

JAN 24 2007

A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF EDUCATION.

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

1 SECTION 1. The legislature finds that public schools in
2 Hawaii are suffering from severe overcrowding, which negatively
3 affects the learning potential of our children. With Hawaii's
4 high growth rate and the continuous construction of new home
5 developments, the overcrowding problems will only become
6 amplified.

7 The legislature further finds that an alternate way of
8 financing new school projects without using general obligation
9 bonds needs to be implemented. Encouraging partnerships between
10 public schools and private developers is a cost-effective and
11 timely way to finance new school construction to help alleviate
12 overcrowding.

13 The purpose of this Act is to provide the board of
14 education with more autonomy in the acquisition of new school
15 design and construction projects by establishing a separate
16 account that is subject to legislative approval for the payment
17 of lease-purchase agreements.



1 SECTION 2. Section 36-32, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§36-32 State educational facilities improvement special
4 fund. (a) There is created in the treasury of the State the
5 state educational facilities improvement special fund, into
6 which shall be deposited a portion of all general excise tax
7 revenues collected by the department of taxation under section
8 237-31. The special fund shall be used solely to plan, design,
9 acquire lands for, and to construct public school facilities and
10 to provide equipment and technology infrastructure to improve
11 public schools and other facilities under the jurisdiction of
12 the department of education, except public libraries. In
13 addition, activities of the department of education intended to
14 eliminate the gap between the facility needs of schools and
15 available resources shall be eligible for funding from the
16 special fund. Expenditures from the special fund shall be
17 limited to projects authorized by the legislature and shall be
18 subject to sections 37-31, and 37-33 through 37-40.
19 Appropriations or authorizations from the special fund shall be
20 expended by the superintendent of education.

21 (b) There is established within the state educational
22 facilities improvement special fund a separate account, to be



1 known as the lease payments for schools account, for lease
2 payments required by financing agreements entered into by the
3 board of education pursuant to this section and sections 37D-2
4 and 302A-1506. The lease payments for schools account shall be
5 funded by legislative appropriations and expended by the
6 superintendent of education. Expenditures from the lease
7 payments for schools account shall be exempt from chapters 103
8 and 103D and are restricted to lease payments on new schools for
9 which:

- 10 (1) The legislature adopted a concurrent resolution
11 directing the department of education to:
12 (A) Build a new school in a specific geographic area
13 using the design-build method; and
14 (B) Pursue the use of a financing agreement to build
15 the new school; or
16 (2) The legislature appropriated planning and design funds
17 and specified that the remainder of the costs
18 necessary to complete the project are eligible for
19 funding through a financing agreement.

20 [-(b)-] (c) The department of education shall submit an
21 annual report to the legislature that shall include a financial
22 statement of the special fund, the separate account pursuant to



1 subsection (b), and the status of projects undertaken pursuant
2 to this section, no later than twenty days prior to the
3 convening of each regular session."

4 SECTION 3. 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 board of education
18 may enter into a financing agreement in accordance with this
19 chapter without the approval of the director but with the
20 approval of the attorney general as to form and legality, and
21 that the board of regents of the University of Hawaii may enter
22 into a financing agreement in accordance with this chapter



1 without the approval of the director and of the attorney general
2 as to form and legality if the principal amount of the financing
3 agreement does not exceed \$3,000,000. A financing agreement may
4 be entered into by the department on behalf of one or more
5 participating agencies at any time (before or after commencement
6 or completion of any improvements or acquisitions to be
7 financed) and shall be upon terms and conditions the department
8 finds to be advantageous. In each case of a written request by
9 the judiciary to participate in the financing agreement program,
10 the department shall implement the request; provided that the
11 related financing agreement shall be upon terms and conditions
12 the department finds to be advantageous. Any financing
13 agreement entered into by the department without the approval
14 required by this section shall be void and of no effect. A
15 single financing agreement may finance a single item or multiple
16 items of property to be used by multiple agencies or may finance
17 a single item or multiple items of property to be used by a
18 single agency. The department shall bill any participating
19 agency that benefits from property acquired with the proceeds of
20 a financing agreement for such participating agency's pro rata
21 share of:



1 (1) The department's costs of administration of the
2 financing agreement program; and
3 (2) The financing costs, including the principal and
4 interest components of the financing agreement and
5 insurance premiums;
6 on a monthly or other periodic basis, and may deposit payments
7 received in connection with the billings with a trustee as
8 security for a financing agreement. Any participating agency
9 receiving such a bill shall be authorized and shall pay the
10 amounts billed from the available moneys.

11 (b) Financing agreements shall be subject to the following
12 limitations:

13 (1) Amounts payable by a participating agency to or upon
14 the direction of the department in respect to a
15 project and by the department under a financing
16 agreement shall be limited to available moneys. In no
17 circumstance shall the department be obligated to pay
18 amounts due under a financing agreement from any
19 source other than available moneys. If, by reason of
20 insufficient available moneys or other reason, amounts
21 due under a financing agreement are not paid when due,
22 the lender may exercise any property right that the



1 department has granted to it in the financing
2 agreement, against the property that was purchased
3 with the proceeds of the financing agreement, and
4 apply the amounts so received toward payments
5 scheduled to be made by the department under the
6 financing agreement;

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

12 (3) Notwithstanding any other law to the contrary, and
13 except for the Hawaii health systems corporation and
14 as otherwise provided in this section with respect to
15 the department of education and the University of
16 Hawaii, and except as provided in chapter 323F as to
17 the Hawaii health systems corporation, an agency shall
18 not have the power to enter into a financing
19 agreement, except through the department as authorized
20 by this chapter, and nothing in this chapter shall be
21 construed to authorize the sale, lease, or other
22 disposition of property owned by an agency;



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

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

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

12 "~~§~~302A-1506~~§~~ **Public school facilities.** The
13 department may enter into such contracts, leases, lease-purchase
14 agreements, or other transactions as may be necessary for the
15 acquisition of public school facilities, including any lands for
16 these facilities, on such terms as it may deem appropriate,
17 subject to approval by the comptroller~~(-)~~, except that financing
18 agreements, including lease-purchase agreements, shall not be
19 subject to approval by the comptroller."

20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.

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Report Title:

Department of Education; Financing Agreements

Description:

Authorizes the department of education to enter into financing agreements without the approval of the director of budget and finance or the comptroller and creates a separate account within the state education facilities improvement special fund to be called the lease payments for schools account.

