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STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

TESTIMONY BY RODERICK K. BECKER
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 976, S.D. 2, H.D. 1

April 3, 2019
2:00 p.m.
Room 308

RELATING TO PUBLIC LIBRARIES

Senate Bill (S.B.) No. 976, S.D. 2, H.D. 1, establishes a pilot program to generate revenues through the lease of public library lands to meet the mission of the public libraries. The bill also creates the Library Facilities Fund to collect revenues generated from the pilot program, including proceeds, leases, permits, interest income, and other revenues.

As a matter of general policy, the department does not support the creation of any special fund which does not meet the requirements of Section 37-52.3, HRS. Special funds should: 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. In regards to S.B. No. 976, S.D. 2, H.D. 1, it is difficult to determine whether the proposed special fund would be self-sustaining.

Thank you for your consideration of our comments.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
FINANCE**

**Wednesday, April 3, 2019
2:00 PM
State Capitol, Conference Room 308**

**In consideration of
SENATE BILL 976, SENATE DRAFT 2, HOUSE DRAFT 1
RELATING TO PUBLIC LIBRARIES**

Senate Bill 976, Senate Draft 2, House Draft 1 proposes to: 1) establish a pilot program to generate revenue through the lease of public library lands to meet the mission of the public libraries; 2) establish a library facilities fund, and 3) require the State Librarian and Board of Education to report to the Legislature. **The Department of Land and Natural Resources (Department) appreciates the intent of this measure and provides the following comments and suggested amendment.**

Lands being used for public libraries are typically set aside to the Department of Education (DOE) for use by the Hawaii State Public Libraries System (HSPLS) by Governor's executive order. Any change in or additional use of the land would normally require the executive order to be amended or cancelled and reissued, which would be subject to the approval of the Board of Land and Natural Resources (BLNR) and the Governor. Additionally, BLNR consent is normally required for leases issued under an executive order pursuant to Section 171-11, Hawaii Revised Statutes (HRS). However, this measure expressly exempts DOE/HSPLS from securing BLNR approval of leases under Section 171-11, HRS.

Senate Bill 976, Senate Draft 2, House Draft 1 proposes to set the maximum lease term for library sites included in the pilot project to 99 years, unless further extended pursuant to Section 171-36, HRS. The Department notes that there is currently a 65-year limit on lease terms pursuant Section 171-36(a)(2), HRS. The intent of the measure seems to be to override the 65-year limit. However, even if the measure properly allows for the issuance of 99-year leases, the Department points out that there is currently no mechanism in Section 171-36, HRS, to extend a lease beyond 65 years (or beyond 99 years).

To remedy the inconsistency of the measure, the Department suggests striking out language in SECTION 1, §312- (b)(2) as follows:

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

"§312- Pilot program for lease of public library

land. (a) There shall be established a pilot program for the lease of public library land, including facilities. The state librarian, in consultation with the board of education and any other appropriate agency, shall serve as the facilitator of the pilot program.

(b) Notwithstanding section 171-11 or any other law to the contrary, the board of education may lease public library land without review by or approval of the board of land and natural resources on terms it deems appropriate, including a leaseback of all or a portion of the improvements constructed; provided that:

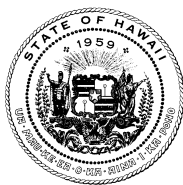
(1) In consultation with the state librarian, the board may identify and select up to five public library land sites as candidates for participation in the pilot program; provided that:

(A) Any library site with outstanding general obligation bond debt shall be excluded from consideration as a candidate for participation in the pilot program; and

(B) If the site is on land owned by a county, the department of education shall consult with the county;

(2) The board of education may lease no more than three public library land sites identified and selected by the board pursuant to paragraph (1) under leases for a term of not more than ninety-nine years per lease, [unless extended pursuant to section 171-36,] to lessees who may be required to modify, construct, or utilize facilities to meet the mission of the public libraries, in accordance with specific request for proposal or request for information guidelines;

Thank you for the opportunity to comment on this measure.



DAVID Y. IGE
GOVERNOR

STACIE A. ALDRICH
STATE LIBRARIAN

STATE OF HAWAII
HAWAII STATE PUBLIC LIBRARY SYSTEM
OFFICE OF THE STATE LIBRARIAN
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HOUSE COMMITTEE ON FINANCE

Wednesday, April 3, 2019

2:00p.m.

Conference Room 308

State Capitol

By

Stacey A. Aldrich

State Librarian

S.B. 976 S.D.2 H.D.1 - Relating to Public Libraries

To: Chair Sylvia Luke
Vice Chair Ty J.K. Cullen
Members of the House Committee on Finance

Senate Bill (S.B.) 976 S.D.2 H.D.1 establishes a pilot program to generate revenue through the leasing of public library lands to meet the mission of the public libraries. The Hawaii State Public Library System (HSPLS) **supports** the intent of S.B. 976 S.D.2 H.D.1.

HSPLS appreciates the amendments to clarify the process and eligibility of public library property for the pilot program, as well as the inclusion of a provision for an unspecified appropriation for FY2019-2021 for a comprehensive planning study to review all public library property and facilities.

HSPLS notes that it has been almost 50 years since all HSPLS properties have been reviewed. A comprehensive planning study would greatly assist HSPLS and the Board of Education in identifying properties for the pilot program as proposed by this measure, as well as help HSPLS in developing a strategic plan for the long-term needs of HSPLS properties that may not be eligible for the pilot program. The study could also better assist HSPLS in planning for current and future community needs.

Thank you for the opportunity to comment on this measure.



LATE

SB976 SD2 HD1
RELATING TO PUBLIC LIBRARIES
House Committee on Finance

April 3, 2019

2:00 p.m.

Room 308

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB976 SD2 HD1, which would allow the Board of Education (BOE) to determine the long-term disposition of state-owned lands, including lands to which neither the Department of Education (DOE) nor the Hawai'i State Public Library System (HSPLS) holds title. **By circumventing the procedural safeguards found in Chapter 171, this measure may inadvertently result in leases that inhibit the state's fiduciary obligations under the public trust and the public land trust, and allow for extremely long-term private uses of public and public land trust lands that fail to provide a fair return to the public and Native Hawaiians; in addition, the century-long leases contemplated under this measure may ultimately facilitate the permanent alienation of public and "ceded" lands.**

While OHA appreciates that the DOE and the HSPLS may benefit from greater flexibility and autonomy over the management and disposition of lands that may potentially fall within their control, OHA has significant concerns regarding language in this measure that would allow for leases without critical procedural or substantive mechanisms safeguarding the public's and Native Hawaiians' interests in the disposition of public lands, including public land trust lands held for the specific benefit of Native Hawaiians and the general public. Moreover, OHA has particular concerns regarding the generations-long, 99-year leases contemplated under the current draft of this measure.

Under Article 11, section 1 of the Hawai'i State Constitution and HRS Chapter 171, the State holds in trust approximately 1.3 million acres of public lands, including the natural and cultural resources they contain, for the benefit of present and future generations. The vast majority of these lands are "ceded" lands, most of which are also subject to the public land trust created by Article 12 of the Hawai'i State Constitution and the section 5(f) of the Admission Act; the public land trust requires that a portion of revenues derived from public land trust lands be dedicated to OHA, for the purpose of bettering the conditions of Native Hawaiians. OHA notes that the trust status of these lands imposes on the State specific fiduciary obligations of due diligence and undivided loyalty, in making the trust corpus productive and maximizing its benefits for the trust's Native Hawaiian and public beneficiaries.

By exempting lands chosen by the BOE for the proposed pilot program from the leasing provisions of Chapter 171 and by not requiring alternative leasing safeguards,

this bill would completely circumvent critical laws that protect the interests of Native Hawaiians and the public in the disposition of public lands, including public land trust and “ceded” lands. OHA notes that the leasing provisions of Chapter 171, including public auction requirements, appraisal requirements, limits on lease length and parcel use, and lessee qualifications, provide for a level of accountability and transparency that protect the interests of Native Hawaiians and the public in the private use of our limited public land base. Exempting lands chosen for the proposed pilot program from these requirements may invite potential violations of the public trust and public land trust, eliminating mechanisms that ensure an appropriate return for the use of public lands, and inhibiting present and future generations from ensuring the best use of these lands. **Accordingly, should the Committee choose to move this measure forward, in order to ensure the protection of Native Hawaiian and public interests in our limited public land base, OHA respectfully urges the Committee to amend this measure by explicitly requiring any land leases to be made pursuant to administrative rules specifically establishing requirements for lease appraisal and valuation, public auction or similar public accountability mechanism(s), lessee qualifications, lease length and renewal restrictions, and parcel use, analogous to the requirements of Chapter 171.**

In addition, extremely long-term multi-generational leases, such as the 99-year leases currently proposed under this measure, may also lead to a sense of entitlement on the part of lessees that has led and may continue to lead to the alienation of public lands, including “ceded” lands to which Native Hawaiians have never relinquished their claims. **OHA objects to the sale or alienation of “ceded” lands except in limited circumstances, and has significant concerns over any proposal that may facilitate the diminution of the “ceded” lands corpus.** Accordingly, OHA respectfully urges the Committee to reinstate SB976’s original lease term length of fifty-five years, by amending the language on page 2, line 13, to read as follows:

“term of not more than fifty-five years per lease,”

Accordingly, OHA urges the Committee to **HOLD** SB976 SD2 HD1, or, at minimum, include the above-recommended amendment to better protect the interests of Native Hawaiians and the public in the DOE’s receipt, administration, and disposition of public lands this measure may place under its control. Mahalo for the opportunity to testify on this measure.