
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 adversely
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 financing new school
8 projects without using general obligation bonds needs to be
9 implemented. Encouraging partnerships between public schools
10 and private developers is a cost-effective and timely way to
11 finance new school construction to help alleviate overcrowding.

12 The purpose of this Act is to, among other things, provide
13 the department of education with more autonomy in the
14 acquisition of new school design and construction projects by
15 establishing a separate account that is subject to legislative
16 approval for the payment 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 department of education pursuant to this section and sections
4 37D-2 and 302A-1506. The lease payments for schools account
5 shall be funded by legislative appropriations and expended by
6 the 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
9 included within the department of education's current six year
10 capital improvement programs and for which:

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



1 date of this Act and for which a private developer is willing to
2 enter into a lease-purchase agreement with the department of
3 education within twelve months of the effective date of this Act
4 is exempt from the requirements of subsections (b) (1) and (2).

5 [~~b~~] (c) The department of education shall submit an
6 annual report to the legislature that shall include a financial
7 statement of the special fund, the lease payments for schools
8 account established under subsection (b), and the status of
9 projects undertaken pursuant to this section, no later than
10 twenty days prior to the convening of each regular session."

11 SECTION 3. Section 37D-2, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§37D-2 Financing agreements.** (a) There is hereby
14 established and authorized the financing agreement program of
15 the State. Any agency desiring to acquire or improve projects
16 through the financing agreement program established and
17 authorized by this chapter shall submit a written request to the
18 department providing such information as the department shall
19 require. Notwithstanding any other law to the contrary, and
20 except for the Hawaii health systems corporation, only with the
21 approval by the attorney general as to form and legality and
22 upon the written request of one or more participating agencies



1 may the department enter into a financing agreement in
2 accordance with this chapter, except that the department of
3 education may enter into a financing agreement in accordance
4 with section 36-32 with the concurrence of the director and with
5 the approval of the attorney general as to form and legality;
6 and that the board of regents of the University of Hawaii may
7 enter into a financing agreement in accordance with this chapter
8 without the approval of the director and of the attorney general
9 as to form and legality if the principal amount of the financing
10 agreement does not exceed \$3,000,000.

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



1 finance a single item or multiple items of property to be used
2 by multiple agencies or may finance a single item or multiple
3 items of property to be used by a single agency. The department
4 shall bill any participating agency that benefits from property
5 acquired with the proceeds of a financing agreement for such
6 participating agency's pro rata share of:

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

17 (b) Financing agreements shall be subject to the following
18 limitations:

19 (1) Amounts payable by a participating agency to or upon
20 the direction of the department in respect to a
21 project and by the department under a financing
22 agreement shall be limited to available moneys. In no



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

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

18 (3) Notwithstanding any other law to the contrary, and
19 except for the Hawaii health systems corporation and
20 as otherwise provided in this section with respect to
21 the department of education and the University of
22 Hawaii, and except as provided in chapter 323F as to



1 the Hawaii health systems corporation, an agency shall
2 not have the power to enter into a financing
3 agreement, except through the department as authorized
4 by this chapter, and nothing in this chapter shall be
5 construed to authorize the sale, lease, or other
6 disposition of property owned by an agency;

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

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

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

18 "[~~§~~302A-1506~~]~~ **Public school facilities.** The
19 department may enter into such contracts, leases, lease-purchase
20 agreements, or other transactions as may be necessary for the
21 acquisition of public school facilities, including any lands for
22 these facilities, on such terms as it may deem appropriate~~]~~



1 ~~subject to approval by the comptroller.]~~ with the concurrence of
2 the director of finance."

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect on July 1, 2007.



S.B. NO. 1820
S.D. 1
H.D. 2
C.D. 1

Report Title:

DOE; Financing Agreements

Description:

Authorizes the department of education to enter into financing agreements with the concurrence of the Director of Finance and without the approval of the comptroller. Creates a new account within the state educational facilities improvement special fund for lease payments required by financing agreements entered into by the department of education for new schools. (CD1)

