



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON EDUCATION

DATE: FRIDAY, February 3, 2017 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Melissa J. Kolonie, Deputy Attorney General

Chair Takumi and Members of the Committee:

Upon further reflection, the Department of the Attorney General provides the following comments to amend our previously submitted testimony.

The purpose of this bill is to require the City and County of Honolulu to transfer to the Department of Education all property upon which a public school is situated.

Section 171-11 of the Hawaii Revised Statutes (HRS) provides for the set aside and withdrawal of public lands by the governor to "any department or agency of the State, the city and county, county, or other political subdivisions of the State for public use or purpose." This bill concerns lands that are already public property and are used for a public purpose – public schools. Section 171-11 does not require "just compensation" under article I, section 20 of the Hawai'i Constitution for the set aside and withdrawal of public lands.

We believe that article I, section 20 of the Hawai'i Constitution does not apply to the transfer of public lands between the City and County of Honolulu and the Department of Education.

Thank you for the opportunity to provide comments.



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The Department of the Attorney General provides the following comments.

The purpose of this bill is to require the City and County of Honolulu to transfer to the Department of Education all property upon which a public school is situated.

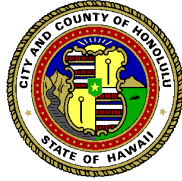
Under article I, section 20 of the Hawai'i Constitution, property cannot be taken for a public use without just compensation. "[A] governmental body can take private property, but it is subject to the requirements of a 'public purpose' and 'just compensation' to the property owner." Leone v. Cty. of Maui, 128 Haw. 183, 189 (Ct. App. 2012). This bill would essentially take the property of the City and County of Honolulu for a public purpose, but without just compensation. Consequently, the bill could be subject to challenge as violating article I, section 20 of the Hawai'i Constitution.

To address this issue, we recommend providing just compensation for the property the State seeks to obtain from the County.

Thank you for the opportunity to provide comments.

**OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU**

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DEPUTY MANAGING DIRECTOR

**CITY AND COUNTY OF HONOLULU
BEFORE THE HOUSE COMMITTEE ON EDUCATION**

FRIDAY, FEBRUARY 3, 2017, 2:00 PM

**TO: THE HONORABLE ROY M. TAKUMI, CHAIR
THE HONORABLE SHARON E. HAR, VICE CHAIR
AND MEMBERS OF THE HOUSE COMMITTEE ON EDUCATION**

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

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

The City and County of Honolulu opposes H.B. 116, 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. Instead, the City supports working with the State to identify land exchanges 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 as written.



**Testimony to the House Committee on Education
Friday, February 3, 2017 at 2:00 P.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 116 RELATING TO PUBLIC SCHOOLS

Chair Takumi, Vice Chair Har, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 116, which would require the City and County of Honolulu to transfer to DOE 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.

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 is 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.

Thank you for the opportunity to testify.

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**Testimony to the House Committee on Education
February 3, 2017
2:00 pm
Conference Room 309**

RE: HB 116 – Relating to Public Schools

Chair Takumi, Vice-Chair Har, and members of the committee:

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 HB 116, which would require the City and County of Honolulu to transfer to DOE 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 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 HB 116. We appreciate the opportunity to provide our input on this important legislation.

EDNtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 11:30 AM
To: EDNtestimony
Cc: ChoonJamesHawaii@gmail.com
Subject: Submitted testimony for HB116 on Feb 3, 2017 14:00PM

HB116

Submitted on: 2/2/2017

Testimony for EDN on Feb 3, 2017 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Choon James	Individual	Support	Yes

Comments: Support this HB116 100% Our children's school grounds should not become a victim of covetous developers/legislators who do not believe that our public school children need open spaces. Instead these special interests want to squeeze our children into vertical buildings with limited playgrounds and fields. Hopefully, this will help protect green and open space for our school children in perpetuity. <http://hawaiiindependent.net/story/allow-hawaiis-keiki-the-joy-of-open-space-and-field-playgrounds> Allow Hawaii's keiki the joy of open space and field playgrounds. Studies have shown correlation between crowded space and aggression. Senator Donovan Dela Cruz's recent posturing that "we need new ways of generating revenues to support needed programs without raising taxes" by developing on school grounds for revenue is shibai. He has a bad record of appeasing corporations and shutting out the public due process. Furthermore, the government will never have enough revenue when it perennially shows no discipline in its fiscal management of the public treasury. After the government gives away Hawaii's inheritances, what is there left? Fabricating PLDC to "raise revenues to finance Hawaii's schools" is as convincing as its attempt not the raid the Hurricane Relief Fund. For certain developers, leaving the open space in Hawaii public schools alone must be a hard pill to swallow. But the public must insist on a line of demarcation with developers "optimizing" public lands. They can covet elsewhere, like Kenya or Mombasa. There are lots of construction projects needed over there. As Hawaii's population increases, it's imperative for schools to hold on to their playgrounds and land acreages as part of prudent planning. Most public schools were built to last for a very long time, with systematic maintenance and imaginative upgrades. Old buildings can be wired for modern connections or renovations without demolishing the entire building. Don't deprive the children of their turkey trots, big field activities, and off-hours ball games. We can't continue with our bi-polar behavior of worrying about youth obesity on one hand and taking away their field playground on the other. Protect the space for further project garden or loi or whatever projects to be imagined in the future. School grounds are often used for other community needs, including emergency centers. Don't stack classrooms into vertical buildings just so developers can "optimize" every inch of the school grounds. Don't cement green buffer zones from the school children. Why force eye-ball to eye-ball crowding in learning and living situations? Building high density hotels or apartments next to schools will inevitably create more noise, urban pressures, and stresses all around. (I was in the city of Guangzhou several years ago and stayed in a 4-star hotel next to a vertical school. it turned out to be a very noisy and crowded situation. I had a very clear view of some classrooms. It was a good thing I was no psycho nor had any inclination to test my shooting skills.) Jefferson Elementary School at 324 Kapahulu Avenue, Honolulu, Hi 96815 has been mentioned by the Governor as a PLDC possibility. Jefferson is undoubtedly a prime location to a developer; but

don't deny the children their little oasis in Honolulu's concrete jungle. Let them enjoy the Diamond Head views instead of concrete buildings. Let them enjoy the breezes and sunshine in their school environment. Allow Hawaii's keiki the joy of open space and field playgrounds in their schools. Don't steal from Hawaii's keiki. Developers, go lobby someplace else. Hands off Hawaii's public school grounds!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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EDNtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2017 9:58 PM
To: EDNtestimony
Cc: jamesjtz@aol.com
Subject: *Submitted testimony for HB116 on Feb 3, 2017 14:00PM*

HB116

Submitted on: 1/31/2017

Testimony for EDN on Feb 3, 2017 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
James Gauer	Individual	Support	No

Comments:

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EDNtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 2:42 PM
To: EDNtestimony
Cc: laurie.ann.miyano@notes.k12.hi.us
Subject: Submitted testimony for HB116 on Feb 3, 2017 14:00PM
Attachments: HB0116_DOE_02-03-2017_EDN.pdf

HB116

Submitted on: 2/2/2017

Testimony for EDN on Feb 3, 2017 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Ann Miyano	Department of Education	Support	Yes

Comments:

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I am Olivia Loney, a student at Kealakehe High School located on the Big Island. Please pass bill to help increase funding for public schools.

Our children are our future. When teachers instruct their students, they build the foundation for equality and prosperity for tomorrow's generations. Every dollar invested in our community's public schools yields exponential returns, not just for our economy, but for the promise of a more open and democratic society.

Investing in the education of our youth is something I have deemed personally important, seeing as my education would benefit directly. By investing in my peers and I, you give us the opportunity to reach beyond the bounds of our economic status, enabling us to achieve and set in motion our path to our aspirations, fulfilling the true purpose of public education.

Supporting these proposals will lift Hawaii's schools into the 21st Century. A vote for these measures is a vote for lower class sizes that allow teachers to connect with their students, whole child education that includes the arts and Hawaiian studies, resources for special needs students, and professional pay that reflects the value of our hardworking teachers.

To deliver the schools our keiki deserve, please support these bills. Mahalo.

Olivia Loney, high school student, Big Island

Contact: kealakehe.oloney@gmail.com

EDNtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 8:49 PM
To: EDNtestimony
Cc: rkailianu57@gmail.com
Subject: Submitted testimony for HB116 on Feb 3, 2017 14:00PM

HB116

Submitted on: 2/2/2017

Testimony for EDN on Feb 3, 2017 14:00PM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Oppose	Yes

Comments: If the citi and county lands are not transferred to the state where a public school resides, will our children get a lesser type education? Why is the legislators making laws to to have county lands to be own by the state? How would this help improve our children's capabilities or higher educational skills/tools to use for a favorable quality of life?

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