

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

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

**Wednesday, February 14, 2018
3:15 PM
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 2237
RELATING TO PUBLIC SCHOOLS**

Senate Bill 2237 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 elementary or intermediate school is situated. **The Department of Land and Natural Resources (Department) opposes this measure and instead, recommends if this measure was to move forward, then the City should be directed to simply transfer the school lands to the Department of Education (DOE).**

The Department notes that there is another measure, Senate Bill 2238 that proposes to authorize DOE to acquire and hold fee title to public school lands, as well as exempt DOE from Chapter 171, Hawaii Revised Statutes (HRS). The Department recommends deferring this bill until passage of Senate Bill 2238 or a similar measure, then DOE may acquire the fee title from the City directly. This would alleviate the cost and risk to the Department in acquiring lands it has no interest in, and also expedite the process by removing the Department as an unnecessary intermediary party. This measure as currently written would burden the Department with significant acquisition costs, especially in regards to subdivision. Additionally, the measure does not appropriate any funds to the Department to carry out its requirements.

This measure identifies 84 school site parcels that would be conveyed from the City. Of those, 36 of the parcels include an abutting City park, and the Department would be required to negotiate a property boundary between the schools and the parks with the City, and also be responsible for subdividing the parcels. If the Department is required to go through the City's

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

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DEPUTY DIRECTOR - WATER

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CONSERVATION AND COASTAL LANDS
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

subdivision processes for each parcel, such a requirement would impose a debilitating staffing and financial burden on the Department. The Department does not have the staff, funds or spending authority to absorb the enormous workload and cost of processing 36 subdivision approvals. In order to fulfill the mandates of this legislation, the Department would need to contract with a surveyor to prepare the legal metes and bounds description and map, and hire a consultant to process the subdivision through the City Council.

Depending on the complexity, topography and size of the land to be subdivided, the surveyor's costs could range from \$30,000 to \$50,000 per parcel, and the consultant to process the subdivision through the City could \$50,000 or more, per parcel. Multiplying that amount by the 36 parcels, the Department will need an appropriation of about \$3,600,000. An alternative cost-saving measure could be to exempt the conveyances from the subdivision requirement. However, in order to divide up the 36 parcels between the City and the State, a surveyed legal metes and bounds description and map, approved by the State Surveyor from the Department of Accounting and General Services would be required. At a cost of \$30,000 to \$50,000 per parcel, even a conservative estimate of \$30,000 per parcel would require an appropriation of about \$1,100,000 to the Department.

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 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, HRS, 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 will not necessarily improve the management or operations of the affected schools. 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.

Thank you for the opportunity to comment on this measure.



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEES ON EDUCATION AND ON WATER AND LAND

DATE: Wednesday, February 14, 2018 **TIME:** 3:15 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Russell A. Suzuki, Acting 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 84 public schools sit, with existing improvements, to the Department of Land and Natural Resources (DLNR).

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 6, lines 10–14, 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 land and natural resources.” The term “each instrument” is vague. If “each instrument” refers to the quitclaim deeds to be executed conveying property to the DLNR, the titleholder is already the DLNR 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.



**Testimony to the Senate Committees on Education; and Water & Land
Wednesday, February 14, 2018
3:15 pm
State Capitol, Room 229**

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RE: SB 2237 – Relating to Public Schools

Chairs Kidani & Rhoads, Vice-Chairs Kahele & Gabbard, & 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 supports the intent of S.B.2237 which requires the City and County of Honolulu to transfer to the Department of Land and Natural Resources all property upon which a public elementary or intermediate school is situated.

We would prefer the Senate use the language in S.B. 2379 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.

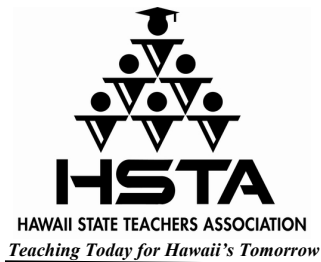
The legislature passed Act 155, 2013 SLH. The purpose of Act 155 was to optimize the use of public school lands to generate opportunities to improve public school facilities and infrastructure to meet the challenges of the twenty-first century and to improve the overall quality of education in Hawaii. 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.

S.B. 2379 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 S.B. 2379 is a necessary step that would truly test the concepts envisioned when Act 155 was first passed.

We are in encourage the Committee to use S.B. 2379 as the vehicle to move the discussion forward on this matter. We appreciate the opportunity to express our views on this matter.



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TESTIMONY BEFORE THE SENATE COMMITTEES ON
EDUCATION and WATER AND LAND

RE: SB 2237 - RELATING TO PUBLIC SCHOOLS

WEDNESDAY, FEBRUARY 14, 2018

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Kidani, Chair Rhoads, and Members of the Committee:

The Hawaii State Teachers Association **supports SB 2237**, relating to public schools.

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.