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## A BILL FOR AN ACT

RELATING TO EDUCATION.

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

1           SECTION 1. The legislature finds that the financing of  
2 capital improvements for state educational facilities is  
3 inefficient. Pursuant to article VII, section 11 of the  
4 Constitution of the State of Hawaii, appropriations from the  
5 state educational facilities improvement special fund for the  
6 construction or acquisition of public school facilities may be  
7 made for periods exceeding three years, unlike all  
8 appropriations from general obligation bonds or general funds.  
9 Funds for the construction or acquisition of state educational  
10 facilities are appropriated from the state educational  
11 facilities improvement special fund (EDN100 and EDN400).  
12 General obligation bonds are issued as a separate line item in  
13 the appropriations Act to finance appropriations from the state  
14 educational facilities improvement special fund. While  
15 appropriations from the state educational facilities improvement  
16 special fund do not necessarily lapse after a three-year period,  
17 the general obligation bonds issued to finance appropriations  
18 from the state educational facilities improvement special fund



1 are required by the state constitution to lapse after three  
2 years.

3 During the regular session of 2011, the department of  
4 budget and finance informed the legislature that due to an  
5 accounting error, the statutory authority to issue general  
6 obligation bonds (BUF101) for the construction of certain  
7 educational facilities (EDN100 and EDN400) had lapsed. Yet,  
8 appropriations from the state educational facilities improvement  
9 special fund for those same projects had already been  
10 encumbered. As a result, the department of budget and finance  
11 informed the legislature that an appropriation of an additional  
12 \$390,000,000 in general obligation bonds was needed to provide  
13 sufficient statutory authority to cover the encumbered state  
14 educational facilities improvement special fund appropriations  
15 (page 28 of Conference Committee Report No. 143 on House Bill  
16 No. 200, Conference Draft 1, Regular Session of 2011). The  
17 \$390,000,000 in general obligation bonds appropriated for this  
18 purpose accounted for approximately one-fourth of all of the  
19 general obligation bonds appropriated for the fiscal biennium.

20 The legislature also finds that there is a need to  
21 stimulate job creation in the State. Between 2009 and 2011, the  
22 unemployment rate for Hawaii fluctuated between six and seven



1 per cent, according to the United States Bureau of Labor  
2 Statistics. With a labor force of approximately 635,400 in the  
3 State, seasonally adjusted, more than 38,500 of our citizens are  
4 currently unemployed.

5 Capital investment in government infrastructure has long  
6 been used as an effective means of stimulating employment. The  
7 use of general obligation bonds to fund the construction of  
8 government facilities infuses capital into the local economy and  
9 benefits not only the construction workers receiving a salary,  
10 but also the private-sector businesses that provide goods and  
11 services to the construction workers.

12 Accordingly, the legislature believes that the need to  
13 improve the efficiency of government financing provides the  
14 State with an ideal opportunity to stimulate Hawaii's economy.

15 It is the intent of the legislature that general excise tax  
16 revenues deposited into the state educational facilities repair  
17 and maintenance account be used for repair and maintenance  
18 projects that have a useful life of no more than twenty years,  
19 including painting, landscaping, plumbing, electrical work,  
20 reroofing, and air conditioning.

21 The purpose of this Act is to reform the manner in which  
22 the construction and acquisition of public school facilities are



1 financed to promote the efficiency of limited government  
2 resources, job creation, and economic stimulus.

3 SECTION 2. Section 36-27, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) Except as provided in this section, and  
6 notwithstanding any other law to the contrary, from time to  
7 time, the director of finance, for the purpose of defraying the  
8 prorated estimate of central service expenses of government in  
9 relation to all special funds, except the:

10 (1) Special out-of-school time instructional program fund  
11 under section 302A-1310;

12 (2) School cafeteria special funds of the department of  
13 education;

14 (3) Special funds of the University of Hawaii;

15 [~~4~~] ~~State educational facilities improvement special fund,~~

16 ~~5~~] (4) Convention center enterprise special fund under  
17 section 201B-8;

18 [~~6~~] (5) Special funds established by section 206E-6;

19 [~~7~~] (6) Housing loan program revenue bond special fund;

20 [~~8~~] (7) Housing project bond special fund;

21 [~~9~~] (8) Aloha Tower fund created by section 206J-17;



- 1     ~~[(10)]~~ (9) Funds of the employees' retirement system created  
2             by section 88-109;
- 3     ~~[(11)]~~ (10) Unemployment compensation fund established under  
4             section 383-121;
- 5     ~~[(12)]~~ (11) Hawaii hurricane relief fund established under  
6             chapter 431P;
- 7     ~~[(13)]~~ (12) Hawaii health systems corporation special funds  
8             and the subaccounts of its regional system boards;
- 9     ~~[(14)]~~ (13) Tourism special fund established under section  
10            201B-11;
- 11    ~~[(15)]~~ (14) Universal service fund established under section  
12            269-42;
- 13    ~~[(16)]~~ (15) Emergency and budget reserve fund under section  
14            328L-3;
- 15    ~~[(17)]~~ (16) Public schools special fees and charges fund  
16            under section 302A-1130;
- 17    ~~[(18)]~~ (17) Sport fish special fund under section 187A-9.5;
- 18    ~~[(19)]~~ (18) Glass advance disposal fee established by  
19            section 342G-82;
- 20    ~~[(20)]~~ (19) Center for nursing special fund under section  
21            304A-2163;



1       ~~[(21)]~~ (20) Passenger facility charge special fund  
2               established by section 261-5.5;

3       ~~[(22)]~~ (21) Court interpreting services revolving fund under  
4               section 607-1.5;

5       ~~[(23)]~~ (22) Hawaii cancer research special fund;

6       ~~[(24)]~~ (23) Community health centers special fund;

7       ~~[(25)]~~ (24) Emergency medical services special fund;

8       ~~[(26)]~~ (25) Rental motor vehicle customer facility charge  
9               special fund established under section 261-5.6; and

10       ~~[(27)]~~ (26) Shared services technology special fund under  
11              section 27-43,

12 shall deduct five per cent of all receipts of all special funds,  
13 which deduction shall be transferred to the general fund of the  
14 State and become general realizations of the State. All  
15 officers of the State and other persons having power to allocate  
16 or disburse any special funds shall cooperate with the director  
17 in effecting these transfers. To determine the proper revenue  
18 base upon which the central service assessment is to be  
19 calculated, the director shall adopt rules pursuant to chapter  
20 91 for the purpose of suspending or limiting the application of  
21 the central service assessment of any fund. No later than  
22 twenty days prior to the convening of each regular session of



1 the legislature, the director shall report all central service  
2 assessments made during the preceding fiscal year."

3 SECTION 3. Section 36-30, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) Each special fund, except the:

6 (1) Transportation use special fund established by section  
7 261D-1;

8 (2) Special out-of-school time instructional program fund  
9 under section 302A-1310;

10 (3) School cafeteria special funds of the department of  
11 education;

12 (4) Special funds of the University of Hawaii;

13 [~~(5)~~] ~~State educational facilities improvement special fund,~~

14 ~~(6)~~ (5) Special funds established by section 206E-6;

15 [~~(7)~~] (6) Aloha Tower fund created by section 206J-17;

16 [~~(8)~~] (7) Funds of the employees' retirement system created  
17 by section 88-109;

18 [~~(9)~~] (8) Unemployment compensation fund established under  
19 section 383-121;

20 [~~(10)~~] (9) Hawaii hurricane relief fund established under  
21 section 431P-2;



- 1       ~~[(11)]~~ (10)   Convention center enterprise special fund  
2                   established under section 201B-8;
- 3       ~~[(12)]~~ (11)   Hawaii health systems corporation special funds  
4                   and the subaccounts of its regional system boards;
- 5       ~~[(13)]~~ (12)   Tourism special fund established under section  
6                   201B-11;
- 7       ~~[(14)]~~ (13)   Universal service fund established under section  
8                   269-42;
- 9       ~~[(15)]~~ (14)   Emergency and budget reserve fund under section  
10                  328L-3;
- 11       ~~[(16)]~~ (15)   Public schools special fees and charges fund  
12                  under section 302A-1130;
- 13       ~~[(17)]~~ (16)   Sport fish special fund under section 187A-9.5;
- 14       ~~[(18)]~~ (17)   Center for nursing special fund under section  
15                  304A-2163;
- 16       ~~[(19)]~~ (18)   Passenger facility charge special fund  
17                  established by section 261-5.5;
- 18       ~~[(20)]~~ (19)   Court interpreting services revolving fund under  
19                  section 607-1.5;
- 20       ~~[(21)]~~ (20)   Hawaii cancer research special fund;
- 21       ~~[(22)]~~ (21)   Community health centers special fund;
- 22       ~~[(23)]~~ (22)   Emergency medical services special fund;





1       ~~[(+24)]~~ (23) Rental motor vehicle customer facility charge  
2                   special fund established under section 261-5.6; and  
3       ~~[(+25)]~~ (24) Shared services technology special fund under  
4                   section 27-43,

5 shall be responsible for its pro rata share of the  
6 administrative expenses incurred by the department responsible  
7 for the operations supported by the special fund concerned."

8           SECTION 4. Section 36-32, Hawaii Revised Statutes, is  
9 amended to read as follows:

10           "~~§36-32 [State educational facilities improvement special~~  
11 ~~fund. (a) There is created in the treasury of the State the~~  
12 ~~state educational facilities improvement special fund, into~~  
13 ~~which shall be deposited a portion of all general excise tax~~  
14 ~~revenues collected by the department of taxation under section~~  
15 ~~237-31. The special fund shall be used solely to plan, design,~~  
16 ~~acquire lands for, and to construct public school facilities and~~  
17 ~~to provide equipment and technology infrastructure to improve~~  
18 ~~public schools and other facilities under the jurisdiction of~~  
19 ~~the department of education, except public libraries. In~~  
20 ~~addition, activities of the department of education intended to~~  
21 ~~eliminate the gap between the facility needs of schools and~~  
22 ~~available resources shall be eligible for funding from the~~



1 ~~special fund. Expenditures from the special fund shall be~~  
2 ~~limited to projects authorized by the legislature and shall be~~  
3 ~~subject to sections 37-31, and 37-33 through 37-40.~~  
4 ~~Appropriations or authorizations from the special fund shall be~~  
5 ~~expended by the superintendent of education.~~

6 ~~(b)]~~ Lease payments for schools account. (a) There is  
7 ~~[established within the state educational facilities improvement~~  
8 ~~special]~~ created in the state general fund a separate account [7]  
9 to be known as the lease payments for schools account, for lease  
10 payments required by financing agreements entered into by the  
11 department of education pursuant to this section and sections  
12 37D-2 and 302A-1506. The lease payments for schools account  
13 shall be funded by legislative appropriations and expended by  
14 the superintendent of education. Expenditures from the lease  
15 payments for schools account shall be exempt from chapters 103  
16 and 103D and are restricted to lease payments on new schools  
17 included within the department of education's current [~~six-year~~]  
18 six-year capital improvement programs and for which:

19 (1) The legislature adopted a concurrent resolution  
20 directing the department of education to:

21 (A) Build a new school in a specific geographic area  
22 using the design-build method; and



1 (B) Pursue the use of a financing agreement to build  
2 the new school; or

3 (2) The legislature appropriated planning and design funds  
4 and specified that the remainder of the costs  
5 necessary to complete the project are eligible for  
6 funding through a financing agreement [

7 ~~provided that any school to which the legislature has~~  
8 ~~appropriated planning and design funds prior to July 1, 2007 and~~  
9 ~~for which a private developer is willing to enter into a lease-~~  
10 ~~purchase agreement with the department of education within~~  
11 ~~twelve months of July 1, 2007 is exempt from the requirements of~~  
12 ~~{paragraphs} (1) and (2)] .~~

13 [~~e~~] (b) The department of education shall submit an  
14 annual report to the legislature that shall include a financial  
15 statement of [~~the special fund,~~] the lease payments for schools  
16 account established under subsection [~~(b),~~] (a), and the status  
17 of projects undertaken pursuant to this section, no later than  
18 twenty days prior to the convening of each regular session."

19 SECTION 5. Section 36-35, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§36-35 State educational facilities repair and**  
22 **maintenance account.** (a) There is created in the state general



1 fund under EDN 400 (school support) the state educational  
2 facilities repair and maintenance account, into which shall be  
3 deposited a portion of all general excise tax revenues collected  
4 by the department of taxation under section 237-31, and  
5 legislative appropriations to the account designated for use  
6 solely to eliminate the backlog of school repair and maintenance  
7 projects, including the repair or replacement of fixtures,  
8 furnishings, and equipment [~~existing on June 30, 2000~~].  
9 Expenditures from the account shall be subject to sections 37-31  
10 and 37-33 to 37-40. Based on the prioritization approved by the  
11 department of education as prescribed by section 302A-1505,  
12 appropriations or authorizations from the account shall be  
13 expended by the superintendent of education.

14 (b) The department of education shall review the existing  
15 condition of school facilities and establish specific vision  
16 plans for each school complex based on current repair and  
17 maintenance requirements and overall repair and maintenance  
18 priorities.

19 [~~(c) Criteria used to establish current repair and~~  
20 ~~maintenance requirements may include:~~

21 ~~(1) The remaining useful life of the school facility and~~  
22 ~~its major components;~~



1       ~~(2) The adjusted life of the school facility and its major~~  
2           ~~components after repair or maintenance; and~~

3       ~~(3) The current and future repair and maintenance~~  
4           ~~requirements of the school facility and its components~~  
5           ~~based on established industry standards or product~~  
6           ~~manufacturer recommendations;~~

7       ~~provided that demolition of a facility or any of its components~~  
8       ~~may be recommended if the cost of the repairs do not justify the~~  
9       ~~adjusted life or remaining life of the facility.~~

10       ~~(d) Criteria used to establish overall repair and~~  
11       ~~maintenance requirements may include:~~

12       ~~(1) Whether a school facility will continue to be used for~~  
13           ~~the next twenty five years; and~~

14       ~~(2) Whether a repair or maintenance project is required:~~

15           ~~(A) For health or safety reasons;~~  
16           ~~(B) To comply with legal mandates;~~  
17           ~~(C) To comply with current building codes; or~~  
18           ~~(D) For preventive maintenance reasons;~~

19       ~~provided that in developing criteria, consideration shall be~~  
20       ~~given to school facilities that were more than twenty five years~~  
21       ~~of age on July 1, 2000.~~



1       ~~(e)~~ (c) The expenditure of funds for any project with an  
2 estimated total cost of less than \$100,000 shall be exempt from  
3 section 464-4; provided that:

4           (1) The superintendent of education shall develop internal  
5 policies and procedures for the procurement of goods,  
6 services, and construction, consistent with the goals  
7 of public accountability and public procurement  
8 practices;

9           (2) Insofar as is practical, and based on specifications  
10 developed, adequate and reasonable competition of no  
11 fewer than three proposals shall be solicited for each  
12 project, based on rules adopted by the superintendent  
13 of education;

14           (3) Considering all factors, including quality, warranty,  
15 and delivery, the award shall be made to the vendor  
16 with the most advantageous proposal;

17           (4) The procurement requirements shall not be artificially  
18 divided or parceled so as to avoid competitive bidding  
19 or competitive proposals; and

20           (5) Formal design for projects shall be done when there is  
21 a clear need to preserve structural integrity, health



1           and safety, or to clearly communicate construction  
2           requirements.

3           For all projects, the superintendent of education shall  
4   develop a strategy for the efficient and cost-effective use of  
5   government and private-sector workforces and consider increased  
6   flexibility through public-private partnering, design-build  
7   options, cost plus, job order contracts, performance-based  
8   contracts, request for proposals, and any other means to improve  
9   communications and accelerate repairs while preserving the  
10   quality of the repairs.

11        ~~[(f)]~~ (d) The superintendent of education shall ensure  
12   that all repair and maintenance projects achieve maximum cost-  
13   efficiency by emphasizing functional or performance criteria,  
14   uniformity of design, and commonality of products, and by  
15   avoiding unique or custom requirements that increase costs. The  
16   superintendent of education shall develop project specifications  
17   based on generic specifications or prescriptive specifications  
18   using standard commercial products. Prescriptive specifications  
19   may include a qualified product list.

20        For the purposes of this subsection:



1 "Generic specification" means a technical specification  
2 that is written in a clear, unambiguous, and nonrestrictive  
3 manner establishing:

- 4 (1) Design, performance, or functional requirements to  
5 identify the work to be performed; and
- 6 (2) Material standards to be used on a project.

7 "Prescriptive specification" means a technical  
8 specification:

- 9 (1) Establishing that the required work to be performed is  
10 written in a clear, unambiguous, and nonrestrictive  
11 manner; and
- 12 (2) Listing manufacturers or products that are acceptable  
13 for use on the project.

14 "Standard commercial product" means a product or material  
15 that in the normal course of business is customarily maintained  
16 in stock by, or readily available for marketing from a  
17 manufacturer, distributor, or dealer.

18 This subsection shall not apply to any school facility  
19 designated a historic property pursuant to section 6E-5.5.

20 [~~g~~] (e) The superintendent of education shall submit an  
21 annual report to the legislature, which shall include a  
22 financial statement of the account and the status of repair and





1 maintenance projects undertaken pursuant to this section, no  
2 later than twenty days prior to the convening of each regular  
3 session. Expenditures for repair and maintenance projects  
4 undertaken pursuant to this section shall be posted  
5 electronically on the Internet by the department of education  
6 within thirty days of each project's completion.

7 ~~[(h) This section shall be repealed on July 1, 2020.]~~"

8 SECTION 6. Section 237-31, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "§237-31 Remittances. All remittances of taxes imposed by  
11 this chapter shall be made by money, bank draft, check,  
12 cashier's check, money order, or certificate of deposit to the  
13 office of the department of taxation to which the return was  
14 transmitted. The department shall issue its receipts therefor  
15 to the taxpayer and shall pay the moneys into the state treasury  
16 as a state realization, to be kept and accounted for as provided  
17 by law; provided that:

18 (1) ~~[The sum from all general excise tax revenues realized~~  
19 ~~by the State that represents the difference between~~  
20 ~~\$45,000,000 and the proceeds from the sale of any~~  
21 ~~general obligation bonds authorized for that fiscal~~  
22 ~~year for the purposes of the state educational~~



1 ~~facilities improvement special fund shall be deposited~~  
2 ~~in the state treasury in each fiscal year to the~~  
3 ~~credit of the state educational facilities improvement~~  
4 ~~special fund;]~~ A sum, not to exceed \$45,000,000 from  
5 all general excise tax revenues realized by the State  
6 shall be deposited in the state treasury in each  
7 fiscal year to the credit of the state educational  
8 facilities repair and maintenance account under EDN  
9 400 of the state general fund;

10 (2) A sum, not to exceed \$5,000,000, from all general  
11 excise tax revenues realized by the State shall be  
12 deposited in the state treasury in each fiscal year to  
13 the credit of the compound interest bond reserve fund;  
14 and

15 (3) A sum from all general excise tax revenues realized by  
16 the State that is equal to one-half of the total  
17 amount of funds appropriated or transferred out of the  
18 hurricane reserve trust fund under sections 4 and 5 of  
19 Act 62, Session Laws of Hawaii 2011, shall be  
20 deposited into the hurricane reserve trust fund in  
21 fiscal year 2013-2014 and in fiscal year 2014-2015;



1 provided that the deposit required in each fiscal year  
2 shall be made by October 1 of that fiscal year."

3 SECTION 7. All fund balances remaining unencumbered and  
4 unexpended as of June 30, 2013, in the lease payments for  
5 schools account of the state educational facilities improvement  
6 special fund shall be transferred to the lease payments for  
7 schools account of the state general fund established pursuant  
8 to this Act; provided that all other fund balances remaining  
9 unencumbered and unexpended as of June 30, 2013, in the state  
10 educational facilities improvement special fund shall be  
11 transferred to the state bond fund as defined in section 37-62,  
12 Hawaii Revised Statutes.

13 SECTION 8. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 9. This Act shall take effect on July 1, 2013;  
16 provided that:

- 17 (1) The amendments made to sections 36-27(a) and 36-30(a),  
18 Hawaii Revised Statutes, in sections 2 and 3 of this  
19 Act shall not be repealed when sections 36-27(a) and  
20 36-30(a), Hawaii Revised Statutes, are reenacted on  
21 June 30, 2015, pursuant to section 34(3) of Act 79,  
22 Session Laws of Hawaii 2009; and

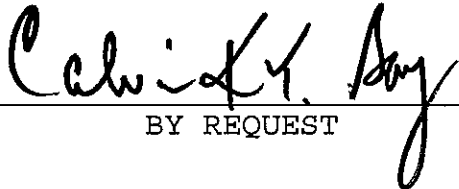


# H.B. NO. 1891

1           (2) This Act shall take effect only if House Bill  
2           No.           or any other bill proposing an amendment to  
3           article VII, section 11 of the Hawaii State  
4           Constitution to empower the legislature to make  
5           appropriations for the construction or acquisition of  
6           public school facilities for periods exceeding three  
7           years as provided by law, is enacted by the 2012  
8           legislature and ratified in compliance with article  
9           XVII, section 3, of the Hawaii Constitution.

10

INTRODUCED BY:

  
BY REQUEST

JAN 17 2012



# H.B. NO. 1891

**Report Title:**

State Educational Facilities Improvement Special Fund; Public Schools; Lease Payments; Repair and Maintenance

**Description:**

Repeals the state educational facilities improvement special fund; transfers the lease payments for schools special account of the special fund into a new special account of the general fund; and lapses all other unencumbered and unexpended funds into the state bond fund. Repeals the sunset date of the state educational facilities repair and maintenance account of the general fund and provides up to \$45,000,000 in general excise tax revenues to be deposited into the account each year. Takes effect on 7/1/13, subject to ratification of a corresponding amendment to the Hawaii Constitution.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

