

ACT 316

S.B. NO. 1577

A Bill for an Act Relating to School Facilities.

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

SECTION 1. The legislature finds that a key component in improving public education in Hawaii is the provision of school facilities that support and enhance academic programs. While the State has invested over \$1,700,000,000 in the construction of school facilities, repair and maintenance services for these facilities have been curtailed in recent years due to poor economic conditions.

In 2000, economic projections for Hawaii began to show positive signs, and the legislature passed Act 239, Session Laws of Hawaii 2000, which appropriated \$30,000,000 for repair, maintenance, and improvement projects for the department of education in 2000-2001. Act 239 was a significant first step in addressing the State's long neglected public school facilities, but sustained improvement will require a long-term solution to address both the current backlog and allow preventive repair and maintenance services.

The repair and maintenance backlog alone for public school facilities was estimated at \$600,000,000, as of June 30, 2000. While the State provided a total of \$51,900,000 for school repair and maintenance in 2000-2001, inconsistencies in annual funding have made it impossible to undertake needed repairs on a systematic basis.

According to both the American Public Works Association and the National Association of Higher Education Facilities Officers, a minimum of two to four per cent of a physical plant's replacement cost should be allocated annually for repair

and maintenance. Using the conservative two per cent figure, this would equal \$51,800,000, per year for Hawaii's public schools, based on 18,500,000 square feet of school facilities and a replacement cost of \$140 per square foot.

The overall purposes of this Act are to fund the \$600,000,000 repair and maintenance backlog over a ten-year period through legislative appropriations, and to fund normal, on-going school repairs and preventive maintenance through general fund appropriations. Specifically, this Act:

- (1) Establishes the school physical plant operations and maintenance account to pay for normal, on-going school repairs and preventive maintenance projects scheduled after June 30, 2001;
- (2) Establishes the state educational facilities repair and maintenance account to eliminate the backlog of projects existing on June 30, 2000;
- (3) Specifies how school repairs and maintenance are to be prioritized and moneys allocated; and
- (4) Provides for the establishment of eight school business and fiscal officers to oversee school facilities planning.

It is not the intent of this Act to undermine the authority of schools to prioritize and approve their repair and maintenance needs pursuant to section 302A-1505, Hawaii Revised Statutes, or to interfere with any partnerships that schools have formed with community groups, volunteers, and businesses, to obtain donated and discounted repair and maintenance services and materials. The legislature remains committed to the principles of local control and decentralized decision making.

SECTION 2. Chapter 36, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§36- State educational facilities repair and maintenance account. (a)

There is created in the state general fund under AGS 807 (physical plant operations and maintenance) the state educational facilities repair and maintenance account, into which shall be deposited legislative appropriations to the account designated for use solely to eliminate the backlog of school repair and maintenance projects, including the repair or replacement of fixtures, furnishings, and equipment, existing on June 30, 2000. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. Appropriations or authorizations from the account shall be expended by the comptroller.

(b) The department of education, with the assistance of the department of accounting and general services, shall review the existing condition of school facilities and establish specific vision plans for each school complex based on current repair and maintenance requirements and overall repair and maintenance priorities.

(c) Criteria used to establish current repair and maintenance requirements may include:

- (1) The remaining useful life of the school facility and its major components;
- (2) The adjusted life of the school facility and its major components after repair or maintenance; and
- (3) The current and future repair and maintenance requirements of the school facility and its components based on established industry standards or product manufacturer recommendations;

provided that demolition of a facility or any of its components may be recommended if the cost of the repairs do not justify the adjusted life or remaining life of the facility.

(d) Criteria used to establish overall repair and maintenance requirements may include:

- (1) Whether a school facility will continue to be used for the next twenty-five years; and
- (2) Whether a repair or maintenance project is required:
 - (A) For health or safety reasons;
 - (B) To comply with legal mandates;
 - (C) To comply with current building codes; or
 - (D) For preventive maintenance reasons;

provided that in developing criteria, consideration shall be given to school facilities that were more than twenty-five years of age on July 1, 2000.

(e) The expenditure of funds for any project with an estimated total cost of less than \$100,000 shall be exempt from chapter 103D and section 464-4; provided that:

- (1) The comptroller shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D. However, where possible, the comptroller is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the comptroller to any other provision of chapter 103D;
- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three proposals shall be solicited for each project, based on rules adopted by the comptroller;
- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous proposal;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.

For all projects, the comptroller shall develop a strategy for the efficient and cost-effective use of government and private-sector workforces and consider increased flexibility through public-private partnering, design-build options, cost plus, job order contracts, performance-based contracts, request for proposals, and any other means to improve communications and accelerate repairs while preserving the quality of the repairs.

(f) The comptroller shall ensure that all repair and maintenance projects achieve maximum cost-efficiency by emphasizing functional or performance criteria, uniformity of design, and commonality of products, and by avoiding unique or custom requirements that increase costs. The comptroller shall develop project specifications based on qualified products lists and standard commercial products.

For the purposes of this subsection:

“Qualified products list” means an approved list of goods, services, or construction items described by model or catalog numbers, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirement.

“Standard commercial product” means a product or material that in the normal course of business is customarily maintained in stock by, or readily available for marketing from a manufacturer, distributor, or dealer.

This subsection shall not apply to any school facility designated a historic property pursuant to section 6E-5.5.

(g) The comptroller shall submit an annual report to the legislature, which shall include a financial statement of the account and the status of repair and maintenance projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session. Expenditures for repair and maintenance projects undertaken pursuant to this section shall be posted electronically on the Internet by the department of accounting and general services within thirty days of each project's completion.

(h) This section shall be repealed on July 1, 2020.

§36- School physical plant operations and maintenance account; maintenance schedule. (a) There is created in the state general fund under AGS 807 (physical plant operations and maintenance) the school physical plant operations and maintenance account, into which shall be deposited all legislative appropriations to the account.

The moneys in the account shall be used solely for school repairs and preventive maintenance projects scheduled after June 30, 2001. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. Appropriations or authorizations from the account shall be expended by the comptroller.

(b) Every school facility newly constructed or renovated after June 30, 2001, shall include a preventive maintenance schedule prepared by the architect or engineer of the facility or the capital improvement project. The maintenance schedule shall include:

- (1) A description of each major component of a facility or capital improvement project and the component's maintenance;
- (2) The starting date of each maintenance project;
- (3) The current, future, and any recurring cost of each maintenance project;
- (4) The useful life of the facility or capital improvement project;
- (5) The present value of the cost of normally scheduled maintenance over the useful life of the facility;
- (6) The adjusted life of the facility or capital improvement project; and
- (7) The replacement date of the facility or capital improvement project.

(c) Moneys in physical plant operations and maintenance account shall be allocated according to departmental school districts based on:

- (1) Estimated preventive and scheduled maintenance costs that reflect the age and condition of existing school facilities in the State in the following categories: re-roofing, electrical, athletic facilities, re-surfacing, equipment, exterior painting, plumbing, structural integrity, termite ground treatment, termite tent treatment, interior painting, air conditioning change out, and re-carpeting; and
- (2) Budgeted recurring maintenance, health and safety requirements, and legal mandates.

(d) The expenditure of funds made under this Act for any project with an estimated total cost of less than \$100,000 shall be exempt from chapter 103D and section 464-4; provided that:

- (1) The comptroller shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D. However, where possible, the comptroller is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the comptroller to any other provision of chapter 103D;

- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three quotations shall be solicited for each project based on rules adopted by the comptroller;
- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous quotation;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.

(e) The comptroller shall submit an annual report to the legislature, which shall include a financial statement of the account and the status of school repair and preventive maintenance projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session. The department of accounting and general services shall post the following reports electronically on the Internet and update them quarterly:

- (1) Expenditures for school repair and preventive maintenance projects undertaken pursuant to this section, shall be posted within thirty days of each project's completion; and
- (2) A list of each school's repair and maintenance needs to be undertaken.''

SECTION 3. Chapter 302A, Hawaii Revised Statutes, is amended as follows:

- 1. By adding three new sections to be appropriately designated and to read:

“§302A-A Six-year program and financial plan for school repair and maintenance. (a) The department of accounting and general services, in consultation with the department of education, shall prepare a six-year program and financial plan for school repair and maintenance which shall be:

- (1) Based on:
 - (A) Estimated preventive and scheduled maintenance costs;
 - (B) Budgeted recurring maintenance;
 - (C) Health and safety requirements; and
 - (D) Legal mandates;
- (2) Insofar as is practical, prepared in accordance with the principles and procedures contained in section 514A-83.6; and
- (3) Submitted initially to the legislature not less than thirty days prior to the convening of the 2002 regular session, with annual funding requirements for the physical plant operations and maintenance account submitted not less than thirty days prior to the convening of the 2002 regular session and each regular session thereafter;

provided that the governor may incorporate the six-year program and financial plan required by this subsection into the six-year program and financial plan required by section 37-69, if the plan required by this subsection is incorporated without reductions or restrictions.

(b) The department of accounting and general services, in consultation with the department of education, shall develop and maintain a facilities physical analysis report and a facilities financial analysis report for each public school. These reports shall be posted electronically on the Internet.

§302A-B District business and fiscal officers. (a) The department shall establish eight permanent civil service exempt full-time equivalent business and

fiscal officer positions; provided that four business and fiscal officer positions shall be assigned to the Oahu school districts, with the remaining positions to be assigned to school complexes based on need; and provided further that the business and fiscal officer:

- (1) Shall have a business and facilities management background;
- (2) Shall not be subject to the requirements of chapters 76 and 77; and
- (3) Shall not be required to be a certified teacher.

(b) Departmental school district business and fiscal officers shall be responsible for:

- (1) Coordinating physical plant operations and maintenance activities with the department of accounting and general services;
- (2) Coordinating the training and selection of school custodians; monitoring the performance of school custodians in accomplishing minor repairs with funds from school-level minor repairs and maintenance accounts; and overseeing these accounts at the direction of school principals;
- (3) Planning for capital improvement projects with the department of education and the department of accounting and general services;
- (4) Ensuring that school facilities comply with the laws and rules regarding:
 - (A) The provision of a free appropriate public education for exceptional children with disabilities; and
 - (B) The provision of a free appropriate public education for qualified students with disabilities;
- (5) Assisting the department, individual schools, and school complexes in forming partnerships with community groups, volunteers, and businesses to obtain donated and discounted repair and maintenance services and materials; and
- (6) Developing, coordinating, overseeing, and participating in the data collection for the physical plant analysis report and the maintenance plan for each school.

§302A-C Federal/state cooperation authorized. The department may enter into agreements with any federal agency to construct, repair, or renovate Hawaii public schools on military bases and elsewhere in the State using state or federal funds, subject to the department's educational specifications and standards for facilities. The department shall cooperate with any federal agency to carry out this section."

2. By amending subsection (a) of section 302A-1504, to read:

"(a) The department shall establish school-level minor repairs and maintenance accounts for the use of each public school, which shall not exceed ~~[\$8,000]~~ \$25,000 per school. The accounts shall be comprised of funds appropriated to the department for school-level minor repairs and maintenance and shall not be used for any other purpose, nor shall any other funds be deposited into the accounts. The department shall allocate funds based on the number of students at the school multiplied by a factor which recognizes the age and condition of the school."

3. By amending section 302A-1505 to read:

"~~[§302A-1505]~~ **Prioritization of repair and maintenance.** (a) Each school shall meet with the department of accounting and general services on an annual basis to advise the department of school needs. Before any repair and maintenance projects for the upcoming fiscal year are implemented, each individual school administration shall prioritize and approve its repair and maintenance needs, and approve the scope of the implementation plan for the individual projects. After

schools have prioritized their repair and maintenance projects, a statewide list shall be prepared[;] and reviewed[;] by the department of accounting and general services, and reviewed and approved by the department of education; provided that the department of education may make adjustments among schools and districts. Each school repair and maintenance priority listing shall be ~~[approved by the individual school-administration and]~~ submitted by the department of education to the department of accounting and general services for implementation. Each listing shall be posted electronically on the Internet. The department of accounting and general services shall implement the school repair and maintenance program in accordance with the priorities set forth by the [individual school-administration.] department of education.

(b) Prior to meeting with the department of accounting and general services to advise it of a school’s repair and maintenance needs, the school’s principal and the business and fiscal officer shall consider the recommendations made by the school/community-based management council, if there is such a council at the school; or the local school board, if the school is a new century charter school. If there is no school/community-based management council or local school board, then the school’s principal shall appoint a standing committee composed of a teacher, a member of the support staff, a parent, a student, and a community member.

(c) In prioritizing a school’s repair and maintenance needs, the department of accounting and general services, the school’s principal, and the business and fiscal officer shall consider the availability of donated and discounted repair and maintenance services and materials that will be provided by community groups, volunteers, and businesses.’’

SECTION 4. The creation of three new staff positions consisting of two building inspector II positions, and one clerk typist III position is authorized by this Act. These positions shall be project funded and assigned to the department of accounting and general services under AGS 807 to work with the department of education to identify and prioritize repairs, maintain historical repair records, and to inspect records.

SECTION 5. All appropriations from the general appropriations act or supplemental appropriations act for AGS 807 physical plant operation and maintenance, or AGS 221 construction, that are used for school repair and maintenance projects shall allow for the expenditure of funds for any project with an estimated cost of less than \$100,000, to be exempt from chapter 103D and section 464-4, Hawaii Revised Statutes; provided that:

- (1) The comptroller shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D, Hawaii Revised Statutes. However, where possible, the comptroller is encouraged to use the provisions of chapter 103D, Hawaii Revised Statutes; provided that the use of one or more provisions of chapter 103D, Hawaii Revised Statutes, shall not constitute a waiver of the exemption of chapter 103D, Hawaii Revised Statutes, and shall not subject the comptroller to any other provision of chapter 103D, Hawaii Revised Statutes;
- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three quotations shall be solicited for each project based on rules adopted by the comptroller;

- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous quotation;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.

SECTION 6. In codifying the new sections added to chapter 302A, Hawaii Revised Statutes, by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections designated by this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000, or so much thereof as may be necessary for fiscal year 2001-2002, and the sum of \$300,000, or so much thereof as may be necessary for fiscal year 2002-2003 for the purpose of funding eight permanent civil service exempt full-time equivalent business and fiscal officer positions.

The sum appropriated shall be expended by the department of education through EDN 400 for the purposes of this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect on July 1, 2001.

(Approved July 2, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.