

**SB-2186-SD-2**

Submitted on: 3/15/2022 6:39:44 PM

Testimony for EDN on 3/17/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kevin Moore	DLNR	Comments	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

**SB-2186-SD-2**

Submitted on: 3/15/2022 6:44:21 PM

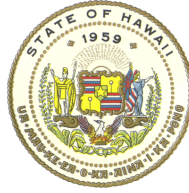
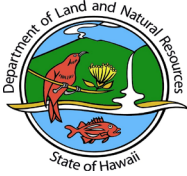
Testimony for EDN on 3/17/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Russell Tsuji	DLNR	Comments	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

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 House Committees on  
EDUCATION  
and  
WATER & LAND**

**Thursday, March 17, 2022  
2:00 PM**

**State Capitol, Conference Room 309, Via Videoconference**

**In consideration of  
SENATE BILL 2186, SENATE DRAFT 2  
RELATING TO PUBLIC SCHOOL LAND TRANSFER**

Senate Bill 2186, Senate Draft 2 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 and amendments:**

First, the Department requests the bill be amended to provide the following:

1. Any deed conveying land to the DOE shall provide for a reversionary interest back to the grantor in the event the land is no longer used for school purposes; and
2. All conveyance costs, including but not limited to any subdivision or surveying costs shall be borne by the DOE; **or alternatively**
3. The transfer of public school lands to the DOE shall be accomplished by “operation of law” for school purposes, with a reversionary interest back to the grantor in the event the lands are no longer used for school purposes.

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.

**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

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 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 the majority 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 deed or quitclaim deed shall contain a reversionary clause providing that title to the land shall immediately revert in grantor in the event the land is no longer used for school 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. Therefore, a land survey may ultimately still be needed to set the boundaries between the school parcel and the park.

Finally, the Department notes that the Tax Map Key listed on page 7, line 3 is incomplete as it is missing the final digit.

Thank you for the opportunity to comment on this measure.



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

**Date:** 03/17/2022

**Time:** 02:00 PM

**Location:** 309 Via Videoconference

**Committee:** House Education  
House Water & Land

**Department:** Education

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

**Title of Bill:** SB 2186, SD2 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 held 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 held by the Department of Education. Appropriates funds to the Department of Education to effectuate conveyances and manage real property. (SD2)

**Department's Position:**

The Department of Education (Department) is in strong support of SB 2186, SD2.

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, SD2.

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 HOUSE COMMITTEES ON EDUCATION AND WATER & LAND  
ON  
SENATE BILL NO. 2186, S.D. 2

**March 17, 2022**  
**2:00 p.m.**  
**Room 309 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. 2: 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.