

ACT 309

S.B. NO. 493

A Bill for an Act Relating to Public Schools.

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

SECTION 1. The legislature finds that the backlog of repair and maintenance projects for public schools across the State is now estimated at more than \$600,000,000. This accumulation of projects has occurred because of tight budgets over the last decade, when an average of only \$22,000,000 a year was appropriated for the upkeep of elementary, middle, and high school campuses, even though they required an estimated \$66,000,000 in maintenance each year.

The legislature further finds that no public school in the State is ever given sufficient funds to cover all of its repair and maintenance needs, so the deterioration and degradation of each campus compounds with each passing school year. The general practice has been to repair the most critical, health-threatening conditions or to tackle the least-involved projects in order to keep facilities operating.

The governor has proposed that the sum of \$50,000,000 be included in the capital improvement projects budget for the repair and maintenance of our schools. While clearly a substantial sum that is much needed, it pales in comparison to the total deferred maintenance requirements of the system.

As a consequence, if those moneys are handled in the manner that is typical of the system, they will be governed by the priority matrix and handled in a way that disperses them throughout the whole of the system and leaves no single place readied and prepared to provide the physical environment in which powerful learning can occur. Its impact will be marginalized and no school will receive the critical infusion necessary to fully address all its repair and maintenance needs. No school will receive much more than crisis management treatment. There will be no visible or obvious impact in any locale, and no campus will be restored to the status of a fully intact and healthy learning environment.

The legislature finds that education is universally recognized as the key to Hawaii's future in a global, high-tech economy. However, except for the State's most modern campuses, such as at Kapolei, Kapaa, or Keeau, the legislature finds that schools statewide will never support the kind of teaching our children deserve if facilities continue to become rundown, unhealthy, and even dangerous.

The legislature finds that one of the components of school repair and maintenance is the development of a "sweat-equity" program, spearheaded by Helping Hands Hawaii, that consists of professional and community work hours, materials, and design contributions, local business donations, military participation, and other in-kind endowments, that would be the basis for restoration projects within geographical regions defined by their kindergarten through grade twelve school districts. The intent of this program is to place parents and immediate communities on the front line for their respective schools.

The legislature finds that there is a need to develop a public-private partnership to mobilize the community by involving stakeholders in Hawaii's public educational system, including parents of students, alumni, teachers, business, and government, as well as the students themselves, to actually complete the repair and maintenance projects.

Accordingly, the purpose of this Act is to begin to work towards eliminating the \$600,000,000 repair and maintenance backlog for Hawaii's public schools by:

- (1) Appropriating state funds, and encouraging federal and private contributions, to a fund established as a separate fund of Helping Hands Hawaii, a nonprofit organization, to provide public-private funding of these backlogged projects through grants. Helping Hands Hawaii, through its project, Hawaii 3R's, is to seek funding and financial grants to supplement state funding wherever available, including special program grants from the federal government, and private-sector contributions from sources such as the travel, construction, development, or high technology industries. These funds would be used to award grants and purchase services and materials beyond the department of accounting and general services' budgeting to support proposals from schools and communities. However, the intent is not to supplant the department's budget for the routine, day-to-day maintenance and emergency repair of public schools. An advisory board of Helping Hands Hawaii is to review grant proposals and rate them according to pre-determined criteria to select the projects it would support with appropriate funding. The department of accounting and general services already has extensive data on the long-delayed repairs needed by the schools, with engineering and design work sometimes already performed; and
- (2) Authorizing contractors, architects, engineers, surveyors, landscape architects, and pest control operators licensed under chapters 444, 460J, and 464, Hawaii Revised Statutes, who provide professional services for the repair and maintenance of Hawaii's public schools through Hawaii 3R's, to take an income tax credit as an incentive to provide such services.

Finally, the legislature finds that appropriating public funds to Helping Hands Hawaii serves the public purpose of expediting the repair and maintenance of Hawaii's public schools.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§235- Credit for school repair and maintenance.** (a) There shall be allowed to each taxpayer licensed under chapter 444, 460J, or 464, who is subject to the tax imposed by this chapter, and does not owe the State delinquent taxes, penalties, or interest, a credit for contributions of in-kind services for the repair and maintenance of public schools provided by the licensed taxpayer in Hawaii. The credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(b) The amount of the credit determined under this section for the taxable year shall be equal to ten per cent of the value of contributions of in-kind services to the Hawaii school repair and maintenance fund for that taxable year; provided that the aggregate value of the contributions of in-kind services claimed by a taxpayer shall not exceed \$40,000.

(c) For purposes of this section:

“Value of contributions of in-kind services” means the fair market value of uncompensated services or labor as determined and certified by the department of accounting and general services.

“Public schools” has the same meaning as defined in section 302A-101.

(d) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. A tax credit under this section which exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted.

(e) All claims for tax credits under this section, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(f) The department of accounting and general services shall maintain records of the names of taxpayers eligible for the credit and the total value of in-kind services contributed for the repair and maintenance of public schools for the taxable year. All contributions shall be verified by the department of accounting and general services. The department of accounting and general services shall total all contributions that the department certifies. Upon each determination, the department of accounting and general services shall issue a certificate to the taxpayer certifying:

- (1) The amount of the contribution;
- (2) That the taxpayer is licensed under chapter 444, 460J, or 464; and
- (3) That the taxpayer has obtained a current and valid certificate signed by the director of taxation, showing that the taxpayer does not owe the State any delinquent taxes, penalties, or interest.

The taxpayer shall file the certificate from the department of accounting and general services with the taxpayer's tax return with the department of taxation. When the total amount of certified contributions reaches \$2,500,000, the department of accounting and general services shall immediately discontinue certifying contributions and notify the department of taxation. In no instance shall the total amount of certified contributions exceed \$2,500,000 for each taxable year.

(g) The State shall provide not more than \$250,000 in tax credits for contributions of in-kind services in Hawaii for the repair and maintenance of public schools.

(h) The director of taxation shall prepare any forms that may be necessary to allow a credit to be claimed under this section.”

**SECTION 3. Hawaii school repair and maintenance fund.** (a) There is established the Hawaii school repair and maintenance fund (hereinafter, “fund”) as a separate fund of Helping Hands Hawaii, a Hawaii nonprofit organization. Moneys received from the state, county, or federal government, private contributions of cash or other property, and the income and capital gains earned by the fund shall constitute its assets.

(b) Helping Hands Hawaii shall expend moneys in the form of either grants to organizations or contracts with private vendors from the fund for the repair and maintenance of public schools in Hawaii in accordance with this section.

(c) The fund may receive contributions, grants, endowments, or gifts in cash or otherwise from all sources, including corporations or other businesses, foundations, government, individuals, and other interested parties. The legislature intends that the public and private sectors work together as partners in securing contributions for the fund, and that Helping Hands Hawaii, through its project, Hawaii 3R’s, assist the public and private sectors in reviewing and investigating all potential funding sources. The State may appropriate moneys to the fund; provided that any appropriations made by the State are not intended to supplant the funding of any existing public school repair and maintenance programs, including school-level minor repairs and maintenance accounts established under section 302A-1504, Hawaii Revised Statutes.

(d) Helping Hands Hawaii shall appoint the members of the Hawaii school maintenance and repair advisory board, which shall be responsible for:

- (1) Soliciting and otherwise raising funds for the fund;
- (2) Establishing criteria for the expenditure of funds;
- (3) Reviewing grant proposals utilizing criteria established by Helping Hands Hawaii; and
- (4) Making recommendations for grants and other specific expenditures.

Members of the advisory board shall be stakeholders in Hawaii’s public educational system, including students, parents, alumni, principals, community and business leaders, and representatives from the department of education and the department of accounting and general services, who shall be represented on the advisory board.

(e) The aggregate principal sum deposited in the fund, and any income and capital gains earned by the fund but not expended for administration, shall be invested in accordance with the provisions of Helping Hands Hawaii in a manner intended to maximize the rate of return on investment of the fund.

(f) There may be an endowment component of the funds.

(g) The use of any state moneys may be restricted by the legislation appropriating these moneys to the fund.

(h) Helping Hands Hawaii is authorized to expend the principal from the fund for the purposes of the fund.

(i) Any organization submitting a proposal to Helping Hands Hawaii for fund moneys shall meet all of the following standards at the time of application:

- (1) Be a for-profit organization duly registered under the laws of the State, or be a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax, or be an agency of the State or a county;
- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation;
- (3) In the case of an applicant that is not a state or county government agency, have bylaws or policies that describe the manner in which

business is conducted and policies that relate to the management of potential conflict of interest situations;

- (4) Have experience with the project or in the program area for which the proposal is being made; and
- (5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments.

(j) All proposals submitted to Helping Hands Hawaii for fund moneys shall be approved by the department of accounting and general services for consistency in meeting design and materials standards for public schools.

(k) Organizations or agencies to which fund moneys are awarded shall agree to comply with the following conditions before receiving the award:

- (1) Employ or have under contract persons qualified to engage in the activity to be funded;
- (2) Comply with applicable federal, state, and county laws; and
- (3) Comply with any other requirements prescribed by Helping Hands Hawaii to ensure adherence by the recipient of the award with applicable federal, state, and county laws and with the purposes of this section.

(l) Chapter 103D, Hawaii Revised Statutes, shall not apply to organizations or agencies that apply for grants or contracts under this section; provided that Helping Hands Hawaii shall be held accountable for the use of the funds under a contract with the department of accounting and general services.

(m) Any contracts awarded by Helping Hands Hawaii shall be made under as much competition as is practical to execute its purposes.

(n) The fund shall be audited annually by an independent auditor. The results of each annual audit shall be submitted to the department of accounting and general services not later than thirty days from the date Helping Hands Hawaii receives the audit results. In addition, Helping Hands Hawaii shall retain for a period of three years and permit the department of accounting and general services, the department of education, state legislators, and the auditor, or their duly authorized representatives, to inspect and have access to any documents, papers, books, records, and other evidence that is pertinent to the fund.

(o) The fund shall not be placed in the state treasury, and the State shall not administer the fund, nor shall the State be liable for the operation or solvency of the fund, Helping Hands Hawaii, or Hawaii 3R's.

(p) For every dollar of state moneys granted by the fund to the project, there shall be a minimum of \$1 in value matched by Helping Hands Hawaii from private, federal, county, or community sources.

SECTION 4. The state comptroller shall submit an annual report of the progress of the Hawaii school repair and maintenance fund no later than twenty days prior to the convening of the regular sessions of the legislature.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2001-2002, and the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2002-2003, as a grant-in-aid pursuant to chapter 42F, Hawaii Revised Statutes, to Helping Hands Hawaii for the Hawaii school repair and maintenance fund.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$41,772 or so much thereof as may be necessary for fiscal year 2001-2002 for a position in the department of accounting and general services to

coordinate public and private efforts to repair and maintain public schools. The comptroller may employ the coordinator, who shall be exempt from chapters 76 and 77, Hawaii Revised Statutes, as necessary to effectuate the purposes of this Act. The coordinator shall serve at the pleasure of the comptroller.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 9. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act shall take effect on July 1, 2001; provided that section 2 of this Act, upon its approval, shall apply to taxable years beginning after December 31, 2000.

(Approved July 2, 2001.)

**Note**

1. Edited pursuant to HRS §23G-16.5.