




STATE OF HAWAII
DEPARTMENT OF EDUCATION
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OFFICE OF THE SUPERINTENDENT

November 21, 2019

TO: The Honorable Kenneth Uemura
Chairperson, Finance and Infrastructure Committee

FROM: Dr. Christina M. Kishimoto 
Superintendent

SUBJECT: **Update on status of implementation of Act 155 (Hawaii Revised Statutes Section 302A-1151.1, Pilot program for lease of public school land): status of community engagement efforts, status of due diligence, status of Requests for Proposals ("RFPs"), information on independent contractor, and status of Memorandum of Understanding with Hawaii Housing Finance & Development Corporation ("HHFDC")**

Executive Summary

Act 155 (§302A-1151.1 HRS), is a pilot program for the lease of public school lands, which allows the Department of Education (DOE) to explore the possibility of managing public school properties to generate revenue for modern improvements to its educational facilities.

Description

Update of ongoing work to develop pilot projects per §302A-1151.1 HRS.

Update

Pursuant to Act 210, SLH 2018, the DOE petitioned the Board of Land and Natural Resources (BLNR) to transfer fee on three properties, specific to the Act 155 Pilot Program, to the DOE:

- 475 22nd Avenue;
- 4087 Diamond Head Road; and
- 3633 Waialae Avenue.

Based on BLNR approval, the Department of Land and Natural Resources is now working on cancellation of three executive orders (action by the Governor), and quit claim conveyance of these properties to the DOE.

On July 9, 2019, the legislative bill SB1303 was signed into law as Act 272, SLH 2019. This law extends the lease term for Act 155 pilot projects from 55 years to 99 years, it also transfers high school properties under Act 206, SLH 2017, directly to the DOE.

During due diligence efforts on the Act 155 candidate sites, the DOE received information from the City and County of Honolulu (City), Department of Environmental Services (DES), showing that sewer capacity for two of the sites is inadequate for new development. These sites are:

- 475 22nd Avenue, and
- 4087 Diamond Head Road.

At DOE's request, DES provided additional information showing that 1600 linear feet of sewer line, which will serve the development on the two sites, would need to be upgraded from 12 inches to 24 inches

In discussions with the City, they informed us that funding for the upgrade of the sewer was not a City priority, and so the upgrade was unlikely in the near future. They said if the DOE, or project developer, funded the sewer improvements they could collect connection fees from future users to repay the cost.

As the initial work began on a draft Request for Proposals (RFP), for the 3633 Waialae Avenue property, and before the Memorandum of Understanding (MOU) with Hawaii Housing Finance Development Corporation (HHFDC) was finalized, the DOE received a letter from the State Department of Budget and Finance (B&F), indicating that *"entering into a long-term lease of public school land and related improvements with a private developer pursuant to Act 155, is problematic in any case where appropriations of proceeds of outstanding tax-exempt G.O. Bonds were used for the acquisition, construction, or improvement of such land. Federal tax law imposes restrictions on the private use, including a lease to a private developer, of property financed with tax-exempt G.O. Bonds. These restrictions apply for as long as the tax-exempt G.O. Bonds are outstanding. Failure to comply with federal rules on the private use of bond-financed property could jeopardize the tax-exempt status of the G.O. Bonds, resulting in significant adverse consequences to bondholders or forcing the State to incur costly measures to remediate the tax law violations."*

The DOE subsequently met with the University of Hawaii Land Development Branch to discuss the issue of bond funding, and to better understand their process for developing public land. A response memo to B&F was drafted, citing the conditions under which the DOE would hope to proceed with Act 155. Based on the original memo from B&F, the properties that the DOE hopes to pursue for pilot projects will be:

- Public school lands not acquired using appropriations of tax-exempt General Obligation Bonds, and
- State-owned properties with no bond-financed improvements, or properties where such improvements have exceeded their life-cycle utility and are scheduled to be demolished.

While the issue of future long-term lease of public school land is awaiting resolution, we are continuing with due diligence on each site. Upon B&F confirmation of our position, as described above, we hope to finalize the MOU with HHFDC and begin, in earnest, with the RFP process and community engagement for the candidate sites.

In meetings with HHFDC, on the possible role of Act 155 in the development of teacher housing, we advanced a tentative financial model for use of public school lands to support teacher housing. The initial model suggests that the land value contribution would not be enough to offset the cost of building a standalone teacher housing development. The land value contribution, however, might be enough to offset the cost of housing for a select number of units within a bigger development. The issues of geographic local and scale, of proposed teacher housing, will need to be further addressed as these effect the value of the land contribution and construction cost, and thus the amount of the subsidy. As we continue to advance Act 155, through the RFP process, we can identify teacher housing for consideration in developer proposals.

The Department has received feedback from the legislature and business community expressing their desire to utilize an existing school campus as the pilot project for Act 155. The Department will be engaging community stakeholders to further explore this idea and will present a potential revision to our recommendation at the January FIC meeting.

CMK:kgm

c: Office of Facilities and Operations
Facilities Development Branch