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# A BILL FOR AN ACT

RELATING TO SCHOOLS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that education is  
2           universally recognized as the key to Hawaii's future in a global  
3           economy. Except for the State's most modern campuses, however,  
4           the conditions of many of Hawaii's schools are hampering the  
5           educational opportunities of Hawaii's children. Many of the  
6           State's rundown, unhealthy, and even dangerous school facilities  
7           do not support the kind of learning environment that Hawaii's  
8           children deserve.

9           The legislature finds that one way to address the  
10          deterioration of school facilities is to develop public-private  
11          partnerships for the construction of new schools throughout the  
12          State. In particular, the legislature finds that one highly  
13          promising type of public-private partnership that could be used  
14          to construct new school facilities is a lease-purchase  
15          agreement, in which a private developer either renovates an  
16          existing school or demolishes and rebuilds a school, and then  
17          leases the facility back to the State for a period of years,  
18          with an option to purchase the school at the end of that period.



1 The lease-purchase agreement to finance the construction of the  
2 facility would be securitized through the issuance of  
3 certificates of participation under chapter 37D, Hawaii Revised  
4 Statutes, relating to the management of financing agreements.

5 Public-private partnerships have already been used  
6 successfully by the federal government, for example, for the  
7 construction of new facilities at Ford Island, Hawaii. The  
8 State has also recently used a public-private partnership to  
9 finance the construction of the Kakuhihewa building in Kapolei,  
10 Oahu, using certificates of participation.

11 In addition, the legislature finds that a lease-purchase  
12 agreement was previously authorized by House Concurrent  
13 Resolution No. 156, H.D. 1 (1994), as a pilot project to request  
14 the department of education to enter into such a transaction for  
15 the construction of a new elementary school in Kihei, Maui.

16 According to that concurrent resolution, in response to  
17 Kihei, Maui being one of the fastest growing areas in the State,  
18 the department of education identified a site in Kihei for a new  
19 elementary school, and the board of land and natural resources  
20 approved the site and authorized its acquisition. The site's  
21 landowner expressed a willingness to design and construct the  
22 elementary school to the department of education's



1 specifications and lease the completed facilities to the  
2 department for ten to thirty years with an option to purchase it  
3 for \$1. Lease payments were to be set at an amount that would  
4 allow the landowner to recover its own payments on the mortgage  
5 used to finance the costs of title clearance and facilities  
6 design, development, and construction.

7       The house concurrent resolution further noted that "the  
8 lease-and-purchase is a pilot project that will test the  
9 efficiency and expeditiousness of an alternative mechanism  
10 through which the State constructs and delivers much-needed  
11 classrooms and school facilities with the assistance of the  
12 private sector". The completed school at Kihei, named  
13 "Kamalii", was eventually constructed as a real estate  
14 transaction, rather than as a lease-purchase agreement, in which  
15 the State simply purchased the new facility.

16       Another school in Kahului, Maui, named "Maui Lani", is also  
17 being proposed to be constructed through a public-private  
18 partnership. Now in the design phase, the landowner-developer  
19 will be constructing the school and will sell the school back to  
20 the State upon its completion, using the Kihei school  
21 development process as a model.



1           The advantages of using this approach are that it is  
2 generally less expensive and faster than constructing schools in  
3 the more traditional way. Schools being constructed by the  
4 department of education and the department of accounting and  
5 general services must be accomplished in two phases as  
6 appropriations are generally made over two fiscal years.

7           Following the first phase, which coincides with the first  
8 fiscal year appropriation, the project must be bid out again for  
9 the second phase in the second fiscal year and may be awarded to  
10 a different contractor. This two-phase approach tends to  
11 increase the time and cost needed to complete the project. On  
12 the other hand, in a public-private partnership a private  
13 contractor can usually obtain a loan for the entire school  
14 project and complete the facility in one phase instead of two.

15           The quick construction of a state-of-the-art school  
16 facility immediately addresses the needs of the community,  
17 avoids overcrowding at existing facilities, and serves to  
18 attract highly qualified teachers, administrators, and parents  
19 who want to send their children to exceptional facilities.

20           The legislature further finds that a public-private  
21 partnership approach has been used successfully across the  
22 United States. For example, when the Niagara Falls, New York



1 school district was faced with declining school enrollment and a  
2 dismal economic situation, by partnering with the private  
3 sector, it managed to reverse this trend and substantially  
4 upgrade school buildings and technology for students without  
5 raising taxes.

6 The new state-of-the-art high school in Niagara Falls,  
7 which opened in September 2000, was financed in part with  
8 private funds, through the issuance of certificates of  
9 participation, and constructed by a private contractor. The  
10 \$83,000,000 high school has been described as one of the most  
11 advanced and instructionally integrated technological high  
12 schools in the country.

13 Similarly, in Florida, a new charter school opened in 1998  
14 that was constructed with a creative public-private financing  
15 plan. Pembroke Pines, a public charter school, hired a private  
16 company to build and operate its new facility, saving between  
17 twenty-two and thirty-four per cent on the cost of the building.  
18 The school used its advantage as a public entity to finance  
19 construction of the school with tax-exempt borrowing and then  
20 leased the building to the private entity to operate as a  
21 charter school.



1           Public-private partnerships have also been used  
2 successfully in other countries. For example, in Nova Scotia,  
3 Canada, public-private partnerships are helping to facilitate  
4 the construction of new schools. By the end of 1998, as many as  
5 forty-one new schools had either been completed or approved for  
6 construction, and another twelve were proposed. Scotland has  
7 also replaced or renovated fifty-six schools at a total cost of  
8 \$554,000,000 by shifting the burden of financing to the private  
9 sector.

10           In Hawaii, pursuant to section 302A-1506, Hawaii Revised  
11 Statutes, the department of education already has the power to  
12 enter into "contracts, leases, lease-purchase agreements, or  
13 other transactions" with the private sector as may be necessary  
14 to acquire public school facilities and lands, subject to the  
15 approval of the comptroller.

16           In 2002, the department of education pursued the  
17 possibility of using certificates of participation as a method  
18 of financing construction of new schools to be built on land  
19 owned by the developer. In this method of financing, the  
20 department of budget and finance enters into an agreement with  
21 the developer to "front the financing". However, the department  
22 of budget and finance informed the department of education that



1 certificates of participation would be treated as lease payments  
2 and would be met as an operating budget item. The department of  
3 education concluded that this was not a viable method of  
4 financing the construction of a new school.

5 The legislature finds that a contract between the State and  
6 the landowner or developer for outright purchase of title to the  
7 property with its school facilities improvements is the  
8 preferred method for new school construction because the costs  
9 of general obligation bonds for such a transaction are generally  
10 lower due to the State's credit rating and exemption of the  
11 interest income from the State's federal tax liability. A  
12 lease-purchase agreement, in the form of a lease-purchase option  
13 provision should be incorporated in these new school  
14 construction contracts to serve as a back-up in cases when new  
15 school construction is not fully funded.

16 In order to facilitate the financing and construction of  
17 public schools by partnering with the private sector, as well as  
18 to address the concerns of the department of education and  
19 provide a source of funding for the payment of certificates of  
20 participation, this Act:

21 (1) Establishes a pilot project for the financing and  
22 construction of new school facilities through public-



1 private partnerships when new school construction is  
2 not fully funded;

3 (2) Specifies that the use of certificates of  
4 participation to finance the construction of new  
5 public schools will not be paid out of the department  
6 of education's operating budget; and

7 (3) Establishes the public school facility financing  
8 agreement special fund to establish a stable source of  
9 funding to finance the private construction of new  
10 public schools in Hawaii when new school construction  
11 is not fully funded.

12 The legislature finds that this Act will encourage  
13 partnerships with the private sector to benefit Hawaii's school  
14 children by facilitating the financing and construction of new,  
15 modern school facilities that are built in a timely, efficient  
16 manner. Moreover, the legislature finds that allowing the  
17 private sector to build new school facilities will generally  
18 allow for construction in a shorter time period and more  
19 efficiently than could be provided by the State and will help to  
20 free up needed funds to address deterioration at other schools.



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

4 "§302A- Public school facility financing agreement  
5 special fund. (a) There is created in the treasury of the  
6 State the public school facility financing agreement special  
7 fund, into which shall be deposited a portion of all general  
8 excise tax revenues collected by the department of taxation  
9 under section 237-31(4). The special fund shall be used only  
10 when new school construction is not fully funded by the  
11 legislature in order to meet the obligations of public school  
12 facility financing agreements authorized pursuant to chapter  
13 37D. Amounts payable from the special fund shall be limited to  
14 "available moneys" as defined in section 37D-1. Appropriations  
15 or authorizations from the special fund shall be expended by the  
16 superintendent of education.

17 (b) No later than twenty days prior to the convening of  
18 each regular session, the department of education shall submit  
19 an annual report to the legislature that shall include a  
20 financial statement of the special fund and the status of public  
21 school facility financing agreements undertaken pursuant to  
22 chapter 37D."



1 SECTION 3. Section 237-31, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§237-31 Remittances. All remittances of taxes imposed by  
4 this chapter shall be made by money, bank draft, check,  
5 cashier's check, money order, or certificate of deposit to the  
6 office of the department of taxation to which the return was  
7 transmitted. The department shall issue its receipts therefor  
8 to the taxpayer and shall pay the moneys into the state treasury  
9 as a state realization, to be kept and accounted for as provided  
10 by law; provided that:

11 (1) The sum from all general excise tax revenues realized  
12 by the State that represents the difference between  
13 \$45,000,000 and the proceeds from the sale of any  
14 general obligation bonds authorized for that fiscal  
15 year for the purposes of the state educational  
16 facilities improvement special fund shall be deposited  
17 in the state treasury in each fiscal year to the  
18 credit of the state educational facilities improvement  
19 special fund;

20 (2) A sum, not to exceed \$5,000,000, from all general  
21 excise tax revenues realized by the State shall be  
22 deposited in the state treasury in each fiscal year to



1 the credit of the compound interest bond reserve fund;

2 [and]

3 (3) A sum, not to exceed the amount necessary to meet the  
4 obligations of the integrated tax information  
5 management systems performance-based contract may be  
6 retained and deposited in the state treasury to the  
7 credit of the integrated tax information management  
8 systems special fund. The sum retained by the  
9 director of taxation for deposit to the integrated tax  
10 information management systems special fund for each  
11 fiscal year shall be limited to amounts appropriated  
12 by the legislature. This paragraph shall be repealed  
13 on July 1, 2005[-]; and

14 (4) A sum, not to exceed \$ \_\_\_\_\_, or the amount necessary  
15 to meet the obligations of public school facility  
16 financing agreements authorized pursuant to chapter  
17 37D, whichever is less, shall be retained and  
18 deposited in the state treasury each fiscal year to  
19 the credit of the public school facility financing  
20 agreement special fund. The sum retained by the  
21 director of taxation for deposit into the public  
22 school facility financing agreement special fund for



1           each fiscal year shall be limited to \$ \_\_\_\_\_, or the  
2           amount necessary to meet the obligations of public  
3           school facility financing agreements authorized  
4           pursuant to chapter 37D, whichever is less."

5           SECTION 4. Section 302A-1506, Hawaii Revised Statutes, is  
6 amended to read as follows:

7           "~~+~~ §302A-1506 ~~+~~ **Public school facilities.** (a) The  
8 department may enter into such contracts, leases, lease-purchase  
9 agreements, or other transactions, including public school  
10 facility financing agreements pursuant to chapter 37D, as may be  
11 necessary for the acquisition of public school facilities,  
12 including any lands for these facilities, on such terms as it  
13 may deem appropriate, subject to approval by the comptroller.

14           (b) With respect to any public school facility financing  
15 agreement authorized pursuant to chapter 37D, the use of  
16 certificates of participation to finance the construction of new  
17 public school facilities when new school construction is not  
18 fully funded shall be paid out of "available moneys" as defined  
19 in section 37D-1 and shall not be paid out of the department's  
20 operating budget. In the event of a conflict between this  
21 section and any other law, this section shall control unless



1 that law specifically provides that this section is being  
2 superseded."

3 SECTION 5. **Public-private partnerships; department of**  
4 **education pilot project.** (a) The department of education shall  
5 implement a pilot project for the financing and construction of  
6 new school facilities through public-private partnerships. The  
7 pilot project shall include the following elements:

- 8 (1) The identification of appropriate schools in each of  
9 the counties;
- 10 (2) The identification of appropriate private sector firms  
11 that have the experience, integrity, and ability to  
12 renovate or reconstruct these schools to meet the  
13 department of education's specifications;
- 14 (3) A review of the most appropriate, most efficient, and  
15 least expensive means to develop new facilities in  
16 cooperation with the private sector, including lease-  
17 purchase agreements to finance the construction of  
18 school facilities that are securitized through  
19 certificates of participation under chapter 37D,  
20 Hawaii Revised Statutes and that are to be used when  
21 new school construction is not fully funded by the  
22 legislature;



- 1       (4) A review of the best means of structuring public-
- 2             private ventures so that proposals are mutually
- 3             beneficial to both the public and private sectors;
- 4       (5) A review of appropriate provisions to include in
- 5             agreements with the private sector to limit the
- 6             State's liability, address security and default
- 7             issues, and require private contractors to obtain
- 8             adequate insurance coverage; and
- 9       (6) A review of all other issues that impact on and would
- 10            facilitate the development of public-private
- 11            partnerships to construct new school facilities.
- 12       (b) The department of education shall:
- 13       (1) Report preliminary findings and progress in
- 14            implementing the pilot project to the legislature and
- 15            the governor no later than twenty days before the
- 16            convening of the regular session of 2006; and
- 17       (2) Submit a final report of findings and recommendations
- 18            to the legislature and the governor no later than
- 19            twenty days before the convening of the regular
- 20            session of 2007.

21       SECTION 6. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect upon its approval.

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JAN 20 2006



**Report Title:**

Public Schools; Private Construction & Financing; Pilot Project

**Description:**

Specifies that certificates of participation for new school construction will not be paid out of the department of education's operating budget. Establishes the public school facility financing agreement special fund to finance new schools when new school construction is not fully funded.

