

SECOND ANNUAL STATUS REPORT
on the
IMPLEMENTATION OF ACT 203,
SESSION LAWS OF HAWAII 1967

(Relating to State-county Relationships)

FOREWORD

This report is being submitted in compliance with Section 16 of Act 203, S.L.H. 1967, which directs this office to review annually the progress in implementing the provisions of the act.

While this report identifies some of the problems and issues in implementing Act 203, it does not analyze any of them. Essentially, the report merely indicates the progress that is being made in carrying out the provisions of the act.

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I. INTRODUCTION

Some Background. In 1965, the Third State Legislature enacted Act 97. By this act, the legislature declared certain public functions, then performed by the several counties, to be of statewide concern and fixed responsibility therefor in the State government. These functions are:

- (1) planning, construction, improvement and maintenance of public school facilities and grounds and the transportation of school children;
- (2) planning, construction, improvement, maintenance and operation of public hospitals and other public health and medical facilities;
- (3) burial of indigents;
- (4) medical treatment and hospitalization to pensioners; and
- (5) administration and operation of district courts.

Of the foregoing, the State government immediately assumed operational control over the burial of indigents, the hospitalization and medical treatment of pensioners, and the administration and operation of district courts, but deferred transferring the functions relating to public schools and public (county) hospitals for an indefinite period. Instead, the latter functions were performed by the counties under contractual agreements with the State. This authority to enter into State-county contracts was granted under Act 97 to assure the uninterrupted continuation of services and covered the one-year period ending June 30, 1966.

During the budget session of 1966, the governor requested authority to continue the contractual arrangements and, in response, the legislature by Act 14 permitted the renewal of these State-county contracts for another year ending June 30, 1967.

Then, in 1967, the Fourth State Legislature enacted Act 203. By this act, the legislature reaffirmed the State's responsibilities for providing all education and health-related services, then being performed on a contractual basis by the counties, and prescribed the methods by which these functions should be carried out. In addition, the legislature in Act 203 added a new dimension in State-county relationship by authorizing the State to contract with the several counties for the maintenance of State highways, parks and historical sites.

Purpose of this Report. In order that the legislature may be periodically apprised of the manner and extent to which Act 203 is being implemented, Section 16 of the Act directs the legislative auditor to review the progress and problems in effectuating Act 203 and to report his findings at each subsequent legislative session. This status report is submitted in compliance therewith. It covers the period January-December, 1968 and up-dates the first status report which was previously submitted to the legislature in February, 1968.

Organization of this Report. This report is divided into three sections, each corresponding with the three basic substantive areas affected by Act 203, namely (1) public school functions, (2) county hospitals and related medical facilities, and (3) maintenance of State highways, parks and historical sites. The discussion of each section includes a description of the pertinent provisions of the Act; a description of the implementation status; and, as appropriate, a commentary on the problems or unresolved issues which remain to be settled at this time.

II. PUBLIC SCHOOL FUNCTIONS

A. **Act 203 Provisions.** In general, under Act 203, the following functions, then performed by the counties under contract with the State were required to be "directly administered and performed by the departments, or divisions of government designated by the governor."

- (1) Planning, construction and improvements of public school facilities and grounds.
- (2) Repair, maintenance, custodial and janitorial services for public school facilities.
- (3) Transportation of school children.

Personnel and equipment engaged or used primarily and substantially in the performance of the aforementioned functions were to be transferred from the counties to the State within 60 days of the effective date of the Act (July 1, 1967), unless extended by the governor in order to avoid the disruption of services. (Employees thus transferred are protected against loss of salary, status and employee benefits.) The counties were not required to transfer funds to cover the accumulated vacation credits of these employees, but were required to transfer their equipment without cost to the State or reimbursement to the counties.

The State was permitted the temporary, rent-free use of county facilities for one year, but the relocation of personnel and equipment to State quarters at the earliest possible date was encouraged.

With respect to county real property then used for school purposes, no change was mandated. However, the Act did require that appropriate State agencies report to the next succeeding legislature (1968) with recommendations for disposing of such real property as may be affected by the Act.

B. **Implementation Status.** On August 10, 1967, the governor took the first major step in the transfer process by issuing an executive order which (1) set September 1, 1967, as the target date for effecting the transfer of functions, personnel and equipment to the State; and (2) assigned organizational responsibilities to various State executive departments for assuming the functions and portions thereof, to be transferred from the counties (see Table I). By these actions, the initial groundwork for the State takeover of all remaining public school-related services was laid.

Table I. General Allocation of Public School Functions
 Transferred by Act 203 to State Departments
 (Per the Governor's Executive Order of 8-10-67)

Function	Department of Education	Department of Accounting & General Services	Department of Social Services
1. Planning and Construction	Establishes program guidelines and priorities; budgets for capital improvements; selects school and library sites.	Prepares the physical plans, including design engineering and construction planning; selects architects and consultants; administers construction contracts; inspects projects; performs other functions related to physical planning.	
2. Repair and Maintenance	Budgets and establishes priorities for repair and maintenance work.	Provides the repair and maintenance services.	
3. Custodial and Ground Maintenance	Administers and provides custodial and ground maintenance services.		
4. Teacher Housing	Establishes housing policies and areas of need; assigns teachers to living quarters (by district superintendent).		Plans, constructs maintains and operates teacher housing facilities; devises rent structure in consultation with the DOE.
5. Student Transportation	Establishes policies, regulations and models for a transportation system, including bus schedules, routes, rates, equipment, etc.	Implements the policies, regulations and models established by the DOE.	

By December, 1968, the state of progress in implementing this part of Act 203 stood as follows:

1. **School planning and construction:** All functions have been transferred to the State as required. In the process, some 43 employees of the city and county of Honolulu and accessory equipment were transferred to the department of accounting and general services (DAGS). None of the other counties was required to transfer personnel or equipment for this particular function. No further implementing action is expected.

2. **School repair and maintenance:** To date, only the city and county of Honolulu and the county of Kauai have completed the transfer of school repair and maintenance services, staff and equipment to the State.¹ A total of 170 employees was transferred to DAGS control as a result of these actions. The two other counties (Hawaii and Maui) continue to perform these services with county personnel and county equipment (with State financing) in much the same fashion as they did under the prior State-county contracts, with one notable exception.

This exception involves county purchasing procedures. Under the terms of the State-county contracts previously in force, counties were permitted to receive advance allotments and to purchase school repair and maintenance supplies through their own county purchasing systems. This method is still being applied to the county of Maui. However, in the case of the county of Hawaii, modified procedures were instituted at the start of the current fiscal year wherein supply purchases are billed directly to and paid by DAGS, the expending agency of the State for this function. For local control purposes, purchase orders are routed through the Hawaii district office of the department of education (DOE). The purchasing procedures followed by the county of Hawaii are essentially the same as those followed by any other State agency.

3. **Custodial services:** Under the governor's executive order, operational and administrative responsibilities for custodial and janitorial services were transferred *in toto* to the DOE. As noted in our first status report, the transfer of 761 employees to the State was substantially completed by September 1, 1967. However, at that time, equipment transfers from the counties of Maui and Kauai were not completed. Actions have since been taken to conform with the equipment transfer requirements of Act 203. No further implementing measures are expected.

4. **Student bus transportation:** Responsibility for this function is divided between two executive departments. The DOE establishes transportation policies, standards and routes; while DAGS is charged with providing the operational and enforcement services. To date, four employees have been transferred to DAGS from the counties of Hawaii (2), Maui (1) and Kauai (1).² On Oahu, transportation planning was directly performed by the DOE and, therefore, personnel transfers were unnecessary. Generally, employees transferred to the State are housed by the DOE in the respective school districts but receive supervision from the DAGS central headquarters in Honolulu.

Of the four counties, only Hawaii owned and operated public school buses are used to transport student to and from school.³ By official action of the county governing board, some 17 county owned buses and miscellaneous equipment were acquired by the State. Presently, these buses are under DOE custody. Plans are to have them eventually transferred to DAGS.

¹With respect to equipment transfers, the county of Kauai only recently effected the formal transfer of its repair and maintenance equipment to the State. Up until this past December, it was incorrectly assumed that equipment slated for transfer were properly released from county custody when, in fact, they were not. Steps were taken to correct this oversight.

²Under a special proviso of Act 74, SLH 1968, employees thus transferred are accorded civil service status and certain employee benefits retroactive to the date of their original employment by the counties.

³On Hawaii, government owned buses are usually driven by persons hired by contract. Thus, they are not considered to be employees for transfer purposes.

5. **Teacher housing:** Pursuant to the governor's executive order, the department of social services (DSS), through its Hawaii housing authority (HHA), has assumed responsibility for construction and maintenance aspects of teacher housing. The department has completed a comprehensive survey of teacher housing facilities and is expected to report its findings and recommendations to the Fifth State Legislature.

Operationally, maintenance and repair services are provided by DAGS maintenance crews or, in the case of Hawaii and Maui, by county maintenance crews.

State assumption of this function did not result in any transfer of personnel. Similarly, other than those equipment items already carried on school property inventories, no additional equipment was required to be transferred to the State.

6. **Junior police officer (JPO) programs:** By Act 203 the State was authorized to finance JPO training programs and to make adequate provision to indemnify, within specified limits, the injury or death of children performing duties of junior police officers. Although no public funds have been specifically sought for this purpose, "Rule 37" of the DOE extends workmen's compensation medical coverage for injuries sustained in the line of duty. Also, as a public service and at no cost to government, a private insurance company has been providing indemnity coverage of up to \$5,000 for bodily injury and property damage for all JPO's in the public schools.

In brief, then, as far as public school functions are concerned, Act 203 has been implemented in all respects, except for those repair and maintenance functions which are still being performed by the counties of Hawaii and Maui. This and related topics, which appear to warrant legislative review at this time, are discussed next.

C. Implementation Problems and Issues

1. **Extended delay in transferring school repair and maintenance functions:** As already noted, the counties of Hawaii and Maui are still performing school repair and maintenance services for the State in much the same manner as when Act 203 was enacted over one and one-half years ago. It appears that the required transfer of these functions to the State has been indefinitely postponed by the governor, who is empowered to effect such postponements to avoid the disruption of services.⁴ As far as could be determined, this action appears to be based on verbal instructions rather than on any formal written notice.

On the basis of these circumstances, a fundamental issue is raised regarding the fulfillment of legislative intent under both Act 203 and the governor's executive order issued pursuant thereof; it was explicitly intended that school repair and maintenance functions, personnel and equipment were to be transferred to the State within a reasonable period of time. However, as the situation now stands, there is no assurance that these intentions will be fulfilled since under Act 203 the governor's authority to postpone the transfer is open-ended and void of constraints.

The basic reason originally cited for postponing the transfers was the reported problem of maintaining an adequate county workforce to meet county repair and maintenance needs should the employees, who were then engaged in both State and county work, be transferred to the State. The issue which appears to warrant current attention is whether legislative intent, as expressed in Act 203, can be properly met under the existing statutory framework and, if not, whether further legal remedies ought to be provided.

⁴In our report of February 1968 to the State Legislature, we related that the counties of Hawaii and Maui, in separate memoranda sent the governor in September of 1967, requested the postponement of the impending transfer because of difficulties expected in replacing county personnel who were slated for transfer to the State.

2. **Disposition of Real Property.** Act 203 did not immediately affect the status of county-owned real property then in use for public school purposes. However, in anticipating the need to act on this matter, it did require that real property and improvements related and necessary to the functioning of schools be reported to the next succeeding legislature together with recommendations for their disposition. From all indications, no such report was rendered to the 1968 State Legislature.⁵

Recently, however, the DOE did complete a statewide survey of public school lands and facilities. It appears now that the department will sponsor legislative proposals to place all public school land, buildings and improvements under State jurisdiction. Summary data with respect to land and improvements which are currently under county jurisdiction are presented in Tables II and III.

TABLE II
DEPARTMENT OF EDUCATION
INVENTORY OF BUILDINGS AND IMPROVEMENTS
(Acquisition Costs as of December 31, 1968)

Districts	County	State	Federal	Total
Honolulu	\$ 39,064,789.89	\$18,079,719.83	\$ —	\$ 57,144,509.72
Central Oahu	14,440,966.19	8,841,755.31	10,644,571.09	33,927,292.59
Leeward Oahu	14,742,430.01	7,476,420.53	6,221,281.21	28,440,131.75
Windward Oahu	17,348,535.89	9,670,481.51	2,471,168.00	29,490,185.40
Subtotal (Oahu)	85,596,721.98	44,068,377.18	19,377,020.30	149,002,119.46
Hawaii	7,699,707.13	5,393,495.02	160,891.72	13,254,093.87 ^b
Maui	6,648,828.08	6,003,908.79	—	12,652,736.87
Kauai	3,168,018.09	3,302,748.76	—	6,470,766.85
Total	\$103,113,275.28	\$58,768,529.75	\$19,497,912.02^a	\$181,379,717.05

^aFederally funded improvements may be considered to be under State jurisdiction and control.

^bTotal does not include the cost of the gift of the swimming pool at Hilo High School — \$203,197.76.

Source: Physical Facilities Branch, Department of Education.

⁵The 1968 State Legislature, in commenting on the appropriations for the department of accounting and general services (Conference Committee Report No. 3, p. 35) took special note of this apparent omission and requested that this department "take whatever action is necessary to expedite the process and bring about conformance with the provisions of the law." As indicated here, the report and recommendations will be forthcoming from the DOE instead.

TABLE III
DEPARTMENT OF EDUCATION
SUMMARY OF DETAIL INVENTORY OF LAND
As of November 30, 1968

Districts	County Acres	State Acres	Lease Acres	Total Acres
Honolulu	330.309	205.160	—	535.469
Central Oahu	212.408	137.243 ^a	23.967	373.618
Leeward Oahu	219.057	103.896	14.203	337.156
Windward Oahu	210.859	115.332	9.968	336.159
Subtotal (Oahu)	972.633	561.631	48.138 ^c	1,582.402
Hawaii	54.381	484.518	—	538.899
Maui	136.724	738.843	10.000 ^d	885.567
Kauai	33.832	118.374	4.005 ^e	156.211
Total	1,197.570 ^b	1,903.366	62.143	3,163.079

^aIncludes 3.655 acres for Wahiawa Elementary pending in court.

^bIncludes 211.904 acres of federal surplus property transferred to the city and county of Honolulu. Also includes 46.391 acres as gift to the city and county for Castle High School and Kainalu Elementary.

^cRepresents all federal land leased for school purposes.

^dMolokai High and Intermediate School.

^eKaunakani School.

Source: Physical Facilities Branch, Department of Education.

III. COUNTY HOSPITALS AND RELATED MEDICAL FACILITIES

A. Act 203 Provisions

Act 203 intended to "strike a balance between responsiveness to local conditions and statewide uniformity in medical services and facilities, which balance would be impossible to achieve if responsibility were left solely to either the counties or the State."⁶ In pursuing this intent, the Act provided that 1) the State retain sole fiscal responsibility for public hospitals and medical facilities; 2) the counties operate and maintain these county hospitals and related medical facilities on behalf of the State within their respective geographic areas; and 3) a hospital advisory council be established in each county to advise the State director of health on matters pertaining to the planning, construction, improvement, maintenance and operation of county hospitals and related public health facilities.

With respect to financial matters, the Act required that funds for the operation of these hospitals be paid directly to the counties by quarterly allotments, and that each county prepare and submit budget requests in accordance with policies and procedures established for the State government.

With respect to the new county hospital advisory councils, the Act outlined their general roles, compositions and limited powers. Specifically, each of these councils consists of ten members, appointed as follows:

- 4 members — appointed by the governor, one of whom shall be the county health officer of the department of health.
- 3 members — appointed by the chairman of the county board of supervisors or city council.
- 1 member — appointed from the county governing board by the chairman thereof.
- 1 member — the president of the county medical society or his authorized representative.
- 1 member — the president of the county dental society or his authorized representative.

Each council selects its own chairman and vice-chairman and is required to meet once every three months. The members of these councils serve without compensation but may be reimbursed for travel expenses. The Act authorized the department of health to provide for the necessary expenses of these councils subject, however, to the prior approval of the director of health.

⁶Excerpt from conference committee report no. 18, relating to House Bill 705, which was enacted as Act 203, Session Laws of Hawaii 1967.

B. Implementation Status

Generally, the Act encompassed two separate but related aspects. One concerned the formation of advisory councils; the other concerned the actual management and operation of county hospitals and related health facilities. Implementation actions of each aspect is discussed here.

1. **County hospital advisory councils:** In our status report of February, 1968, we noted that these councils were then in the process of being formed. Subsequently, all councils were organized and are now functioning. The dates of the initial meetings held by each of these councils are shown below.

Kauai	February 19, 1968
Maui	April 3, 1968
Hawaii	April 16, 1968
Honolulu	May 28, 1968

A review of the minutes of advisory council meetings shows that councils serving the counties of Honolulu, Hawaii and Maui generally meet once each quarter; whereas, the advisory council for Kauai meets on a monthly basis. These councils cover a wide range of topics ranging from county-wide hospital planning to specific hospital operating practices. For all practical purposes, the intent and requirement of Act 203 regarding the formation of local hospital advisory bodies have been met.

2. **Management and operation of county hospitals.** In this area, several significant developments occurred since our last status report.

First, the department of health established a staff office, designated the "County/State Hospitals Administration Office" and placed under the general direction of the director of health, to provide staff assistance to, and exercise general supervision over, the county hospitals and county hospital advisory councils.⁷ This office is funded in the operating budget of the department and is authorized a staff of four positions.

Secondly, the department of health, after consultation with the counties and with the approval of the governor, promulgated policies and procedures pertaining to the administration of county hospitals and related public health and medical facilities.⁸ Generally, these policies affirm the State's authority to govern the operations of county hospitals and prescribe basic guidelines relative to budgeting, accounting, personnel transactions, and operational policy-setting.

At the county government level, the organizational structures for the local management of county hospitals remained relatively unchanged except for the county of Hawaii. The latter abolished its "governing board of the Hawaii county hospital system"; made the hospital system administration directly accountable to the county executive officer; and retained but redescribed the trustee committees for each of the four county hospitals from executive bodies to advisory bodies.

⁷Organizational proposals approved by the governor on February 17, 1968.

⁸Policies and procedures approved by the governor on April 2, 1968.

C. Implementation Problems and Issues

1. Interpretation of Act 203: In our first status report of February, 1968, we noted that

Act 203 is generally regarded as the follow-up legislation to Act 97, both of which fixed the responsibility for public hospitals and related medical services in the State government. Moreover, Act 203 statutorily assigned a special role to the counties and directed that they operate and maintain the county hospitals in behalf of the State. Beyond this, however, the Act is vague as to the management relationships which were intended between the State and the several counties. This vagueness and absence of specific directions as to legislative intent has resulted in divergent interpretations of the Act regarding the respective roles of the State and the counties in the management of county hospitals.

This problem still exists. The State's position, as reflected in the policies pursued by the department of health, is that Act 203 effectively vested all responsibility and *authority* for the operation and management of county hospitals in the State government and that "the extent to which the State shall exercise its authority is a policy determination."⁹ Interpreted thusly, the department of health views and treats county hospitals as if they were organizational units of the department and attempts to exercise direct administrative control over them. The department's policies are stated in such fashion so as to retain centralized authority over most hospital matters excepting personnel transactions which are permitted to follow county procedures.

On the other hand, some counties hold the view that the Act intended that the State should limit itself to statewide policy-making and leave internal management affairs to the counties. They say that the State should determine the extent and level of services that the counties are to provide and that the counties should be held accountable to the State for meeting these standards through inspection and audit processes.

In a practical sense, despite the position advanced by the State, it cannot effectively exercise "full and complete authority" for, notwithstanding the present policies, the county hospitals are managed and operated by county employees who are legally subject to local rules, regulations and procedures of the respective civil service systems. In effect, the State cannot exert its powers over personnel matters except on an informal basis. The resultant division of powers between the State and counties poses many potential hazards. Among other effects, it tends to confuse the roles and responsibilities of the parties concerned.

We note that the department of health has gone on record favoring the complete transfer of county hospitals, their personnel and properties, to the State and is proposing legislation to accomplish this move. Irrespective of this attempt, there is a definite need to clarify more permanently the respective roles of the State and the counties with respect to the operations and management of county hospitals.

⁹The opinion of the attorney general of August 3, 1967, a statement of which is quoted here, held that "Act 203 reinforces the basic legislative policy of fixing full and complete responsibility and authority for the operation and maintenance of county hospitals in the State government"

IV. CONTRACTUAL MAINTENANCE OF STATE HIGHWAYS AND PARKS

A. Act 203 Provisions

Part IV of Act 203 authorized the State, through the governor, to contract with the counties for the maintenance of State highways, parks and historical sites for the fiscal year ending June 30, 1968. In addition, the Act permitted the governor to transfer these maintenance functions to the counties; provided, that such transfers were to be only temporary and subject to the express approval of the next succeeding legislature.

B. Implementation Status

The state of implementation is discussed separately for highways and parks.

1. **Maintenance of State highways:** As of this date, all four counties have entered into separate highway maintenance contracts with the State department of transportation. These contracts, however, were not executed pursuant to Act 203, but rather under authority of Act 159, S.L.H. 1965, which established a State highway system, and Act 163, S.L.H. 1967, which authorized the maintenance of this highway system by either public employment or by contract, including the contractual hire of counties to perform this service. The contracts vary as to miles of highways to be maintained by the counties; but, generally, the terms and conditions of each contract are similar. For example, they each specify the similar kinds of services to be rendered; and convey instructions with respect to highway maintenance standards, the method of payment and accounting of funds, the nature of financial and operational reports required, the use of personnel and equipment, and other common stipulations. In cases where inter-jurisdictional transfers of personnel and equipment (from the State to the county) are mutually agreed upon, the agreements set forth the conditions for the transfer and the methods by which new hires and equipment replacements shall be handled. In the event that the contracts should be terminated, personnel and equipment revert to State jurisdiction.

The following outlines the extent to which the State and the several counties are committed in this joint venture.

County of Hawaii – On January 30, 1968, agreement was reached for the county to assume maintenance responsibility for 27.1 miles of State highways. Under the agreement, the State pays for actual costs incurred, including depreciation of equipment and rental charges as required, plus a five percent charge for administrative overhead. No personnel or equipment transfer was effected. The scope of the agreement may be expanded to include additional maintenance miles subject to the availability of funds.

County of Kauai – The State-county contract was consummated on February 2, 1968, and covers the contractual maintenance of 16.7 miles of State highways. The terms of the agreement, and considerations for expanding the service are similar to that reported above for the county of Hawaii. No personnel or equipment transfer was effected.

County of Maui – Since January 2, 1968, the county has assumed maintenance responsibility for virtually all State highways on the islands of Maui, Molokai and Lanai, totaling some 137 miles. Under the terms of its agreement with the State, 39 employees of the State department of transportation and maintenance equipment were transferred to the county, effective May 1, 1968.

City and County of Honolulu — Based on an agreement executed on October 21, 1968, which became effective on December 1, 1968, the city and county has assumed operational responsibility for the following maintenance functions, together with the transfer of 29 State employees and allied equipment engaged or used in the performance of these functions.

Functions	State Highway Miles Maintained	No. of Employees Transferred To County
Highway landscaping	35.472 miles	21
Street sweeping	71.735 miles	3
Highway lighting	All Oahu	5

The foregoing constitutes the first of several phases. It is planned that more functions be eventually added to those already assumed by the county which could involve the transfer of approximately 115 more employees to the city and county of Honolulu.

2. Maintenance of State parks and historical sites: No contract has been entered into for the counties to maintain the State parks and historical sites.

