

## ACT 210

S.B. NO. 2237

A Bill for an Act Relating to Public Schools.

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

## PART I

SECTION 1. The legislature finds that Act 97, Session Laws of Hawaii 1965, transferred the responsibility for functions that were deemed to be of state-wide concern from the counties to the State. Among these functions were the planning, construction, improvement, and maintenance of public school facilities and grounds, and the transportation of school children. Prior to the passage of Act 97, Session Laws of Hawaii 1965, the counties issued bonds to plan, construct, improve, and maintain public school facilities and grounds. Since these functions are now wholly the responsibility of the State, it only makes sense to begin transferring all remaining county lands and improvements under the department of education to the State.

Act 154, Session Laws of Hawaii 2003, conveyed fee simple title of all county of Hawaii lands being used by the department of education to the State. The county of Hawaii was the only county to have legislation passed to convey the fee simple interest in its properties to the State.

The State of Hawaii's department of education has invested significant public funds on the maintenance and capital improvement projects for new school facilities. The expenditure of these public funds was done without regard to the underlying fee ownership of the property. If the school is on county land, this investment in vertical improvements is transferred to the county when a school is closed, which is what happened when Wailupe elementary school closed.

The legislature further finds that Act 155, Session Laws of Hawaii 2013, provided the department of education with the authority to develop its assets to create twenty-first century schools. Act 155 also allowed the department of education to explore different mechanisms to redevelop its assets, including revenue generation in support of investments in twenty-first century schools.

The legislature additionally finds that the department of education is responsible for approximately 2,120 acres (92,353,688 square feet) of land under its school facilities within the city and county of Honolulu. Of this total land area, the city and county of Honolulu owns approximately one-half of the land under the existing school facilities, approximately one thousand four acres (43,753,360 square feet).

The legislature finds that the split ownership of the underlying fee simple lands under existing schools creates problems for redevelopment, especially when private investment is involved. In order to allow the department of education flexibility to redevelop or reposition its assets, especially along the rail transit corridor, the State should consolidate ownership of the lands under existing public schools.

The legislature further finds that, from an asset management standpoint, the department of education should also be given the authority and responsibility to own the real property on which its educational facilities are located. This will allow the department to maximize the value of its real estate assets as it seeks to redevelop and reposition public educational facilities in the future.

The purpose of this Act is to:

- (1) Transfer parcels of property containing schools operated by the department of education that are currently owned, operated, main-

- tained, and managed by the city and county of Honolulu, some of which are public park lands;
- (2) Give the department of education the power to acquire and hold title to real, personal, or mixed property for use for public educational purposes; and
  - (3) Require legislative approval prior to the sale or gift of lands to which the department of education holds title.

## PART II

SECTION 2. (a) Notwithstanding any other law to the contrary, the fee simple interest to the following parcels of land with the existing improvements thereon (hereinafter "the properties") (but not including submerged land, accreted land, or any land makai of the shoreline), shall be conveyed by the city and county of Honolulu to the department of education as grantee, as is, where is:

- (1) TMK 1-4-4-3-16 (Aikahi elementary);
- (2) TMK 1-4-5-16-1 (Ben Parker elementary);
- (3) TMK 1-4-2-2-37 (portion) (Enchanted Lake elementary);
- (4) TMK 1-4-6-31-20 (Heeia elementary);
- (5) TMK 1-4-7-12-24 (portion) (Kahaluu elementary);
- (6) TMK 1-4-3-56-9 (portion) (Kailua elementary);
- (7) TMK 1-4-3-56-9 (portion) (Kailua intermediate);
- (8) TMK 1-4-3-76-15 (Kainalu elementary);
- (9) TMK 1-4-5-103-11 (Kaneohe elementary);
- (10) TMK 1-4-5-78-14 (portion) (Kapunahala elementary);
- (11) TMK 1-4-2-92-1 (portion) (Keolu elementary);
- (12) TMK 1-4-6-4-2 (King intermediate);
- (13) TMK 1-5-5-15-23 (Laie elementary);
- (14) TMK 1-4-2-55-12 (Lanikai elementary);
- (15) TMK 1-4-2-43-2 (portion) (Maunawili elementary);
- (16) TMK 1-4-5-30-38 (portion) (Puohala elementary);
- (17) TMKs 1-4-8-9-9, 1-4-8-9-11 (Waiahole elementary);
- (18) TMK 1-9-4-59-73 (August Ahrens elementary);
- (19) TMK 1-9-1-115-13 (Ewa Beach elementary);
- (20) TMK 1-9-7-36-124 (Highlands intermediate);
- (21) TMK 1-9-1-1-2 (portion) (Ilima intermediate);
- (22) TMK 1-9-1-1-3 (Iroquois Point elementary);
- (23) TMK 1-9-7-17-2 (portion) (Lehua elementary);
- (24) TMK 1-8-7-4-42 (portion) (Maili elementary);
- (25) TMK 1-8-4-25-10 (Makaha elementary);
- (26) TMK 1-9-7-93-16 (portion) (Palisades elementary);
- (27) TMK 1-9-7-24-2 (Pearl City elementary);
- (28) TMK 1-9-7-36-122 (Pearl City Highlands elementary);
- (29) TMK 1-9-1-1-2 (portion) (Pohakea elementary);
- (30) TMK 1-8-5-1-67 (Waianae elementary);
- (31) TMKs 1-9-4-10-98, 1-9-4-29-1 (Waipahu elementary);
- (32) TMK 1-9-4-1-29 (portion) (Waipahu intermediate);
- (33) TMK 1-1-1-10-33 (portion) (Aliamanu elementary);
- (34) TMK 1-1-1-10-33 (portion) (Aliamanu intermediate);
- (35) TMKs 1-9-8-29-2, 1-9-8-29-29 (Alvah Scott elementary);
- (36) TMKs 1-6-6-13-11, 1-6-6-13-13, 1-6-6-14-15 (Haleiwa elementary);
- (37) TMK 1-7-1-2-17 (Helemano elementary);
- (38) TMK 1-7-5-27-2 (portion) (Iliahi elementary);

- (39) TMK 1-7-3-19-13 (Kaala elementary);
- (40) TMK 1-9-5-21-2 (portion) (Kipapa elementary);
- (41) TMK 1-1-1-34-42 (Moanalua elementary);
- (42) TMK 1-1-1-9-5 (portion) (Moanalua intermediate);
- (43) TMK 1-1-1-2-6 (Nimitz elementary);
- (44) TMK 1-1-1-10-27 (Pearl Harbor elementary);
- (45) TMKs 1-7-1-2-8, 1-7-5-5-7, 1-7-5-5-3 (Wahiawa elementary);
- (46) TMK 1-6-7-1-10 (Waialua elementary);
- (47) TMK 1-9-8-8-7 (portion) (Waimalu elementary);
- (48) TMK 1-3-6-11-9 (portion) (Aina Haina elementary);
- (49) TMKs 1-3-4-4-6, 1-3-4-4-7 (Anuenue elementary);
- (50) TMKs 2-1-005-001 (portion), 2-1-009-002, 2-1-009-003 (Central intermediate);
- (51) TMKs 1-1-3-24-5 (portion) (Dole intermediate);
- (52) TMKs 1-1-3-1-23, 1-1-3-1-17 (portion) (Fern elementary);
- (53) TMK 3-9-038-001 (portion) (Hahaione elementary);
- (54) TMKs 2-8-029-010, 2-8-029-011 (Hokulani elementary);
- (55) TMK 2-4-012-002 (Kaahumanu elementary);
- (56) TMKs 1-3-024-001, 1-3-024-002 (Kaewai elementary);
- (57) TMK 1-3-5-11-27 (Kahala elementary);
- (58) TMK 3-2-059-002 (Kaimuki intermediate);
- (59) TMKs 1-5-024-040, 1-5-025-002 (portion) (Kalakaua intermediate);
- (60) TMK 1-1-4-7-2 (portion) (Kalihi elementary);
- (61) TMK 1-5-025-002 (portion) (Kalihi-Kai elementary);
- (62) TMKs 1-3-035-001 (portion), 1-3-036-079 (Kalihi-Uka elementary);
- (63) TMK 3-9-005-061 (Kamiloiki elementary);
- (64) TMK 1-1-6-26-22 (Kapalama elementary);
- (65) TMK 1-7-023-042 (Kauluwela elementary);
- (66) TMK 1-2-2-9-11 (Kawananakoa intermediate);
- (67) TMK 3-9-022-037 (Koko Head elementary);
- (68) TMKs 1-2-7-17-30, 1-2-7-27-10 (portion) (Kuhio elementary);
- (69) TMK 1-3-2-21-35 (Liholiho elementary);
- (70) TMKs 1-1-6-8-16, 1-1-6-8-22, 1-1-6-8-24, 1-1-6-8-38, 1-1-6-8-58 (Likelike elementary);
- (71) TMK 1-1-3-39-5 (Linapuni elementary);
- (72) TMKs 1-2-3-30-55, 1-2-3-30-56 (Lunalilo elementary);
- (73) TMK 2-9-036-003 (portion) (Manoa elementary);
- (74) TMK 3-7-003-010 (portion) (Niu Valley intermediate);
- (75) TMK 1-2-9-23-29 (Noelani elementary);
- (76) TMK 1-2-2-43-11 (Nuuanu elementary);
- (77) TMK 1-3-4-2-1 (Palolo elementary);
- (78) TMK 1-2-2-16-20 (portion) (Pauoa elementary);
- (79) TMK 1-1-2-8-1 (Puuhale elementary);
- (80) TMK 1-3-2-45-3 (Waialae elementary);
- (81) TMK 1-3-1-25-1 (portion) (Waikiki elementary);
- (82) TMK 1-2-3-26-1 (Washington intermediate); and
- (83) TMK 3-5-017-012 (portion) (Wilson elementary).

(b) The city and county of Honolulu shall prepare, execute, and record, in the land court or bureau of conveyances, as appropriate, a quitclaim deed to convey each above-listed parcel with all existing improvements, subject to the property boundaries determined pursuant to subsection (d), to the department of education, as grantee. As these are conveyances in which the city and county

of Honolulu and the State and its agencies are the only parties, the tax imposed by section 247-1, Hawaii Revised Statutes, shall not apply. Effective on the date of transfer pursuant to subsection (e), every reference to the present titleholder or the head of the department or agency in each instrument, if the titleholder is a department or an agency, shall be construed as a reference to the department of education.

(c) The department of education shall accept the properties in their existing condition. All claims and liabilities against the city and county of Honolulu, if any, which the department of education has, may have had, or may have in the future, regarding any injury, loss, cost, damage, or liability, including reasonable attorney's fees, concerning the physical, environmental, soil, economic, and legal conditions of the conveyed properties, are released, waived, and extinguished.

(d) Because the tax map numbers for parcels (2), (3), (5), (6), (7), (10), (11), (15), (16), (23), (24), (26), (27), (32), (38), (39), (40), (41), (42), (46), (47), (48), (50), (53), (54), (56), (58), (59), (61), (62), (63), (65), (67), (73), (74), and (83) under subsection (a) include an abutting city and county of Honolulu public park, the department of education and the city and county of Honolulu shall agree on the proposed property boundary separating the school and park portions of the properties. The department of education shall subdivide the foregoing parcels in accordance with the agreed upon property boundaries.

(e) Work to initiate the transfer of parcels identified in this Act shall start no later than December 31, 2018.

### PART III

SECTION 3. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§302A- Property acquisition, use, and disposition.** (a) The department may acquire or contract to acquire by grant or purchase any real, personal, or mixed property or any interest therein for its immediate or future use for public educational purposes, including lease revenues; and own, hold, improve, and rehabilitate any real, personal, or mixed property acquired, and sell, assign, exchange, transfer, convey, lease, or otherwise dispose of, or encumber the same; provided that the department shall incur all fees and costs associated with, and for, the subdividing of the land.

(b) The department may by itself, or in partnership with qualified persons, acquire, construct, reconstruct, rehabilitate, improve, alter, or repair any infrastructure or accessory facilities in connection with any project; and own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of, or encumber any project.

(c) The department may lease or rent all or a portion of any real property acquired for public educational purposes and establish and revise the rents or charges therefor. The department shall not sell any property, real or personal, or any interest therein, except to a government entity.

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

(e) For purposes of this section:

“Land” or “property” includes vacant land or land with site improvements, whether partially or entirely finished in accordance with governmental subdivision standards, or with complete dwellings.

“Public educational purposes” includes any use of the property, including revenue generation, that would benefit the department's mission to provide public education to students in the State.

“Real property” includes lands, land under water, structures, and any agreed upon easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.”

SECTION 4. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (9) Lands that are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;
- (10) Lands that are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title; ~~and~~
- (11) Lands to which the Hawaii technology development corporation in its corporate capacity holds title; and
- (12) Lands to which the department of education holds title;

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

SECTION 5. Section 171-64.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This section applies to all lands or interest therein owned or under the control of state departments and agencies classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or any other manner, including accreted lands not otherwise awarded, submerged lands, and lands beneath tidal waters that are suitable for reclamation, together with reclaimed lands that have been given the status of public lands under this chapter, including:

- (1) Land set aside pursuant to law for the use of the United States;
- (2) Land to which the United States relinquished the absolute fee and ownership under section 91 of the Organic Act prior to the admission of Hawaii as a state of the United States;
- (3) Land to which the University of Hawaii holds title;
- (4) Land to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (5) Land to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (6) Land that is set aside by the governor to the Aloha Tower development corporation; or land to which the Aloha Tower development corporation holds title in its corporate capacity;
- (7) Land that is set aside by the governor to the agribusiness development corporation; or land to which the agribusiness development corporation in its corporate capacity holds title; ~~and~~
- (8) Land to which the Hawaii technology development corporation in its corporate capacity holds title~~;~~; and
- (9) Land to which the department of education holds title.”

#### PART IV

SECTION 6. Lands conveyed under this Act shall contain a provision that shall allow the underlying fee simple interest in the property to revert back to the city and county of Honolulu if the land is not used for “public educational purposes”. For the purpose of this Act, “public educational purposes” shall include any use of the property, including revenue generation, that would benefit the department of education’s mission to provide public education to students in Hawaii.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2018-2019 as a grant-in-aid to the city and county of Honolulu to prepare, execute, and record the quitclaim deeds required by this Act.

The sum appropriated shall be expended by the city and county of Honolulu for the purposes of this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect upon its approval; provided that section 7 shall take effect on July 1, 2018.

(Approved July 10, 2018.)

#### Note

1. Edited pursuant to HRS §23G-16.5.