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**Senate Committee on Education and Housing
Hearing Date: Monday, March 20, 2009, at 1:30 PM in CR 225**

**Testimony in Support of HB 1376 HD1: Relating to Education
(DOE Facilities Alignment Commission)**

Honorable Chair Senator Sakamoto, Vice Chair Michelle Kidani and Senate Committee on Education and Housing 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 HD1, 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 HD1 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 HD1. 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 Commissions 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.

Amendments to HD1. The House Committee on Finance changed the bill's effective date is July 1, 2020, which was amended from its original version to encourage further discussion. The House Committee on Finance also made technical, nonsubstantive changes for clarity, consistency, and style.

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 HD1. 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 HD1, 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 HD1** and hope that this Committee moves it forward.

Thank you for the opportunity to express our **support for HB 1376 HD1**.