



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2237, S.D. 1, RELATING TO PUBLIC SCHOOLS.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, February 21, 2018 **TIME:** 10:08 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call
David D. Day, Deputy Attorney General at (808) 587-2990

Chair Dela Cruz and Members of the Committee:

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 84 public schools sit, with existing improvements, to the Department of Education (DOE). The 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 Hawaii Revised Statutes section 171-64.7, which generally requires legislative approval for the sale or gift of state lands.

The Department of the Attorney General believes that it lacks sufficient information regarding the 84 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 respectfully suggest that a concurrent resolution be adopted 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 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 of the Attorney General. The bill as written currently provides that the City and County of Honolulu shall prepare, execute, and record quitclaim deeds without any reference to action to be taken by any state entity, including the Department of the Attorney General, 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 of the Attorney General 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 of the Attorney General prior to execution and recordation.

Finally, on page __, lines ____, 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 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” refers to something else, then we recommend clarifying what “each instrument” concerns.

Thank you for the opportunity to provide comments.

SB-2237-SD-1

Submitted on: 2/17/2018 1:06:47 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments: