



GOV. MSG. NO. 991

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

June 28, 2007

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 28, 2007, the following bill was signed into law:

SB1820 SD1 HD2 CD1

A BILL FOR AN ACT RELATING TO THE  
DEPARTMENT OF EDUCATION.  
(ACT 220)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor

on JUN 28 2007

THE SENATE  
TWENTY-FOURTH LEGISLATURE, 2007  
STATE OF HAWAII

**ACT 220**  
**S.B. NO.** 1820  
S.D. 1  
H.D. 2  
C.D. 1

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# 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 public schools in  
2 Hawaii are suffering from severe overcrowding, which adversely  
3 affects the learning potential of our children. With Hawaii's  
4 high growth rate and the continuous construction of new home  
5 developments, the overcrowding problems will only become  
6 amplified.

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

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



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

3 "§36-32 State educational facilities improvement special  
4 fund. (a) There is created in the treasury of the State the  
5 state educational facilities improvement special fund, into  
6 which shall be deposited a portion of all general excise tax  
7 revenues collected by the department of taxation under section  
8 237-31. The special fund shall be used solely to plan, design,  
9 acquire lands for, and to construct public school facilities and  
10 to provide equipment and technology infrastructure to improve  
11 public schools and other facilities under the jurisdiction of  
12 the department of education, except public libraries. In  
13 addition, activities of the department of education intended to  
14 eliminate the gap between the facility needs of schools and  
15 available resources shall be eligible for funding from the  
16 special fund. Expenditures from the special fund shall be  
17 limited to projects authorized by the legislature and shall be  
18 subject to sections 37-31, and 37-33 through 37-40.  
19 Appropriations or authorizations from the special fund shall be  
20 expended by the superintendent of education.

21 (b) There is established within the state educational  
22 facilities improvement special fund a separate account, to be



1 known as the lease payments for schools account, for lease  
2 payments required by financing agreements entered into by the  
3 department of education pursuant to this section and sections  
4 37D-2 and 302A-1506. The lease payments for schools account  
5 shall be funded by legislative appropriations and expended by  
6 the superintendent of education. Expenditures from the lease  
7 payments for schools account shall be exempt from chapters 103  
8 and 103D and are restricted to lease payments on new schools  
9 included within the department of education's current six year  
10 capital improvement programs and for which:

- 11 (1) The legislature adopted a concurrent resolution  
12 directing the department of education to:  
13 (A) Build a new school in a specific geographic area  
14 using the design-build method; and  
15 (B) Pursue the use of a financing agreement to build  
16 the new school; or  
17 (2) The legislature appropriated planning and design funds  
18 and specified that the remainder of the costs  
19 necessary to complete the project are eligible for  
20 funding through a financing agreement;  
21 provided that any school to which the legislature has  
22 appropriated planning and design funds prior to the effective



1 date of this Act and for which a private developer is willing to  
2 enter into a lease-purchase agreement with the department of  
3 education within twelve months of the effective date of this Act  
4 is exempt from the requirements of subsections (b) (1) and (2).

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

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

13 "§37D-2 Financing agreements. (a) There is hereby  
14 established and authorized the financing agreement program of  
15 the State. Any agency desiring to acquire or improve projects  
16 through the financing agreement program established and  
17 authorized by this chapter shall submit a written request to the  
18 department providing such information as the department shall  
19 require. Notwithstanding any other law to the contrary, and  
20 except for the Hawaii health systems corporation, only with the  
21 approval by the attorney general as to form and legality and  
22 upon the written request of one or more participating agencies



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

11 A financing agreement may be entered into by the department  
12 on behalf of one or more participating agencies at any time  
13 (before or after commencement or completion of any improvements  
14 or acquisitions to be financed) and shall be upon terms and  
15 conditions the department finds to be advantageous. In each  
16 case of a written request by the judiciary to participate in the  
17 financing agreement program, the department shall implement the  
18 request; provided that the related financing agreement shall be  
19 upon terms and conditions the department finds to be  
20 advantageous. Any financing agreement entered into by the  
21 department without the approval required by this section shall  
22 be void and of no effect. A single financing agreement may



1 finance a single item or multiple items of property to be used  
2 by multiple agencies or may finance a single item or multiple  
3 items of property to be used by a single agency. The department  
4 shall bill any participating agency that benefits from property  
5 acquired with the proceeds of a financing agreement for such  
6 participating agency's pro rata share of:

7 (1) The department's costs of administration of the  
8 financing agreement program; and

9 (2) The financing costs, including the principal and  
10 interest components of the financing agreement and  
11 insurance premiums;

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

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

19 (1) Amounts payable by a participating agency to or upon  
20 the direction of the department in respect to a  
21 project and by the department under a financing  
22 agreement shall be limited to available moneys. In no



1           circumstance shall the department be obligated to pay  
2           amounts due under a financing agreement from any  
3           source other than available moneys. If, by reason of  
4           insufficient available moneys or other reason, amounts  
5           due under a financing agreement are not paid when due,  
6           the lender may exercise any property right that the  
7           department has granted to it in the financing  
8           agreement, against the property that was purchased  
9           with the proceeds of the financing agreement, and  
10          apply the amounts so received toward payments  
11          scheduled to be made by the department under the  
12          financing agreement;

13          (2) No property rights may be granted in property unless  
14          the property is being acquired, is to be substantially  
15          improved, is to be refinanced with the proceeds of a  
16          financing agreement, or is land on which the property  
17          is located;

18          (3) Notwithstanding any other law to the contrary, and  
19          except for the Hawaii health systems corporation and  
20          as otherwise provided in this section with respect to  
21          the department of education and the University of  
22          Hawaii, and except as provided in chapter 323F as to





1 the Hawaii health systems corporation, an agency shall  
2 not have the power to enter into a financing  
3 agreement, except through the department as authorized  
4 by this chapter, and nothing in this chapter shall be  
5 construed to authorize the sale, lease, or other  
6 disposition of property owned by an agency;

7 (4) Except as otherwise provided in this section with  
8 respect to the department of education and the  
9 University of Hawaii, the sale, assignment, or other  
10 disposition of any financing agreements, including  
11 certificates of participation relating thereto, shall  
12 require the approval of the director; and

13 (5) The department shall not be subject to chapter 103D  
14 and any and all other requirements of law for  
15 competitive bidding for financing agreements."

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

18 " ~~{}~~§302A-1506 ~~{}~~ Public school facilities. The  
19 department may enter into such contracts, leases, lease-purchase  
20 agreements, or other transactions as may be necessary for the  
21 acquisition of public school facilities, including any lands for  
22 these facilities, on such terms as it may deem appropriate[7



1 ~~subject to approval by the comptroller.]~~ with the concurrence of  
2 the director of finance."

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

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



GOVERNOR OF THE STATE OF HAWAII

Approved this day: JUN 28 2007

