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# A BILL FOR AN ACT

RELATING TO EDUCATION.

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

PART I

SECTION 1. The legislature finds that Hawaii's future is dependent upon our youth, and the investments we make in our young people today will determine the course of our State in the years to come. One of the greatest investments we can make is to provide our youth with the best possible opportunities in education, and therefore the purpose of this Act is to provide:

- (1) Resources for operations and repair and maintenance of Hawaii's educational facilities; and
- (2) Flexibility to the department of education for the construction of new schools.

PART II

SECTION 2. A proper scholastic environment, one that is safe, secure, well-maintained, and clean, has proven to be a key contributor to a child's capacity to learn.

However, the legislature finds that there is a continuing backlog of repair and maintenance projects for Hawaii's public schools. In 2001, the Hawaii Opinion Poll on public education



1 found that rundown, poorly kept, or inadequate facilities ranked  
2 third in the ten biggest problems facing our schools. Student  
3 leaders at the 2005 Hawaii secondary student conference passed a  
4 resolution supporting the expenditure of funds to relieve the  
5 backlog.

6 The condition of our schools increasingly depends on the  
7 availability of funds and effective management of facility  
8 needs. It is equally important that our schools be provided  
9 with sufficient funds for their operations, which also directly  
10 affect student achievement.

11 The purpose of this part is to provide resources for both  
12 the operations and repair and maintenance of Hawaii's public  
13 schools.

14 SECTION 3. There is appropriated out of the general  
15 revenues of the State of Hawaii the sum of \$1, or so much  
16 thereof as may be necessary for fiscal year 2006-2007, for  
17 repair and maintenance of department of education school  
18 facilities.

19 The sum appropriated shall be expended by the department of  
20 education for the purposes of this part.

21 SECTION 4. The director of finance is authorized to issue  
22 general obligation bonds in the sum of \$1, or so much thereof as



1 may be necessary, and the same sum, or so much thereof as may be  
2 necessary, is appropriated for fiscal year 2006-2007, for the  
3 purpose of capital improvement projects for the department of  
4 education.

5 SECTION 5. The appropriation made for the capital  
6 improvement projects authorized by this part shall not lapse at  
7 the end of the fiscal year for which the appropriation is made;  
8 provided that all moneys from the appropriation unexpended or  
9 unencumbered as of June 30, 2008, shall lapse as of that date.

10 The sum appropriated shall be expended by the department of  
11 education for the purposes of this part.

12 SECTION 6. There is appropriated out of the general  
13 revenues of the State of Hawaii the sum of \$1, or so much  
14 thereof as may be necessary for fiscal year 2006-2007, for  
15 operations of the department of education.

16 The sum appropriated shall be expended by the department of  
17 education for the purposes of this part.

18 PART III

19 SECTION 7. The legislature finds that the department of  
20 education may serve Hawaii's students more effectively if given  
21 flexibility in certain areas of its operations. The purpose of  
22 this part is to:



1 (1) Authorize the department to independently issue  
2 certificates of participation when initiating the  
3 construction of new schools; and

4 (2) Establish a special fund from which lease back  
5 payments may be made.

6 SECTION 8. Chapter 302A, Hawaii Revised Statutes, is  
7 amended by adding a new section to part VI to be appropriately  
8 designated and to read as follows:

9 "§302A- New school construction special fund. (a)

10 There is created in the state treasury the new school  
11 construction special fund, to be administered by the department,  
12 into which shall be deposited:

13 (1) Appropriations, including designated appropriations  
14 made for the operations of the department of  
15 education; and

16 (2) All interest earnings accruing from moneys in the  
17 fund.

18 (b) Expenditures from the fund shall be limited to  
19 interest earnings and shall be solely for the purpose of making  
20 lease back payments for new schools constructed through  
21 financing agreements entered into pursuant to chapter 37D,  
22 including using certificates of participation.



1        (c) New schools constructed with moneys appropriated from  
2 the new school construction special fund shall meet energy-  
3 efficient design standards, pursuant to chapter 196."

4        SECTION 9. Section 37D-2, Hawaii Revised Statutes, is  
5 amended to read as follows:

6        "**§37D-2 Financing agreements.** (a) There is [hereby]  
7 established and authorized the financing agreement program of  
8 the State. Any agency desiring to acquire or improve projects  
9 through the financing agreement program established and  
10 authorized by this chapter shall submit a written request to the  
11 department providing such information as the department shall  
12 require. Notwithstanding any other law to the contrary, and  
13 except for the Hawaii health systems corporation, only with the  
14 approval by the attorney general as to form and legality and  
15 upon the written request of one or more participating agencies  
16 may the department enter into a financing agreement in  
17 accordance with this chapter, except that [~~the~~]:

18        (1) The department of education may enter into a financing  
19 agreement in accordance with this chapter without the  
20 approval of the director but with the approval of the  
21 attorney general as to form and legality; and



1       (2) The board of regents of the University of Hawaii may  
2           enter into a financing agreement in accordance with  
3           this chapter without the approval of the director and  
4           of the attorney general as to form and legality;  
5 if the principal amount of the financing agreement does not  
6 exceed \$3,000,000.

7           A financing agreement may be entered into by the department  
8 on behalf of one or more participating agencies at any time  
9 (before or after commencement or completion of any improvements  
10 or acquisitions to be financed) and shall be upon terms and  
11 conditions the department finds to be advantageous. In each  
12 case of a written request by the judiciary to participate in the  
13 financing agreement program, the department shall implement the  
14 request; provided that the related financing agreement shall be  
15 upon terms and conditions the department finds to be  
16 advantageous. Any financing agreement entered into by the  
17 department without the approval required by this section shall  
18 be void and of no effect.

19       (b) A single financing agreement may finance a single item  
20 or multiple items of property to be used by multiple agencies or  
21 may finance a single item or multiple items of property to be  
22 used by a single agency. The department shall bill any



1 participating agency that benefits from property acquired with  
2 the proceeds of a financing agreement for such participating  
3 agency's pro rata share of:

- 4 (1) The department's costs of administration of the  
5 financing agreement program; and
- 6 (2) The financing costs, including the principal and  
7 interest components of the financing agreement, and  
8 insurance premiums;

9 on a monthly or other periodic basis, and may deposit payments  
10 received in connection with the billings with a trustee as  
11 security for a financing agreement. Any participating agency  
12 receiving such a bill shall be authorized and shall pay the  
13 amounts billed from the available moneys.

14 [~~(b)~~] (c) Financing agreements shall be subject to the  
15 following limitations:

- 16 (1) Amounts payable by a participating agency to or upon  
17 the direction of the department in respect to a  
18 project and by the department under a financing  
19 agreement shall be limited to available moneys. In no  
20 circumstance shall the department be obligated to pay  
21 amounts due under a financing agreement from any  
22 source other than available moneys. If, by reason of



1           insufficient available moneys or other reason, amounts  
2           due under a financing agreement are not paid when due,  
3           the lender may exercise any property right that the  
4           department has granted to it in the financing  
5           agreement, against the property that was purchased  
6           with the proceeds of the financing agreement, and  
7           apply the amounts so received toward payments  
8           scheduled to be made by the department under the  
9           financing agreement;

10           (2) No property rights may be granted in property unless  
11           the property is being acquired, is to be substantially  
12           improved, is to be refinanced with the proceeds of a  
13           financing agreement, or is land on which the property  
14           is located;

15           (3) Notwithstanding any other law to the contrary, and  
16           except for the Hawaii health systems corporation and  
17           as otherwise provided in this section with respect to  
18           the department of education and the University of  
19           Hawaii, and except as provided in chapter 323F as to  
20           the Hawaii health systems corporation, an agency shall  
21           not have the power to enter into a financing  
22           agreement, except through the department as authorized





1 by this chapter, and nothing in this chapter shall be  
2 construed to authorize the sale, lease, or other  
3 disposition of property owned by an agency;

4 (4) Except as otherwise provided in this section with  
5 respect to the department of education and the  
6 University of Hawaii, the sale, assignment, or other  
7 disposition of any financing agreements, including  
8 certificates of participation relating thereto, shall  
9 require the approval of the director; and

10 (5) The department shall not be subject to chapter 103D  
11 and any and all other requirements of law for  
12 competitive bidding for financing agreements."

13 SECTION 10. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$1, or so much  
15 thereof as may be necessary for fiscal year 2006-2007, to be  
16 deposited into the new school construction special fund.

17 The sum appropriated shall be expended by the department of  
18 education for the purposes of this part.

19 SECTION 11. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 12. This Act shall take effect on July 1, 2050.



**Report Title:**

Fix Hawaii's Schools Act

**Description:**

Creates new school construction special fund; makes appropriations for DOE operations, repair, and maintenance; allows DOE to use certificates of participation to finance the construction of new schools; requires new schools to meet energy-efficient standards. (SD2)

