
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 § -2 **Legislative disapproval.** Any sale or exchange of
2 State-held land to a person or entity other than the State, its
3 agencies, or its entities shall be subject to disapproval by the
4 legislature by majority vote of both houses of the legislature
5 in any regular or special session in which the concurrent
6 resolution under section -3 is submitted.

7 § -3 **Concurrent resolution submittal.** To effect the
8 process of legislative disapproval required by section -2,
9 the State, agency, or entity, as appropriate, shall submit for
10 introduction to the legislature twenty days prior to the start
11 of any regular or special session, a concurrent resolution for
12 review of action on the exchange or sale of State-held land,
13 following the approval in principle of the sale or exchange by
14 the State, its agencies, or its entities. The concurrent
15 resolution shall include:

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



1 **§ -4 Community briefing.** Prior to finalizing any
2 proposal for the sale or exchange of State-held land to a person
3 or entity other than the State, its agencies, or its entities,
4 and prior to submission of the concurrent resolution to the
5 legislature under section -3, the State, agency, or entity,
6 as appropriate, shall hold an informational briefing on the
7 proposed sale or exchange in the community where the State-held
8 land to be sold or exchanged is located.

9 **§ -5 Limitations.** (a) Any disapproval of the
10 legislature to a sale or exchange of State-held lands shall only
11 be exercised:

12 (1) As to all of the parcels proposed to be conveyed in
13 the concurrent resolution submitted pursuant to
14 section -3; and

15 (2) During the legislative session in which the concurrent
16 resolution is submitted.

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

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



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

3 (2) For which a process of legislative approval or
4 disapproval is required, including sections 171-41,
5 171-42, and 171-95.

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

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

11 "(c) Legislative disapproval. Any exchange of public land
12 for private land shall be subject to disapproval by the
13 legislature [~~by two thirds vote of either the senate or the~~
14 ~~house of representatives or by majority vote of both in any~~
15 ~~regular or special session following the date of the board of~~
16 ~~land and natural resources' approval in principle of the~~
17 ~~exchange. The department shall submit for introduction to the~~
18 ~~legislature a resolution for review of action on any exchange to~~
19 ~~be consummated by the board wherein exchange deeds will be~~
20 ~~executed by the parties together with the following information:~~
21 ~~(1) the location and area of the parcels of land to be~~
22 ~~exchanged; (2) the value of the lands to be conveyed by the~~



1 ~~State and the private party; (3) the name or names of the~~
2 ~~appraiser or appraisers; and (4) the date of the appraisal~~
3 ~~valuation.] as set forth in chapter _____."~~

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

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



Report Title:

State Held Lands; Public Lands; Sale and Exchange

Description:

Requires majority vote of house and 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 HD2)

