

ACT 214

S.B. NO. 58

A Bill for an Act Relating to School Repair and Maintenance.

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

SECTION 1. The legislature finds that the backlog of repair and maintenance projects in public schools continues to be of concern and that all means of addressing the problem should be explored and supported.

The twenty-first legislature, in Act 309, Session Laws of Hawaii 2001, laid the foundation for Hawaii 3R's, a project of the private, nonprofit organization, Helping Hands Hawaii.

The legislature finds that Hawaii 3R's has saved the State money by leveraging funds with volunteerism or "sweat equity." Through remarkable community support, federal funds, private donations, and state grant funds, repair and maintenance projects estimated to cost \$2,885,000 have been completed or are in progress. Of the \$1,000,000 in state grant funds appropriated for Hawaii 3R's for the biennium ending June 30, 2003, \$625,000 has been expended thus far by Hawaii 3R's. This means that for every state dollar expended, over four and one-half dollars worth of work is completed. Or, in terms of savings, the State has saved over \$2,200,000 in repair and maintenance costs. It is also noteworthy that Hawaii 3R's has statewide reach, with thirty-eight grants awarded on the islands of Oahu, Maui, Molokai, Kauai, and Hawaii.

The legislature also finds that the public-private partnership between the State and Hawaii 3R's is effective and essential to the success of the program. Specifically, the legislature finds that the coordinator position within the department of accounting and general services provides Hawaii 3R's with expertise, support, quick response, and access to state resources and information. The coordinator position also adds visibility and positive coverage to the efforts of the State.

The legislature acknowledges that Hawaii 3R's also has built a partnership with the military's Joint Venture Education Forum. This relationship benefits not only military-impacted or dependent schools but all of Hawaii's public schools through increased military partnerships. Through Joint Venture Education Forum (i.e., federal) funding, Hawaii 3R's can provide grants to over one hundred military-impacted, dependent, partnered schools.

The legislature understands that it is necessary to maintain the current level of state funding to reach those estimated one hundred fifty public schools that cannot receive grants through Joint Venture Education Forum funding.

The legislature is encouraged by the level of support that the community has given to Hawaii 3R's and, more importantly, the public schools. Skilled and unskilled volunteer labor from the military, civic clubs, churches, teachers, parents, and students, combined with donations from community restaurants and businesses, have made Hawaii 3R's successful. Also, trade unions and associations have been lending invaluable support. Hawaii 3R's, with the assistance of the department of accounting and general services and the community, has created a truly successful public-private partnership.

While Hawaii 3R's has been a project of Helping Hands Hawaii, it has developed the expertise to carry out its operations as an independent entity. Hawaii 3R's has applied to the Internal Revenue Service for designation as a qualified nonprofit organization under section 501(c)(3) of the Internal Revenue Code. The receipt of qualified nonprofit status would enable Hawaii 3R's to receive state, federal, and private funds through grants and contributions. The Internal Revenue Service is expected to make its determination regarding Hawaii 3R's nonprofit status by spring 2003.

Given the uncertainty as to when the Internal Revenue Service will make its determination regarding Hawaii 3R's nonprofit status, the legislature believes that to ensure the continuity of services provided by Helping Hands Hawaii and Hawaii 3R's, moneys must be appropriated to Helping Hands Hawaii for fiscal years 2003-2004 and 2004-2005 to address school repair and maintenance projects. However, upon the Internal Revenue Service's determination that Hawaii 3R's is a qualified nonprofit organization under section 501(c)(3) of the Internal Revenue Code, the legislature directs Helping Hands Hawaii to transfer to Hawaii 3R's all unencumbered and unexpended moneys in the Hawaii 3R's school repair and maintenance fund. In addition, all appropriations made to Helping Hands Hawaii shall be transferred to Hawaii 3R's at that time. After such transfers have been made, the Hawaii school repair and maintenance fund shall be repealed to avoid the possibility of confusion that public and private donors may have given the establishment of the Hawaii 3R's school repair and maintenance fund.

Accordingly, the purpose of this Act is to improve public education facilities by:

- (1) Establishing the Hawaii 3R's school repair and maintenance fund;
- (2) Appropriating state funds to Helping Hands Hawaii; and
- (3) Providing a position and funds for the department of accounting and general services to coordinate public and private efforts to repair and maintain public schools.

Also, upon the determination that Hawaii 3R's is a qualified nonprofit organization, all moneys, appropriations, books, records, and property of Helping Hands Hawaii relating to its project, Hawaii 3R's, shall be transferred to Hawaii 3R's. After the transfer of moneys to Hawaii 3R's, the Hawaii school repair and maintenance fund shall be repealed. The legislature finds that these actions further the public-private efforts to repair and maintain Hawaii's public schools.

Finally, the legislature finds that appropriating public funds to Helping Hands Hawaii and Hawaii 3R's serves the public purpose of expediting the repair and maintenance of Hawaii's public schools.

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

**“§302A- Hawaii 3R's school repair and maintenance fund.** (a) There is established the Hawaii 3R's school repair and maintenance fund (hereinafter, “fund”) as a separate fund of Hawaii 3R's, 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) Hawaii 3R's shall expend moneys from the fund in the form of either grants to organizations or contracts with private vendors 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 public and private sectors review and investigate 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 school-level minor repairs and maintenance programs, including school-level minor repairs and maintenance accounts established under section 302A-1504.

(d) Hawaii 3R's shall appoint the members of the Hawaii 3R's 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 using criteria established by Hawaii 3R's; 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) In managing the moneys in the fund, Hawaii 3R's shall exercise ordinary business care and prudence given the facts and circumstances prevailing at the time of action or decision. In doing so, Hawaii 3R's shall consider its long- and short-term needs in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, price trends, and general economic conditions.

(f) There may be an endowment component of the fund, and Hawaii 3R's may accumulate net income and add the same to the principal.

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

(h) Hawaii 3R's may expend principal from the fund for the purposes of the fund.

(i) Any organization submitting a proposal to Hawaii 3R's for moneys shall meet 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 a potential situation involving a conflict of interest;
- (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 Hawaii 3R's for 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 moneys are awarded shall agree to comply with the following conditions before receiving the award:

- (1) Use persons qualified to engage in the activity to be funded;
- (2) Comply with the applicable federal, state, and county laws; and
- (3) Comply with any other requirements prescribed by Hawaii 3R's 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 shall not apply to organizations or agencies that apply for grants or contracts under this section; provided that Hawaii 3R's shall be held accountable for the use of the funds under a contract with the department of accounting and general services.

(m) Any contract awarded by Hawaii 3R's shall be made with 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 Hawaii 3R's receives the audit results. In addition, Hawaii 3R's 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 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 Hawaii 3R's from private, federal, county, or community service.

(q) The state comptroller shall submit an annual report of the progress of the Hawaii 3R's school repair and maintenance fund no later than twenty days prior to the convening of each regular session of the legislature."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$148,688, or so much thereof as may be necessary for fiscal year 2003-2004 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Helping Hands Hawaii for the Hawaii school repair and maintenance fund; provided that upon the Internal Revenue Service's determination that Hawaii 3R's is a qualified nonprofit organization under section 501(c)(3) of the Internal Revenue Code, Helping Hands Hawaii shall transfer to Hawaii 3R's all appropriations made to Helping Hands Hawaii.

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

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$51,312<sup>1</sup>, or so much thereof as may be necessary for fiscal year 2003-2004 for a position within the department of accounting and general services to coordinate the public and private efforts to repair and maintain public schools; provided that the coordinator shall serve at the pleasure of the comptroller; and provided further that chapter 76, Hawaii Revised Statutes, shall not apply to any action taken by the comptroller pursuant to this Act.

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

SECTION 5. Upon the Internal Revenue Service's determination that Hawaii 3R's is a qualified nonprofit organization under section 501(c)(3) of the Internal Revenue Code, Act 309, Session Laws of Hawaii 2001, is amended by repealing section 3.

~~[“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 6. Upon the Internal Revenue Service's determination that Hawaii 3R's is a nonprofit organization under section 501(c)(3) of the Internal Revenue Code, Helping Hands Hawaii shall transfer to Hawaii 3R's:

- (1) All unencumbered and unexpended moneys in the Hawaii school repair and maintenance fund to the Hawaii 3R's school repair and maintenance fund; and
- (2) All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, and other personal property made, used, developed, acquired, or held by Helping Hands Hawaii, through its project, Hawaii 3R's.

SECTION 7. Upon request of the comptroller, Helping Hands Hawaii shall submit a report to the comptroller, in the form prescribed by the comptroller, accounting for the receipts and disbursements of the Hawaii school repair and maintenance fund and any other information that the comptroller may require.

SECTION 8. After the repeal of the Hawaii school repair and maintenance fund, Helping Hands Hawaii shall submit the results of the annual audit of the Hawaii school repair and maintenance fund to the department of accounting and general services not later than thirty days from the date that Helping Hands Hawaii receives the audit results. Helping Hands Hawaii shall 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 Hawaii school repair and maintenance fund.

SECTION 9. 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 10. 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 therefore to the legislature at its next session thereafter for review by the legislature.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 12. This Act shall take effect on July 1, 2003.

(Approved June 26, 2003.)

Notes

1. Item vetoed, replaced with "0", and initialed "LL".
2. Edited pursuant to HRS §23G-16.5.