

ACT 220

S.B. NO. 1820

A Bill for an Act Relating to the Department of Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that public schools in Hawaii are suffering from severe overcrowding, which adversely affects the learning potential of our children. With Hawaii's high growth rate and the continuous construction of new home developments, the overcrowding problems will only become amplified.

The legislature further finds that financing new school projects without using general obligation bonds needs to be implemented. Encouraging partnerships between public schools and private developers is a cost-effective and timely way to finance new school construction to help alleviate overcrowding.

The purpose of this Act is to, among other things, provide the department of education with more autonomy in the acquisition of new school design and construction projects by establishing a separate account that is subject to legislative approval for the payment of lease-purchase agreements.

SECTION 2. Section 36-32, Hawaii Revised Statutes, is amended to read as follows:

“§36-32 State educational facilities improvement special fund. (a) There is created in the treasury of the State the state educational facilities improvement special fund, into which shall be deposited a portion of all general excise tax revenues collected by the department of taxation under section 237-31. The special fund shall be used solely to plan, design, acquire lands for, and to construct public school facilities and to provide equipment and technology infrastructure to improve public schools and other facilities under the jurisdiction of the department of education, except public libraries. In addition, activities of the department of education intended to eliminate the gap between the facility needs of schools and available resources shall be eligible for funding from the special fund. Expenditures from the special fund shall be limited to projects authorized by the legislature and shall be subject to sections 37-31, and 37-33 through 37-40. Appropriations or authorizations from the special fund shall be expended by the superintendent of education.

(b) There is established within the state educational facilities improvement special fund a separate account, to be known as the lease payments for schools account, for lease payments required by financing agreements entered into by the department of education pursuant to this section and sections 37D-2 and 302A-1506. The lease payments for schools account shall be funded by legislative appropriations and expended by the superintendent of education. Expenditures from the lease payments for schools account shall be exempt from chapters 103 and 103D and are restricted to lease payments on new schools included within the department of education’s current six year capital improvement programs and for which:

- (1) The legislature adopted a concurrent resolution directing the department of education to:
 - (A) Build a new school in a specific geographic area using the design-build method; and
 - (B) Pursue the use of a financing agreement to build the new school;
- or
- (2) The legislature appropriated planning and design funds and specified that the remainder of the costs necessary to complete the project are eligible for funding through a financing agreement;

provided that any school to which the legislature has appropriated planning and design funds prior to the effective date of this Act and for which a private developer is willing to enter into a lease-purchase agreement with the department of education within twelve months of the effective date of this Act is exempt from the requirements of subsections (b)(1) and (2).

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

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

“§37D-2 Financing agreements. (a) There is hereby established and authorized the financing agreement program of the State. Any agency desiring to acquire or improve projects through the financing agreement program established and authorized by this chapter shall submit a written request to the department providing such information as the department shall require. Notwithstanding any other law to the contrary, and except for the Hawaii health systems corporation, only with the approval by the attorney general as to form and legality and upon the written request of one or more participating agencies may the department enter into a financing

agreement in accordance with this chapter, except that the department of education may enter into a financing agreement in accordance with section 36-32 with the concurrence of the director and with the approval of the attorney general as to form and legality; and that the board of regents of the University of Hawaii may enter into a financing agreement in accordance with this chapter without the approval of the director and of the attorney general as to form and legality if the principal amount of the financing agreement does not exceed \$3,000,000.

A financing agreement may be entered into by the department on behalf of one or more participating agencies at any time (before or after commencement or completion of any improvements or acquisitions to be financed) and shall be upon terms and conditions the department finds to be advantageous. In each case of a written request by the judiciary to participate in the financing agreement program, the department shall implement the request; provided that the related financing agreement shall be upon terms and conditions the department finds to be advantageous. Any financing agreement entered into by the department without the approval required by this section shall be void and of no effect. A single financing agreement may finance a single item or multiple items of property to be used by multiple agencies or may finance a single item or multiple items of property to be used by a single agency. The department shall bill any participating agency that benefits from property acquired with the proceeds of a financing agreement for such participating agency's pro rata share of:

- (1) The department's costs of administration of the financing agreement program; and
- (2) The financing costs, including the principal and interest components of the financing agreement and insurance premiums;

on a monthly or other periodic basis, and may deposit payments received in connection with the billings with a trustee as security for a financing agreement. Any participating agency receiving such a bill shall be authorized and shall pay the amounts billed from the available moneys.

(b) Financing agreements shall be subject to the following limitations:

- (1) Amounts payable by a participating agency to or upon the direction of the department in respect to a project and by the department under a financing agreement shall be limited to available moneys. In no circumstance shall the department be obligated to pay amounts due under a financing agreement from any source other than available moneys. If, by reason of insufficient available moneys or other reason, amounts due under a financing agreement are not paid when due, the lender may exercise any property right that the department has granted to it in the financing agreement, against the property that was purchased with the proceeds of the financing agreement, and apply the amounts so received toward payments scheduled to be made by the department under the financing agreement;
- (2) No property rights may be granted in property unless the property is being acquired, is to be substantially improved, is to be refinanced with the proceeds of a financing agreement, or is land on which the property is located;
- (3) Notwithstanding any other law to the contrary, and except for the Hawaii health systems corporation and as otherwise provided in this section with respect to the department of education and the University of Hawaii, and except as provided in chapter 323F as to the Hawaii health systems corporation, an agency shall not have the power to enter into a financing agreement, except through the department as authorized by this chapter, and nothing in this chapter shall be construed to

- authorize the sale, lease, or other disposition of property owned by an agency;
- (4) Except as otherwise provided in this section with respect to the department of education and the University of Hawaii, the sale, assignment, or other disposition of any financing agreements, including certificates of participation relating thereto, shall require the approval of the director; and
 - (5) The department shall not be subject to chapter 103D and any and all other requirements of law for competitive bidding for financing agreements.”

SECTION 4. Section 302A-1506, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§302A-1506]]~~ **Public school facilities.** The department may enter into such contracts, leases, lease-purchase agreements, or other transactions as may be necessary for the acquisition of public school facilities, including any lands for these facilities, on such terms as it may deem appropriate~~[-subject to approval by the comptroller-]~~ with the concurrence of the director of finance.”

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

SECTION 6. This Act shall take effect on July 1, 2007.

(Approved June 28, 2007.)