

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO ASSET MANAGEMENT.

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

1           SECTION 1. The purpose of this Act is to establish the  
2 authority of the board of education and department of education  
3 to own and administer all of the lands under Hawaii's public  
4 schools. Accordingly, this Act transfers all public lands used  
5 for public school facilities to the department of education.  
6 This Act also empowers the board of education and department of  
7 education to acquire, sell, lease, transfer, hypothecate,  
8 develop, and enter into agreements for the improvement of lands  
9 under its control for the support of the public schools.

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

13                           **"PART     .   ASSET MANAGEMENT**

14           **§302A-A Legislative findings.** The legislature finds that  
15 section 5(f) of the Admissions Act provides that public lands  
16 and the proceeds and income therefrom shall be held as a public  
17 trust and managed and disposed of for purposes including but not  
18 limited to support of the public schools. The legislature also



1 finds that article X, section 3, of the State Constitution  
2 establishes that "the board of education shall have the power,  
3 as provided by law, to formulate policy and to exercise control  
4 over the public school system." The legislature further finds  
5 that under article XI, section 5, of the State Constitution,  
6 "legislative power over the lands owned by or under the control  
7 of the State and its political subdivisions shall be exercised  
8 only by general laws." Therefore, the legislature believes that  
9 public lands appropriately classified by the department of land  
10 and natural resources and used for public school facilities  
11 should be transferred to the department of education, with the  
12 approval of the board of land and natural resources and the  
13 board of education, for purposes and in a manner consistent with  
14 the State Constitution.

15 The purpose of this chapter is to ensure the most  
16 productive use of public lands classified or set aside by the  
17 department of land and natural resources for public school  
18 facilities by allowing these lands to be transferred to and  
19 managed by the department of education.

20 **§302A-B Definitions.** As used in this part, unless the  
21 context otherwise requires:



1 "Board" means the board of education as defined in section  
2 302A-101.

3 "Department" means the department of education as defined  
4 in section 302A-101.

5 "Public schools" has the same meaning as in section 302A-  
6 101.

7 "Public school facilities" has the same meaning as in  
8 section 302A-1506.

9 **§302A-C Transfer and management of public school lands and**  
10 **related facilities to the department of education.** (a) Upon  
11 mutual agreement and approval of the board and the board of land  
12 and natural resources:

13 (1) The department may accept the transfer of and manage  
14 certain qualifying public school lands; and

15 (2) Certain assets, including position counts, related to  
16 the management of existing encumbered and unencumbered  
17 public school lands and related facilities shall be  
18 transferred to the department.

19 (b) The department shall administer a program to manage  
20 the transferred public school lands under rules adopted by the  
21 board pursuant to chapter 91. The transfer of public school  
22 lands shall be done in a manner to be determined by the board



1 and may include more than one parcel; provided that these  
2 parcels are geographically adjacent to one another.

3 (c) For any public school lands to be transferred to the  
4 department that are not being used or required for the public  
5 purpose stated, the order setting aside the lands shall be  
6 withdrawn and the lands shall be returned to the department of  
7 land and natural resources.

8 **§302A-D Conversion of qualified and encumbered public**  
9 **school lands.** The department shall establish criteria and rules  
10 pursuant to chapter 91 and subject to approval by the board to  
11 convert qualified and encumbered public school lands to  
12 department leases or other forms of encumbrance.

13 **§302A-E Extension of public school lands encumbered by**  
14 **permit and transferred to and managed by the department.**  
15 Notwithstanding chapter 171, the board shall establish criteria  
16 and rules to allow the cancellation, renegotiation, and  
17 extension of transferred encumbrances by the department.  
18 Notwithstanding any law to the contrary, leases of encumbered  
19 public school lands transferred to the department shall not have  
20 their respective length of term or rents reduced over the  
21 remaining fixed term of the leases.



1           **§302A-F Rules.** The board shall adopt rules pursuant to  
2 chapter 91 to effectuate the purposes of this part.

3           **§302A-G Aquisition, use, and disposition of property.** (a)

4 The board may acquire any real or personal property or interest  
5 therein by purchase, exchange, gift, grant, lease, or other  
6 means from any person or government to provide sites for public  
7 school facilities. Exchange of real property shall be in  
8 accordance with section 171-50.

9           (b) The board may own or hold real property. All real  
10 property owned or held by the board shall be exempt from  
11 mechanics' or materialmen's liens and also from levy and sale by  
12 virtue of an execution, and no execution or other judicial  
13 process shall issue against the same nor shall any judgment  
14 against the board be a charge or lien upon its real property;  
15 provided that this subsection shall not apply to or limit the  
16 right of obligees to foreclose or otherwise enforce any mortgage  
17 of the board or the right of obligees to pursue any remedies for  
18 the enforcement of any pledge or lien given by the board on its  
19 rents, fees, or revenues. The board and its property shall be  
20 exempt from all taxes and assessments.

21           (c) The board may lease or rent all or a portion of any  
22 public school site and establish and revise the rents or charges



1 therefor. The board may sell, exchange, transfer, assign, or  
2 pledge any property, real or personal, or any interest therein  
3 to any person or government.

4 (d) The board may insure or provide for the insurance of  
5 its property or operations against risks as it deems advisable.

6 **§302A-H Development of property.** (a) The board, in its  
7 own behalf or on behalf of any government, may:

8 (1) Clear, improve, and rehabilitate property;

9 (2) Plan, develop, construct, and finance public school  
10 projects; and

11 (3) In cooperation with the housing and community  
12 development corporation of Hawaii and the department  
13 of accounting and general services, plan educational  
14 facilities and related infrastructure as a necessary  
15 and integral part of public housing projects using all  
16 its innovative powers towards achieving that end  
17 expeditiously and economically; provided that the  
18 educational facilities comply with the department's  
19 educational specifications, timelines, and siting  
20 requirements.

21 (b) The board may develop public land in an agricultural  
22 district subject to the prior approval of the land use



1 commission, when developing lands greater than five acres in  
2 size, and public land in a conservation district subject to the  
3 prior approval of the board of land and natural resources. The  
4 board shall not develop state monuments, historical sites, or  
5 parks. When the board proposes to develop public land, it shall  
6 file with the department of land and natural resources a  
7 petition setting forth such purpose. The petition shall be  
8 conclusive proof that the intended use is a public use superior  
9 to that which the land has been appropriated.

10 (c) The board may develop or assist in the development of  
11 federal lands with the approval of appropriate federal  
12 authorities.

13 (d) The board shall not develop any public land where the  
14 development may:

- 15 (1) Endanger the receipt of any federal grant;
- 16 (2) Impair the eligibility of any public body for a  
17 federal grant;
- 18 (3) Prevent the participation of the federal government in  
19 any government program; or
- 20 (4) Impair any covenant between the government and the  
21 holder of any bond issued by the government.



1           **§302A-I Development of property; additional powers.**

2 Notwithstanding any provision to the contrary, whenever the bids  
3 submitted for any public school development or rehabilitation  
4 project exceed the amount of funds available for that project,  
5 the board, with the approval of the governor, may disregard the  
6 bids and enter into an agreement to carry out the project, or  
7 undertake the project or participate in the project under the  
8 agreement; provided that the total cost of the agreement and the  
9 board's participation, if any, shall not exceed the amount of  
10 funds available for the project; and provided further that if  
11 the agreement is with a non-bidder, the scope of the project  
12 under agreement shall remain the same as that for which bids  
13 were originally requested.

14           **§302A-J Eminent domain, exchange or use of public**

15 **property.** (a) The board may acquire any real property,  
16 including fixtures and improvements, or interest therein:

17           (1) Through voluntary negotiation;

18           (2) Through exchange of land in accordance with section  
19           171-50; provided that the public land to be exchanged  
20           need not be of like use to that of the private land;

21           or





1           (3) By the exercise of the power of eminent domain which  
2           it deems necessary by the adoption of a resolution  
3           declaring that the acquisition of the property  
4           described therein is in the public interest and  
5           required for public use.

6           (b) The board shall exercise the power of eminent domain  
7           granted by this section in the same manner and procedure as is  
8           provided by chapter 101, and otherwise in accordance with all  
9           applicable provisions of the general laws of the State; provided  
10          that condemnation of parcels greater than fifteen acres shall be  
11          subject to legislative disapproval expressed in a concurrent  
12          resolution adopted by majority vote of the senate and the house  
13          of representatives in the first regular or special session  
14          following the date of condemnation. No award of compensation  
15          shall be increased by reason of any increase in the value of  
16          real property caused by the designation of a public school  
17          facility site, or the actual or proposed acquisition, use, or  
18          disposition of any other real property by the board.

19          (c) The board may acquire by the exercise of the power of  
20          eminent domain property already devoted to a public use;  
21          provided that no property belonging to any government may be  
22          acquired without its consent, and that no property belonging to



1 a public utility corporation may be acquired without the  
2 approval of the public utilities commission, and subject to  
3 legislative disapproval expressed in a concurrent resolution  
4 adopted by majority vote of the senate and the house of  
5 representatives in the first regular or special session  
6 following the date of condemnation. Such property shall not  
7 thereafter be taken for any other public use without the consent  
8 of the board.

9 **§302A-K Use of public lands; acquisition of state lands.**

10 (a) Chapter 171 to the contrary notwithstanding, the governor  
11 may transfer lands located within a public school facility  
12 project area to the board for its use.

13 (b) If state lands under the control and management of  
14 other public agencies are required by the board for its  
15 purposes, the agency having the control and management of those  
16 required lands, upon request by the board and with the approval  
17 of the governor, shall lease the lands to the board upon such  
18 terms and conditions as may be agreed to by the parties.

19 (c) Subsection (b) to the contrary notwithstanding, no  
20 public lands shall be leased to the board if the lease would  
21 impair any covenant between the State or any county, or any



1 department or board thereof, and the holders of bonds issued by  
2 the State or the county, department, or board.

3       **§302A-L Public works contracts.** The board may make,  
4 execute, and carry out contracts for, or in connection with, any  
5 public school facility project in the manner provided in chapter  
6 103D and section 103-53. With regard to contracts entered into  
7 as prescribed in this section, the term "officers", as used in  
8 chapter 103D, shall mean the department or officer authorized by  
9 the department to act as its contracting officer. Unless made  
10 and executed in the name of the State, each contract made and  
11 executed as authorized in this section shall state therein that  
12 it is so made and executed.

13       **§302A-M Quitclaim deeds.** Unless otherwise provided by  
14 law, the board shall issue quitclaim deeds and leases whenever  
15 it conveys, transfers, sells, or assigns any property developed,  
16 constructed, or sponsored under this chapter.

17       **§302A-N Acquisition of real property from a county.** Any  
18 provision of law or charter to the contrary notwithstanding, any  
19 county, by resolution of its local governing body, may, without  
20 public auction, sealed bids, or public notice, sell, lease for a  
21 term not exceeding sixty-five years, grant or convey to the  
22 board any real property owned by it which the board certifies to



1 be necessary for its purposes. The sale, lease, grant, or  
2 conveyance shall be made with or without consideration and upon  
3 such terms and conditions as may be agreed upon by the county  
4 and the board. Certification shall be evidenced by a formal  
5 request from the board. Before the sale, lease, grant, or  
6 conveyance may be made to the board, a public hearing shall be  
7 held by the governing body of the county to consider the same.  
8 Notice of the hearing shall be published at least ten days  
9 before the date set for the hearing in such publication and in  
10 such manner as may be designated by such governing body.

11 **§302A-0 Sale or lease of public school sites.** (a) The  
12 board may, without recourse to public auction, sell, or lease  
13 for a term not exceeding sixty-five years, all or any portion of  
14 the real or personal property constituting a public school  
15 facility to any person, upon such terms and conditions as may be  
16 approved by the board, if the board finds that the sale or lease  
17 is in conformity with the six-year program and financial plan.

18 (b) In the case of public school redevelopment projects,  
19 the terms of the sale shall provide for the repurchase of the  
20 property by the board at its option, in the event that the  
21 purchaser, if other than a state agency, desires to sell the  
22 property within ten years; provided that this requirement may be



1 waived by the board if the authority determines that a waiver  
 2 will not be contrary to the purpose of this part. The board  
 3 shall establish at the time of original sale a formula setting  
 4 forth a basis for a repurchase price based on market  
 5 considerations including but not limited to interest rates, land  
 6 values, construction costs, and federal tax laws.

7 (c) If the purchaser of a public school site is a state  
 8 agency, the authority may include as a term of the sale a  
 9 provision for the repurchase of the property in conformance with  
 10 this section.

11 **§302A-P Public land trust.** All funds derived from the  
 12 sale or lease or other disposition of public school lands shall  
 13 be appropriated by the laws of the State; provided that all  
 14 proceeds and income from the sale, lease, or other disposition  
 15 of lands ceded to the United States by the Republic of Hawaii  
 16 under the joint resolution of annexation, approved July 7, 1898  
 17 (30 Stat. 750), or acquired in exchange for lands so ceded, and  
 18 returned to the State of Hawaii by virtue of section 5(b) of the  
 19 Act of March 18, 1959 (73 Stat. 6), and all proceeds and income  
 20 from the sale, lease, or other disposition of lands retained by  
 21 the United States under sections 5(c) and 5(d) of the Act and



1 later conveyed to the State under section 5(e) shall be held as  
2 a public trust for the support of the public schools."

3 SECTION 3. Section 171-2, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§171-2 **Definition of public lands.** "Public lands" means  
6 all lands or interest therein in the State classed as government  
7 or crown lands previous to August 15, 1895, or acquired or  
8 reserved by the government upon or subsequent to that date by  
9 purchase, exchange, escheat, or the exercise of the right of  
10 eminent domain, or in any other manner; including accreted lands  
11 not otherwise awarded, submerged lands, and lands beneath tidal  
12 waters which are suitable for reclamation, together with  
13 reclaimed lands which have been given the status of public lands  
14 under this chapter, except:

- 15 (1) Lands designated in section 203 of the Hawaiian Homes  
16 Commission Act, 1920, as amended;
- 17 (2) Lands set aside pursuant to law for the use of the  
18 United States;
- 19 (3) Lands being used for roads and streets;
- 20 (4) Lands to which the United States relinquished the  
21 absolute fee and ownership under section 91 of the  
22 Hawaiian Organic Act prior to the admission of Hawaii



1 as a state of the United States unless subsequently  
2 placed under the control of the board of land and  
3 natural resources and given the status of public lands  
4 in accordance with the State Constitution, the  
5 Hawaiian Homes Commission Act, 1920, as amended, or  
6 other laws;

7 (5) Lands to which the University of Hawaii holds title;

8 (6) Lands to which the housing and community development  
9 corporation of Hawaii in its corporate capacity holds  
10 title;

11 (7) Lands to which the Hawaii community development  
12 authority in its corporate capacity holds title;

13 (8) Lands to which the department of agriculture holds  
14 title by way of foreclosure, voluntary surrender, or  
15 otherwise, to recover moneys loaned or to recover  
16 debts otherwise owed the department under chapter 167;

17 (9) Lands which are set aside by the governor to the Aloha  
18 Tower development corporation; lands leased to the  
19 Aloha Tower development corporation by any department  
20 or agency of the State; or lands to which the Aloha  
21 Tower development corporation holds title in its  
22 corporate capacity;



1 (10) Lands which are set aside by the governor to the  
 2 agribusiness development corporation; lands leased to  
 3 the agribusiness development corporation by any  
 4 department or agency of the State; or lands to which  
 5 the agribusiness development corporation in its  
 6 corporate capacity holds title; [~~and~~]

7 (11) Lands to which the high technology development  
 8 corporation in its corporate capacity holds title[~~+~~];  
 9 and

10 (12) Lands to which the department of education holds  
 11 title."

12 SECTION 4. Section 302A-1111, Hawaii Revised Statutes, is  
 13 amended by amending subsection (a) to read as follows:

14 "(a) Under policies established by the board, the  
 15 superintendent shall be designated as the chief executive  
 16 officer of the public school system having jurisdiction over the  
 17 internal organization, operation, and management of the public  
 18 school system, as provided by law[~~+~~], including but not limited  
 19 to the acquisition, ownership, development, management, and  
 20 disposition of public lands for public schools, and shall  
 21 administer programs of education and public instruction  
 22 throughout the State, including education at the preschool,





1 primary, and secondary school levels, and such other programs as  
2 may be established by law."

3 SECTION 5. Section 302A-1128, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§302A-1128 Department powers and duties.** (a) The  
6 department shall have entire charge and control and be  
7 responsible for the conduct of all affairs pertaining to public  
8 instruction, including operating and maintaining the capital  
9 improvement and repair and maintenance programs for department  
10 and school facilities. The department may establish and  
11 maintain schools for secular instruction at such places and for  
12 such terms as in its discretion it may deem advisable and the  
13 funds at its disposal may permit. The schools may include high  
14 schools, kindergarten schools, schools or classes for pregrade  
15 education, boarding schools, Hawaiian language medium education  
16 schools, and evening and day schools. The department may also  
17 maintain classes for technical and other instruction in any  
18 school where there may not be pupils sufficient in number to  
19 justify the establishment of separate schools for these  
20 purposes.



1           (b) The department shall regulate the courses of study to  
2 be pursued in all grades of public schools and classify them by  
3 methods the department deems proper; provided that:

4           (1) The course of study and instruction shall be regulated  
5 in accordance with the statewide performance standards  
6 established under section 302A-201;

7           (2) All pupils shall be progressively competent in the use  
8 of computer technology; and

9           (3) The course of study and instruction for the first  
10 twelve grades shall provide opportunities for all  
11 students to develop competency in a language in  
12 addition to English.

13           The department shall develop statewide educational policies  
14 and guidelines based on this subsection without regard to  
15 chapter 91.

16           For the purposes of this subsection, the terms  
17 "progressively competent in the use of computer technology" and  
18 "competency in a language in addition to English" shall be  
19 defined by policies adopted by the board. The board shall  
20 formulate statewide educational policies allowing the  
21 superintendent to exempt certain students from the requirements  
22 of paragraphs (2) and (3) without regard to chapter 91.



1 (c) Nothing in this section shall interfere with those  
2 persons attending a summer school.

3 (d) The department shall have entire charge and control  
4 and be responsible for the acquisition, ownership, development,  
5 management, and disposition of public lands for public schools,  
6 and for the construction, operation, maintenance, and repair of  
7 public school facilities."

8 SECTION 6. This Act does not affect rights and duties that  
9 matured, penalties that were incurred, and proceedings that were  
10 begun, before its effective date.

11 SECTION 7. If any provision of this Act, or the  
12 application thereof to any person or circumstance is held  
13 invalid, the invalidity does not affect other provisions or  
14 applications of the Act, which can be given effect without the  
15 invalid provision or application, and to this end the provisions  
16 of this Act are severable.

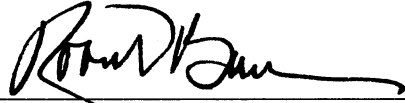
17 SECTION 8. In codifying the new sections added by section  
18 2 of this Act, the revisor of statutes shall substitute  
19 appropriate section numbers for the letters used in designating  
20 the new sections in this Act.

21 SECTION 9. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.

1 SECTION 10. This Act shall take effect upon its approval.

2

INTRODUCED BY:

  
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**SB. NO. 3137**

**Report Title:**

Public schools; BOE; DOE; Public lands; Asset management

**Description:**

Establishes the authority of the Board of Education and Department of Education to own and administer all lands under Hawaii's public schools.

