



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2679, H.D. 1, S.D. 1, RELATING [sic] THE TRANSFER OF LANDS.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, April 4, 2018

TIME: 10:30 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN TESTIMONY ONLY. For more information, call
Melissa J. Kolonie, Deputy Attorney General or
Anne T. Horiuchi, Deputy Attorney General at 586-1255.

Chair Dela Cruz and Members of the Committee:

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

The purpose of this bill is to require the City and County of Honolulu ("City") to convey land upon which 83 public schools sit, with existing improvements, to the Department of Education ("DOE"). This bill further provides the DOE with the power to acquire real, personal, or mixed property, and sell, assign, exchange, transfer, convey, lease, dispose of, or encumber the same, among other things. The bill further makes land to which the DOE holds title subject to section 171-64.7, Hawaii Revised Statutes, which generally requires legislative approval for the sale or gift of state lands.

The Department believes that it lacks sufficient information regarding the 83 properties at issue to perform a full analysis of the legal implications of the bill. For instance, how the City 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 adopted to request that an appropriate agency conduct a study into land owned by the City 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.

We also note that it is currently unclear whether the bill seeks to bypass the review or approval of the quitclaim deeds by the Department. The bill as written currently provides that the City shall prepare, execute, and record quitclaim deeds without any reference to action to be taken by any state entity, including the Department, in this process.

According to section 107-10, Hawaii Revised Statutes (HRS), “No real property or any right, title, or interest therein shall be acquired by agreement, purchase, gift, devise, eminent domain, or otherwise, for any purpose, by the State or any department . . . without the prior approval of the attorney general as to form, exceptions, and reservations.” The duties of the Department include “approv[ing] as to legality and form all documents relating to the acquisition of any land or interest in lands by the State[.]” Section 26-7, HRS.

We also respectfully recommend that the bill be amended to provide that all quitclaim deeds are subject to review and approval by the Department prior to execution and recordation.

We further note that the word “to” is left out of the title of the bill. Because the subject matter can reasonably be inferred by the title and contents of the bill, we do not believe that the error renders this bill defective. Nevertheless, we bring it to your attention so that it may be appropriately addressed.

Finally, on page 9, lines 11-16, the bill states: “Effective on the date of transfer pursuant to subsection (e), 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 education.” The term “each instrument” is vague. If “each instrument” refers to the quitclaim deeds to be executed conveying property to the DOE, the titleholder is already the DOE in such deeds, and we recommend that the sentence be deleted. If “each instrument” is in reference to something else, then we recommend clarifying what “each instrument” concerns.

Thank you for the opportunity to provide 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 Committee on
WAYS AND MEANS**

**Wednesday, April 4, 2018
10:30 AM
State Capitol, Conference Room 211**

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

House Bill 2679, House Draft 1, Senate Draft 1 proposes to require the City and County of Honolulu (City) to transfer to the Department of Education (DOE) all property upon which a public elementary or intermediate school is situated. The measure also proposes to grant the DOE the power to acquire and hold title to real, personal or mixed property for use for public educational purposes. The measure would also require legislative approval prior to the sale or gift of lands to which the DOE holds title. **The Department of Land and Natural Resources (Department) offers the following comments.**

The Department notes that Governor's executive orders to the DOE are limited to school purposes. Should the DOE wish to use school parcels for revenue generation through commercial development rather than for school purposes, the DOE would need to seek an amendment of the executive orders, which would be subject to the approval of the Board of Land and Natural Resources (Board) and Governor.

The Department further notes that four of the sites listed in the measure are jointly owned by both the City and the State: (38) Iliahi Elementary School, (46) Waialua Elementary School, (52) Fern Elementary School and (81) Waikiki Elementary School. For three of the sites, except Fern Elementary School, the State used public funds to assist in the acquisition of these properties from private owners. Therefore as the measure only requires the City to transfer its fee interest to the DOE, in the case of these four sites, the State will retain its interest in the properties through the Board. If the DOE seeks to sell or gift fee title in these properties, approval from the Board would also be required with respect to its share of the fee interest in addition to legislative approval pursuant to Section 171-64.7, Hawaii Revised Statutes.

Finally, the Department notes that PART III, SECTION 3 of the measure, 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

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
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

(a) and (b) of that same section authorize the sale, exchange, transfer or conveyance of real and personal property without restriction. As such, these potentially inconsistent provisions may have been an oversight in drafting.

Thank you for the opportunity to comment on this measure.



HB2679 HD1 SD1
RELATING THE TRANSFER OF LANDS
Senate Committee on Ways and Means

April 4, 2018

10:30 a.m.

Room 211

The Office of Hawaiian Affairs' Beneficiary Advocacy and Empowerment Committee (OHA) will recommend that the Board of Trustees **COMMENT** on HB2679 HD1 SD1, which would require the City and County of Honolulu to transfer to the Department of Education (DOE) eighty-three (83) parcels of land underlying schools operated by the DOE; give the DOE power to sell, exchange, or transfer property to any government entity; exempt lands held by the DOE from the land disposition and management requirements under HRS Chapter 171; and require legislative approval prior to the sale or gift of lands to which the DOE holds title pursuant to HRS §171-64.7.

OHA appreciates that the DOE may benefit from the exploration of revenue generating opportunities, particularly given its critical mission to educate Hawai'i's keiki. However, as recognized by this measure, Act 155 (Reg. Sess. 2013), now codified in Haw. Rev. Stat. (HRS) §302A-1151.1, has already enacted a pilot program to give the DOE, in consultation with the Board of Education (BOE), significant flexibility in exploring potential revenue generating opportunities through the leasing of public school properties. Notably, neither Act 155 nor its extension via Act 206 (Reg. Sess. 2017) granted the DOE the authority to sell or otherwise alienate public lands, and both limited the pilot program to no more than five public school land sites. Act 155 also restricted leases to no more than 55 years in most instances.

OHA understands that the Act 155 pilot program has been progressing since its enactment, as reflected in several BOE meetings. 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. Furthermore, the DOE's March 13, 2018, submittal to the Committee and BOE included a statement that sites selected for the pilot program would be encumbered for up to 55 years.

Accordingly, OHA respectfully submits that HB2679 HD1 SD1 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.

OHA does appreciate this measure's assurance that the DOE's lands will remain subject to the legislative approval process for the sale or gift of any public lands, as described in HRS §171-64.7. This section, along with HRS §171-50, is critical to maintaining the "ceded" lands corpus; the enactment of these sections 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. An exemption from these statutory requirements, as proposed in the prior draft of this measure, would therefore undermine the long-held understanding between OHA, Native Hawaiians, and the State, regarding the State's moral and legal obligation to maintain the "ceded" lands corpus pending the resolution of Native Hawaiians' claims to these lands. Accordingly, OHA appreciates the current draft's maintenance of the legislative approval process under HRS § 171-64.7 to lands held by the DOE.

OHA does note that Chapter 171 also contains numerous other requirements for leases of public lands, including public auction requirements, limits on lease length and parcel use, and lessee qualifications, all of which are meant to benefit and protect the interests of Native Hawaiians and the public. An exemption from these requirements, as would result from the proposed exception of the DOE's lands from the definition of "public lands" under Chapter 171, may result in potential violations of the public trust and public land trust, by foreclosing opportunities to maximize the financial and intangible benefits derived from the trust corpus, and fostering a sense of entitlement in long-term lessees that can and has in the past led to the alienation of public lands. Accordingly, OHA again suggests that this measure may be more appropriately considered after a close assessment of the results of the Act 155 pilot program, to ensure that any exemptions to Chapter 171 are carefully tailored to meet the DOE's needs while also protecting the interests of Native Hawaiians, the general public, and the State.

Mahalo for the opportunity to testify on this measure.



'ĀINA HAINA COMMUNITY ASSOCIATION

c/o 'Āina Haina Library, 5246 Kalanianaʻole 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

April 3, 2018

To: Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Agaran, Vice Chair and
Members of the Committee on Ways and Means

From: Jeanne Y. Ohta, President

RE: HB 2679 HD1 SD1 Relating to Transfer of Lands
Hearing: Wednesday, April 4, 2018, 10:30 a.m., Room 211

POSITION: STRONG OPPOSITION

The Board of Directors of the 'Āina Haina Community Association (AHCA) write in strong opposition to HB 2679 HD1 SD1 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.

AHCA also opposes the transfer of adjacent City and County of Honolulu park property which includes a pavilion; basketball, volleyball, and tennis courts to the Department of Education.

It is our understanding that when the land under 'Āina Haina Elementary School was dedicated by the Hind Estate 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.

HB 2679 HD1 SD1 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; and would also allow the Department of Education to develop popular and heavily-used community parks to generate revenue.

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.

AHCA is opposed to any proposal that would limit or curtail public use of community park property. As written, the current proposal would allow the Department of Education to take community park lands and use them for revenue generation, leaving our community without public recreational facilities.

AHCA opposes the 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.

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.



**Testimony to the Senate Committee on Ways & Means
Wednesday, April 4, 2018
10:30 am
State Capitol, Room 211**

2018 OFFICERS

PRESIDENT
DEAN Y. UCHIDA
SSFM INTERNATIONAL, INC.

PRESIDENT-ELECT
MARSHALL HICKOX
HOMEWORKS CONSTRUCTION, INC.

VICE PRESIDENT
DWIGHT MITSUNAGA
DM PACIFIC, INC.

SECRETARY
CHRIS CHEUNG
CC ENGINEERING & CONSTRUCTION, INC.

TREASURER
BRIAN MOORE
CENTRAL PACIFIC BANK

SPECIAL APPOINTEE-BUILDER
GREG THIELEN
COMPLETE CONSTRUCTION SERVICES CORP.

SPECIAL APPOINTEE-BUILDER
MARK KENNEDY
HASEKO CONSTRUCTION MANAGEMENT
GROUP, INC.

SPECIAL APPOINTEE-ASSOCIATE
CRAIG WASHOFKY
SERVCO HOME & APPLIANCE DISTRIBUTION

IMMEDIATE PAST PRESIDENT
EVAN FUJIMOTO
GRAHAM BUILDERS, INC.

CHIEF EXECUTIVE OFFICER
GLADYS MARRONE
BIA-HAWAII

2018 DIRECTORS

KAREN BERRY
TRADE PUBLISHING COMPANY

DARCY ENDO-OMOTO
HAWAIIAN ELECTRIC COMPANIES

MARK HERTEL
INTER-ISLAND SOLAR SUPPLY,
OAHU-MAUI-HAWAII-KAUAI

BRENTON LIU
DESIGN TRENDS CONSTRUCTION, INC.

SARAH LOVE
BAYS LUNG ROSE & HOLMA

BEAU NOBMANN
HPM BUILDING SUPPLY

GARY T. OKIMOTO
HONOLULU WOOD TREATING

JORDAN OKIMURA
BROOKFIELD HOMES HAWAII, LTD

JACKSON PARKER
D.R. HORTON, SCHULER DIVISION

ALAN TWU
HK CONSTRUCTION CORP.

DARYL TAKAMIYA
CASTLE & COOKE HOMES

PAUL D. SILEN
HAWAIIAN DREDGING
CONSTRUCTION CO. INC.

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

RE: HB 2679 SD1 SD1 – Relating to the Transfer of Lands

Chair Dela Cruz, Vice-Chair Keith-Agaran, & 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 **support** of H.B.2679, HD 1, S.D. 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, 2013 SLH. 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.

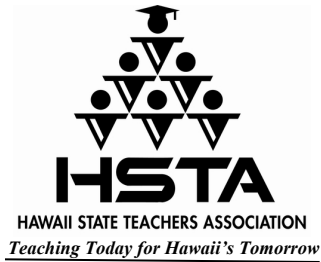
As drafted, the Bill creates two different owners of the fee simple lands under public schools. DOE would be one of the owners based on conveyance of the lands from the City and County of Honolulu. The Department of Land and Natural Resources would be the other owner as they presently hold title to all of the State owned lands under public schools.



The legislature should consider the language in S.B. 2237 which transfers the lands under certain public schools on Oahu from both the City and County of Honolulu and the State Department of Land and Natural Resources to the Department of Education. This would consolidate the ownership of the land under one owner, the Department of Education, and remove a major obstacle from the DOE's ability to re-position underutilized assets.

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

We are in **support** of H.B. 2679, HD 1, SD 1, if it incorporates language from S.B. 2237, and appreciate the opportunity to express our views on this matter.



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

Corey Rosenlee
President

Justin Hughey
Vice President

Amy Perruso
Secretary-Treasurer

Wilbert Holck
Executive Director

TESTIMONY BEFORE THE SENATE COMMITTEE ON
WAYS AND MEANS

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

WEDNESDAY, APRIL 4, 2018

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Dela Cruz and Members of the Committees:

The Hawaii State Teachers Association **supports HB 2679, HD 1, SD 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.