One of the biggest hurdles, in developing school sites, has been the issue of land ownership. With the recent passing of Act 210, 2018 the DOE can now hold fee on public school lands. As properties are transferred from the City to the State, and from the State to the DOE, we will be better able to estimate the long range value of Act 155 as a model for further public school land development.