

SB 1385

Date: 02/09/2011

Committee: Senate Education
Senate Water, Land and Housing

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 1385 RELATING TO PUBLIC SCHOOL LANDS.

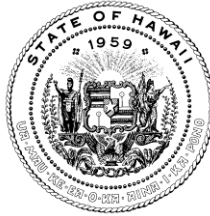
Purpose of Bill: Establishes the public school lands trust to provide for the maximum use of public school lands in order to generate income to improve public school facilities and infrastructure to meet the challenges of the twenty-first century and beyond. (\$)

Department's Position: The DOE appreciates the intent of the bill and agrees that adequate funding continues to be a challenge. However, the DOE has major concerns regarding the bill's implementation and practicality:

1. The fractured nature of current ownership of school lands, between the counties and the state makes consolidation of lands under a single entity challenging.
2. The relative value of schools lands are undetermined and may not be substantial enough to generate any substantial revenue.
3. Under the State Constitution, the Department of Land and Natural Resources already has this responsibility as the Landowner for the State. The creation of a separate school land trust may be duplicative.

Thank you for the opportunity to provide testimony.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committees on
EDUCATION
and
WATER, LAND AND HOUSING**

**Wednesday, February 9, 2011
2:00 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 1385
RELATING TO PUBLIC SCHOOL LANDS**

Senate Bill 1385 authorizes the creation of a public school lands trust tasked with the management of public school trust lands. The trust would manage the lands for the purpose of maximizing the use of public school lands to generate income to fund improvements of school infrastructure. In addition, the bill provides for the transfer of title of all lands under State or County ownership, set aside by executive order to the Department of Education (DOE), to the trust for no compensation. The bill also provides for the creation of a public school lands trust commission to manage, administer and exercise control over the public school trust lands. The Department of Land and Natural Resources (Department) has several concerns with this bill as written.

The bill has a potential conflict in the use of income derived from public trust lands owned by the trust. The bill mandates that income derived from public trust lands are dedicated solely to DOE. As mandated the State Constitution Article XVI, Section 7 and Section 5(b) of the Admission Act, income from public trust lands shall be dedicated to five enumerated public trust purposes. However, this bill appears to unfairly favor only one public trust beneficiary (public education) at the expense of the other four beneficiaries, such as the twenty percent (20%) share owed to the Office of Hawaiian Affairs.

In addition, the administrative responsibility for the commission is placed with the Department. The Department is extremely concerned with this provision. As these lands would not generate income immediately, this would impose a tremendous administrative burden on the Department, which it currently cannot afford. The Department continues to face severe budget cutbacks. The

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INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Department's general fund appropriations and special fund revenues have dropped significantly over the last several years, and the Department lost more than 10% of its positions over the past three years. The bill imposes duties that would require a substantial amount of staff time and funding. The Department simply does not have the resources and staffing necessary to undertake the additional duties that would be required under this bill.

Furthermore, the Department would like to note that the commission is akin to a development authority, but the bill does not provide the commission with special powers as granted to similar development agencies. This may hamper the commission in its ability to successfully develop the lands and fully realize revenue generation potential.

TESTIMONY BY KALBERT K. YOUNG
INTERIM DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON EDUCATION AND WATER, LAND
AND HOUSING
ON
SENATE BILL NO. 1385

February 9, 2011

RELATING TO PUBLIC SCHOOL LANDS

Senate Bill No. 1385 establishes the Public School Lands Trust to maximize the use of public school lands and to generate income to improve public school facilities. This bill establishes the Public School Lands Trust Permanent Fund, into which shall be deposited all proceeds from the sale of public school trust lands. This bill also establishes the School Facilities Special Fund, into which shall be deposited the interest income accruing to the Public School Lands Trust Permanent Fund, and all proceeds from leases, permits, interest from sale contracts and other revenue. The School Facilities Special Fund shall be used to construct and improve public school facilities.

As a matter of general policy, the Department of Budget and Finance does not support the creation of any special fund which does not meet the requirements of Section 37-52.3 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In regards to Senate Bill No. 1385, it is difficult to determine whether there is a clear nexus between the benefits sought and the charges made upon the users or beneficiaries of the program and whether the fund will be self-sustaining.



SB 1385
RELATING TO PUBLIC LANDS
Senate Committee on Education
Senate Committee on Water, Land, and Housing

February 9, 2011

2:00 p.m.

Room 225

The Office of Hawaiian Affairs (OHA) offers the following comments on SB 1385, which transfers title of public land currently held by the Department of Education (DOE) to a public school land trust.

The OHA Administration will recommend that our Board of Trustees oppose SB 1385 because the proposed public school land trust would be given the authority to sell public land under certain circumstances, including ceded land and public trust land.

A cursory review of the State Land Information Management System (SLIMS) shows that at least 1,222 acres of the land currently held by the DOE, or approximately 68% of the total, are classified Admission Act section 5(b) lands, which are subject to the public land trust. Another 179 acres are classified as Admission Act section 5(a) lands. Much of the section 5(a) and 5(b) lands are former government and crown lands that were ceded by the Republic of Hawai'i to the United States in 1898. We note that SLIMS includes only encumbered lands, and the Department of Land and Natural Resources, which maintains the system, has acknowledged the database is incomplete.

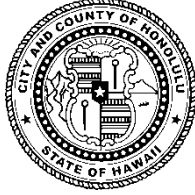
OHA maintains that the state cannot diminish the ceded lands corpus until the Native Hawaiian people's claim to ceded lands has been resolved. *See, e.g.,* P.L. 103-150 (1993) ("the Republic of Hawaii . . . ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government").

OHA further notes that Admission Act section 5(f), Hawai'i Constitution, article XII, Chapter 10, Hawai'i Revised Statutes, Act 178, SLH (2006), and Executive Order 06-06 impose trust obligations with respect to public trust land on all state agencies. Restricting the use of revenues generated on public trust land solely for the use of public schools would violate the state's obligations.

The OHA Administration will make this recommendation to our Board at its meeting on Feb. 10. Mahalo for the opportunity to testify on this important measure.

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PETER B. CARLISLE
MAYOR

February 9, 2011

The Honorable Jill N. Tokuda, Chair
Senate Committee on Education
The Honorable Donovan Dela Cruz, Chair
Senate Committee on Water, Land, and Housing
Twenty-Sixth Legislature
Regular Session of 2011
State of Hawaii

RE: Testimony of Mayor Peter Carlisle on S.B. 1385, Relating to Public School Lands

Chair Tokuda and members of the Senate Committee on Education, Chair Dela Cruz and members of the Senate Committee on Water, Land, and Housing, Mayor Peter Carlisle submits the following testimony in opposition S.B. 1385.

The purpose of this bill is to establish a public school land trust composed of all lands under the management of the state department of education as of July 1, 2011, except for lands owned by the Department of Hawaiian Home Lands, the federal government and any private persons or entities. Lands owned by the state and the counties would be included in the public school land trust. Deeds documenting the transfers are to be executed no later than July 1, 2013. The purpose of the trust is to maximize the use of the lands and to generate income to construct, repair, and retrofit public schools.

Although I certainly support the funding of public education, I do have concerns about the loss of county lands ostensibly without compensation or consideration. A significant portion of public schools on Oahu, sit on land owned by the county; the Department of Education has the use of a possessory interest in the school facilities and grounds located on county land. However, as the Department of Education (DOE) has on occasion relinquished its possessory interest in these properties as the DOE has realigned its schools to meet district demands. When those properties have been returned to the county, we have been able to find other uses for them which improve the surrounding communities or assist the county in carrying out its functions.

For these reasons, I respectfully ask that this bill be held and thank you for this opportunity to testify.



LAND USE RESEARCH
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February 9, 2011

Senator Jill N. Tokuda, Chair and Senator Michelle N. Kidani, Vice Chair
Committee on Education

Senator Donovan M. Dela Cruz, Chair and Senator Malama Solomon, Vice Chair
Committee on Water, Land, and Housing

Testimony of the Land Use Research Foundation of Hawaii

Support of SB 1385, Relating to Public School Lands. (Establishes the public schools land trust to provide maximum use of public school lands in order to generate income to improve public school facilities and infrastructure.)

Wednesday, February 8, 2011 at 2:00 p.m. in CR 225

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

SB 1385. This bill establishes the public school lands trust to provide for the maximum use of public school lands in order to generate income required to improve public school facilities and infrastructure, and create a learning environment which will maximize student achievement and prepare students to meet the challenges of the twenty-first century and succeed in today's highly competitive economy.

Background. SB 1385 recognizes that the considerable amount of underutilized public school lands on the State's 257 school campuses may be used as a resource (e.g., redeveloped) to enable the building of public school infrastructure to make classes fit for twenty-first century learning. The beneficiaries would Hawaii's public school children, especially the native Hawaiian population, which currently comprises 28 percent of the students in the State's public school system.

LURF's Position. LURF supports this bill because it establishes an innovative method through which the State may use its assets to obtain funding to benefit Hawaii's public school children.

LURF has consistently supported creative legislation, especially legislation targeted to further education in this State. In 2007, LURF testified in support of legislation proposed to establish a two-year pilot project within a designated complex area which would authorize reallocation of

resources within the schools in the complex area to achieve greater efficiency and cost-effectiveness. Other prior education-related efforts by the State Department of Education (DOE), LURF and other stakeholders over the past years include:

- **SB 292 (2005) proposal to grant DOE Asset Management authority.** In 2005, pursuant to SB 972, the legislature considered the establishing the authority of the Board and DOE to own and administer all of the lands and facilities being used for the public schools of Hawaii.
- **SB 611 (2007) proposal to transfer lands and facilities to DOE.** In 2007, a similar version was presented as SB 611, which proposed to transfer all public lands and facilities in use for public schools to the DOE. That bill also empowered the Board and DOE to acquire, sell, lease, transfer, hypothecate, develop, and enter into agreements for the improvement of lands and facilities under its control for the support of the public schools.
- **DOE Advisory Council: SB 611 (2007).** SB 611 was the result of one of the working groups from the DOE Advisory Council, which was created to evaluate the merits of DOE's various proposals being implemented, and to make recommendations on establishing measurable goals and objectives.
- **SB 690 (2007) proposal for DOE cost-benefit analysis and additional school funding based on savings from school closures or consolidation.** This proposal would have required the DOE to do a cost-benefit analysis to determine the cost savings of school closures or consolidations, and would have required that 50% of the savings be retained by the affected schools for a period of not less than five years.

As noted in LURF's 2007 testimony in support of the above measures, the DOE has approximately the same number of students today (+/-180,000) as they did 30 years ago, the difference being that the concentration of the student population has moved. This creates situations such as with the present bill, where existing assets are underutilized and provides opportunities to reposition these real estate assets for future needs. Possibilities include redevelopment of the site for a new school; allowing for mixed use with a redeveloped school and possibly teacher housing; or providing for new revenue sources based on long term leasing of the property.

The following are various other initiatives that the DOE, other stakeholders, and the Legislature may wish to pursue in the future:

- **Capital Improvement Projects ("CIP") Public Private Partnership Group.** One of the working groups from the DOE Advisory Council was the CIP Public Private Partnership group, which explored "non-traditional" alternatives for building new schools, or redeveloping existing schools. The term "non-traditional" was meant to describe the processes or methods not presently being used by the DOE.
- **Common School Fund Program.** The idea of giving the DOE the power and authority to own the land under the school facilities is based on the "Common School Fund" programs or "Land Grant Schools" on the mainland. Many of the school lands in the western United States were provided by Congress to each of the states via "land grants" at the time each state joined the United States. The land grants were originally made for a single explicitly stated purpose -- to support common schools and similar public institutions. These granted lands are generally known as "Common School Fund Lands," and are held by the states, together with any permanent funds and revenues

generated from the lands, and all of those assets are generally viewed as a “trust.” Most of the western states manage the Common School Fund Lands, either for use as school sites, or to generate revenues for the schools. The corpus of the trust is determined by the value of the land, any permanent funds and any revenues generated by the lands. Hence, the trust land managers in those states approach their management responsibilities under the same array of rules and enforcement mechanisms that surround any legal trustee with fiduciary duties.

- **Management of DOE lands as “trust” lands for the benefit of DOE schools and programs.** The prior Hawaii legislation listed above, was based on an idea similar to the “Common School Fund Lands program - - that the existing DOE school lands could be used to create a trust for the DOE public schools. Somewhat like Kamehameha Schools Bishop Estate (“KSBE”), the DOE lands could then be managed as a “trust,” and the DOE will have the ability to leverage underutilized land assets for redevelopment, joint venture, revenue production, and other opportunities similar to KSBE or any other real estate corporation. Considering the need to attract and retain teachers, and the prospects of a fixed-guide-way system for Oahu, the bill would allow for the repositioning some of the “underutilized school sites” in the City’s Primary Urban Center could be redeveloped to provide teacher housing and/or generate income for the DOE as a center for a mixed-use transit oriented development (“TOD”).

Conclusion. LURF supports SB 1385 as an inventive means of using underutilized assets to generate funding for the benefit of public school children, and hopes that this Committee moves it forward.

Thank you for this opportunity to present testimony regarding this matter.

Owen Miyamoto
3209 Paty Drive
Honolulu, HI 96822-1439

February 8, 2011

Honorable Jill N. Tokuda, Chair
Honorable Michelle Kidani, Vice Chair
Honorable Members of the Senate Committee on Education

Honorable Donovan M. Dela Cruz, Chair
Honorable Malama Solomon, Vice Chair
Honorable Members of the Senate Committee on Water, Land, and Housing

I am testifying in support for SB 1385 Relating to Public School Lands

I am a member of the Technical Review Committee for the Hawaii 3R's Program, which provides funding for small repairs and renovations to our public schools. I am not speaking on its behalf. The Technical Review Committee examines proposals from the school. Funding has been provided through Senator Inouye's efforts and each project must leverage the financial contribution with the sweat equity of volunteers.

It is clear that the 3R's program cannot possibly meet the huge backlog of repairs and upgrades needed for the school system. Further, the deficit of the federal budget makes it unlikely that the US government can be counted on continuing its support.

Although the details of how the proposed Public Schools Land Trust will operate need clarification, it represents an opportunity to capture revenues from lands that are presently unused. With careful planning and organizing, there are clearly locations where such an opportunity could result in needed revenues for our schools. Possibly, legislation could be written to authorize a pilot program to test the concept.

I urge your favorable action to approve SB 1385. Thank you for the opportunity to present my views.



Owen Miyamoto

IN SUPPORT OF SENATE BILL 1385 RELATING TO THE CREATION OF A PUBLIC SCHOOL LAND TRUST

Committee on Education

Date: February 9, 2011 Time: 2:00 p.m.

I fully support the formation of a new land trust for the management of public school lands.

At present, public school lands represent one of the largest underutilized resources in the State of Hawaii. In an era in which the DOE is forced to make agonizingly difficult decisions for the sake of several hundred thousand dollars we simply cannot allow potential sources of revenue to go unrealized.

Despite the fact that many recognize the inherent potential of underutilized properties there is currently no mechanism available to allow ANY of the “owners” in question to realize their full value. It is only by pooling their assets that this can be achieved. A Land Trust represents just such a mechanism.

Some might say that DLNR can already address this concern. DLNR does indeed have the authority to withdraw lands under Executive Order to DOE where the lands are abandoned or no longer needed for the intended purpose. In such cases DLNR could develop that land yet in such cases all revenues would go to the general fund (if trust lands) or Land Division's special fund (if non-trust lands). Either way, DOE would not see the proceeds. In addition, many properties are partially owned by a number of entities. There needs to be statutory authority to consolidate the ownership of such properties and to direct resulting revenues into a “ring-fenced” trust dedicated to Hawaii’s public schools for whose benefit this land was originally intended.

Grants from a dedicated Land Trust would be awarded on a merit-driven basis directly toward those projects that most help bring our schools up to a 21st century standard. These grants would represent truly leveraged investment that would no doubt have a positive impact on student outcomes as well as on the culture within our public schools.

In addition to its impact on student outcomes, bringing Hawaii’s schools up to 21st century standards would have benefits far beyond the classroom. Next generation building techniques greatly reduce the environmental “footprint” that Hawaii’s schools currently have and could in many cases

actually increase open space by potentially consolidating multiple ageing single level buildings into several state-of-the-art multi-story ones.

Most states west of the Mississippi have had such Land Trusts since statehood and the model is therefore not new but has been functioning well in a number of different formats for many years. After its initial launch the Land Trust would be self financing.

While there is admittedly more work to be done to arrive at the structure most suited to Hawaii's unique circumstances, I believe that we can no longer ignore this important potential revenue source that could be used to further our collective efforts to bring Hawaii's public schools into the 21st century.

Thank you for your time and consideration,

Bill Reeves