



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/18/2022

Time: 10:10 AM

Location: CR 211 & Videoconference

Committee: Senate Ways and Means

Department: Education

Person Testifying: Keith T. Hayashi, Interim Superintendent of Education

Title of Bill: SB 2186, SD1 RELATING TO PUBLIC SCHOOL LAND TRANSFER.

Purpose of Bill: Directs the conveyance to the Department of Education of certain lands used for public schools and owned by the counties of Kauai and Maui, the State, and the Department of Land and Natural Resources. Requires legislative approval prior to the sale, gift, or alienation of the fee simple title to lands owned by the Department of Education. Appropriates funds to the Department of Education to effectuate conveyances and manage real property. (SD1)

Department's Position:

The Department of Education (Department) is in strong support of SB 2186, SD1.

In 2004, the Legislature approved Act 51, Session Laws of Hawaii 2004, what is now known as the Reinventing Education Act of 2004 (Act 51). Under this landmark measure, the Legislature found that significant changes needed to be made to enhance Hawaii's public education system to ensure the success of that journey. Among the innovation efforts to public education, Act 51 helped to streamline management of the public works program by completely transferring management of construction projects for schools from the Department of Accounting and General Services to the Department.

Today, the split ownership of public school lands remains a significant challenge in the Department's effort to redevelop, construct and maintain facilities within its portfolio. Split ownership of land has resulted in delays with permitting and related entitlements and delivery of vital capital improvements throughout the public school system. It has also hampered the Department's ability to plan and truly modernize its aging physical

assets.

As of this testimony, there have been several attempts to unify land ownership of public schools:

1. Act 154, Session Laws of Hawaii 2003, conveyed to the State the fee simple title to certain County of Hawaii lands used by the Department.
2. Act 206, Session Laws of Hawaii 2017, directed the conveyance of City and County of Honolulu lands to the Department of Land and Natural Resources.
3. Act 210, Session Laws of Hawaii 2018, directed the conveyance to the Department of the fee simple title to additional City and County of Honolulu lands used by the Department.
4. Act 279, Session Laws of Hawaii 2019, amended Act 206 by designating the Department as the transferee instead of the Department of Land and Natural Resources.

This measure will be the final step toward unifying land ownership under the Department and will create tremendous opportunities for it to maximize the full potential of its efforts to innovate and modernize its facilities.

Thank you for this opportunity to provide testimony in support of SB 2186, SD1.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
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EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

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

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 2186, S.D. 1

February 18, 2022
10:10 a.m.
Room 211 and Videoconference

RELATING TO PUBLIC SCHOOL LAND TRANSFER

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 2186, S.D. 1: 1) directs the conveyance to the Department of Education (DOE) of certain lands used for public schools and owned by the counties of Kaua'i and Maui, the State, and the Department of Land and Natural Resources; 2) requires legislative approval prior to the sale, gift, or alienation of the fee simple title to lands owned by DOE; and 3) appropriates an unspecified sum of general funds in FY 23 to effectuate the transfer of the properties identified within the measure and for DOE to effectively manage real property owned by DOE.

B&F notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and

- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

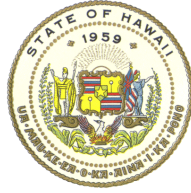
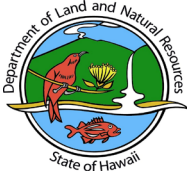
Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

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
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Friday, February 18, 2022
10:10 AM**

State Capitol, Via Videoconference, Conference Room 211

**In consideration of
SENATE BILL 2186, SENATE DRAFT 1
RELATING TO PUBLIC SCHOOL LAND TRANSFER**

Senate Bill 2186, Senate Draft 1 proposes to require that certain lands used for public schools and owned by the counties of Kauai and Maui, the State, and the Department of Land and Natural Resources (Department) be conveyed to the Department of Education (DOE), require legislative approval prior to the sale, gift, or alienation of the fee simple title to lands owned by DOE, and appropriate funds to effectuate the conveyances and manage real property. **The Department provides the following comments on this measure.**

This measure has significant implications for public trust lands currently held by the Department. While the Department understands the need to consolidate lands currently used by DOE under one agency, the Department does have some concerns regarding the implementation of these land transfers and potential long-term implications for the public land trust.

As currently written, this measure empowers DOE to sell lands conveyed pursuant to this measure provided that the Legislature approves. The Department appreciates the inclusion of language requiring legislative approval but opposes the sale of public trust lands.

Revenues collected by the Department's Land Division cover the entire annual operating budget for the Land Division, the Department's Office of Conservation and Coastal Lands, and the Dam Safety and Mineral Resources Programs of the Department. The revenues fund over 80 Department staff positions, including 5 positions within the Commission on Water Resource Management, and provide funding support to the Division of State Parks and various resource protection programs administered by the Division of Forestry and Wildlife such as the protection of threatened and endangered species, removal of invasive species, wildland firefighting and lifeguard services. In addition, the Department has provided lands to other agencies in support of a variety of agricultural, educational, transportation and affordable housing projects, often at the

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

expense of generating revenue to support its own programs. These collective efforts have contributed significantly to the betterment of Hawaii's public school programs and students. Permitting DOE to sell, or otherwise develop, public trust lands not needed for education-related purposes could have substantial long-term implications for the public trust corpus and deny the Department the opportunities that would belong to it if Section 171-11, Hawaii Revised Statutes (HRS), were followed.

Staff analysis of section (g) of this measure indicates that 230 to 233 of the 255 parcels listed are likely owned by the Department. These include parcels that have been set aside to DOE via executive order and parcels pending set-aside. Many of these parcels will require subdivision and/or preparation of survey maps prior to any conveyance to DOE. Some of these lands are used for both schools and county parks. The parks will need to be carved out prior to conveyance to DOE. Otherwise, DOE will end up owning county parks. This presents a significant expense which the Department is not prepared to cover. Below we request an amendment requiring DOE to bear all costs associated with these potential conveyances if this bill moves forward. To the extent that any compensation should be required to the counties, DOE should also bear those costs.

The Legislature previously addressed this issue for schools in Hawaii County via Act 154, Session Laws of Hawaii (SLH) 2003, and schools in the City and County of Honolulu via Act 206, SLH 2017, as amended by Act 279, SLH 2019. The Department notes that most of the transfers mandated by Act 206 have not been completed because the County lacks the resources needed to effectuate the transfers. If the Committee wishes to ensure that all public school lands are consolidated under DOE, it should consider amending Act 206 and possibly Act 154 to require DOE cover the costs associated with these numerous conveyances. In addition, the Department believes that public lands conveyed to DOE pursuant to this measure should be returned to the public trust if DOE no longer uses the lands for school or education purposes. The Department recommends amending SECTION 2 (b) as follows:

(b) The respective owner or owners of the properties shall prepare, execute, and record, in the land court or bureau of conveyances, as appropriate, a quitclaim deed to convey each of the properties together with all existing improvements. Any quitclaim deed shall contain a reverter clause providing that title to the land shall immediately revert in grantor in the event the land is no longer used by the department of education for school or education purposes. Work to initiate the conveyance of the properties shall commence no later than December 31, 2022. The department of education shall bear all costs associated with the

preparation, execution, and recordation of the conveyances required in this subsection.

As an alternative to conveyance instruments for each parcel of land, the Legislature could transfer county-owned lands by operation of law. The Department prefers this approach for school sites owned by the counties because the volume of conveyances this measure mandates would divert substantial staff from regular duties that further the Department's mission. One downside to a transfer by operation of law is that it does not address the issue of joint DOE/county use of some parcels for schools and public parks without a boundary survey. Conveyances of the Department's lands to DOE should not be by operation of law but should instead follow the requirements of Chapter 171, HRS, including prior approval of the Board of Land and Natural Resources.

Finally, the Department notes that the Tax Map Key listed on page 7, line 2 is incomplete as it is missing the final digit.

Thank you for the opportunity to comment on this measure.

Kūpuna for the Mo'opuna
committed to the well-being of Hawai'i for the next generations to come
kupuna4moopuna@gmail.com



SB 2186 SD1 – RELATING TO PUBLIC SCHOOL LAND TRANSFER.

OPPOSE

Committee on Ways and Means 2/18/2022 @ 10:10am

We **OPPOSE** and provide the following on SB 2186 SD1.

The provision regarding legislative approval needs clarification. That provision must either be **removed or amended** to read “lands transferred to the department shall be subject to the requirements of HRS section 171-50 and section 171-64.7.”

The State has a fiduciary duty as trustee of our public lands: “shall be held by the State as a public trust for native Hawaiians and the general public.”

PUBLIC TRUST

Section 4. The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution... **shall be held by the State as a public trust for native Hawaiians and the general public.**

Mahalo,
Kūpuna for the Mo'opuna
Pana'ewa, Hawai'i



STOP LEGAL THIEVERY

Ua mau ke ea o ka 'āina i ka pono!