

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 House Committee on
FINANCE

Tuesday, February 28, 2017
3:00 PM
State Capitol, Conference Room 308

In consideration of
HOUSE BILL 116, HOUSE DRAFT 1
RELATING TO PUBLIC SCHOOLS

House Bill 116, House Draft 1 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 school is situated. House Draft 1 removed the Department of Education (DOE) from having to conduct all land and building due diligence requirements and imposed those requirements on the Department of Land and Natural Resources (Department). **The Department strongly opposes this measure.**

The measure would transfer to the Department an enormous liability for property conditions that are currently the responsibility of either DOE or the City. Additionally, the bill's requirements impose colossal financial and time hardships that the Department cannot meet, rendering the bill impossible to implement.

This measure would impose a debilitating unfunded mandate by requiring the Department to conduct due diligence for each property to be conveyed without appropriating adequate funds. For past acquisitions, due diligence costs have ranged between \$250,000 to \$500,000 for such items as title reports and environmental site assessments. Conceivably, even if costs could be lowered to \$100,000 per acquisition, given the voluminous amount of properties involved, the cost could still run as high as \$10 million. The Department does not have the funds or spending authority to absorb those costs. The measure also imposes additional future costs by requiring the Department to pay for the relocation of access easements in favor of the City. As these properties are school sites currently managed by the DOE and will remain so after any conveyance, all such costs should be the responsibility of DOE.

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

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Conducting any form of due diligence at this point seems superfluous and an unwise use of limited public funds since the land and buildings on these populated school sites have been utilized by and under the direct management and control of the DOE for decades, and will continue to be so managed and controlled in the same manner by DOE beyond any such title conveyance.

Due diligence is normally conducted on private lands the State is looking to acquire now, where it has very little knowledge of the types of activities that were previously conducted on the private land in the past. If remediation is required, the State would not accept the land unless the Seller is willing to remediate the contamination before closing the transaction. That is not the case or situation we have here. As this bill forcibly usurps the City's ownership over these lands, it is safe to speculate the City will deny any responsibility for the land and buildings the DOE has occupied and managed for decades. Therefore, if this bill in any form moves forward, the due diligence requirements should be deleted entirely and any future remediation obligation should remain with the City and the DOE.

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 measure sets an expiration date for the due diligence period at March 1, 2018, less than one year after the presumed enactment of this measure. As acquisitions usually take between 2 to 3 years to complete, it would be impossible to conduct adequate due diligence for all the properties identified in this measure in such a limited time period. Furthermore, the measure limits the scope of due diligence by prohibiting the Department from relying on information provided by the City.

By limiting the Department's ability to meaningfully conduct due diligence and utilize any information in negotiations, the result is a costly, time-consuming and useless exercise.

Finally, 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, Hawaii Revised Statutes, 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.

The Department urges that this bill be held.

Thank you for your consideration of our testimony.



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

Date: 02/28/2017
Time: 03:00 PM
Location: 308
Committee: House Finance

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 0116, HD1 RELATING TO PUBLIC SCHOOLS.

Purpose of Bill: Requires the City and County of Honolulu to transfer to the Department of Land and Natural Resources all property upon which a public school is situated. (HB116 HD1)

Department's Position:

The Department of Education (DOE) supports the intent of this bill.

Act 97, Session Laws of Hawaii (SLH) 1965, transferred executive authority for county school lands to the State. The DOE has managed these lands since the enactment of this law, 52 years ago. The circumstance of having state schools on county land, or situated on both county and state land, creates unnecessary difficulty in the management of school properties. To continue to effectively maintain school facilities and to accommodate future growth, where needed, many of our existing campuses will have to undergo extensive renovation or major rebuilding. It would greatly simplify the process if Fee Simple Interest (FSI) for county school lands was effectively transferred to the State. The DOE believes this was the original intent of Act 97, SLH 1965, and the failure to transfer the FSI of county properties compelled the County of Hawaii to seek a legislative solution through Act 154, SLH 2003.

The DOE recognizes the inherent burden that transferring these properties may place on the Department of Land and Natural Resources and asks that this bill include either an equivalent appropriation, or a clear mechanism for funding, for all costs associated with the legal transfer of these parcels.

Thank you for the opportunity to present DOE testimony on HB 0116.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 116, H.D. 1, RELATING TO PUBLIC SCHOOLS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, February 28, 2017 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Douglas S. Chin, Attorney General, or
David D. Day, Deputy Attorney General

Chair Luke and Members of the Committee:

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 98 public schools sit, with existing improvements, to the Department of Education.

The Department of the Attorney General believes that it lacks sufficient information regarding the 98 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 suggest that a concurrent resolution be offered 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 that the agency would require money to conduct the study, a bill with an appropriation would be required.

We also note that the bill could be subject to challenge as violative of article VIII, section 5 of the Hawai'i Constitution, which provides: "If any new program or increase in the level of service under an existing program shall be mandated to any of the political subdivisions by the legislature, it shall provide that the State share in the cost." The bill mandates that the City and County of Honolulu perform various tasks, including

the preparation and execution of deeds and other instruments appropriate and necessary to convey the properties, but does not appropriate any funds.

Finally, should this bill be advanced, we recommend inserting the word “conveyed” after the word “properties” on page 9, line 3, to clarify that the release identified in subsection (g) would only apply to those properties actually conveyed to the Department of Land and Natural Resources.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Finance
Tuesday, February 28, 2017 at 3:00 P.M.
Conference Room 308, State Capitol**

RE: HOUSE BILL 116 HD1 RELATING TO PUBLIC SCHOOLS

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 116 HD1, which would require the City and County of Honolulu to transfer to the Department of Land and Natural Resources all property upon which a public school is situated.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The proposed bill attempts to address a long standing problem regarding the split ownership of lands used for public schools in Hawaii.

The legislature, pursuant to Act 97, Session Laws of Hawaii 1965, transferred the responsibility for functions that were deemed to be of statewide concern from the counties to the State. Among these functions were the planning, construction, improvement, and maintenance of public school facilities and grounds, and the transportation of school children. Prior to the passage of Act 97, the counties issued bonds to plan, construct, improve, and maintain public school facilities and grounds. Since these functions are now wholly the responsibility of the State, it only made sense to begin transferring all remaining county lands and improvements under the department of education to the State.

Act 154, SLH 2003 conveyed fee simple title of all County of Hawaii lands being used by the DOE to the State of Hawaii. The County of Hawaii was the only county to have legislation passed to convey the fee simple interest in its properties to the State.

The State of Hawaii Department of Education has invested significant public funds on maintenance and capital improvement projects for new school facilities. The expenditure of these public funds was done without regard to the underlying fee ownership of the property. This investment in vertical improvements is transferred to the City when a school is closed (i.e. Wailupe Elementary School).

Act 155, SLH 2013 provided the Department of Education with the authority to redevelop its assets to create 21st Century Schools. The Act also allowed the DOE to explore



Chamber of Commerce HAWAII

The Voice of Business

different mechanisms to redevelop its assets, including revenue generation in support of investments in 21st Century Schools.

The Department of Education is responsible for approximately 2,120 acres/92,353,688 square feet of land under its school facilities within the City and County of Honolulu. Of this total land area, the City and County of Honolulu owns approximately one-half of the land under the existing school facilities (1,004 acres/43,753,360 square feet).

The split ownership of the underlying fee simple lands under existing schools creates problems for redevelopment especially when private investment is involved.

In order to allow the DOE flexibility to redevelop and/or reposition its assets, especially along the rail transit corridor, the State of Hawaii should consolidate ownership of the lands under existing public schools.

We appreciate the opportunity to provide our input on this important legislation.

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**Testimony to the House Committee on Finance
Tuesday, February 28, 2017
3:00 pm
Conference Room 308**

RE: HB 116 HD1 – Relating to Public Schools

Chair Luke, Vice-Chair Cullen, and 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 is in strong support of H.B. 116, H.D. 1, which would require the City and County of Honolulu to transfer to the Department of Land and Natural Resources all property upon which a public school is situated. The proposed bill attempts to address a long standing problem regarding the split ownership of lands used for public schools in Hawaii.

The legislature, pursuant to Act 97, Session Laws of Hawaii 1965, transferred the responsibility for functions that were deemed to be of statewide concern from the counties to the State. Among these functions were the planning, construction, improvement, and maintenance of public school facilities and grounds, and the transportation of school children. Prior to the passage of Act 97, the counties issued bonds to plan, construct, improve, and maintain public school facilities and grounds. Since these functions are now wholly the responsibility of the State, it only made sense to begin transferring all remaining county lands and improvements under the department of education to the State.

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In order to allow the DOE flexibility to redevelop and/or reposition its assets, especially along the rail transit corridor, the State of Hawaii should consolidate ownership of the lands under existing public schools.

We strongly support H.B. 116, H.D. 1. We appreciate the opportunity to provide our input on this important legislation.