



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 116, H.D. 1, RELATING TO PUBLIC SCHOOLS.

BEFORE THE:

SENATE COMMITTEES ON EDUCATION AND ON WATER AND LAND

DATE: Wednesday, March 22, 2017 **TIME:** 3:05 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
David D. Day, Deputy Attorney General

Chairs Kidani and Rhoads and Members of the Committees:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to require to the City and County of Honolulu to convey land upon which 98 public schools sit, with existing improvements, to the Department of Education.

The Department of the Attorney General believes that it lacks sufficient information regarding the 98 properties at issue to perform a full analysis of the legal implications of the bill. For instance, how the City and County of Honolulu came to own each individual parcel or the potential existence of pollutants on site could have broad legal consequences.

Therefore, we suggest that a concurrent resolution be offered to request that an appropriate agency conduct a study into land owned by the City and County of Honolulu that is currently used for public schools. To the extent that the agency would require money to conduct the study, a bill with an appropriation would be required.

We also note that the bill could be subject to challenge as violative of article VIII, section 5 of the Hawai'i Constitution, which provides: "If any new program or increase in the level of service under an existing program shall be mandated to any of the political subdivisions by the legislature, it shall provide that the State share in the cost." The bill mandates that the City and County of Honolulu perform various tasks, including

the preparation and execution of deeds and other instruments appropriate and necessary to convey the properties, but does not appropriate any funds.

Finally, should this bill be advanced, we recommend inserting the word “conveyed” after the word “properties” on page 9, line 3, to clarify that the release identified in subsection (g) would only apply to those properties actually conveyed to the Department of Land and Natural Resources.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/22/2017
Time: 03:05 PM
Location: 229
Committee: Senate Education
Senate Water and Land

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 0116, HD1 RELATING TO PUBLIC SCHOOLS.

Purpose of Bill: Requires the City and County of Honolulu to transfer to the Department of Land and Natural Resources all property upon which a public school is situated. (HB116 HD1)

Department's Position:

The Department of Education (DOE) supports the intent of this bill.

Act 97, Session Laws of Hawaii (SLH) 1965, transferred executive authority for county school lands to the State. The DOE has managed these lands since the enactment of this law, 52 years ago. The circumstance of having state schools on county land, or situated on both county and state land, creates unnecessary difficulty in the management of school properties. To continue to effectively maintain school facilities and to accommodate future growth, where needed, many of our existing campuses will have to undergo extensive renovation or major rebuilding. It would greatly simplify the process if Fee Simple Interest (FSI) for county school lands was effectively transferred to the State. The DOE believes this was the original intent of Act 97, SLH 1965.

The DOE recognizes the inherent burden that transferring these properties may place on the Department of Land and Natural Resources and asks that this bill include either an equivalent appropriation, or a clear mechanism for funding, for all costs associated with the legal transfer of these parcels.

Thank you for the opportunity to present DOE testimony on HB 0116.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

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

**Wednesday, March 22, 2017
3:05 PM**

State Capitol, Conference Room 229

**In consideration of
HOUSE BILL 116, HOUSE DRAFT 1
RELATING TO PUBLIC SCHOOLS**

House Bill 116, House Draft 1 proposes to require the City and County of Honolulu (City) to transfer to the Department of Land and Natural Resources (Department) all property upon which a public school is situated. House Draft 1 removed the Department of Education (DOE) from having to conduct all land and building due diligence requirements and imposed those requirements on the Department of Land and Natural Resources (Department). **The Department strongly opposes this measure.**

The measure would transfer to the Department an enormous liability for property conditions that are currently the responsibility of either DOE or the City. Additionally, the bill's requirements impose colossal financial and time hardships that the Department cannot meet, rendering the bill impossible to implement.

This measure would impose a debilitating unfunded mandate by requiring the Department to conduct due diligence for each property to be conveyed without appropriating adequate funds. For past acquisitions, due diligence costs have ranged between \$250,000 to \$500,000 for such items as title reports and environmental site assessments. Conceivably, even if costs could be lowered to \$100,000 per acquisition, given the voluminous amount of properties involved, the cost could still run as high as \$10 million. The Department does not have the funds or spending authority to absorb those costs. The measure also imposes additional future costs by requiring the Department to pay for the relocation of access easements in favor of the City. As these

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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

properties are school sites currently managed by the DOE and will remain so after any conveyance, all such costs should be the responsibility of DOE.

Conducting any form of due diligence at this point seems superfluous and an unwise use of limited public funds since the land and buildings on these populated school sites have been utilized by and under the direct management and control of the DOE for decades, and will continue to be so managed and controlled in the same manner by DOE beyond any such title conveyance.

Due diligence is normally conducted on private lands the State is looking to acquire now, where it has very little knowledge of the types of activities that were previously conducted on the private land in the past. If remediation is required, the State would not accept the land unless the Seller is willing to remediate the contamination before closing the transaction. That is not the case or situation we have here. As this bill forcibly usurps the City's ownership over these lands, it is safe to speculate the City will deny any responsibility for the land and buildings the DOE has occupied and managed for decades. Therefore, if this bill in any form moves forward, the due diligence requirements should be deleted entirely and any future remediation obligation should remain with the City and the DOE.

This measure would also prohibit the Department from properly negotiating the acquisitions by requiring the Department to accept the properties on an "as is, where is" basis, as well as releasing, waiving and extinguishing any future claims the Department may have. When negotiating an acquisition, the Department requires the landowner to resolve any title issue or encumbrance that the Department finds objectionable prior to the closing. The Department's standard practice is to require the landowner to convey the property via the State's standard form warranty deed. The provisions of the warranty deed require the landowner to warrant and defend title to the property as well as indemnify against pre-existing environmental hazards after the closing of the transaction. Additionally, the measure sets an expiration date for the due diligence period at March 1, 2018, less than one year after the presumed enactment of this measure. As acquisitions usually take between 2 to 3 years to complete, it would be impossible to conduct adequate due diligence for all the properties identified in this measure in such a limited time period. Furthermore, the measure limits the scope of due diligence by prohibiting the Department from relying on information provided by the City.

By limiting the Department's ability to meaningfully conduct due diligence and utilize any information in negotiations, the result is a costly, time-consuming and useless exercise.

Additionally, the language of the measure is unclear as to whether the Department has any discretion on whether to accept the conveyance of the properties. Pursuant to Section 171-30, Hawaii Revised Statutes, the Board of Land and Natural Resources (Board) has the exclusive responsibility to acquire real property on behalf of the State for public purposes. If the intent is to force the Department to acquire such lands without discretion, it would run counter to the Board's statutory direction.

Finally, the Department notes that this measure fails to improve the management and operations of the affected schools. The DOE has operated the schools located on the properties identified in

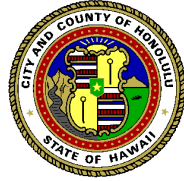
this measure for the last half century without significant issue. As noted previously in this testimony, regardless of whether the fee interest in the properties is owned by the City or the State, the schools will continue to be operated by DOE. This measure would provide the State a significant benefit only if the intent is to redevelop the properties for uses *other than that of a school*. If that is the intent of the measure, then the Board of Education should hold public hearings in the affected communities prior to any school closures.

The Department urges that this bill be held.

Thank you for the opportunity to comment on this measure

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KIRK CALDWELL
MAYOR

ROY K. AMEMIYA, JR.
MANAGING DIRECTOR

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

CITY AND COUNTY OF HONOLULU
BEFORE THE HOUSE COMMITTEE ON EDUCATION

WEDNESDAY, MARCH 22, 2017, 3:05 PM

TO: THE HONORABLE MICHELLE N. KIDANI, CHAIR
THE HONORABLE KAIALII KAHELE, VICE CHAIR
AND MEMBERS OF THE COMMITTEE ON EDUCATION

THE HONORABLE KARL RHOADS, CHAIR
THE HONORABLE MIKE GABBARD, VICE CHAIR
AND MEMBERS OF THE COMMITTEE ON WATER AND LAND

FROM: ROY K. AMEMIYA, JR., MANAGING DIRECTOR
CITY AND COUNTY OF HONOLULU

SUBJECT: OPPOSITION TO H.B. 116, HD1, RELATING TO PUBLIC SCHOOLS.

The City and County of Honolulu **opposes** H.B. 116, HD1, which requires the City and County of Honolulu (City) to transfer to the Department of Education (DOE) all property upon which a public school is situated. These properties make up a significant portion of the City's assets. The City's Department of Parks and Recreation also uses these lands to run many programs that benefit our keiki and kupuna.

City and State agencies have been working together effectively to explore the potential for redevelopment of school properties (including many of the properties on City-owned lands) throughout the transit corridor. These school properties in rail transit station areas offer the potential for more vertical school construction, plus development of significant amounts of affordable and workforce housing. Some state agency staff have also suggested maximizing the development capacity of state lands by formalizing the use of nearby City park lands for school recreation purposes.

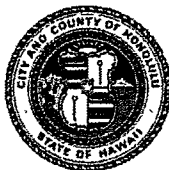
Rather than just taking ownership of City lands, the City supports working with the State to identify land exchanges and other partnerships that would work in both the City's and the State's favor and simplify ownership. This could include identifying State lands that are used for City purposes such as parks and golf courses, and City lands that are used for State purposes, such as the parcels identified in this measure.

Thank you for your consideration of this testimony in opposition to H.B. 116, HD1 as written.

DEPARTMENT OF PARKS AND RECREATION
CITY AND COUNTY OF HONOLULU

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Website: www.honolulu.gov

KIRK CALDWELL
MAYOR



MICHELE K. NEKOTA
DIRECTOR

JEANNE C. ISHIKAWA
DEPUTY DIRECTOR

March 21, 2017

THE SENATE
COMMITTEE ON EDUCATION
COMMITTEE ON WATER AND LAND
March 22, 2017 Conference Room 229

The Honorable Michelle N. Kidani, Chair
and Members of the Committee on Education
The Honorable Karl Rhoads, Chair
and Members of the Committee on Water and Land

TESTIMONY IN OPPOSITION OF
H.B. 116, HD1: RELATING TO PUBLIC SCHOOLS

Dear Chair Kidani, Chair Rhoads, and Members of the Committees:

The Department of Parks and Recreation (DPR) opposes H.B. 116, HD1, "Relating to Public Schools," because it requires the City and County of Honolulu (City) to transfer 98 identified parcels of land upon which a public school is situated, some which includes abutting public park land, to the Department of Land and Natural Resources (DLNR).

Our opposition rests mainly on the concern that 36 of the listed TMK parcels in H.B. 116, HD1, includes an abutting public park of the City & County of Honolulu. H.B. 116, HD1, in its current form, will inadvertently transfer public park land along with the school land to DLNR. Many of these 36 parks are used year-round for DPR's keiki, teen, adult and kupuna programs, including our very popular Summer Fun program. Sports leagues and community events, as well as high school sports teams, often use these open fields for games or practice sessions. Losing these city park locations will have an immediate, and adverse impact on many communities and countless families.

If H.B. 116, HD1, were to advance, DPR requests your consideration of the attached amended H.B. 116, HD1, which states DLNR and the City shall agree on any proposed property boundary separating the school and the park portions of the property, then DLNR shall subdivide the foregoing parcels in accordance with the agreed upon property boundaries. DPR also requests that rights of access in favor of lands adjoining the properties be provided to DPR without fees, as the City and State/DOE currently enjoys a mutual working relationship to requests of this nature.

Thank you for the opportunity to submit testimony in opposition of H.B. 116, HD1.

Sincerely,


(for) Michele K. Nekota
Director

Attachment
cc: Roy K. Amemiya Jr., Managing Director

RELATING TO PUBLIC SCHOOLS.

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

SECTION 1. (a) Notwithstanding any other law to the contrary, the fee simple interest to the following parcels of land with the existing improvements thereon (hereinafter "the properties") (but not including submerged land, accreted land, or any land makai of the shoreline), shall be conveyed by the city and county of Honolulu to the department of land and natural resources as grantee, as of July 1, 2018, as is, where is:

- (1) TMK 1-4-4-3-16 (Aikahi Elementary);
- (2) TMK 1-4-5-16-1 (Ben Parker Elementary);
- (3) TMK 1-4-5-34-14 (Castle High);
- (4) TMK 1-4-2-2-37 (portion) (Enchanted Lake Elementary);
- (5) TMK 1-4-6-31-20 (Heeia Elementary);
- (6) TMK 1-4-7-12-24 (portion) (Kahaluu Elementary);
- (7) TMKs 1-5-6-6-9, 1-5-6-6-10, and 1-5-6-6-25 (Kahuku High and Elementary);
- (8) TMK 1-4-3-56-9 (portion) (Kailua Elementary);
- (9) TMK 1-4-3-56-9 (portion) (Kailua Intermediate)
- (10) TMK 1-4-3-76-15 (Kainalu Elementary);
- (11) TMK 1-4-4-34-24 (Kalaheo High);

- (12) TMK 1-4-5-103-11 (Kaneohe Elementary);
- (13) TMK 1-4-5-78-14 (portion) (Kapunahala Elementary);
- (14) TMK 1-4-2-92-1 (portion) (Keolu Elementary);
- (15) TMK 1-4-6-4-2 (King Intermediate);
- (16) TMK 1-5-5-15-23 (Laie Elementary);
- (17) TMK 1-4-2-55-12 (Lanikai Elementary
- (18) TMK 1-4-2-43-2 (portion) (Maunawili Elementary)
- (19) TMK 1-4-5-30-38 (portion) (Puohala Elementary);
- (20) TMKs 1-4-8-9-9, 1-4-8-9-11 (Waiahole Elementary)
- (21) TMK 1-9-4-59-73 (August Ahrens Elementary);
- (22) TMK 1-9-1-1-2 (portion) (Campbell High);
- (23) TMK 1-9-1-115-13 (Ewa Beach Elementary);
- (24) TMK 1-9-1-17-37 (Ewa Elementary);
- (25) TMK 1-9-7-36-124 (Highlands Intermediate);
- (26) TMK 1-9-1-1-2 (portion) (Ilima Intermediate);
- (27) TMK 1-9-1-1-3 (Iroquois Point Elementary);
- (28) TMK 1-9-7-17-2 (portion) (Lehua Elementary);
- (29) TMK 1-8-7-4-42 (portion) (Maili Elementary);
- (30) TMK 1-8-4-25-10 (Makaha Elementary);
- (31) TMK 1-9-7-93-16 (portion) (Palisades Elementary);
- (32) TMK 1-9-7-24-2 (Pearl City Elementary);
- (33) TMK 1-9-7-36-122 (Pearl City Highlands Elementary);
- (34) TMK 1-9-1-1-2 (portion) (Pohakea Elementary);
- (35) TMK 1-8-5-1-67 (Waianae Elementary);

- (36) TMK 1-8-5-15-1 (Waianae High);
- (37) TMK 1-9-4-10-98, 1-9-4-29-1 (Waipahu Elementary);
- (38) TMK 1-9-4-8-20 (Waipahu High);
- (39) TMK 1-9-4-1-29 (portion) (Waipahu Intermediate);
- (40) TMK 1-9-8-31-17 (Aiea High);
- (41) TMK 1-1-1-10-33 (portion) (Aliamanu Elementary);
- (42) TMK 1-1-1-10-33 (portion) (Aliamanu Intermediate);
- (43) TMKs 1-9-8-29-2, 1-9-8-29-29 (Alvah Scott Elementary);
- (44) TMKs 1-6-6-13-11, 1-6-6-13-13, 1-6-6-14-15 (Haleiwa Elementary);
- (45) TMK 1-7-1-2-17 (Helemano Elementary);
- (46) TMK 1-7-5-27-2 (portion) (Iliahi Elementary);
- (47) TMK 1-7-3-19-13 (Kaala Elementary);
- (48) TMK 1-9-5-21-2 (portion) (Kipapa Elementary);
- (49) TMK 1-7-4-18-1 (Leilehua High);
- (50) TMK 1-1-1-34-42 (Moanalua Elementary);
- (51) TMK 1-1-1-9-5 (portion) (Moanalua Intermediate);
- (52) TMK 1-1-1-2-6 (Nimitz Elementary);
- (53) TMK 1-1-1-10-27 (Pearl Harbor Elementary);
- (54) TMK 1-9-9-2-23 (Radford High);
- (55) TMKs 1-7-1-2-8, 1-7-5-5-7, 1-7-5-5-3 (Wahiawa Elementary);
- (56) TMK 1-6-7-1-10 (Waialua Elementary);
- (57) TMK 1-6-7-2-10 (Waialua High and Intermediate);

- (58) TMK 1-9-8-8-7 (portion) (Waimalu Elementary);
- (59) TMK 1-3-6-11-9 (portion) (Aina Haina Elementary);
- (60) TMKs 3-4-004-006, 3-4-004-007 (Anuenue Elementary);
- (61) TMKs 2-1-005-001 (portion), 2-1-009-002, 2-1-009-003 (Central Intermediate);
- (62) TMKs 1-3-024-005, 1-3-024-004 (portion) (Dole Intermediate);
- (63) TMKs 1-6-003-048, 1-6-021-005 (Farrington High);
- (64) TMKs 1-3-001-023, 1-3-001-017 (portion) (Fern Elementary);
- (65) TMK 3-9-038-001 (portion) (Hahaione Elementary);
- (66) TMKs 2-8-029-010, 2-8-029-011 (Hokulani Elementary);
- (67) TMK 2-4-012-002 (Kaahumanu Elementary);
- (68) TMKs 1-3-024-001, 1-3-024-002 (Kaewai Elementary);
- (69) TMK 3-5-011-027 (Kabala Elementary);
- (70) TMK 2-7-024-001 (Kaimuki High);
- (71) TMK 3-2-059-002 (Kaimuki Intermediate);
- (72) TMK 3-9-005-027 (Kaiser High);
- (73) TMKs 1-5-024-040, 1-5-025-002 (portion) (Kalakaua Intermediate);
- (74) TMK 3-5-020-004 (Kalani High);
- (75) TMK 1-4-007-002 (portion) (Kalihi Elementary);
- (76) TMK 1-5-025-002 (portion) (Kalihi-Kai Elementary);

(77) TMKs 1-3-035-001 (portion), 1-3-036-079 (Kalihi-Uka Elementary);

(78) TMK 3-9-005-061 (Kamiloiki Elementary);

(79) TMK 1-6-026-022 (Kapalama Elementary);

(80) TMK 1-7-023-042 (Kauluwela Elementary);

(81) TMK 2-2-009-011 (Kawananakoa Intermediate);

(82) TMK 3-9-022-037 (Koko Head Elementary);

(83) TMKs 2-7-017-030, 2-7-027-010 (portion) (Kuhio Elementary);

(84) TMK 3-2-021-035 (Liholiho Elementary);

(85) TMKs 1-6-008-016, 1-6-008-022, 1-6-008-024, 1-6-008-038, 1-6-008-058 (Likelike Elementary);

(86) TMK 1-3-039-005 (Linapuni Elementary);

(87) TMKs 2-3-030-055, 2-3-030-056 (Lunalilo Elementary);

(88) TMK 2-9-036-003 (portion) (Manoa Elementary);

(89) TMK 3-7-003-010 (portion) (Niu Valley Intermediate);

(90) TMK [2-9-023-023] 2-9-023-029 (Noelani Elementary);

(91) TMK 2-2-043-011 (Nuuanu Elementary);

(92) TMK 3-4-002-001 (Pabolo Elementary);

(93) TMK 2-2-016-020 (portion) (Pauoa Elementary);

(94) TMK 1-2-008-001 (Puuhale Elementary);

(95) TMK 3-2-045-003 (Waiialae Elementary);

(96) TMK 3-1-025-001 (portion) (Waikiki Elementary);

(97) TMK 2-3-026-001 (Washington Intermediate); and

(98) TMK 3-5-017-012 (portion) (Wilson Elementary).

(b) Because the tax map key numbers for parcels (2), (4), (6), (8), (9), (13), (14), (18), (19), (28), (29), (31), (32), (39), (46), (47), (48), (50), (51), (56), (58), (59), (61), (65), (66), (68), (71), (73), (76), (77), (78), (80), (82), (88), (89) and (98) include an abutting city and county of Honolulu public park, the department of land and natural resources and the city and county of Honolulu shall agree on the proposed property boundary separating the school and the park portions of the property. The department of land and natural resources shall subdivide the foregoing parcels in accordance with the agreed upon property boundaries.

~~[(f)]~~ (c) The department of land and natural resources shall complete all due diligence investigations of the parcels necessary to satisfy itself as to the physical, environmental, economic and legal conditions relating to the parcels of land, and shall rely solely on the information it secured from its due diligence, and not on any information provided by or on behalf of the city and county of Honolulu, to determine whether it wishes to accept and acquire title to those parcels of land.

~~[(b)]~~ (d) The city and county of Honolulu shall:

(1) Prepare and execute deeds warranting title only, and such other instruments appropriate and necessary to convey fee title and

interest to the above-listed parcels with all existing improvements, to the department of land and natural resources, as grantee; and

(2) Record the deeds and such other instruments within a reasonable period of time after the effective date of this Act, in the land court or bureau of conveyances, as appropriate.

[(c)](e) The aforesaid executed deeds and other instruments shall be delivered to the office of the chairperson of the board of land and natural resources by the city and county of Honolulu no later than thirty days after they are recorded. As these are conveyances in which the city and county of Honolulu and the State and its agencies are the only parties, the tax imposed by section 247-1, Hawaii Revised Statutes, shall not apply to them.

[(d)](f) For purposes of this section and this Act, "as is, where is" means that the department of land and natural resources is accepting the properties in their existing condition as of March 1, 2018, the close of the department's period for due diligence, without representations or warranties of any kind or nature.

[e](g) Except as set forth in the aforesaid deeds, the city and county of Honolulu makes no warranty or representation of any kind or nature, either express or implied, or arising by operation of law, including any warranty of quantity, quality, condition, habitability, reliability, merchantability,

workmanlike construction, suitability or fitness for a particular purpose, about the parcels of real property described in this section, any building or other improvement located on those parcels of land, any environmental contamination or conditions of those parcels of land, and the soil conditions related to those parcels of land.

[(g)](h) All claims and liabilities against the city and county of Honolulu, if any, which the department of land and natural resources has, may have had, or may have in the future, regarding any injury, loss, cost, damage or liability, including reasonable attorney's fees, concerning the physical, environmental, soil, economic and legal conditions of the properties, are released, waived and extinguished.

[(h)](i) The properties conveyed shall be and remain subject to all encumbrances (whether or not of record), the rights of tenants, leases, contracts, agreements, permits, easements, profits, licenses, rights-of-way or other instruments applicable to any of the properties effective or ongoing on the effective date of this Act unless they expire or are terminated pursuant to their respective terms. These rights and encumbrances shall be set forth in the deeds conveying the properties to the department of land and natural resources or set forth in a license or similar agreement, a memorandum of which may be recorded concurrently with the deeds conveying the

properties to the office. Effective July 1, 2018, every reference to the present titleholder or the head of the department or agency in each instrument, if the titleholder is a department or an agency, shall be construed as a reference to the department of land and natural resources.

[(i)] (j) The properties shall be subject to all laws, except as otherwise provided in this Act, provided that the city and county of Honolulu may acquire by condemnation, pursuant to chapter 101, Hawaii Revised Statutes, easements, rights-of-way, rights of entry, or other rights of access in favor of lands adjoining the properties conveyed that are under the control and management of public agencies[; provided that the department of land and natural resources is paid just compensation for the same]. The department of land and natural resources shall administer the properties in accordance with its duties under the Hawaii constitution and as provided by law.

[(j)] (k) The instruments of conveyance executed and recorded pursuant to this Act shall specify that the department of land and natural resources and any successor owner of any of the properties shall cooperate with the city and county of Honolulu and its agencies to designate and grant the access rights and easements to the city and county of Honolulu or its agencies as may be reasonably necessary for the benefit and use of properties owned by the city and county of Honolulu or its

agencies and which are adjacent to one or more of the properties. Each of the instruments creating those access rights or granting those easements shall provide that the department of land and natural resources, or any successor owner of the servient property, shall have the right to reasonably relocate any access areas or easements so granted. The cost of initially identifying access areas or designating and granting any easements shall be paid by the city and county of Honolulu. The cost of relocating any access areas or easements shall be paid by the department of land and natural resources or any successor owner, as the case may be. Each of the instruments creating access rights or granting easements also shall provide that the city and county of Honolulu and its agencies shall be responsible for only a reasonable share of the cost of maintaining any access areas and easement areas, as the case may be, and that the department of land and natural resources, its tenants, licensees, concessionaires, successors, and assigns shall not be liable for injuries or damages arising from the use of those access areas or easement areas and caused by the acts or omissions of the city and county of Honolulu, its agencies or employees, or their invitees.

SECTION 2. This Act shall take effect on July 1, 2051.

Report Title:

Public Schools; Property;

Title; Transfer Description:

Requires the City and County of Honolulu to transfer to the Department of Land and Natural Resources all property upon which a public school is situated. (HB116 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

PRESIDENT
EVAN FUJIMOTO
GRAHAM BUILDERS, INC.

PRESIDENT-ELECT
DEAN UCHIDA
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VICE PRESIDENT
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**Testimony to the Senate Committee on Education; and
Senate Committee on Water & Land
Wednesday, March 22, 2017
3:05 pm
Conference Room 229**

RE: HB 116 HD1 – Relating to Public Schools

Chairs Kidani & Rhoads, Vice-Chairs Kahele & Gabbard, and members of the committees:

My name is Gladys Quinto Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII is in strong support of H.B. 116, H.D. 1, which would require the City and County of Honolulu to transfer to the Department of Land and Natural Resources all property upon which a public school is situated. The proposed bill attempts to address a long standing problem regarding the split ownership of lands used for public schools in Hawaii.

The legislature, pursuant to Act 97, Session Laws of Hawaii 1965, transferred the responsibility for functions that were deemed to be of statewide concern from the counties to the State. Among these functions were the planning, construction, improvement, and maintenance of public school facilities and grounds, and the transportation of school children. Prior to the passage of Act 97, the counties issued bonds to plan, construct, improve, and maintain public school facilities and grounds. Since these functions are now wholly the responsibility of the State, it only made sense to begin transferring all remaining county lands and improvements under the department of education to the State.

Act 154, SLH 2003 conveyed fee simple title of all County of Hawaii lands being used by the DOE to the State of Hawaii. County of Hawaii was only county to have legislation passed to convey the fee simple interest in its properties to the State. The State of Hawaii Department of Education has invested significant public funds on maintenance and capital improvement projects for new school facilities. The expenditure of these public funds was done without regard to the underlying fee ownership of the property. This investment in vertical improvements are transferred to the City when a school is closed (i.e. Wailupe Elementary School).

Act 155, SLH 2013 provided the Department of Education with the authority to redevelop its assets to create 21st Century Schools. The Act also allowed the DOE to explore different mechanisms to redevelop its assets, including revenue generation in support of investments in 21st Century Schools. The Department of Education is responsible for approximately 2,120 acres/92,353,688 square feet of land under its school facilities within the City and County of Honolulu. Of this total land area, the City and County of Honolulu owns approximately one-half of the land under the existing school facilities (1,004 acres/43,753,360 square feet).

The split ownership of the underlying fee simple lands under existing schools creates problems for redevelopment especially when private investment is involved.

In order to allow the DOE flexibility to redevelop and/or reposition its assets, especially along the rail transit corridor, the State of Hawaii should consolidate ownership of the lands under existing public schools.

We strongly support H.B. 116, H.D. 1. We appreciate the opportunity to provide our input on this important legislation.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the Senate Committee on Education
and the Senate Committee on Water and Land
Wednesday, March 22, 2017 at 3:05 P.M.
Conference Room 229, State Capitol**

RE: HOUSE BILL 116 HD1 RELATING TO PUBLIC SCHOOLS

Chairs Kidani and Rhoads, Vice Chairs Kahele and Gabbard, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports the intent** of HB 116 HD1, which would require the City and County of Honolulu to transfer to the Department of Land and Natural Resources all property upon which a public school is situated.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The proposed bill attempts to address a long standing problem regarding the split ownership of lands used for public schools in Hawaii.

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Chamber of Commerce HAWAII

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In order to allow the DOE flexibility to redevelop and/or reposition its assets, especially along the rail transit corridor, the State of Hawaii should consolidate ownership of the lands under existing public schools.

We appreciate the opportunity to provide our input on this important legislation.