



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

September 15, 2020

GOV. MSG. NO. 1177

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

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

This is to inform you that on September 15, 2020, the following bill was signed into law:

SB3103 SD2 HD2

RELATING TO A SCHOOL FACILITIES AGENCY.
Act 072 (20)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on SEP 15 2020

THE SENATE
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

ACT 072

S.B. NO. 3103
S.D. 2
H.D. 2

A BILL FOR AN ACT

RELATING TO A SCHOOL FACILITIES AGENCY.

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

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

4 " . School Facilities Agency

5 **§302A-A Definitions.** As used in this subpart, "agency"
6 means the school facilities agency established by
7 section 302A-B.

8 **§302A-B School facilities agency; established.** (a) There
9 is established the school facilities agency, which shall be a
10 body corporate and a public instrumentality of the State, for
11 the purpose of implementing this subpart. The agency shall be
12 placed within the department for administrative purposes only.

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

16 (1) Exempt from chapter 76 and the term limitation in
17 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.

6 (c) The executive director shall:

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

8 (2) Be responsible for carrying out the purposes of the
9 agency; and

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

11 **§302A-C Powers; generally.** (a) Except as otherwise
12 limited by this chapter, the agency shall be responsible for all
13 public school development, planning, and construction related to
14 capital improvement projects assigned by the legislature,
15 governor, or board of education. The agency shall act as its
16 procurement officer.

17 (b) Any award of a contract for construction shall be
18 subject to the requirements of section 103D-302; provided that
19 the agency shall give preference to construction bids submitted
20 by a contractor or subcontractor domiciled within the State.

21 Notwithstanding subsection (a), professional services contracts



1 for licensees under chapter 464 shall be procured in accordance
2 with section 103D-304.

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

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

6 (2) Subject to subsection (b), make and execute contracts
7 and all other instruments necessary or convenient for
8 the exercise of its powers and functions under this
9 subpart;

10 (3) Make and alter bylaws for its organization and
11 internal management;

12 (4) Adopt rules pursuant to chapter 91 with respect to its
13 projects, operations, properties, and facilities;

14 (5) Acquire, reacquire, or contract to acquire or
15 reacquire by grant or purchase real, personal, or
16 mixed property or any interest therein; to own, hold,
17 hold title, clear, improve, and rehabilitate and to
18 sell, assign, exchange, transfer, convey, lease, or
19 otherwise dispose of or encumber the same;

20 (6) Acquire or reacquire by condemnation real, personal,
21 or mixed property or any interest therein for public



1 facilities, including but not limited to streets,
2 sidewalks, parks, schools, and other public
3 improvements;

4 (7) By itself, or in partnership with qualified persons,
5 including public-private partnerships, acquire,
6 reacquire, construct, reconstruct, rehabilitate,
7 improve, alter, or provide for the construction,
8 reconstruction, improvement, or alteration of any
9 project; own, hold, hold title, sell, assign,
10 transfer, convey, exchange, lease, or otherwise
11 dispose of or encumber any project, and in the case of
12 the sale of any project, accept a purchase money
13 mortgage in connection therewith; and repurchase or
14 otherwise acquire any project that the agency has
15 theretofore sold or otherwise conveyed, transferred,
16 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) Grant options to purchase any project or to renew any
4 lease entered into by it in connection with any of its
5 projects, on terms and conditions as it deems
6 advisable;
- 7 (10) Prepare or cause to be prepared plans, specifications,
8 designs, and estimates of costs for the construction,
9 reconstruction, rehabilitation, improvement, or
10 alteration of any project, and from time to time to
11 modify the plans, specifications, designs, or
12 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) Procure insurance against any loss in connection with
2 its property and other assets and operations in
3 amounts and from insurers as it deems desirable;

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

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

10 (15) Do any and all things necessary to carry out its
11 purposes and exercise the powers given and granted in
12 this subpart.

13 (d) Prior to project approval, the agency shall consult
14 with the Hawaii state public library system regarding any
15 construction or renovation projects for school lands that are
16 adjacent to or have Hawaii state public library facilities on
17 them.

18 **§302A-D School facilities board.** (a) There is
19 established within the department for administrative purposes
20 only a school facilities board.



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

3 (1) Be appointed by the governor pursuant to section
4 26-34;

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

6 (3) Include one member representing the construction
7 industry.

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

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

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

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



1 (e) The school facilities board may form workgroups and
2 subcommittees, including with individuals who are not school
3 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 than
13 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-E Use of public lands; acquisition of state lands.**

13 (a) If state lands under the control and management of another
14 department are required by the agency for its purposes, the
15 department having the control and management of those required
16 lands, upon request by the agency and with the approval of the
17 governor, may convey or lease those lands to the agency upon
18 terms and conditions as may be agreed to by the parties;
19 provided that any lands for which the department currently holds
20 title that are agreed to be transferred shall be transferred to
21 the agency no later than January 1, 2021.



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

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

11 **§302A-F School facilities special fund.** (a) There is
12 established within the state treasury a special fund to be known
13 as the school facilities special fund into which shall be
14 deposited:

15 (1) All moneys appropriated by the legislature for any
16 public school development, planning, or construction
17 related to a capital improvement project;

18 (2) Revenues pursuant to 302A-1608(a); provided that these
19 moneys shall be deposited into the appropriate
20 subaccount established pursuant to subsection (b);



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



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

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

18 (f) The agency shall submit to the director of finance a
19 report that shall be prepared in the form prescribed by the
20 director of finance and shall identify the total amount of funds
21 in the school facilities special fund that will carry over to



1 the next fiscal year. The agency shall submit the report to the
2 director of finance within ninety days of the close of each
3 fiscal year and a copy of the information contained in the
4 report to the director of finance shall be included within the
5 agency's report to the legislature pursuant to section 302A-G.

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

10 **§302A-G Annual report.** At least twenty days prior to the
11 convening of each regular session, the agency shall submit to
12 the governor, board of education, and legislature, a complete
13 and detailed report of its activities during the prior fiscal
14 year."

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

17 "(a) There is hereby established and authorized the
18 financing agreement program of the State. Any agency desiring
19 to acquire or improve projects through the financing agreement
20 program established and authorized by this chapter shall submit
21 a written request to the department providing any information



1 that the department shall require. Notwithstanding any other
2 law to the contrary, and except for the Hawaii health systems
3 corporation and its regional system boards, only with the
4 approval by the attorney general as to form and legality and
5 upon the written request of one or more agencies may the
6 department enter into a financing agreement in accordance with
7 this chapter, and only with the approval by the attorney general
8 as to form and legality, and by the director as to fiscal
9 responsibility, and upon the written request of an agency, the
10 agency may enter into a financing agreement in accordance with
11 this chapter, [~~except that the department of education may enter~~
12 ~~into a financing agreement in accordance with section 36-32 with~~
13 ~~the concurrence of the director and with the approval of the~~
14 ~~attorney general as to form and legality;~~] and that the board of
15 regents of the University of Hawaii may enter into a financing
16 agreement in accordance with this chapter without the approval
17 of the director and of the attorney general as to form and
18 legality if the principal amount of the financing agreement does
19 not exceed \$3,000,000. A financing agreement may be entered
20 into by the department on behalf of one or more agencies, or by
21 an agency, at any time (before or after commencement or



1 completion of any improvements or acquisitions to be financed)
2 and shall be upon terms and conditions the department finds to
3 be advantageous. In each case of a written request by the
4 judiciary to participate in the financing agreement program, the
5 department shall implement the request; provided that the
6 related financing agreement shall be upon terms and conditions
7 the department finds to be advantageous. Any financing
8 agreement entered into by the department without the approval,
9 or by an agency without the approvals required by this section
10 shall be void and of no effect. A single financing agreement
11 entered into by the department may finance a single item or
12 multiple items of property to be used by multiple agencies or
13 may finance a single item or multiple items of property to be
14 used by a single agency. If the financing agreement is by the
15 department, the department shall bill any agency that benefits
16 from property acquired with the proceeds of a financing
17 agreement for the agency's pro rata share of:

- 18 (1) The department's costs of administration of the
19 financing agreement program; and



1 (2) The financing costs, including the principal and
2 interest components of the financing agreement and
3 insurance premiums,
4 on a monthly or other periodic basis, and may deposit payments
5 received in connection with the billings with a trustee as
6 security for the financing agreement. Any agency receiving such
7 a bill shall be authorized and shall pay the amounts billed from
8 available moneys.

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

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



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

3 (1) The governor, the lieutenant governor, the members of
4 the legislature, and delegates to the constitutional
5 convention; provided that delegates to the
6 constitutional convention shall only be required to
7 file initial disclosures;

8 (2) The directors and their deputies, the division chiefs,
9 the executive directors and the executive secretaries
10 and their deputies, the purchasing agents and the
11 fiscal officers, regardless of the titles by which the
12 foregoing persons are designated, of every state
13 agency and department;

14 (3) The permanent employees of the legislature and its
15 service agencies, other than persons employed in
16 clerical, secretarial, or similar positions;

17 (4) The administrative director of the State, and the
18 assistants in the office of the governor and the
19 lieutenant governor, other than persons employed in
20 clerical, secretarial, or similar positions;



- 1 (5) The hearings officers of every state agency and
2 department;
- 3 (6) The president, the vice presidents, assistant vice
4 presidents, the chancellors, and the provosts of the
5 University of Hawaii and its community colleges;
- 6 (7) The superintendent, the deputy superintendent, the
7 assistant superintendents, the complex area
8 superintendents, the state librarian, and the deputy
9 state librarian of the department of education;
- 10 (8) The administrative director and the deputy director of
11 the courts;
- 12 (9) The members of every state board or commission whose
13 original terms of office are for periods exceeding one
14 year and whose functions are not solely advisory;
- 15 (10) Candidates for state elective offices, including
16 candidates for election to the constitutional
17 convention, provided that candidates shall only be
18 required to file initial disclosures;
- 19 (11) The administrator and assistant administrator of the
20 office of Hawaiian affairs; [~~and~~]



1 (12) The Hawaii unmanned aerial systems test site chief
2 operating officer[-] and

3 (13) The members of the school facilities board appointed
4 by the governor."

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

7 ~~["§36-32 State educational facilities improvement special~~

8 ~~fund. (a) There is created in the treasury of the State the~~

9 ~~state educational facilities improvement special fund. The~~

10 ~~special fund shall be used solely to plan, design, acquire lands~~

11 ~~for, and to construct public school facilities and to provide~~

12 ~~equipment and technology infrastructure to improve public~~

13 ~~schools and other facilities under the jurisdiction of the~~

14 ~~department of education, except public libraries. In addition,~~

15 ~~activities of the department of education intended to eliminate~~

16 ~~the gap between the facility needs of schools and available~~

17 ~~resources shall be eligible for funding from the special fund.~~

18 ~~Expenditures from the special fund shall be limited to projects~~

19 ~~authorized by the legislature for fiscal years ending prior to~~

20 ~~July 1, 2016, and shall be subject to sections 37-31, and 37-33~~

21 ~~through 37-40. Appropriations or authorizations from the~~



1 ~~special fund shall be expended by the superintendent of~~
2 ~~education.~~

3 ~~(b) There is established within the state educational~~
4 ~~facilities improvement special fund a separate account, to be~~
5 ~~known as the lease payments for schools account, for lease~~
6 ~~payments required by financing agreements entered into prior to~~
7 ~~July 1, 2013, by the department of education pursuant to this~~
8 ~~section and sections 37D-2 and 302A-1506. The lease payments~~
9 ~~for schools account shall be funded by legislative~~
10 ~~appropriations and expended by the superintendent of education.~~
11 ~~Expenditures from the lease payments for schools account shall~~
12 ~~be exempt from chapters 103 and 103D and are restricted to lease~~
13 ~~payments on new schools included within the department of~~
14 ~~education's current six year capital improvement programs and~~
15 ~~for which:~~

16 ~~(1) The legislature adopted a concurrent resolution~~
17 ~~directing the department of education to:~~
18 ~~(A) Build a new school in a specific geographic area~~
19 ~~using the design build method; and~~
20 ~~(B) Pursue the use of a financing agreement to build~~
21 ~~the new school; or~~



1 ~~(2) The legislature appropriated planning and design funds~~
2 ~~and specified that the remainder of the costs~~
3 ~~necessary to complete the project are eligible for~~
4 ~~funding through a financing agreement;~~
5 ~~provided that any school to which the legislature has~~
6 ~~appropriated planning and design funds prior to July 1, 2007,~~
7 ~~and for which a private developer is willing to enter into a~~
8 ~~lease-purchase agreement with the department of education within~~
9 ~~twelve months of July 1, 2007, is exempt from the requirements~~
10 ~~of paragraphs (1) and (2).~~

11 ~~(c) The department of education shall annually post on the~~
12 ~~department's website information related to a financial~~
13 ~~statement of the special fund, the lease payments for schools~~
14 ~~account established under subsection (b), and the status of~~
15 ~~projects undertaken pursuant to this section, no later than~~
16 ~~twenty days prior to the convening of each regular session."]~~

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



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

6 SECTION 7. Sections 302A-1602, 302A-1603, 302A-1604,
7 302A-1605, 302A-1606, 302A-1607, 302A-1609, 302A-1610,
8 302A-1611, and 302A-1612, Hawaii Revised Statutes, are amended
9 by substituting the word "agency", or similar term, wherever the
10 word "department", "department of education", or similar term,
11 appears, as the context requires.

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

17 SECTION 9. The development, planning, oversight,
18 management, and responsibility of the capital improvement
19 projects authorized by Act 155, Session Laws of Hawaii 2013; Act
20 115, Session Laws of Hawaii 2015; Act 206, Session Laws of
21 Hawaii 2017; Act 210, Session Laws of Hawaii 2018; and Act 272,



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

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

14 SECTION 11. In codifying the new sections added by section
15 1 of this Act, the revisor of statutes shall substitute
16 appropriate section numbers for the letters used in designating
17 the new sections in this Act.

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

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

APPROVED this 15 day of SEP, 2020

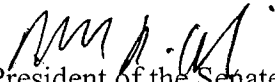



GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: July 10, 2020
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2020.


President of the Senate


Clerk of the Senate

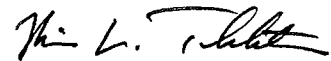
THE HOUSE OF REPRESENTATIVES OF THE
STATE OF HAWAII

Date: July 6, 2020
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2020.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives