

JAN 19 2018

S.B. NO. 2238

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 some public school
2 lands are underutilized. The State and the department of
3 education could benefit from developing the land, but multiple
4 layers of ownership makes it difficult to find developers
5 interested in partnering with the department of education to
6 improve the land. Act 155, Sessions Law of Hawaii 2013, gave
7 the department of education more flexibility with developing the
8 public school land by creating a pilot program for the lease of
9 public school land, including facilities. However, there
10 continues to be a lack of land redevelopment.

11 The purpose of this Act is to give the department of
12 education the statutory authority to hold title to public school
13 lands, with the intent of removing a layer of ownership that has
14 discouraged developers from partnering with the department of
15 education to improve the land and facilities.

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



1 "§171-2 Definition of public lands. "Public lands" means
2 all lands or interest therein in the State classed as government
3 or crown lands previous to August 15, 1895, or acquired or
4 reserved by the government upon or subsequent to that date by
5 purchase, exchange, escheat, or the exercise of the right of
6 eminent domain, or in any other manner; including lands accreted
7 after May 20, 2003, and not otherwise awarded, submerged lands,
8 and lands beneath tidal waters that are suitable for
9 reclamation, together with reclaimed lands that have been given
10 the status of public lands under this chapter, except:

11 (1) Lands designated in section 203 of the Hawaiian Homes
12 Commission Act, 1920, as amended;

13 (2) Lands set aside pursuant to law for the use of the
14 United States;

15 (3) Lands being used for roads and streets;

16 (4) Lands to which the United States relinquished the
17 absolute fee and ownership under section 91 of the
18 Hawaiian Organic Act prior to the admission of Hawaii
19 as a state of the United States unless subsequently
20 placed under the control of the board of land and
21 natural resources and given the status of public lands



1 in accordance with the state constitution, the
2 Hawaiian Homes Commission Act, 1920, as amended, or
3 other laws;

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

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

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

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

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

20 (10) Lands that are set aside by the governor to the
21 agribusiness development corporation; lands leased to



1 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; and

7 (12) Lands to which the department of education holds
8 title;

9 provided that, except as otherwise limited under federal law and
10 except for state land used as an airport as defined in section
11 262-1, public lands shall include the air rights over any
12 portion of state land upon which a county mass transit project
13 is developed after July 11, 2005."

14 SECTION 3. Section 171-19, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§171-19 Special land and development fund.** (a) There is
17 created in the department a special fund to be designated as the
18 "special land and development fund". Subject to the Hawaiian
19 Homes Commission Act of 1920, as amended, and section 5(f) of
20 the Admission Act of 1959, all proceeds of sale of public lands,
21 including interest on deferred payments; all moneys collected



1 under section 171-58 for mineral and water rights; all rents
2 from leases, licenses, and permits derived from public lands;
3 all moneys collected from lessees of public lands within
4 industrial parks; all fees, fines, and other administrative
5 charges collected under this chapter and chapter 183C; a portion
6 of the highway fuel tax collected under chapter 243; all moneys
7 collected by the department for the commercial use of public
8 trails and trail accesses under the jurisdiction of the
9 department; transient accommodations tax revenues collected
10 pursuant to section 237D-6.5(b)(5); and private contributions
11 for the management, maintenance, and development of trails and
12 accesses shall be set apart in the fund and shall be used only
13 as authorized by the legislature for the following purposes:

14 (1) To reimburse the general fund of the State for
15 advances made that are required to be reimbursed from
16 the proceeds derived from sales, leases, licenses, or
17 permits of public lands;

18 (2) For the planning, development, management, operations,
19 or maintenance of all lands and improvements under the
20 control and management of the board pursuant to title
21 12, including but not limited to permanent or



1 temporary staff positions who may be appointed without
2 regard to chapter 76; provided that transient
3 accommodations tax revenues allocated to the fund
4 shall be expended as provided in section 237D-
5 6.5(b)(5);

6 (3) To repurchase any land, including improvements, in the
7 exercise by the board of any right of repurchase
8 specifically reserved in any patent, deed, lease, or
9 other documents or as provided by law;

10 (4) For the payment of all appraisal fees; provided that
11 all fees reimbursed to the board shall be deposited in
12 the fund;

13 (5) For the payment of publication notices as required
14 under this chapter; provided that all or a portion of
15 the expenditures may be charged to the purchaser or
16 lessee of public lands or any interest therein under
17 rules adopted by the board;

18 (6) For the management, maintenance, and development of
19 trails and trail accesses under the jurisdiction of
20 the department;



1 (7) For the payment to private land developers who have
2 contracted with the board for development of public
3 lands under section 171-60;

4 (8) For the payment of debt service on revenue bonds
5 issued by the department, and the establishment of
6 debt service and other reserves deemed necessary by
7 the board;

8 (9) To reimburse the general fund for debt service on
9 general obligation bonds issued to finance
10 departmental projects, where the bonds are designated
11 to be reimbursed from the special land and development
12 fund;

13 (10) For the protection, planning, management, and
14 regulation of water resources under chapter 174C; and

15 (11) For other purposes of this chapter.

16 (b) Notwithstanding the above provisions, but subject to
17 the restrictions contained in section 5(f) of the Admission Act,
18 whenever the board sells remnants to abutting owners, the
19 proceeds therefrom including interest on deferred payments,
20 shall be deposited into the general fund; provided that such
21 proceeds shall be set apart to the appropriate fund where



1 mandatory federal requirements affecting federal funds so
2 require.

3 ~~[(c) Notwithstanding the above limitations on use of the~~
4 ~~proceeds of sale, where the board sells public lands including~~
5 ~~the buildings thereon once used but no longer necessary for~~
6 ~~school purposes at the recommendation and request of the board~~
7 ~~of education, all net proceeds derived from the sales shall be~~
8 ~~used for the acquisition of land or for the erection of~~
9 ~~buildings for school purposes to the extent of an approved~~
10 ~~building plan in the departmental school district wherein the~~
11 ~~sales occur. In the absence of any school building program in~~
12 ~~the district or in the event of any surplus remaining after the~~
13 ~~completion of buildings constructed pursuant to the approved~~
14 ~~plan then the proceeds or surplus shall be used in other~~
15 ~~departmental school districts in the county wherein the sales~~
16 ~~occur.~~

17 ~~(d)]~~ (c) When use of the fund is authorized by the
18 legislature for the development of public lands for a particular
19 project, to be disposed of by sale, lease, license, or permit,
20 the board may pay from the fund the costs of the development,
21 including the costs of surveys, construction of roads, water



1 lines, sewer lines, and such other improvements as may be
2 necessary for the development of the lands; provided that the
3 project shall meet with the zoning and subdivision requirements
4 of the appropriate county government in which the lands are
5 located, except that plans and specifications for recreational
6 projects, including access roads therefor, shall not be required
7 to meet with such approval; and provided further that no such
8 development of public lands for disposal by sale, lease,
9 license, or permit shall be made unless appropriate roads, water
10 lines, and other improvements are installed which will make the
11 land usable for the purpose for which it is being disposed at
12 the time of disposition.

13 ~~[(e)]~~ (d) All unexpended and unencumbered moneys remaining
14 on balance with the fund at the close of each fiscal year which
15 are deemed, by the director of finance, to be in excess of the
16 moneys necessary to carry out the purposes of this section over
17 the next following fiscal year shall lapse to the credit of the
18 state general fund."

19 SECTION 4. Section 302A-1128, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§302A-1128 Department powers and duties. The department
2 shall have entire charge and control and be responsible for the
3 conduct of all affairs pertaining to public instruction in the
4 public schools the department establishes and operates,
5 including operating and maintaining the capital improvement and
6 repair and maintenance programs for department and school
7 facilities. The department shall have the power to:

8 (1) Acquire public school lands through operations of law,
9 purchase, gift, devise, or eminent domain;

10 (2) Hold title to all public school lands; and

11 (3) Sell, assign, exchange, transfer, convey, lease,
12 sublease, or otherwise dispose of or encumber public
13 school lands.

14 The department may establish and maintain schools for
15 secular instruction at such places and for such terms as in its
16 discretion it may deem advisable and the funds at its disposal
17 may permit. The schools may include high schools, kindergarten
18 schools, schools or classes for early childhood education,
19 boarding schools, Hawaiian language medium education schools,
20 and evening and day schools. The department may also maintain
21 classes for technical and other instruction in any school where



1 there may not be pupils sufficient in number to justify the
2 establishment of separate schools for these purposes."

3 SECTION 5. Section 302A-1148, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) All public school buildings, facilities, and grounds
6 shall be available for general recreational purposes, and for
7 public and community use, whenever these activities do not
8 interfere with the normal and usual activities of the school and
9 its pupils. Any other law to the contrary notwithstanding, the
10 department shall adopt rules under chapter 91 as are deemed
11 necessary to carry out the purposes of this section and may
12 issue licenses, revocable permits, concessions, or rights of
13 entry to school buildings and grounds for such periods of use as
14 deemed appropriate by the department. ~~[All such dispositions,~~
15 ~~including those in excess of fourteen days, need not be approved~~
16 ~~by the board of land and natural resources; provided that~~
17 ~~approval by the board of land and natural resources shall be~~
18 ~~required when the dispositions are for periods in excess of a~~
19 ~~year.]~~ The department may assess and collect fees and charges
20 from the users of school buildings, facilities, grounds, and
21 equipment, which include fees and charges assessed and collected



1 by the department for parking on roadways and in parking areas
2 under the jurisdiction of the department, pursuant to section
3 302A-1151.6. The fees and charges shall be deposited into a
4 separate fund and expended by the department under rules as may
5 be adopted by the board; provided that any parking fees assessed
6 and collected by a school shall be deposited to the credit of
7 that school's nonappropriated local school fund account."

8 SECTION 6. Section 302A-1151, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§302A-1151 Sale of public school lands unnecessary for
11 school purposes. ~~[The chairperson of the board of land and~~
12 ~~natural resources is hereby requested, upon the recommendation~~
13 ~~and approval of the superintendent, to]~~ The department may sell
14 any ~~[state]~~ public school lands, including the buildings
15 thereon, once used but no longer necessary for school purposes;
16 provided that no school facility or portion of a school facility
17 shall be sold before that facility or portion of the facility is
18 made available for use by ~~[the department or]~~ charter schools,
19 pursuant to ~~[sections 302A-1151.5 and]~~ section 302D-24. All net
20 proceeds derived from the sale of public school land shall be
21 used for the acquisition of land or for the erection of



1 buildings for school purposes to the extent of an approved
2 building plan in the school complex wherein the sale occurs. In
3 the absence of any school building program in the complex or in
4 the event of any surplus remaining after the completion of
5 buildings constructed pursuant to the approved plan, the
6 proceeds or surplus shall be used in other school complexes in
7 the county wherein the sale occurs."

8 SECTION 7. Section 302A-1151.1, Hawaii Revised Statutes,
9 is amended by amending subsection (b) to read as follows:

10 "(b) Notwithstanding [~~sections 171-13 and~~] section
11 302A-1151, or any other law to the contrary, the department may
12 lease public school land on terms it deems appropriate,
13 including a leaseback of all or a portion of the improvements
14 constructed; provided that:

15 (1) The board may identify and select up to five public
16 school land sites as candidates for participation in
17 the pilot program; provided that:

18 (A) During the identification and selection process,
19 the board shall be subject to chapter 92, shall
20 hold at least one public meeting in each affected



community, and shall foster school and community participation; and

(B) If the site is on land owned by the county, the department shall consult with the county;

(2) The department may lease public school land for no more than three public school land sites identified and selected by the board pursuant to paragraph (1) under leases for a term of not more than fifty-five years per lease[, ~~unless extended pursuant to section 171-367~~] to lessees who shall be required to modify, construct, or utilize facilities to benefit public educational purposes, in accordance with specific request for proposal or request for information guidelines;

(3) Each lease shall stipulate that the lessee may retain any revenue generated from the facilities; provided that:

(A) The lessee shall be obligated to maintain and operate the facilities to benefit public educational purposes for the length of the lease;



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(B) The lessee shall be obligated to pay to the county all applicable property tax on the value of any improvements;

(C) A leasehold premium may be charged to the lessee for the right to use the public school land based on a competitive process that complies with applicable sections of chapter 103D;

(D) Upon the expiration of the lease, the facilities shall revert to the department; and

(E) All revenues and proceeds derived by the State under this section shall be deposited in the school facilities subaccount pursuant to section 302A-1151.2; and

(4) Notwithstanding any law to the contrary, the department may enter into leaseback agreements that allow the department to lease or sublease the property to a third party. The department may lease back the property from the third-party lessee or sublessee for a contractual period of time, after which the department shall own any improvements."



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1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon its approval.
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Report Title:

DOE; Public School Lands; Title

Description:

Gives DOE authority to acquire, hold title to, and sell, assign, exchange, transfer, convey, lease, sublease, or otherwise dispose of or encumber public school lands. Makes conforming amendments.

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