

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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LAND
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

On House Bill 3272– RELATING TO PUBLIC LANDS

**BEFORE THE HOUSE COMMITTEE ON
FINANCE**

February 22, 2008

House Bill 3272 proposes to permit a current lessee of public land to be disposed by public auction to match the winning bid under certain circumstances. The Department of Land and Natural Resources strongly opposes this bill.

Leasing of public lands by public auctions is done to ensure that all applicants are given the opportunity to apply for such lands on equal footing with full disclosure of all material terms. The fundamental principle underlying the use of public auctions is to ensure that no applicant is given an undue advantage over any other applicant. Allowing a current lessee to circumvent that process when a new lease is issued seriously undermines that principle and produces a chilling effect on the willingness of potential applicants to bid on such leases. Serious applicants must usually invest significant time and resources that are not reimbursable in order to qualify as an applicant and to conduct due diligence investigations before participating in a public auction. The possibility, if not probability, that an existing lessee will match the winning bid and deprive the successful bidder in public auction of the new lease will clearly be a significant deterrent to potential applicants.

Under the standard terms of leases for public lands, any improvements on the lands are owned by the State at the termination of the lease. Additionally, all lessees have a duty to maintain any improvements on the land and to ensure that such improvements do not fall into disrepair. When accepting a lease for public lands, all lessees are aware of those conditions, which are a standard practice in both private and public real estate sectors. Allowing current lessees to match the winning bid solely based on their knowing and willing compliance with the standard terms of the lease gives the misleading perception, or worse, creates a legal presumption that installing improvements of a certain value will give rise to a proprietary interest in future lease dispositions.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.B. NO. 3272, RELATING TO PUBLIC LANDS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Friday, February 22, 2008 **TIME:** 1:00 P.M.

LOCATION: State Capitol Room 308
Deliver to: State Capitol, Room 306, 2 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or William J. Wynhoff, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of Attorney General opposes this bill.

This bill requires the Department of Land and Natural Resources to allow a "current lessee" who has made "substantial improvements" to "match the winning bid" when a lease is disposed of at auction.

First, it is not clear what, if any, leases this bill affects. The term "substantial improvements" is to be defined based on a dollar value of improvements. The dollar value has not yet been inserted. Depending on the amount inserted, the bill may affect few, if any, leases.

Moreover, even if there was a previous lease of property on which the lessee had made the threshold level of improvements, the auction of a new lease would typically take place after the previous lease (including any holdover period) already expired. In such cases, there would be no "current lessee" and the bill would have no effect or applicability.

Second, no one testified in favor of this bill when it was considered by the Committee on Water, Land, and Hawaiian Affairs so the intent of the bill remains unclear. The Department of Attorney General is concerned that the bill may be intended to affect recreational-residential cabin lots in Koke'e State Park

and Waimea State Park. These lots were previously leased, but all of these leases (including a one-year holdover) already expired on December 31, 2006.

Because the Koke'e leases have already expired, there is no "current lessee." The bill will not apply to the intended auction of leases at Koke'e. But, there have already been three lawsuits concerning the former leases. One of the lawsuits was decided wholly in the State's favor and was appealed by the lessees; the appeal is pending. Another lawsuit was dismissed without prejudice. The third lawsuit remains pending in First Circuit Court. So even though the bill would not (by its plain language) apply to Koke'e, the Department of the Attorney General is concerned that former lessees might base claims upon it in the existing lawsuit or in a new lawsuit.

The Department of the Attorney General requests that this bill be held.

HOUSE COMMITTEE ON FINANCE
Friday, February 22, 2008
1:00 PM
Conference Room 308

HOUSE BILL 3272
RELATING TO PUBLIC LANDS

Testimony in Support with Amendments

Aloha Chair Oshiro, Vice Chair Lee and Finance Committee Members:

I am present to testify in support of the intent of House Bill 3272. This measure serves to protect lessees of state public land who, in good faith, have invested in property improvements in order to ensure continuation of their business at their chosen or necessary location

In addition, I would like to direct your attention to state public lands that are or have been properly leased for public purposes, but where the lease has been or will be canceled by the state to advance the public property toward private commercial development under an auctioned lease. Such aggressive pursuit of commercial development at the expense of established public need and active public use shortchanges the public interest.

For example, an approximately ½-acre state property adjacent to the Ala Wai Golf Course was recently approved by the Board of Land and Natural Resources for auction of a commercial development lease. For many years this public land has been leased to local businesses for essential public parking, which this main thoroughfare in and out of Waikiki is sorely lacking, and without which the survival of many small businesses would be impossible.

In 1998 the larger community embarked on a master plan for this community business district that designated this as one of two vital locations for public parking, with this site to also have a needed community center for seniors and young people alike. But the Department of Land and Natural Resources (DLNR) has now shunned the community's need for public use of this public land, and is instead moving to auction a commercial development lease to the highest bidder.

The community and our Legislators have repeatedly appealed to the DLNR to no avail. We therefore respectfully ask your assistance in considering additional language for House Bill 3272 that would **1) establish a requirement that the DLNR submit findings on any public impacts the auction of a commercial development lease would have on the surrounding community, including businesses, residences, public open space and recreational needs, and the feasibility of alternative uses of the public land for public purposes; and 2) preclude the auction of a commercial development lease for public land in cases where there is an established public need and planned public use that is a public priority.**

As an eight-term elected member of the Neighborhood Board for the interested and affected community, and a director of both the Kapahulu Business and Community Association and the Waikiki Area Residents Association, I sincerely thank you for your understanding of the public consequences of the DLNR's actions, and for your serious consideration of the suggested amendments and their addition to this measure.

Respectfully,
Michelle S. Matson
Diamond Head/Kapahulu/St. Louis Hts. Neighborhood Board

FINtestimony

From: RawcoHI@cs.com
Sent: Friday, February 22, 2008 6:41 AM
To: FINtestimony
Subject: Testimony in support of HB3272 with suggested amendment
Categories: Printed

HOUSE COMMITTEE ON FINANCE
Friday, February 22, 2008
1:00 PM
Conference Room 308

HOUSE BILL 3272
RELATING TO PUBLIC LANDS

Testimony in Support with Amendments

Aloha Chair Oshiro, Vice Chair Lee and Finance Committee Members:

My name is Reg White. I am a resident of Waikiki and a businessman here in Hawaii. The amendment suggested to this bill by Michelle Matson in her testimony cannot be better said, so I wish to save time and space here by asking only that in supporting the passage of this important legislation you also please consider her very needed proposed amendment to this work. This will serve to protect the public interest in our lands as we go forward in time.

Thank you,

Reg White
1540 S. King St.
Honolulu, HI 96826-1919
(808) 222-9794
RawcoHI@cs.com