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# 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 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 provide the department of  
13 education with more autonomy in the acquisition of new school  
14 design and construction projects by establishing a separate  
15 account that is subject to legislative approval for the payment  
16 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 improvements program 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 ~~(b)~~ (c) The department of education shall submit an  
22 annual report to the legislature that shall include a financial



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

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

7 "**§37D-2 Financing agreements.** (a) There is hereby  
8 established and authorized the financing agreement program of  
9 the State. Any agency desiring to acquire or improve projects  
10 through the financing agreement program established and  
11 authorized by this chapter shall submit a written request to the  
12 department providing such information as the department shall  
13 require. Notwithstanding any other law to the contrary, and  
14 except for the Hawaii health systems corporation, only with the  
15 approval by the attorney general as to form and legality and  
16 upon the written request of one or more participating agencies  
17 may the department enter into a financing agreement in  
18 accordance with this chapter, except that the department of  
19 education may enter into a financing agreement in accordance  
20 with section 36-32 with the concurrence of the director and with  
21 the approval of the attorney general as to form and legality;  
22 and that the board of regents of the University of Hawaii may



1 enter into a financing agreement in accordance with this chapter  
2 without the approval of the director and of the attorney general  
3 as to form and legality if the principal amount of the financing  
4 agreement does not exceed [~~\$3,000,000.~~] \$\_\_\_\_\_.

5 A financing agreement may be entered into by the department  
6 on behalf of one or more participating agencies at any time  
7 (before or after commencement or completion of any improvements  
8 or acquisitions to be financed) and shall be upon terms and  
9 conditions the department finds to be advantageous. In each  
10 case of a written request by the judiciary to participate in the  
11 financing agreement program, the department shall implement the  
12 request; provided that the related financing agreement shall be  
13 upon terms and conditions the department finds to be  
14 advantageous. Any financing agreement entered into by the  
15 department without the approval required by this section shall  
16 be void and of no effect. A single financing agreement may  
17 finance a single item or multiple items of property to be used  
18 by multiple agencies or may finance a single item or multiple  
19 items of property to be used by a single agency. The department  
20 shall bill any participating agency that benefits from property  
21 acquired with the proceeds of a financing agreement for such  
22 participating agency's pro rata 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.~~] with the concurrence of  
18 the director of finance."

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

21 SECTION 6. This Act shall take effect on July 1, 2050.





**Report Title:**

Department of Education; 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 DOE for new schools. (SB1820 HD1)

