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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 lands used for Hawaii's public schools  
4 by:

5           (1) Transferring all public lands used for public school  
6 facilities to the department of education; and

7           (2) Empowering the board of education and department of  
8 education to acquire, sell, lease, transfer,  
9 hypothecate, develop, and enter into agreements for  
10 the improvement of lands under their control for the  
11 support of public schools.

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

15                           **"PART . ASSET MANAGEMENT**

16           **§302A-A Legislative findings.** The legislature finds that  
17 section 5(f) of The Admission Act provides that public lands and



1 the proceeds and income therefrom shall be held as a public  
2 trust and managed and disposed of for purposes including, but  
3 not limited to, support of the public schools. The legislature  
4 further finds that article X, section 3, of the state  
5 constitution establishes that "the board of education shall have  
6 the power, as provided by law, to formulate policy and to  
7 exercise control over the public school system..." The  
8 legislature further finds that article XI, section 5, of the  
9 state constitution provides that "legislative power over the  
10 lands owned by or under the control of the State and its  
11 political subdivisions shall be exercised only by general  
12 laws..." Therefore, the legislature finds that public lands  
13 appropriately classified by the department of land and natural  
14 resources and used for public school facilities should be  
15 transferred to the department of education, with the approval of  
16 the board of land and natural resources and the board of  
17 education, for purposes and in a manner consistent with the  
18 state constitution.

19 The purpose of this part is to ensure the most productive  
20 use of public lands classified or set aside by the department of  
21 land and natural resources for public school facilities by



1 allowing these lands to be transferred to and managed by the  
2 department of education.

3 **§302A-B Definitions.** As used in this part, unless the  
4 context otherwise requires:

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

7 **§302A-C Transfer and management of public school lands and**  
8 **related facilities to the department of education.** (a) Upon  
9 mutual agreement and approval of the board and the board of land  
10 and natural resources:

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

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

17 (b) The department shall administer a program to manage  
18 the transferred public school lands under rules adopted by the  
19 board pursuant to chapter 91. The transfer of public school  
20 lands shall be done in a manner to be determined by the board of  
21 education and may include more than one parcel; provided that  
22 these parcels are geographically adjacent to one another.



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

6           **§302A-D Conversion of qualified and encumbered public**  
7 **school lands.** The department shall establish criteria and rules  
8 pursuant to chapter 91 and subject to approval by the board to  
9 convert qualified and encumbered public school lands to  
10 department leases or other forms of encumbrance.

11           **§302A-E Extension of public school lands encumbered by**  
12 **permit and transferred to and managed by the department.**

13 Notwithstanding chapter 171, the board shall establish criteria  
14 and rules to allow the cancellation, renegotiation, and  
15 extension of transferred encumbrances by the department.

16 Notwithstanding any law to the contrary, leases of encumbered  
17 public school lands transferred to the department shall not have  
18 their respective length of term or rents reduced over the  
19 remaining fixed term of the leases.

20           **§302A-F Rules.** The board shall adopt rules pursuant to  
21 chapter 91 to effectuate the purposes of this part.



1           **§302A-G Acquisition, use, disposition of property.** (a)

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

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

19           (c) The board may lease or rent all or a portion of any  
20   public school site and establish and revise the rents or charges  
21   therefor. The board may sell, exchange, transfer, assign, or



1 pledge any property, real or personal, or any interest therein  
2 to any person or government.

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

5 **§302A-H Development of property.** (a) The board, on its  
6 own behalf or on behalf of any government, may:

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

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

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

20 (b) The board may develop public land in an agricultural  
21 district subject to prior approval of the land use commission,  
22 when developing lands greater than five acres in size, and



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

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

12 (d) The board shall not develop any public land where the  
13 development may endanger the receipt of any federal grant,  
14 impair the eligibility of any public body for a federal grant,  
15 prevent the participation of the federal government in any  
16 government program, or impair any covenant between the  
17 government and the holder of any bond issued by the government.

18 **§302A-I Development of property; additional powers.**

19 Notwithstanding any provision to the contrary, whenever bids  
20 submitted for any public school development or rehabilitation  
21 project exceed the amount of funds available for that project,  
22 the board, with the approval of the governor, may disregard the



1 bids and enter into an agreement to carry out the project, or  
2 undertake the project or participate in the project under the  
3 agreement; provided that the total cost of the agreement and the  
4 board's participation, if any, shall not exceed the amount of  
5 funds available for the project; provided further that if the  
6 agreement is with a non-bidder, the scope of the project under  
7 agreement shall remain the same as that for which bids were  
8 originally requested.

9 **§302A-J Eminent domain, exchange or use of public**

10 **property.** (a) The board may acquire any real property,  
11 including fixtures and improvements, or interest therein,  
12 through voluntary negotiation; through exchange of land in  
13 accordance with section 171-50, provided that the public land to  
14 be exchanged need not be of like use to that of the private  
15 land; or by the exercise of the power of eminent domain that it  
16 deems necessary by the adoption of a resolution declaring that  
17 the acquisition of the property described therein is in the  
18 public interest and required for public use.

19 (b) The board shall exercise the power of eminent domain  
20 granted by this section in the same manner and procedure as is  
21 provided by chapter 101, and otherwise in accordance with all  
22 applicable provisions of the general laws of the State; provided





1 that condemnation of parcels greater than fifteen acres shall be  
2 subject to legislative disapproval expressed in a concurrent  
3 resolution adopted by majority vote of the senate and the house  
4 of representatives in the first regular or special session  
5 following the date of condemnation. No award of compensation  
6 shall be increased by reason of any increase in the value of  
7 real property caused by the designation of a public school  
8 facility site, or the actual or proposed acquisition, use, or  
9 disposition of any other real property by the board.

10 (c) The board may acquire by the exercise of the power of  
11 eminent domain property already devoted to a public use,  
12 provided that no property belonging to any government may be  
13 acquired without its consent, and that no property belonging to  
14 a public utility corporation may be acquired without the  
15 approval of the public utilities commission, and subject to  
16 legislative disapproval expressed in a concurrent resolution  
17 adopted by majority vote of the senate and the house of  
18 representatives in the first regular or special session  
19 following the date of condemnation. Such property shall not  
20 thereafter be taken for any other public use without the consent  
21 of the board.



1           **§302A-K Use of public lands; acquisition of state lands.**

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

5           (b) If state lands under the control and management of  
6 other public agencies are required by the board for its  
7 purposes, the agency having control and management of those  
8 required lands, upon request by the board and with the approval  
9 of the governor, shall lease the lands to the board upon terms  
10 and conditions as may be agreed to by the parties.

11          (c) Subsection (b) to the contrary notwithstanding, no  
12 public lands shall be leased to the board if the lease would  
13 impair any covenant between the State or any county, or any  
14 department or board thereof, and the holders of bonds issued by  
15 the State or the county, department, or board.

16           **§302A-L Public works contracts.** The board may make,  
17 execute, and carry out contracts for, or in connection with, any  
18 public school facility project in the manner provided in chapter  
19 103D and section 103-53. With regard to contracts entered into  
20 as prescribed in this section, the term "officer," as used in  
21 chapter 103D, means the department or officer authorized by the  
22 department to act as its contracting officer. Unless made and



1 executed in the name of the State, each contract made and  
2 executed as authorized in this section shall state therein that  
3 it is so made and executed.

4 **§302A-M Quitclaim deeds.** Unless otherwise provided by  
5 law, the board shall issue quitclaim deeds and leases whenever  
6 it conveys, transfers, sells, or assigns any property developed,  
7 constructed, or sponsored under this chapter.

8 **§302A-N Acquisition of real property from a county.** Any  
9 provision of law or charter to the contrary notwithstanding, any  
10 county, by resolution of its local governing body, without  
11 public auction, sealed bids, or public notice, may sell, lease  
12 for a term not exceeding sixty-five years, grant, or convey to  
13 the board any real property owned by it which the board  
14 certifies to be necessary for its purposes. The sale, lease,  
15 grant, or conveyance shall be made with or without consideration  
16 and upon terms and conditions as may be agreed upon by the  
17 county and the board. Certification shall be evidenced by a  
18 formal request from the board. Before the sale, lease, grant,  
19 or conveyance may be made to the board, a public hearing shall  
20 be held by the governing body of the county to consider the  
21 same. Notice of the hearing shall be published at least ten



1 days before the date set for the hearing in a publication and in  
2 a manner that may be designated by the governing body.

3       **§302A-0 Sale or lease of public school sites.** (a) The  
4 board, without recourse to public auction, may sell, or lease  
5 for a term not exceeding sixty-five years, all or any portion of  
6 the real or personal property constituting a public school  
7 facility to any person, upon terms and conditions that may be  
8 approved by the board, if the board finds that the sale or lease  
9 is in conformity with the six-year program and financial plan.

10       (b) In the case of public school redevelopment projects,  
11 the terms of the sale shall provide for the repurchase of the  
12 property by the board at its option, if the purchaser, if other  
13 than a state agency, desires to sell the property within ten  
14 years; provided that this requirement may be waived by the board  
15 if the authority determines that a waiver will not be contrary  
16 to the purpose of this part. The board shall establish at the  
17 time of original sale a formula setting forth a basis for a  
18 repurchase price based on market considerations including but  
19 not being limited to interest rates, land values, construction  
20 costs, and federal tax laws.

21       (c) If the purchaser of a public school site is a state  
22 agency, the authority may include as a term of the sale a



1 provision for the repurchase of the property in conformance with  
2 this section.

3       **§302A-P Public land trust.** All funds derived from the  
4 sale or lease or other disposition of public school lands shall  
5 be appropriated by the laws of the State; provided that all  
6 proceeds and income from the sale, lease, or other disposition  
7 of lands ceded to the United States by the Republic of Hawaii  
8 under the joint resolution of annexation, approved July 7, 1898  
9 (30 Stat. 750), or acquired in exchange for lands so ceded, and  
10 returned to the State of Hawaii by virtue of section 5(b) of the  
11 Act of March 18, 1959 (73 Stat. 6), and all proceeds and income  
12 from the sale, lease, or other disposition of lands retained by  
13 the United States under sections 5(c) and 5(d) of that Act and  
14 later conveyed to the State under section 5(e) shall be held as  
15 a public trust for the support of the public schools."

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

18       **"§171-2 Definition of public lands.** "Public lands" means  
19 all lands or interest therein in the State classed as government  
20 or crown lands previous to August 15, 1895, or acquired or  
21 reserved by the government upon or subsequent to that date by  
22 purchase, exchange, escheat, or the exercise of the right of



1 eminent domain, or in any other manner; including accreted lands  
2 not otherwise awarded, submerged lands, and lands beneath tidal  
3 waters [~~which~~] that are suitable for reclamation, together with  
4 reclaimed lands which have been given the status of public lands  
5 under this chapter, except:

- 6 (1) Lands designated in section 203 of the Hawaiian Homes  
7 Commission Act, 1920, as amended;
- 8 (2) Lands set aside pursuant to law for the use of the  
9 United States;
- 10 (3) Lands being used for roads and streets;
- 11 (4) Lands to which the United States relinquished the  
12 absolute fee and ownership under section 91 of the  
13 Hawaiian Organic Act prior to the admission of Hawaii  
14 as a state of the United States unless subsequently  
15 placed under the control of the board of land and  
16 natural resources and given the status of public lands  
17 in accordance with the [~~State Constitution,~~] state  
18 constitution, the Hawaiian Homes Commission Act, 1920,  
19 as amended, or other laws;
- 20 (5) Lands to which the University of Hawaii holds title;



- 1           (6) Lands to which the Hawaii housing finance and  
2           development corporation in its corporate capacity  
3           holds title;
- 4           (7) Lands to which the Hawaii community development  
5           authority in its corporate capacity holds title;
- 6           (8) Lands to which the department of agriculture holds  
7           title by way of foreclosure, voluntary surrender, or  
8           otherwise, to recover moneys loaned or to recover  
9           debts otherwise owed the department under chapter 167;
- 10          (9) Lands [~~which~~] that are set aside by the governor to  
11          the Aloha Tower development corporation; lands leased  
12          to the Aloha Tower development corporation by any  
13          department or agency of the State; or lands to which  
14          the Aloha Tower development corporation holds title in  
15          its corporate capacity;
- 16          (10) Lands [~~which~~] that are set aside by the governor to  
17          the agribusiness development corporation; lands leased  
18          to the agribusiness development corporation by any  
19          department or agency of the State; or lands to which  
20          the agribusiness development corporation in its  
21          corporate capacity holds title; [~~and~~]



1 (11) Lands to which the high technology development  
 2 corporation in its corporate capacity holds title[+];  
 3 and

4 (12) Lands to which the department of education holds  
 5 title."

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

8 "(a) Under policies established by the board, the  
 9 superintendent shall be designated as the chief executive  
 10 officer of the public school system having jurisdiction over the  
 11 internal organization, operation, and management of the public  
 12 school system, as provided by law[+], including but not limited  
 13 to the acquisition, ownership, development, management, and  
 14 disposition of public lands for public schools, and shall  
 15 administer programs of education and public instruction  
 16 throughout the State, including education at the preschool,  
 17 primary, and secondary school levels, and such other programs as  
 18 may be established by law."

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

21 "**§302A-1128 Department powers and duties.** (a) The  
 22 department shall have entire charge and control and be





1 responsible for the conduct of all affairs pertaining to public  
2 instruction in the public schools the department establishes and  
3 operates, including operating and maintaining the capital  
4 improvement and repair and maintenance programs for department  
5 and school facilities. The department may establish and  
6 maintain schools for secular instruction at such places and for  
7 such terms as in its discretion it may deem advisable and the  
8 funds at its disposal may permit. The schools may include high  
9 schools, kindergarten schools, schools or classes for pregrade  
10 education, boarding schools, Hawaiian language medium education  
11 schools, and evening and day schools. The department may also  
12 maintain classes for technical and other instruction in any  
13 school where there may not be pupils sufficient in number to  
14 justify the establishment of separate schools for these  
15 purposes.

16 (b) The department shall regulate the courses of study to  
17 be pursued in all grades of the public schools it establishes  
18 and operates, and classify them by methods the department deems  
19 proper; provided that:

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



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

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

7           The department shall develop statewide educational policies  
8           and guidelines based on this subsection without regard to  
9           chapter 91.

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

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

19          (d) The department shall have entire charge and control  
20          and be responsible for the acquisition, ownership, development,  
21          management, and disposition of public lands for public schools,



1 and for the construction, operation, maintenance, and repair of  
2 public school facilities."

3 SECTION 6. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun, before its effective date.

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

12 SECTION 8. In codifying the new sections added by section  
13 2 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16 SECTION 9. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

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

19

INTRODUCED BY: Norman Saberno



**Report Title:**

Asset Management; Public School Lands Ownership and Management

**Description:**

Transfers all public lands used for public school facilities to the department of education; empowers the board of education and department of education to acquire, sell, lease, transfer, hypothecate, develop, and enter into agreements for the improvement of lands under their control for the support of public schools.

