
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, lease, hypothecate, develop, and
9 enter into agreements for the improvement of lands
10 under their control for the support of public schools.

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

14 **"PART . ASSET MANAGEMENT**

15 **§302A- Legislative findings.** The legislature finds that
16 section 5(f) of The Admission Act provides that public lands and
17 the proceeds and income therefrom shall be held as a public



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

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



1 **§302A- Definitions.** As used in this part, unless the
2 context otherwise requires:

3 "Public school facilities" means those facilities discussed
4 in section 302A-1506.

5 **§302A- Transfer and management of public school lands**
6 **and related facilities to the department of education.** (a)

7 Upon mutual agreement and approval of the board and the board of
8 land and natural resources, the department may accept the
9 transfer of and manage:

- 10 (1) Certain qualifying public school lands; and
11 (2) Certain assets, including position counts, related to
12 the management of existing encumbered and unencumbered
13 public school lands and related facilities shall be
14 transferred to the department.

15 (b) For any public school lands to be transferred to the
16 department that are not being utilized or required for the
17 public purpose stated, the order setting aside the lands shall
18 be withdrawn and the lands shall be returned to the department
19 of land and natural resources.

20 **§302A- Conversion of qualified and encumbered public**
21 **school lands.** The department shall establish criteria and rules
22 pursuant to chapter 91 and subject to approval by the board to



1 convert qualified and encumbered public school lands to
2 department leases or other forms of encumbrance.

3 **§302A- Extension of public school lands encumbered by**
4 **permit and transferred to and managed by the department.**

5 Notwithstanding chapter 171, the board shall establish criteria
6 and rules to allow the cancellation, renegotiation, and
7 extension of transferred encumbrances by the department.

8 Notwithstanding any law to the contrary, leases of encumbered
9 public school lands transferred to the department shall not have
10 their respective length of term or rents reduced over the
11 remaining fixed term of the leases.

12 **§302A- Rules.** The board shall adopt rules pursuant to
13 chapter 91 to effectuate the purposes of this part.

14 **§302A- Acquisition, use, disposition of property.** (a)
15 The board may acquire any real or personal property or interest
16 therein by purchase, gift, grant, lease, or other means from any
17 person or government to provide sites for public school
18 facilities.

19 (b) The board may own or hold real property. All real
20 property owned or held by the board shall be exempt from
21 mechanics' or materialmen's liens and also from levy and sale by
22 virtue of an execution, and no execution or other judicial



1 process shall issue against the same nor shall any judgment
2 against the board be a charge or lien upon its real property;
3 provided that this subsection shall not apply to or limit the
4 right of obligees to foreclose or otherwise enforce any mortgage
5 of the board or the right of obligees to pursue any remedies for
6 the enforcement of any pledge or lien given by the board on its
7 rents, fees, or revenues. The board and its property shall be
8 exempt from all taxes and assessments.

9 (c) The board may lease or rent all or a portion of any
10 public school site and establish and revise the rents or charges
11 therefor.

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

14 **§302A- Development of property.** (a) The board, on its
15 own behalf or on behalf of any government agency, may:

- 16 (1) Clear, improve, and rehabilitate property;
17 (2) Plan, develop, construct, and finance public school
18 projects; and
19 (3) In cooperation with the Hawaii housing finance and
20 development corporation and the department of
21 accounting and general services, plan educational
22 facilities and related infrastructure as a necessary



1 and integral part of public housing projects using all
2 its innovative powers toward achieving that end
3 expeditiously and economically; provided that the
4 educational facilities comply with the department's
5 educational specifications, timelines, and siting
6 requirements.

7 (b) The board may develop public land in an agricultural
8 district subject to prior approval of the land use commission,
9 when developing lands greater than five acres in size, and
10 public land in a conservation district subject to the prior
11 approval of the board of land and natural resources. The board
12 shall not develop state monuments, historical sites, or parks.
13 When the board proposes to develop public land, it shall file
14 with the department of land and natural resources a petition
15 setting forth such purpose. The petition shall be conclusive
16 proof that the intended use is a public use superior to that
17 which the land has been appropriated.

18 (c) The board may develop or assist in the development of
19 federal lands with the approval of appropriate federal
20 authorities.

21 (d) The board shall not develop any public land where the
22 development may endanger the receipt of any federal grant,



1 impair the eligibility of any public body for a federal grant,
2 prevent the participation of the federal government in any
3 government program, or impair any covenant between the
4 government and the holder of any bond issued by the government.

5 **§302A- Development of property; additional powers.**

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

18 **§302A- Eminent domain or use of public property. (a)**

19 The board may acquire any real property, including fixtures and
20 improvements, or interest therein, through voluntary negotiation
21 or by the exercise of the power of eminent domain that it deems
22 necessary by the adoption of a resolution declaring that the



1 acquisition of the property described therein is in the public
2 interest and required for public use.

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

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



1 legislative disapproval expressed in a concurrent resolution
2 adopted by majority vote of the senate and the house of
3 representatives in the first regular or special session in which
4 both houses of the legislature are in session following the date
5 of condemnation. The property shall not thereafter be taken for
6 any other public use without the consent of the board.

7 **§302A- Use of public lands; acquisition of state lands;**
8 **disposition.** (a) Chapter 171 to the contrary notwithstanding,
9 the governor may transfer lands located within a public school
10 facility project area to the board for its use.

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

17 (c) Subsection (b) to the contrary notwithstanding, no
18 public lands shall be leased to the board if the lease would
19 impair any covenant between the State or any county, or any
20 department or board thereof, and the holders of bonds issued by
21 the State or the county, department, or board.



1 (d) The board shall transfer any surplus or unused public
2 school lands under its control to the department of land and
3 natural resources for inclusion in the inventory of public lands
4 in the public land trust to maximize the availability of public
5 lands for all State and county agencies and the public.

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

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

20 **§302A- Acquisition of real property from a county.** Any
21 provision of law or charter to the contrary notwithstanding, any
22 county, by resolution of its local governing body, without



1 public auction, sealed bids, or public notice, may sell, lease
2 for a term not exceeding sixty-five years, grant, or convey to
3 the board any real property owned by it which the board
4 certifies to be necessary for its purposes. The sale, lease,
5 grant, or conveyance shall be made with or without consideration
6 and upon terms and conditions as may be agreed upon by the
7 county and the board. Certification shall be evidenced by a
8 formal request from the board. Before the sale, lease, grant,
9 or conveyance may be made to the board, a public hearing shall
10 be held by the governing body of the county to consider the
11 same. Notice of the hearing shall be published as provided by
12 section 1-28.5.

13 **§302A- Lease of public school sites.** The board may
14 lease for a term not exceeding sixty-five years, all or any
15 portion of the real or personal property constituting a public
16 school facility to any person, upon terms and conditions that
17 may be approved by the board, if the board finds that the lease
18 is in conformity with the six-year program and financial plan.

19 **§302A- Public school land trust.** All public school
20 lands and funds derived from the lease of public school lands
21 shall be held as a public trust for the support of the public
22 schools."



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

3 **"§171-2 Definition of public lands.** "Public lands" means
4 all lands or interest therein in the State classed as government
5 or crown lands previous to August 15, 1895, or acquired or
6 reserved by the government upon or subsequent to that date by
7 purchase, exchange, escheat, or the exercise of the right of
8 eminent domain, or in any other manner; including accreted lands
9 not otherwise awarded, submerged lands, and lands beneath tidal
10 waters [~~which~~] that are suitable for reclamation, together with
11 reclaimed lands which have been given the status of public lands
12 under this chapter, except:

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



1 natural resources and given the status of public lands
2 in accordance with the [~~State Constitution,~~] state
3 constitution, the Hawaiian Homes Commission Act, 1920,
4 as amended, or other laws;

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

6 (6) Lands to which the Hawaii housing finance and
7 development corporation in its corporate capacity
8 holds title;

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

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

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

21 (10) Lands [~~which~~] that are set aside by the governor to
22 the agribusiness development corporation; lands leased



1 to the agribusiness development corporation by any
2 department or agency of the State; or lands to which
3 the agribusiness development corporation in its
4 corporate capacity holds title; [and]

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

8 (12) Lands to which the department of education holds
9 title."

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

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



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

3 **"§302A-1128 Department powers and duties.** (a) The
4 department shall have entire charge and control and be
5 responsible for the conduct of all affairs pertaining to public
6 instruction in the public schools the department establishes and
7 operates, including operating and maintaining the capital
8 improvement and repair and maintenance programs for department
9 and school facilities. The department may establish and
10 maintain schools for secular instruction at [~~such~~] any places
11 and for [~~such~~] any terms as in its discretion it may deem
12 advisable and the funds at its disposal may permit. The schools
13 may include high schools, kindergarten schools, schools or
14 classes for pregrade education, boarding schools, Hawaiian
15 language medium education schools, and evening and day schools.
16 The department may also maintain classes for technical and other
17 instruction in any school where there may not be pupils
18 sufficient in number to justify the establishment of separate
19 schools for these purposes.

20 (b) The department shall regulate the courses of study to
21 be pursued in all grades of the public schools it establishes



1 and operates, and classify them by methods the department deems
2 proper; provided that:

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

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

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

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

15 For the purposes of this subsection, the terms
16 "progressively competent in the use of computer technology" and
17 "competency in a language in addition to English" shall be
18 defined by policies adopted by the board. The board shall
19 formulate statewide educational policies allowing the
20 superintendent to exempt certain students from the requirements
21 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 and management of public lands for public schools, and for the
6 construction, operation, maintenance, and repair of public
7 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. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 9. This Act shall take effect on July 1, 2050.



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, lease, hypothecate, develop, and enter into agreements for the improvement of lands under their control for the support of public schools. (SD1)

