
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.

16 (b) The projects of the agency shall be exempt from
17 chapters 6E, 37, 76, 103, 103D, and 343 and all county
18 ordinances except the respective building codes; provided that
19 the agency shall establish and publish transparency initiatives
20 as prescribed by the agency to ensure that the public is
21 properly informed of its activities, to deter fraud and



1 malfeasance, and to allow for public input; provided further
2 that the agency shall adopt rules that provide substantially
3 similar protections to those required by chapter 343; provided
4 further that the creation of the agency shall not effect
5 existing civil service positions; and provided further that any
6 invitation for bids for construction shall specify that all bids
7 include the name of each person or firm to be engaged by the
8 bidder as a joint contractor or subcontractor in the performance
9 of the contract and the nature and scope of the work to be
10 performed by each. Construction bids that do not comply with
11 this requirement may be accepted if acceptance is in the best
12 interest of the State and the value of the work to be performed
13 by the joint contractor or subcontractor is equal to or less
14 than one percent of the total bid amount; and provided further
15 that professional services contracts for licensees under chapter
16 464 shall be procured in accordance with section 103D-304.

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

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



- 1 (2) Make and execute contracts and all other instruments
2 necessary or convenient for the exercise of its powers
3 and functions under this subpart;
- 4 (3) Make and alter bylaws for its organization and
5 internal management;
- 6 (4) Make rules with respect to its projects, operations,
7 properties, and facilities, which rules shall be in
8 conformance with chapter 91;
- 9 (5) Through its executive director appoint officers,
10 agents, and employees, prescribe their duties and
11 qualifications, and fix their salaries, without regard
12 to chapter 76;
- 13 (6) Acquire, reacquire, or contract to acquire or
14 reacquire by grant or purchase real, personal, or
15 mixed property or any interest therein; to own, hold,
16 hold title, clear, improve, and rehabilitate and to
17 sell, assign, exchange, transfer, convey, lease, or
18 otherwise dispose of or encumber the same;
- 19 (7) Acquire or reacquire by condemnation real, personal,
20 or mixed property or any interest therein for public
21 facilities, including but not limited to streets,



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



- 1 (10) Grant options to purchase any project or to renew any
2 lease entered into by it in connection with any of its
3 projects, on terms and conditions as it deems
4 advisable;
- 5 (11) Prepare or cause to be prepared plans, specifications,
6 designs, and estimates of costs for the construction,
7 reconstruction, rehabilitation, improvement, or
8 alteration of any project, and from time to time to
9 modify the plans, specifications, designs, or
10 estimates;
- 11 (12) Provide advisory, consultative, training, and
12 educational services, technical assistance, and advice
13 to any person, partnership, or corporation, either
14 public or private, to carry out the purposes of this
15 subpart, and engage the services of consultants on a
16 contractual basis for rendering professional and
17 technical assistance and advice;
- 18 (13) Procure insurance against any loss in connection with
19 its property and other assets and operations in
20 amounts and from insurers as it deems desirable;



1 (14) Contract for and accept gifts or grants in any form
2 from any public agency or from any other source,
3 including gifts or grants from private individuals and
4 private entities;

5 (15) Issue bonds for the purpose of financing any project;

6 (16) Enter into public-private partnerships; and

7 (17) Do any and all things necessary to carry out its
8 purposes and exercise the powers given and granted in
9 this subpart.

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

15 **§302A-D School facilities board.** (a) There is
16 established within the department of education for
17 administrative purposes only a school facilities board.

18 (b) The school facilities board shall consist of seven
19 voting members. The superintendent of education, or the
20 superintendent's designee, and a member of the board of
21 education selected by the chairperson of the board of education



1 shall serve as ex officio, voting members of the school
2 facilities board. The other five members shall:

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

5 (2) Be subject to section 84-17; provided that board
6 members shall file confidential financial disclosure
7 statements; and

8 (3) Have an interest in school construction.

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

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

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

16 (d) The school facilities board shall select a chairperson
17 by a majority vote of its voting members. A majority of the
18 voting members serving on the board shall constitute a quorum to
19 conduct business. The concurrence of the majority of the voting
20 members serving on the board shall be necessary to make any
21 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 (A) Any financial interest in any entity that bids on
7 projects authorized by the agency; or

8 (B) Bid on any project within the last twelve months
9 prior to their appointment.

10 **§302A-E Use of public lands; acquisition of state lands.**

11 (a) If state lands under the control and management of another
12 department are required by the agency for its purposes, the
13 department having the control and management of those required
14 lands, upon request by the agency and with the approval of the
15 governor, may convey or lease those lands to the agency upon
16 terms and conditions as may be agreed to by the parties.

17 (b) Notwithstanding the foregoing and section 302A-C(c),
18 no public lands shall be conveyed or leased to the agency as
19 provided in this section if the conveyance or lease would impair
20 any covenant between the State or any county or any department



1 or board thereof and the holders of bonds issued by the State or
2 county, department, or board.

3 (c) Should state lands held by the agency no longer be
4 needed for school facilities purposes, said lands shall be
5 returned to the public trust administered by the department of
6 land and natural resources.

7 **§302A-F School facilities special fund.** (a) There is
8 established within the state treasury a special fund to be known
9 as the school facilities special fund into which shall be
10 deposited:

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

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

17 (3) Any other moneys received by the department in the
18 form of a grant, gift, endowment, or donation for any
19 public school development, planning, or construction
20 related to a capital improvement project;



1 (4) All moneys allocated to the fund by the governor or
2 board for a project;

3 (5) Any other appropriation by the legislature to the
4 fund; and

5 (6) Income and capital gains earned by the fund.

6 (b) The agency shall establish and appropriately name
7 subaccounts within the fund to accept deposits of revenues from
8 school impact fees that are required to be expended within a
9 specific school impact district pursuant to 302A-1608(a) or
10 restricted to another specific purpose pursuant to part V,
11 subpart B of this chapter.

12 (c) The special fund shall be administered by the agency
13 and used to fund any school development, planning, or
14 construction project within the jurisdiction of the agency.

15 (d) Any law to the contrary notwithstanding, the governor
16 may authorize expenditures from the special fund of any
17 donation, grant, bequest, and devise of money from any private
18 institution, person, firm, or corporation for the purposes of
19 funding the salaries of the executive director and any officers,
20 agents, and employees of the agency. If all or any portion of
21 any salary of the executive director or any officer, agent, or



1 employee of the agency is funded pursuant to this subsection,
2 the agency shall submit a report to the legislature detailing
3 the use of any funds authorized under this subsection no later
4 than twenty days prior to the convening of each regular session.

5 (e) The agency may transfer any other unencumbered or
6 unrestricted moneys received in the form of grants and donations
7 for school development, planning, or construction to the school
8 facilities special fund established by section 302A-B.

9 (f) The agency shall submit to the director of finance a
10 report that shall be prepared in the form prescribed by the
11 director of finance and shall identify the total amount of funds
12 in the school facilities special fund that will carry over to
13 the next fiscal year. The agency shall submit the report to the
14 director of finance within ninety days of the close of each
15 fiscal year and a copy of the information contained in the
16 report to the director of finance shall be included within the
17 agency's report to the legislature pursuant to section 302A-F.

18 (g) Within the school facilities special fund there shall
19 be established such accounts and subaccounts as may be necessary
20 from time to time in order to ensure compliance with the
21 Internal Revenue Code.



1 (h) Section 87-17 shall not apply to gifts and
2 contributions to the school facilities special fund.

3 §302A-G Annual report. The agency shall submit to the
4 governor, the board of education, and the legislature, at least
5 twenty days prior to the start of any regular session, a
6 complete and detailed report of its activities during the prior
7 fiscal year."

8 SECTION 2. Section 36-32, Hawaii Revised Statutes, is
9 repealed.

10 [~~§36-32 State educational facilities improvement special~~
11 ~~fund.~~ (a) ~~There is created in the treasury of the State the~~
12 ~~state educational facilities improvement special fund. The~~
13 ~~special fund shall be used solely to plan, design, acquire lands~~
14 ~~for, and to construct public school facilities and to provide~~
15 ~~equipment and technology infrastructure to improve public~~
16 ~~schools and other facilities under the jurisdiction of the~~
17 ~~department of education, except public libraries. In addition,~~
18 ~~activities of the department of education intended to eliminate~~
19 ~~the gap between the facility needs of schools and available~~
20 ~~resources shall be eligible for funding from the special fund.~~
21 ~~Expenditures from the special fund shall be limited to projects~~



1 ~~authorized by the legislature for fiscal years ending prior to~~
2 ~~July 1, 2016, and shall be subject to sections 37-31, and 37-33~~
3 ~~through 37-40. Appropriations or authorizations from the~~
4 ~~special fund shall be expended by the superintendent of~~
5 ~~education.~~

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

19 ~~(1) The legislature adopted a concurrent resolution~~
20 ~~directing the department of education to:~~



1 ~~(A) Build a new school in a specific geographic area~~
2 ~~using the design build method; and~~

3 ~~(B) Pursue the use of a financing agreement to build~~
4 ~~the new school; or~~

5 ~~(2) The legislature appropriated planning and design funds~~
6 ~~and specified that the remainder of the costs~~
7 ~~necessary to complete the project are eligible for~~
8 ~~funding through a financing agreement;~~

9 ~~provided that any school to which the legislature has~~
10 ~~appropriated planning and design funds prior to July 1, 2007,~~
11 ~~and for which a private developer is willing to enter into a~~
12 ~~lease purchase agreement with the department of education within~~
13 ~~twelve months of July 1, 2007, is exempt from the requirements~~
14 ~~of paragraphs (1) and (2).~~

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



1 SECTION 3. Any remaining balance in the state educational
2 facilities improvement special fund at the time of repeal, shall
3 be transferred into the school facilities special fund as
4 established by section 4 of this Act.

5 SECTION 4. Sections 302A-1602, 302A-1603, 302A-1604,
6 302A-1605, 302A-1606, 30A-1607, 302A-1609, 302A-1610, 302A-1611,
7 and 302A-1612, Hawaii Revised Statutes, are amended by
8 substituting the word "agency", or similar term, wherever the
9 word "department", "department of education", or similar term,
10 appears, as the context requires.

11 SECTION 5. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$1,500,000 or so much
13 thereof as may be necessary for fiscal year 2020-2021 for the
14 establishment of the school facilities agency.

15 The sum appropriated shall be expended by the school
16 facilities agency for the purposes of this Act.

17 SECTION 6. This Act shall not be construed to transfer the
18 department of education office of facilities and operation,
19 including the facilities maintenance branch and auxiliary
20 services branch and any general fund and position
21 appropriations, to the school facilities agency.



1 SECTION 7. The development, planning, oversight,
2 management, and responsibility of the capital improvement
3 projects authorized by Act 155, Session Laws of Hawaii 2013; Act
4 115, Session Laws of Hawaii 2015; Act 206, Session Laws of
5 Hawaii 2017; Act 210, Session Laws of Hawaii 2018; and Act 272,
6 Session Laws of Hawaii 2019, are hereby transferred to the
7 school facilities agency.

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

19 SECTION 9. In codifying the new sections added by section
20 1 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 10. Statutory material to be repealed is bracketed
4 and stricken.

5 SECTION 11. This Act shall take effect on July 1, 2020.



S.B. NO. 3103
S.D. 1

Report Title:

School Facilities Agency; BOE; DOE; Construction; Appropriation

Description:

Establishes the School Facilities Agency to be responsible for all public school development, planning, and construction, related to capital improvement projects assigned by the Legislature, Governor, or Board of Education. Places management of school impact fees with the agency. Appropriates funds.
(SD1)

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