

**Date:** 03/02/2009

**Committee:** House Finance

**Department:** Education

**Person Testifying:** Patricia Hamamoto, Superintendent of Education

**Title of Bill:** HB 1376 (HSCR237) RELATING TO EDUCATION.

**Purpose of Bill:** Creates the Facilities Alignment Commission to establish criteria for the selection of public schools to be constructed, expanded, consolidated, or closed, and recommend a list of areas for new school construction, and of schools for expansion, consolidation, or closure. Requires the Board of Education to comply with these recommendations if the legislature does not disapprove of them in their entirety.

**Department's Position:** The Department of Education (DOE) does not support H.B. 1376 (HSCR 237).

A year ago, the DOE identified clusters of schools where school consolidation should be studied as provided in Chapter 8-38, Hawaii Administrative Rules. The accelerated decline in the economic landscape that began last spring increased the sense of urgency to consolidate schools. In response, the DOE has notified the Board of Education that it will initiate school consolidation studies. To date, a task force to study the possible consolidation of Wailupe Valley and Aina Haina Elementary Schools has been organized, has met three times, has submitted a report to the complex area superintendent, and the complex area superintendent has instructed the task force to hold a public hearing. Following the public hearing, the task force will make its recommendation to the complex area superintendent, who in turn will make a recommendation to the superintendent, who in turn will make a recommendation to the Board of Education. We expect the superintendent's recommendation will be

delivered to the Board in April. Two more task forces, one to study the consolidation of Keanae and Hana Schools, and the other to study the consolidation of the elementary schools on Molokai, have been appointed and the complex area superintendent for the Castle and Kahuku complexes is in the process of appointing a task force to study the consolidation of Waiahole, Kaaawa, and Hauula Elementary Schools. Finally, the DOE has identified 16 additional clusters of schools where consolidation studies should be undertaken and intends to initiate the studies of all 16 areas within the next 24 months.

Our concern with this bill stems primarily from the fact that we already have these task forces established and functioning. The task forces are required to consider the same criteria that are proposed in Section 4 of the bill, including overuse and underuse of school facilities, academic achievement implications, and repair and maintenance costs.

Establishing a separate commission to evaluate and make recommendations on the same criteria would be duplicative at best, and at worst could lead to conflicting outcomes. Clearly, this is a highly sensitive and taxing experience for the task forces and communities in the affected areas. A separate commission would compromise the integrity of our ongoing task force process and strain the abilities of the department and the communities to meet the needs of both the commission and multiple task forces concurrently.

We have two technical concerns with the bill. First, Section 3 requires that the DOE submit recommendations for the consolidation or closure of schools by December 31, 2009. Because the criteria to determine consolidations and closures are required to go to public hearings and will not be finalized until December 31, 2009, it would be premature for the DOE to submit recommendations by that date as it may appear to some that without established criteria, the DOE is unfairly targeting certain schools.

Second, Section 5 requires that preliminary recommendations on school closures and consolidations be made by February 28, 2010. We do not believe that would be a sufficient amount of time to develop the recommendations. The preliminary recommendations should have a deadline closer to the August 31, 2010 deadline for public hearings on the preliminary recommendations.

Technical concerns aside, we ask that the task forces be given the opportunity to make their recommendations, and that the department and board, understanding the urgency of the situation, be given the opportunity to act on those recommendations.

Thank you for the opportunity to testify.



**HOUSE COMMITTEE ON FINANCE  
STATE CAPITOL, ROOM 308  
3:30 P.M.  
AGENDA #7**

**Subject: House Bill No. 1376 Relating to Education**

Chair Oshiro, Vice Chair Lee and members of the committee:

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

The Chamber of Commerce of Hawaii strongly supports H.B. No. 1376 which proposes to create the facilities alignment commission to revitalize school facilities by developing and submitting recommendations for areas for new school construction, schools for expansion, and schools for consolidation or closure. The bill allows the legislature to disapprove these recommendations only in their entirety. If no legislative disapproval occurs, requires the Board of Education to comply with these recommendations.

The purpose of the bill is to revitalize school facilities statewide and to more effectively and efficiently use our taxpayers' investment in public education. Specifically, this Act provides for the timely construction, expansion, consolidation, or closure of underused public schools in Hawaii through an objective and transparent process that:

1. Includes the establishment of a facilities alignment commission that shall:
  - a. Establish criteria for the selection of public schools to be constructed, expanded, consolidated, or closed; and
  - b. Recommend, based upon these criteria, a list of areas for new school construction, and of schools for expansion, consolidation, or closure, which is subject to the review of the legislature; and
2. Directs the board of education to proceed with the process of constructing, expanding, consolidating, or closing underused schools according to the recommendations of the facilities alignment commission, if the legislature does not disapprove of the recommendations in their entirety.

The DOE has stated that they have approximately the same number of students today (+/- 175,000) as they did 30 years ago. The difference being the distribution of the student population has been dispersed across the state. This creates situations where existing assets (School sites) are underutilized and provides opportunities to reposition these real estate assets for future needs.

What is lacking in the current version of the bill is an option to allow for redevelopment of an underutilized school site for educational, income and/or mixed uses which will provide a funding source to the Department of Education.

The idea would be that the existing school lands are used to create a trust for the public schools. The lands are then managed as a trust, and create the ability to leverage underutilized land assets for redevelopment, joint venture, revenue production, and other opportunities similar to a real estate company.

Many of the older schools are located on "prime pieces" of real estate, especially in the existing urban core of Honolulu which is being planned for redevelopment with the proposed high capacity transit system. Leveraging the land value, the DOE maybe able to have a state of the art "magnet school" built with mixed uses for income purposes and other uses including teacher housing.

We support the intent of the bill with the amendment we are suggesting. Thank you for this opportunity to express our views.



Via Capitol Website

March 2, 2009

**House Committee on Finance  
Hearing Date: Monday, March 2, 2009, at 3:30 pm in CR 309**

**Testimony in Support of HB 1376: Relating to Education  
(DOE Facilities Alignment Commission)**

Honorable Chair Marcus B. Oshiro, Vice Chair Marilyn B. Lee and  
House Finance Committee Members:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawai'i's significant natural and cultural resources and public health and safety.

LURF **strongly supports HB 1376**, which creates the Facilities Alignment Commission (Commission) to establish criteria for the selection of public schools to be constructed, expanded, consolidated, or closed, and recommend a list of areas for new school construction, and of schools for expansion, consolidation, or closure. Requires the Board of Education (Board) to comply with these recommendations if the legislature does not disapprove of them in their entirety. The following includes some background information and proposals relating to this bill.

**Background.** HB 1376 recognizes the fact that over the past 25 years, the demographics of the State of Hawaii have evolved, as the statewide population has increasingly shifted from the urban core to the suburbs, especially on Oahu, where the State and County governments have planned the shift in the population to the Central Oahu area and the "Second City" of Kapolei in the west. The bill also acknowledges that some of the fastest-growing populations in the state are on the neighbor islands, particularly in Kihei, Maui and West Hawaii. It is also a fact that these demographic shifts have overburdened public school facilities in growing areas and have also resulted in unused and underutilized school facilities in other areas. However each school district must be reviewed on its merits, on a case-by-case basis, and based on scientific, but reasonable and practical assumptions.

Other very relevant and interesting facts were confirmed during recent public hearings relating to a West Hawaii Impact Fee, conducted by the Department of Education (DOE) - - According to a private study by Ho'okuleana, LLC, which analyzed statistics and data relating to population growth, building permits issued and public school enrollment in West Hawaii over the past ten years, **the population and building permits in West Hawaii has been increasing, yet the public school enrollment has been decreasing! Yet the DOE is proposing 34 new public schools for the area.**

**Purpose.** The purpose of this bill is to revitalize the DOE school facilities statewide and to more effectively and efficiently use our taxpayers' investment in public education. Specifically, this bill provides for the timely construction, expansion, consolidation, or closure of underused public schools in Hawaii through an objective and transparent process.

**HB 1376.** This proposed bill would create a Facilities Alignment Commission, which would establish criteria for the selection of public schools to be constructed, expanded, consolidated, or closed; and recommend areas for new school construction, schools for expansion, consolidation, or closure. Generally, this bill creates the following process:

- Establishes the Facilities Alignment Commission which shall:
  - Establish Criteria for the selection of public schools to be constructed, expanded, consolidated, or closed; and
  - Recommend, based upon those criteria, a list of areas for new school construction, and of schools for expansion, consolidation, or closure, which is subject to the review of the legislature;
  - Explore funding mechanism alternatives to ensure that funds derived from the consolidation or closure of schools are redirected back to benefit the affected school or schools, or the DOE, as appropriate;
  - Develop procedures or guidelines for executing memoranda or agreement or memoranda of understanding with the counties, other departments, or entities regarding property on which affected schools are located with regard to the disposition of those properties; and
  - Develop procedures or guidelines, with the assistance of the Department of the Attorney General, regarding boilerplate language, terms, and conditions associated with the sale or lease of property on which affected schools are located.
- The Commission shall terminate upon the adjournment of the regular legislative session of 2011, sine die.
- By December 31, 2009, the DOE must submit a school facilities plan to the Commission, based on an assessment of the projected student enrollment for public schools in critical areas of the State (other than charter schools), including those in high growth or steadily declining population areas;
- Before finalizing school alignment selection criteria, the Commission shall hold public hearings to obtain public response;
- By February 28, 2010, the Commission shall compile a list of preliminary recommendations, based on the school facilities plan and the final school alignment selection criteria;
- By August 31, 2010, the commission shall hold public hearings to obtain public response to the Commission's preliminary recommendations;
- Not less than twenty days prior to the convening of the regular session of 2011, the Commission shall submit a report of its findings and conclusions, including a final list of recommendations to the Legislature;

- The final list of recommendations shall be subject to legislative disapproval only in its entirety, by concurrent resolution;
- If the Legislature does not disapprove the recommendations, then after the adjournment of the 2011 regular session, the Board shall implement the recommendations of the Commission for the 2012-2013 school year, considering any procedures and guidelines developed by the Commission; and
- The bill also includes a general fund appropriation in an unspecified amount for fiscal year 2009-2010 for expenses incurred by the Commission in carrying out its duties.

**Prior related efforts.** HB 2972 HD1, SD1 is related to the previous work done by the DOE, LURF and other stakeholders over the past few years:

- **SB 292 (2005) proposal to grant DOE Asset Management authority.** In 2005, pursuant to SB 972, the legislature considered the establishing the authority of the Board and DOE to own and administer all of the lands and facilities being used for the public schools of Hawaii.
- **SB 611 (2007) proposal to transfer lands and facilities to DOE.** In 2007, a similar version was presented as SB 611, which proposed to transfer all public lands and facilities in use for public schools to the DOE. That bill also empowered the Board and DOE to acquire, sell, lease, transfer, hypothecate, develop, and enter into agreements for the improvement of lands and facilities under its control for the support of the public schools.
- **DOE Advisory Council: SB 611 (2007).** SB 611 was the result of one of the working groups from the DOE Advisory Council, which was created to evaluate the merits of DOE's various proposals being implemented, and to make recommendations on establishing measurable goals and objectives.
- **SB 690 (2007) proposal for DOE cost-benefit analysis and additional school funding based on savings from school closures or consolidation.** This proposal would have required the DOE to do a cost-benefit analysis to determine the cost savings of school closures or consolidations, and would have required that 50% of the savings be retained by the affected schools for a period of not less than five years.
- **HB 2972 (2008) proposal for DOE Facilities Alignment Commission was vetoed by the Governor.** That 2008 bill was virtually identical to the 2009 HB 1376. It would have created a Facilities Alignment Commission to establish criteria for the selection of public schools to be consolidated or closed and to recommend schools for consolidation or closure. It also required the BOE to comply with these recommendations if the Legislature does not disapprove of them in their entirety. In Conference Committee, amendments were made to target specific school districts, including elementary schools in the Castle, Farrington, Hilo, Kahuku, Kailua, Kaiser, Kalaheo, Pearl City, and Waiakea complexes; and all schools in the Honokaa, Kaimuki, Laupahoehoe, and Waialua complexes. HB 2972 (2008) was vetoed by the Governor, who stated that the bill was objectionable because it unfairly targeted a selection of schools in specific geographic areas of the State; No rationale was provided as to why these school complexes were singled out while others were not targeted for possible closure or consolidation; further, the amendments which added the list of school districts was done on Conference Committee, without the public being given an opportunity to comment on the amendment prior to final passage of this bill. The Governor also objected to the Facilities Alignment Commission because it would be exempt from chapter 91, Hawaii Revised Statutes, relating to public

access and disclosure of information. (Governor's Veto Message 552, 2008). The Senate did not override the Governor's veto.

**Repositioning DOE and its land assets for the future.** As noted in LURF's 2007 and 2008 testimony, it is our understanding that **public school enrollment is declining**, and that the DOE has approximately the same number of students today (+/- 180,000) as they did 30 years ago. The difference being the concentration of the student population has moved. This creates situations where **existing assets are underutilized and provides opportunities to reposition these real estate assets for future needs.** This could involve redevelopment of the site for a new school, allowing for mixed use with a redeveloped school and possibly teacher housing, or provide for new revenue sources based on long term leasing of the property.

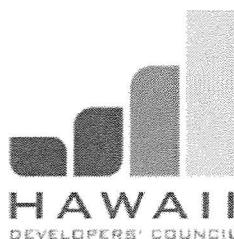
The following are various initiatives that the DOE, Facilities Alignment Commission, other stakeholders and the Legislature might wish to pursue in the future:

- **Capital Improvement Projects ("CIP") Public Private Partnership Group.** One of the working groups from the DOE Advisory Council was the CIP Public Private Partnership group, which explored "non-traditional" alternatives for building new schools, or redeveloping existing schools. The term "non-traditional" was meant to describe the processes or methods not presently being used by the DOE.
- **Common School Fund Program.** The idea of giving the DOE the power and authority to own the land under the school facilities is based on the "Common School Fund" programs or "Land Grant Schools" on the mainland. Many of the school lands in the western United States were provided by Congress to each of the states via "land grants" at the time each state joined the United States. The land grants were originally made for a single explicitly stated purpose - - to support common schools and similar public institutions. These granted lands are generally known as "Common School Fund Lands," and are held by the states, together with any permanent funds and revenues generated from the lands, and all of those assets are generally viewed as a "trust." Most of the western states manage the Common School Fund Lands, either for use as school sites, or to generate revenues for the schools. The corpus of the trust is determined by the value of the land, any permanent funds and any revenues generated by the lands. Hence, the trust land managers in those states approach their management responsibilities under the same array of rules and enforcement mechanisms that surround any legal trustee with fiduciary duties.
- **Management of DOE lands as "trust" lands for the benefit of DOE schools and programs.** The prior Hawaii legislation listed above, was based on an idea similar to the "Common School Fund Lands program - - that the existing DOE school lands could be used to create a trust for the DOE public schools. Somewhat like Kamehameha Schools Bishop Estate (KS), the DOE lands could then be managed as a "trust," and the DOE will have the ability to leverage underutilized land assets for redevelopment, joint venture, revenue production, and other opportunities similar to KS or any other real estate corporation. Considering the need to attract and retain teachers, and the prospects of a fixed-guide-way system for Oahu, the bill would allow for the repositioning some of the "underutilized school sites" in the City's Primary Urban Center could be redeveloped to provide teacher housing and/or generate income for the DOE as a center for a mixed-use transit oriented development ("TOD").

**Conclusion.** The Facilities Alignment Commission proposed in HB 1376, is an important step in having the DOE and the Board review, evaluate and make the best use of its assets and resources. If in the future the DOE, Board and Legislature decide that the DOE should hold and manage its land assets and resources as a “trust” - - this bill could be the first step in helping the DOE toward earning some much-needed revenue and become self-sustaining. We understand that the proposals discussed in this testimony are very different from how DOE operates today; however, the intent of these proposals is to reposition DOE to allow them to become more self-sufficient, more accountable and to be poised to take advantage of future opportunities to improve the quality of education for our children.

Based on the above, we respectfully request your **favorable consideration of HB 1376** and hope that this Committee moves it forward.

Thank you for the opportunity to express our **support for HB 1376**.



**March 2, 2009**

Representative Marcus Oshiro, Chair  
HOUSE COMMITTEE ON FINANCE  
State Capitol, Room 308  
415 South King Street  
Honolulu, Hawaii 96813

Dear Chair Oshiro:

**Subject: House Bill No. 1376 Relating to Education**

My name is Shane Peters, President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HDC strongly supports H.B. No. 1376 which proposes to create the facilities alignment commission to revitalize school facilities by developing and submitting recommendations for areas for new school construction, schools for expansion, and schools for consolidation or closure. The bill allows the legislature to disapprove these recommendations only in their entirety. If no legislative disapproval occurs, requires the Board of Education to comply with these recommendations.

The purpose of the bill is to revitalize school facilities statewide and to more effectively and efficiently use our taxpayers' investment in public education. Specifically, this Act provides for the timely construction, expansion, consolidation, or closure of underused public schools in Hawaii through an objective and transparent process that:

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The DOE has stated that they have approximately the same number of students today (+/- 175,000) as they did 30 years ago. The difference being the distribution of the student population has been dispersed across the state. This creates situations where existing assets (School sites) are underutilized and provides opportunities to reposition these real estate assets for future needs.

What is lacking in the current version of the bill is an option to allow for redevelopment of an underutilized school site for educational, income and/or mixed uses which will provide a funding source to the Department of Education.

The idea would be that the existing school lands are used to create a trust for the public schools. The lands are then managed as a trust, and create the ability to leverage underutilized land assets for redevelopment, joint venture, revenue production, and other opportunities similar to a real estate company.

Many of the older schools are located on "prime pieces" of real estate, especially in the existing urban core of Honolulu which is being planned for redevelopment with the proposed high capacity transit system. Leveraging the land value, the DOE maybe able to have a state of the art "magnet school" built with mixed uses for income purposes and other uses including teacher housing.

We support the intent of the bill with the amendment we are suggesting. Thank you for this opportunity to express our views.

**BIA-HAWAII**  
BUILDING INDUSTRY ASSOCIATION

**March 2, 2009**

Representative Marcus Oshiro, Chair  
HOUSE COMMITTEE ON FINANCE  
State Capitol, Room 308  
415 South King Street  
Honolulu, Hawaii 96813

Dear Chair Oshiro:

**Subject: House Bill No. 1376 Relating to Education**

I am Karen Nakamura, Chief Executive Officer 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 strongly supports H.B. No. 1376 which proposes to create the facilities alignment commission to revitalize school facilities by developing and submitting recommendations for areas for new school construction, schools for expansion, and schools for consolidation or closure. The bill allows the legislature to disapprove these recommendations only in their entirety. If no legislative disapproval occurs, requires the Board of Education to comply with these recommendations.

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Chief Executive Officer  
BIA-Hawaii