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EMPLOYEES' RETIREMENT SYSTEM
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OFFICE OF THE PUBLIC DEFENDER

**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)

WRITTEN ONLY
TESTIMONY BY RODERICK K. BECKER
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 976, S.D. 1

**February 19, 2019
9:30 a.m.
Room 211**

RELATING TO PUBLIC LIBRARIES

Senate Bill (S.B.) No. 976, S.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 or revolving fund which does not meet the requirements of Sections 37-52.3 and 37-52.4, HRS, respectively. Special and revolving 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. 1, it is difficult to determine whether the proposed special fund would be self-sustaining.

Thank you for your consideration of our comments.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. NO. 976, S.D. 1, RELATING TO PUBLIC LIBRARIES.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Tuesday, February 19, 2019 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Melissa J. Kolonie,
Deputy Attorney General, at 586-1255)

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of this bill are to establish a pilot program to generate revenue through the lease of public library lands to meet the mission of the public libraries, establish the library facilities fund, and require the State Librarian and Board of Education to report to the Legislature regarding the foregoing.

The Department has concerns because there is some question about who holds the title to the various land parcels on which the public libraries are located. If the public library lands are public trust lands set aside for public purposes by executive order, they cannot be leased. Moreover, if those lands are no longer needed for library purposes, the executive orders should be withdrawn and the lands returned to the Department of Land and Natural Resources. We recommend clarifying that libraries on public trust lands set aside for public purposes by executive order are excluded from consideration as candidates for participation in the pilot program.

It appears the bill intends that a lease not be subject to approval by the Board of Land and Natural Resources (BLNR). If so, we respectfully suggest that page 1, lines 10-12, be revised to:

(b) Notwithstanding section 171-1[3]1, 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

The reason for this change is that section 171-13, Hawaii Revised Statutes (HRS), authorizes the BLNR to lease land but does not authorize leases by other agencies. The requirement that the BLNR review leases of other agencies is in section 171-11, HRS.

Thank you for the opportunity to provide testimony.

LATE

SB-976-SD-1

Submitted on: 2/18/2019 12:07:37 PM

Testimony for WAM on 2/19/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support SB976. With all the misinformation running rampant on the ubiquitous internet, libraries are becoming a much more important source of information. Recent events have shown that it is no exaggeration to say that protecting libraries is an important step to maintaining our democracy.

Thank you for the opportunity to present my testimony.

Sincerely,

Andrea Quinn

Kihei

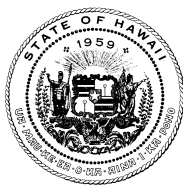
SB-976-SD-1

Submitted on: 2/18/2019 9:14:55 AM

Testimony for WAM on 2/19/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



DAVID Y. IGE
GOVERNOR

STACIE A. ALDRICH
STATE LIBRARIAN

STATE OF HAWAII
HAWAII STATE PUBLIC LIBRARY SYSTEM
OFFICE OF THE STATE LIBRARIAN
44 MERCHANT STREET
HONOLULU, HAWAII 96813

SENATE COMMITTEE ON WAYS AND MEANS

Tuesday, February 19, 2019

9:30 a.m.

Conference Room 211

State Capitol

By

Stacey A. Aldrich

State Librarian

S.B. 976 S.D.1 Relating to Public Libraries

To: Chair Donovan M. Dela Cruz
Vice Chair Gilbert S. C. Keith-Agaran
Members of the Senate Committee on Ways and Means

Senate Bill (S.B.) 976 S.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.1 and provides the following comments.

HSPLS appreciates the S.D.1 amendments proposed by the Senate Committees on Education and Water and Land to clarify the process and eligibility of public library property for the pilot program. For clarification, HSPLS also asks that section (b)(1) be amended to add: "In consultation with the state librarian, the board may identify and select up to five public library sites..."

The HSPLS also notes that a planning study of all HSPLS properties has not been performed in almost almost 50 years – the last study was issued in 1970 and 21 public libraries have been built in the interim. Therefore, HSPLS respectfully requests an appropriation of \$750,000 for a comprehensive planning study to review all HSPLS properties and facilities to assist HSPLS and the Board of Education in identifying properties for the pilot program. At the same time, a comprehensive planning study would also help HSPLS in developing a strategic plan for the long-term needs of HSPLS properties that may not be eligible for the pilot program.

Thank you for the opportunity to comment on this measure.

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**

**Tuesday, February 19, 2019
9:30 AM
State Capitol, Conference Room 211**

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

Senate Bill 976, Senate Draft 1 proposes to establish a pilot program to generate revenue through the lease of public library lands to meet the mission of the public libraries. The measure also proposes to establish a library facilities fund, and requires the State Librarian and Board of Education to report to the Legislature. Senate Draft 1 of the measure deletes language that would have subjected the Board of Education to Chapter 92, Hawaii Revised Statutes (HRS), during the selection process for inclusion of library sites in the program, inserts language specifying that libraries with general obligation bond debt are not eligible to participate in the program, extends the lease term for public library sites from 55 to 99 years, and authorizes, rather than requires, lessees of public library land sites to modify, construct, or utilize facilities to meet the mission of public libraries. **The Department of Land and Natural Resources (Department) appreciates the intent of this measure and provides the following comments.**

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 likely 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 and the Governor. Furthermore, Section 171-11, HRS, provides that when public lands set aside by the governor "are not being utilized or required for the public purpose stated, the order setting aside the lands shall be withdrawn and the lands shall be returned to the department." Under Senate Bill 976, Senate Draft 1, DOE/HSPLS would seem to be required to return land to the Department only when the land is not being used for any public purpose, which is inconsistent with the mandate of Section 171-11, HRS.

Additionally as noted above, Senate Draft 1 of the measure 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

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

terms pursuant Section 171-36(a)(2). The intent of the bill 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 to extend a lease beyond 65 years (or beyond 99 years).

Thank you for the opportunity to comment on this measure.

LATE



SB976 SD1
RELATING TO PUBLIC LIBRARIES
Senate Committee on Ways and Means

February 19, 2019

9:30 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees **OPPOSE** SB976 SD1, 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, allowing for extremely long-term private use 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 Admission Act section 5(f); 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 the land chosen by the BOE for the proposed pilot program from the leasing provisions of Chapter 171 and not requiring alternative leasing

provisionsA, this bill would 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. 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, transparency, and substantive safeguards meant to benefit and 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, the proposed exemption from the land leasing provisions under Chapter 171 may threaten a range of Native Hawaiian and public interests in our limited public land base.**

In addition, extremely long-term multi-generational leases, such as the 99-year leases currently proposed under this measure, ties the hands of the state and the public land trust beneficiaries, and may 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 11 to read as follows:

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

Accordingly, OHA urges the Committee to **HOLD** SB976 SD1, or otherwise, 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.