

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. No. 2679, H.D. 1, RELATING TO TRANSFER OF LANDS.

BEFORE THE:

SENATE COMMITTEES ON EDUCATION AND ON WATER AND LAND

DATE: Wednesday, March 21, 2018 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Anne Horiuchi, Deputy Attorney General or
Melissa Kolonie, Deputy Attorney General

Chairs Kidani, Rhoads, and Members of the Committees:

The Department of the Attorney General ("Department") provides the following comments:

The purposes of this bill are to require the City and County of Honolulu and the Department of Land and Natural Resources, as applicable, to convey land upon which 58 public schools sit, with existing improvements, to the Department of Education, and to give the Department of Education the authority to own the real property on which its educational facilities are located.

The Department believes that it lacks sufficient information regarding the 58 properties at issue to perform a full analysis of the legal implications of the bill. For instance, how the City and County of Honolulu or Department of Land and Natural Resources came to own each individual parcel or the potential existence of pollutants on site could have broad legal consequences.

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

The Department further notes that the bill as drafted does not indicate what type of legal instruments will be prepared to convey the parcels to the Department of Education, what entity or entities will be responsible for preparing those legal instruments, or whether those legal instruments will be subject to review or approval by the Department of the Attorney General, as required by sections 107-10 and 26-7, Hawaii Revised Statutes.

Finally, we 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." To the extent the bill may be interpreted as directing the City and County of Honolulu to prepare legal instruments conveying certain parcels to the Department of Education, the bill does not appropriate any funds for this mandate.

Thank you for the opportunity to provide these comments.

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 21, 2018
3:00 PM
State Capitol, Conference Room 229**

**HOUSE BILL 2679, HOUSE DRAFT 1
RELATING THE TRANSFER OF LANDS**

House Bill 2679, House Draft 1 proposes to transfer fee interest in certain public school lands from the City and County of Honolulu (City) and the Department of Land and Natural Resources (Department), as applicable, to the Department of Education (DOE). **The Department offers the following comments and concerns.**

The Department opposes the inclusion of the automatic reversionary interest as described in SECTION 5. First, at the end of the useful life of the school and income generating project contemplated by the measure, the structures will likely be in a dilapidated condition and possibly contaminated with hazardous materials. Therefore, at the least, DOE ought to be required to remove at its sole cost all improvements and restore the land to its original condition prior to any return to the Department or the City. Secondly, given that the measure includes revenue generation as part of “public educational purposes”, the Department presumes that if the lands conveyed cease to be used for public educational purposes it would mean that the land has minimal or no revenue generation potential either. If this is the case, the land may also have little or no income generating potential for the Department and may end up only resulting in a maintenance and financial burden. In any event, DOE ought to be required to remove at its sole cost all improvements and restore the land to its original condition prior to its return.

Finally, the Department notes that the House Committees on Education and Water & Land may have intended to restrict alienation of the land and building to government entities. SECTION 2 of the bill, the proposed Section 302A-, (c) in fact prohibits DOE from selling, exchanging, transferring, assigning or pledging any real or personal property to any entity other than a government entity. However, subsections (a) and (b) of that same section authorize the sale, exchange, transfer or conveyance of real and personal property without restriction. As such, these inconsistent provisions may have been an oversight in drafting.

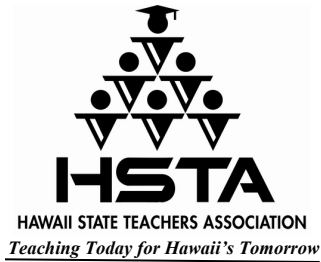
Thank you for the opportunity to comment on this measure.

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

ROBERT K. MASUDA
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
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

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TESTIMONY BEFORE THE SENATE COMMITTEES ON
EDUCATION and WATER AND LAND

RE: HB 2679, HD 1 - RELATING TO THE TRANSFER OF LANDS

WEDNESDAY, MARCH 21, 2018

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Kidani, Rhoads, and Members of the Committees:

The Hawaii State Teachers Association **supports HB 2679, HD 1**, relating to the transfer of lands.

Our state's public school buildings are approximately 65-years-old on average. Facilities are damaged, restrooms and water foundations are in disrepair, classroom windows are broken, and campuses are plagued by rat and insect infestations. Our students, especially those with special needs, are subjected to dilapidated infrastructure. Though our state's repair and maintenance backlog has declined, the total cost of lingering projects runs into the hundreds of millions of dollars. Maintenance and capacity problems are particularly painful for developing communities, like the 'Ewa Plain, which will welcome 28,000 more buildings by the year 2021, and Kaka'ako, in which 39,000 new multi-family units are projected to be built within an approximately half-mile radius of rail transit stations, per the Honolulu Community Development Authority.

Last year, lawmakers passed Act 206, which required the City and County of Honolulu to transfer to the Hawai'i State Department of Land and Natural Resources all property upon which public high schools located on O'ahu are situated, while concurrently extending the state's 21st Century schools pilot program by an additional five years. Act 206 did not fully transfer all land on which public schools in Honolulu sit to DLNR, however, precluding the Hawai'i State Department of Education from exercising full control of its O'ahu campuses, for which the state nonetheless carries operational and maintenance responsibility.

For the 21st Century schools initiative imagined by Act 155 of 2013 to succeed, the DOE must have complete control of public school lands and facilities. Split ownership of these lands hampers redevelopment and impedes the department's ability to maximize the value of its real estate assets. Public-private partnerships intended to generate revenue for the repair, maintenance, and construction of school facilities is only possible if and when the department controls all real property on which schools sit, so that the department can explore innovative ways of managing school space that provide a benefit to both the school and the surrounding community, including through the possible initiation of projects on public school lands that are funded with private capital, like workforce housing.

A quality education is priceless. To provide our children with quality school facilities, the Hawaii State Teachers Association asks your committee to **support** this bill.



HB2679 HD1
RELATING THE TRANSFER OF LANDS
Senate Committee on Education
Senate Committee on Water and Land

March 21, 2018

3:00 PM

Room 229

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB2679 HD1, which would exempt lands held by the Hawai'i Department of Education (DOE) from the definition of "public lands" in Hawai'i Revised Statutes (HRS) §171-2, thereby allowing the potential sale or alienation of "ceded" lands without the critical procedural safeguards found in Chapter 171.

OHA appreciates that the DOE may benefit from greater flexibility and autonomy over the management and disposition of lands under its control, particularly given its critical mission to educate Hawai'i's keiki. OHA understands that this measure would accordingly remove lands held by the DOE from the Board of Land and Natural Resources (BLNR) oversight and management under Chapter 171, through an amendment to the definition of "public lands" in HRS §171-2.

However, to the extent that the DOE is granted the authority to sell or convey lands, OHA urges that this measure **expressly** reaffirm the continued application of current legislative approval requirements for the sale or alienation of **any** state lands, as found in HRS § 171-64.7. This is critical to ensuring that DOE lands are treated consistently with other state lands generally removed from BLNR jurisdiction (such as lands held by the University of Hawai'i and other state entities), and thereby maintaining the ceded lands corpus. **OHA objects to the sale of "ceded" lands except in limited circumstances, and notes that the legislative approval requirements for the sale of state lands in HRS §171-64.7 were enacted to ensure a high level of accountability and transparency in any proposed alienation of the state's limited land base, as well as to protect "ceded" lands from being sold prior to the resolution of Native Hawaiians' unrelinquished claims.** Notably, the enactment of HRS § 171-64.7 was a condition precedent to the settlement agreement in the OHA v. Housing and Community Development Corporation of Hawai'i lawsuit, brought in response to the State's actions to sell and otherwise alienate ceded lands.

Therefore, should the Committee choose to move this measure, OHA respectfully asks that a new paragraph (9) be inserted into subsection (a) of HRS §171-64.7, to read as follows:

“(9) Lands to which the department of education holds title.”

Although OHA recognizes that Section 2 of HB2679 HD1 limits the sale and transfer of lands by the DOE only to government entities, the protections of HRS §171-64.7 could still be circumvented if DOE-held “ceded” lands are sold or transferred to a federal government entity, or sold or transferred to a county entity that subsequently sells or transfers such lands to a private party. Under this scenario, neither transfer would be subject to HRS §171-64.7. **Again, OHA’s requested amendment would require that any and all sales or transfers of land by DOE would be subject to the same legislative approval required of other state agencies exempted from Chapter 171, which provides key protections for the ceded lands corpus.**

Finally, OHA notes that Act 155 (Reg. Sess. 2013) established a pilot program for the leasing of public school lands. Under this pilot program, the DOE is authorized to lease school land and facilities for revenue generating purposes, in accordance with the terms of HRS §302A-1151.1. Most recently, at the BOE’s March 13, 2018, Finance and Infrastructure Committee (Committee) meeting, the Committee recommended, and the BOE later approved, seven (7) sites for further review for lease under the pilot program. **OHA respectfully submits that this measure may be premature, particularly as the DOE and the Legislature have not yet had the opportunity to examine the forthcoming results of the Act 155 pilot program, which may better inform what authorities, exemptions, and safeguards, if any, should be applied to the DOE and any lands under its control.**

Accordingly, OHA urges the Committee to **HOLD** HB2679 HD1, or to incorporate the amendment suggested above. Mahalo nui for the opportunity to provide testimony on this measure.

HB-2679-HD-1

Submitted on: 3/19/2018 3:54:29 PM

Testimony for EDU on 3/21/2018 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Erica Scott	Individual	Support	No

Comments:



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CONSTRUCTION CO. INC.

ADDRESS:
94-487 AKOKI STREET, SUITE 213
WAIPAHU, HAWAII 96797
P 808.847.4666
F 808.440.1198
E INFO@BIAHAWAII.ORG
WWW.BIAHAWAII.ORG

Testimony to the Senate Committees on Education; and Water & Land
Wednesday, March 21, 2018
3:00 pm
State Capitol, Room 229

RE: HB 2679 HD1 – Relating to the Transfer of Lands

Chairs Kidani & Rhoads, Vice-Chairs Kahele & Gabbard, & 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.2679, HD 1, which proposes to transfer certain public school lands from city and county of Honolulu and the department of land and natural resources, as applicable, to the department of education.

The legislature passed Act 155 in 2013. The purpose of Act 155 was to optimize the use of public school lands to generate opportunities to improve public school facilities and infrastructure to meet the challenges of the twenty-first century and to improve the overall quality of education in Hawaii. In particular, the Act was to establish a pilot program to generate revenue from uses for public purposes, such as workforce housing, to build and retrofit twenty-first century schools and create more school-centered communities.

We understand the Department of Education (DOE) has been implementing Act 155 through the development of a process which would allow them to redevelop underutilized school properties. A major barrier to these redevelopment efforts is the fact that the DOE does not own any of the lands it occupies. As the bill states, of the roughly 2,120 acres of land under its school facilities on Oahu, the City and County of Honolulu owns approximately one-half of the land under the existing school facilities - roughly 1,004 acres. In addition, the Department of Land and Natural Resources (DLNR) owns the other half - roughly 1,116 acres.

Investors and lenders raise concerns about the uncertainty, delays and risks associated with getting approvals from two different landowners. The DOE has no control over the approval process by either the City or the State DLNR.

The proposed bill will allow DOE to proceed with the implementation of Act 155, and possibly create opportunities for revenue generation, new or renovated schools, and mixed use developments, including housing and quite possibly teacher housing.

We believe the proposed bill is a necessary step that would truly test the concepts envisioned when Act 155 was first passed.

We are in **strong support** of H.B. 2679, HD 1, and appreciate the opportunity to express our views on this matter.



'ĀINA HAINA COMMUNITY ASSOCIATION

c/o 'Āina Haina Library, 5246 Kalaniana'ole Highway, Honolulu, HI 96821
ainahainaassoc@gmail.com; www.ainahaina.org

Jeanne Ohta, President • Melia Lane-Kanahele, Vice-President • Art Mori, Treasurer • Kathy Takemoto, Secretary • Directors At Large: Jeff Carlson, Wayson Chow, Patricia Moore, Marie Riley

March 21, 2018

To: Senator Michelle Kidani, Chair
Senator Kaiali'i Kahele, Vice Chair and
Members of the Committee on Education

To: Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair and
Members of the Committee on Water and Land

From: Jeanne Y. Ohta, President

RE: HB 2679 HD1 Relating to Transfer of Lands
Hearing: Wednesday, March 21, 2018, 3:00 p.m., Room 229

POSITION: OPPOSED

The Board of Directors of the 'Āina Haina Community Association (AHCA) write in opposition to HB 2679 HD1 Relating to the Transfer of Lands, which transfers the land of certain public schools from the City and County of Honolulu to the State of Hawaii.

AHCA specifically opposes the new definition of "educational purpose" to include any use of the property, including revenue generation, that would benefit the department of education's mission to provide public education to students in Hawaii.

Many of the schools are located in residential neighborhoods. When they were built, they were built with the understanding that schools would be a reasonable use for land in residential neighborhoods, thus, the school properties received conditional use permits. The acceptable use is for education of the children of the neighborhood.

HB 2679 HD1 now proposes a definition of "educational use" that is overly broad, ambiguous, and would allow "revenue generation" by businesses that are not appropriate in residential neighborhoods. AHCA is opposed to commercial use of property in residential neighborhoods, especially because they lead to overcrowding and an increase in traffic and parking on streets designed for residential uses. We are also concerned about the capacity of our aging infrastructure as these schools are located in older neighborhoods.

It is our understanding that when the land under 'Āina Haina Elementary School was dedicated to the City, it was with a covenant that restricted its use for education. We do not believe that the State can now change the use of the land to commercial use for revenue generation.

Many school campuses have residential homes on property adjacent to the schools. This proposal would negatively impact those homes and change the nature of neighborhoods.

We ask that the committee defer this measure. Thank you for the opportunity to provide testimony in opposition.