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# A BILL FOR AN ACT

RELATING TO LANDS CONTROLLED BY THE STATE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In 2006, the legislature passed Act 317, which  
2 prohibited the Hawaii community development authority (HCDA)  
3 from selling or otherwise assigning the fee simple interest in  
4 any land in the Kakaako community development district to which  
5 HCDA holds title, and from approving any plan or proposal for  
6 residential development makai of Ala Moana boulevard and between  
7 Kewalo Basin and the foreign trade zone. The legislative  
8 history shows that in enacting this law, the legislature  
9 believed that "*the disposition of the fee simple interest in any*  
10 *public lands must be carefully scrutinized to ensure that such*  
11 *disposition meets important public needs and goals.*"

12           This important discussion of the State's management of  
13 public lands was continued in 2008, when the Hawaii Supreme  
14 Court in *Office of Hawaiian Affairs v. Housing and Community*  
15 *Development Corporation of Hawaii*, 117 Hawaii 174, 177 P.3d 884  
16 (2008), enjoined the State from selling or otherwise  
17 transferring to third parties, any ceded lands from the public



1 lands trust until the claims of the native Hawaiian people to  
2 the ceded lands are resolved.

3 In April 2008, the governor directed the attorney general  
4 to petition the United States Supreme Court for a writ of  
5 certiorari on whether the passage of Public Law 103-150,  
6 otherwise known as the Apology Resolution, strips the State of  
7 Hawaii of the authority to sell, exchange, or transfer ceded  
8 lands unless or until the State reaches a political settlement  
9 with native Hawaiians about the status of these lands. In  
10 October 2008, the United States Supreme Court granted the  
11 State's petition for certiorari in the foregoing case.

12 These developments highlight the need for the legislature  
13 to adopt a more active, reasonable, and comprehensive approach  
14 toward management of all of the State's lands. The legislature  
15 also finds that in light of these developments, it must reassert  
16 the State's constitutional authority to sell or exchange public  
17 lands as it deems appropriate.

18 The legislature does not undertake the authority in this  
19 Act without being fully cognizant of its attendant  
20 responsibility, and is firmly committed to ensuring appropriate  
21 management of the State's lands, realizing that any sale of  
22 these lands, however reasonable or necessary the sale may



1 appear, is a permanent alienation of the land. Accordingly,  
2 this Act establishes a legislative disapproval process for the  
3 sale or exchange of the State's lands, that includes an  
4 informational briefing in the community where the land is  
5 located.

6 In addition, recognizing that under article XI, section 5,  
7 of the Hawaii Constitution the legislature may exercise its  
8 power over the State's lands only by general laws, this Act  
9 requires that sales and exchanges must be for public purposes  
10 and in accordance with any law authorizing the sale or exchange,  
11 and that legislative disapproval applies generally to sales and  
12 exchanges of the State's land and only as to all of the parcels  
13 proposed to be conveyed.

14 Finally, the legislature does not intend this Act to apply  
15 to the sale or exchange of remnant parcels, which do not have  
16 the significance, nature, or extent, to justify legislative  
17 oversight of these sales. According to information from the  
18 department of land and natural resources, since 1998, there have  
19 been forty-nine remnant parcel transactions, and sales of these  
20 parcels total 13.649 acres, or an average of only 0.2786 acres  
21 per transaction.



1 The purpose of this Act is to establish legislative  
2 oversight of sales and exchanges of land, other than remnant  
3 parcels, held by the State by:

4 (1) Requiring an informational briefing in the community  
5 where the land to be sold or exchanged is located  
6 prior to finalizing a proposal for the sale or  
7 exchange; and

8 (2) Making proposed sales or exchanges of state lands  
9 subject to legislative disapproval by:

10 (A) The adoption of a resolution by a two-thirds  
11 majority vote of either the senate or the house  
12 of representatives; or

13 (B) The adoption of a concurrent resolution passed by  
14 simple majority vote of both houses of the  
15 legislature.

16 SECTION 2. The Hawaii Revised Statutes is amended by  
17 adding a new chapter to be appropriately designated and to read  
18 as follows:

19 "CHAPTER

20 SALE OR EXCHANGE OF STATE-HELD LANDS

21 § -1 Definitions. As used in this chapter:



1 "State-held land" means land held in fee simple title by  
2 the State, its agencies, or entities, including all lands for  
3 which fee simple title is held by the State, its agencies, or  
4 its entities in trust.

5 § -2 **Legislative disapproval.** Any sale or exchange of  
6 State-held land to a person or entity other than the State, its  
7 agencies, or its entities shall be subject to disapproval by the  
8 legislature by two-thirds vote of either the senate or the house  
9 of representatives or by majority vote of both houses of the  
10 legislature in any regular or special session in which the  
11 resolution and concurrent resolution under section -3 is  
12 submitted.

13 § -3 **Concurrent resolution and resolution submittal.**  
14 To effect the process of legislative disapproval required by  
15 section -2, the State, agency, or entity, as appropriate,  
16 shall submit for introduction to the legislature a resolution  
17 and concurrent resolution for review of action on the exchange  
18 or sale of State-held land, following the approval in principle  
19 of the sale or exchange by the State, its agencies, or its  
20 entities. The resolution and concurrent resolution shall  
21 include:



- 1 (1) The location and area of the parcels of land to be
- 2 conveyed;
- 3 (2) The value of the parcels of land to be conveyed;
- 4 (3) The name of the appraiser;
- 5 (4) The date of the appraisal valuation;
- 6 (5) The sale price; and
- 7 (6) The identity of the transferee.

8 **§ -4 Community briefing.** Prior to finalizing any  
9 proposal for the sale or exchange of State-held land to a person  
10 or entity other than the State, its agencies, or its entities,  
11 and prior to submission of the concurrent resolution and  
12 resolution to the legislature under section -3, the State,  
13 agency, or entity, as appropriate, shall hold an informational  
14 briefing on the proposed sale or exchange in the community where  
15 the State-held land to be sold or exchanged is located.

16 **§ -5 Limitations.** (a) Any disapproval of the  
17 legislature to a sale or exchange of State-held lands shall only  
18 be exercised:

- 19 (1) As to all of the parcels proposed to be conveyed in
- 20 the resolution or concurrent resolution submitted
- 21 pursuant to section -3; and



1 (2) During the legislative session in which the resolution  
2 and concurrent resolution is submitted.

3 (b) No sale or exchange of State-held land shall be made  
4 except for public purposes, and any sale or exchange of State-  
5 held land shall be in accordance with this chapter and any other  
6 law authorizing the sale or exchange of State-held land.

7 (c) This chapter shall not apply to dispositions of State-  
8 held lands:

9 (1) That do not result in the permanent alienation of the  
10 land, including sections 171-11 and 171-58; and

11 (2) For which a process of legislative approval or  
12 disapproval is required, including sections 171-41,  
13 171-42, and\* 171-95.

14 (d) Notwithstanding any limitations set forth in this  
15 chapter, the State, its agencies, or its entities may transfer  
16 remnant parcels as set forth in section 171-52."

17 SECTION 3. Section 171-50, Hawaii Revised Statutes, is  
18 amended by amending subsection (c) to read as follows:

19 "(c) Legislative disapproval. Any exchange of public land  
20 for private land shall be subject to disapproval by the  
21 legislature [~~by two thirds vote of either the senate or the~~  
22 ~~house of representatives or by majority vote of both in any~~



1 ~~regular or special session following the date of the board of~~  
2 ~~land and natural resources' approval in principle of the~~  
3 ~~exchange. The department shall submit for introduction to the~~  
4 ~~legislature a resolution for review of action on any exchange to~~  
5 ~~be consummated by the board wherein exchange deeds will be~~  
6 ~~executed by the parties together with the following information:~~  
7 ~~(1) the location and area of the parcels of land to be~~  
8 ~~exchanged; (2) the value of the lands to be conveyed by the~~  
9 ~~State and the private party; (3) the name or names of the~~  
10 ~~appraiser or appraisers; and (4) the date of the appraisal~~  
11 ~~valuation.] as set forth in chapter \_\_\_\_\_."~~

12 SECTION 4. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on January 1, 2046.





S.B. NO. 1677  
S.D. 1  
H.D. 1

**Report Title:**

State Held Lands; Public Lands; Sale and Exchange

**Description:**

Requires majority vote of the legislature or two-thirds vote of house or senate to disapprove the sale or exchange of state-held lands to non-state entities or persons; requires community briefing where land located prior to sale or exchange. (SB1677 HD1)

SB1677 HD1 HMS 2009-2988

