A BILL FOR AN ACT

RELATING TO LANDS CONTROLLED BY THE STATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. In 2006, the legislature passed Act 317, which prohibited the Hawaii community development authority (HCDA) from selling or otherwise assigning the fee simple interest in any land in the Kakaako community development district to which HCDA holds title, and from approving any plan or proposal for residential development makai of Ala Moana boulevard and between Kewalo Basin and the foreign trade zone. The legislative history shows that in enacting this law, the legislature believed that "the disposition of the fee simple interest in any public lands must be carefully scrutinized to ensure that such disposition meets important public needs and goals."

This important discussion of the State's management of public lands was continued in 2008, when the Hawaii Supreme Court in Office of Hawaiian Affairs v. Housing and Community Development Corporation of Hawaii, 117 Hawaii 174, 177 P.3d 884 (2008), enjoined the State from selling or otherwise transferring to third parties, any ceded lands from the public
lands trust until the claims of the native Hawaiian people to
the ceded lands are resolved.

In April 2008, the governor directed the attorney general
to petition the United States Supreme Court for a writ of
certiorari on whether the passage of Public Law 103-150,
otherwise known as the Apology Resolution, strips the State of
Hawaii of the authority to sell, exchange, or transfer ceded
lands unless or until the State reaches a political settlement
with native Hawaiians about the status of these lands. In
October 2008, the United States Supreme Court granted the
State's petition for certiorari in the foregoing case.

These developments highlight the need for the legislature
to adopt a more active, reasonable, and comprehensive approach
toward management of all of the State's lands. The legislature
also finds that in light of these developments, it must reassert
the State's constitutional authority to sell or exchange public
lands as it deems appropriate.

The legislature does not undertake the authority in this
Act without being fully cognizant of its attendant
responsibility, and is firmly committed to ensuring appropriate
management of the State's lands, realizing that any sale of
these lands, however reasonable or necessary the sale may
appear, is a permanent alienation of the land. Accordingly, this Act establishes a legislative disapproval process for the sale or exchange of the State's lands, that includes an informational briefing in the community where the land is located.

In addition, recognizing that under article XI, section 5, of the Hawaii Constitution, the legislature may exercise its power over the State's lands only by general laws, this Act requires that sales and exchanges must be for public purposes and in accordance with any law authorizing the sale or exchange, and that legislative disapproval applies generally to sales and exchanges of the State's land and only as to all of the parcels proposed to be conveyed.

Finally, the legislature does not intend this Act to apply to the sale or exchange of remnant parcels, which do not have the significance, nature, or extent, to justify legislative oversight of these sales. According to information from the department of land and natural resources, since 1998, there have been forty-nine remnant parcel transactions, and sales of these parcels total 13.649 acres, or an average of only 0.2786 acres per transaction.
The purpose of this Act is to establish legislative oversight of sales and exchanges of land, other than remnant parcels, held by the State by:

(1) Requiring an informational briefing in the community where the land to be sold or exchanged is located prior to finalizing a proposal for the sale or exchange; and

(2) Making proposed sales or exchanges of state lands subject to legislative disapproval by the adoption of a concurrent resolution passed by a simple majority vote of both houses of the legislature.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

SALE OR EXCHANGE OF STATE-HELD LANDS

§ -1 Definitions. As used in this chapter:

"State-held land" means land held in fee simple title by the State, its agencies, or entities, including all lands for which fee simple title is held by the State, its agencies, or its entities in trust.
§ -2 Legislative disapproval. Any sale or exchange of State-held land to a person or entity other than the State, its agencies, or its entities shall be subject to disapproval by the legislature by majority vote of both houses of the legislature in any regular or special session in which the concurrent resolution under section -3 is submitted.

§ -3 Concurrent resolution submittal. To effect the process of legislative disapproval required by section -2, the State, agency, or entity, as appropriate, shall submit for introduction to the legislature twenty days prior to the start of any regular or special session, a concurrent resolution for review of action on the exchange or sale of State-held land, following the approval in principle of the sale or exchange by the State, its agencies, or its entities. The concurrent resolution shall include:

1. The location and area of the parcels of land to be conveyed;
2. The value of the parcels of land to be conveyed;
3. The name of the appraiser;
4. The date of the appraisal valuation;
5. The sale price; and
6. The identity of the transferee.
§ 4 Community briefing. Prior to finalizing any proposal for the sale or exchange of State-held land to a person or entity other than the State, its agencies, or its entities, and prior to submission of the concurrent resolution to the legislature under section 3, the State, agency, or entity, as appropriate, shall hold an informational briefing on the proposed sale or exchange in the community where the State-held land to be sold or exchanged is located.

§ 5 Limitations. (a) Any disapproval of the legislature to a sale or exchange of State-held lands shall only be exercised:

(1) As to all of the parcels proposed to be conveyed in the concurrent resolution submitted pursuant to section 3; and

(2) During the legislative session in which the concurrent resolution is submitted.

(b) No sale or exchange of State-held land shall be made except for public purposes, and any sale or exchange of State-held land shall be in accordance with this chapter and any other law authorizing the sale or exchange of State-held land.

(c) This chapter shall not apply to dispositions of State-held lands:
(1) That do not result in the permanent alienation of the land, including sections 171-11 and 171-58; and

(2) For which a process of legislative approval or disapproval is required, including sections 171-41, 171-42, and 171-95.

(d) Notwithstanding any limitations set forth in this chapter, the State, its agencies, or its entities may transfer remnant parcels as set forth in section 171-52."

SECTION 3. Section 171-50, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Legislative disapproval. Any exchange of public land for private land shall be subject to disapproval by the legislature [by two-thirds vote of either the senate or the house of representatives or by majority vote of both in any regular or special session following the date of the board of land and natural resources' approval in principle of the exchange. The department shall submit for introduction to the legislature a resolution for review of action on any exchange to be consummated by the board wherein exchange deeds will be executed by the parties together with the following information:

(1) the location and area of the parcels of land to be exchanged; (2) the value of the lands to be conveyed by the
State and the private party; (3) the name or names of the appraiser or appraisers; and (4) the date of the appraisal valuation. as set forth in chapter.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 2046.
Report Title:
State Held Lands; Public Lands; Sale and Exchange

Description:
Requires majority vote of house and senate to disapprove the sale or exchange of state-held lands to non-state entities or persons; requires community briefing where land located prior to sale or exchange. (SB1677 HD2)