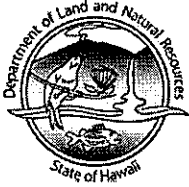


HB 1164

HD1, SD1

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Friday, April 01, 2011
9:00 AM
State Capitol, Conference Room 211**

**In consideration of
HOUSE BILL 1164, HOUSE DRAFT 1, SENATE DRAFT 1
RELATING TO PUBLIC LANDS**

House Bill 1164, House Draft 1, Senate Draft 1 authorizes the Department of Land and Natural Resources (Department) to consider the exchange of Sand Island parcels to the lessees, and report its findings and recommendations to the Legislature. Although the Department appreciates the discretionary language, the Department remains concerned about how this bill, if enacted, could be interpreted by some to impose duties and obligations upon the Department that would detract it from departmental priorities. The Department states the following concerns for the record.

First, the industrial lands on Sand Island targeted by this bill are encumbered by a Master Lease issued by the Department and Board of Land and Natural Resources (BLNR) to the Sand Island Business Association (SIBA), who in turn has issued numerous (e.g., close to a hundred) subleases to numerous individual businesses. The Department has repeatedly stated that the BLNR is not interested in selling or exchanging these lands on Sand Island, and will definitely not consider the sale or exchange of the lands under the SIBA Master Lease into a hundred small lot transfers that would result in a hundred separate land transactions. Having said that, the Department has also stated in the past that in the event SIBA or anyone else has identified and owns suitable replacement industrial or commercial lands of equal or greater value, with an income stream and term of years that are both equal to, or greater than that of the SIBA Master Lease, then the Department and BLNR would consider such a proposal. However, to this date, neither SIBA nor anyone else has been able come forward with any such suitable land exchange proposal. As such, the Department is befuddled by this bill as there is no such suitable and viable land exchange proposal on the table or in the horizon. In any event, until such time as a suitable and viable land exchange proposal is brought forward to the Department for it and the

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

BLNR's consideration, the Department will not expend any of its limited resources (i.e., limited manpower and funds) on an exchange of the Sand Island lands.

Second and probably more importantly, the Department is responsible for managing approximately 1.3 million acres of public lands comprised of sensitive natural, cultural and recreational resources. The Department's responsibilities include managing and maintaining the State's coastal lands and waters, water resources, conservation and forestry lands, historical sites, small boat harbors, parks, and recreational facilities; performing public safety duties (e.g., flood and rockfall prevention); issuing and managing leases of public lands (agriculture, pasture, commercial, industrial, and resort leases); maintaining unencumbered public lands; and enforcing the Department's rules/regulations.

To properly perform these fiduciary duties, the BLNR determined that the Department should utilize a portion of the lands it manages to generate revenues to support the Department's operations and management of public lands/programs. This is especially critical at this time due to the current condition of the State's economy. The industrial lands on Sand Island targeted by this bill have been identified by the Department (and supported by the Board) as revenue producing assets and represent one of the Department's primary sources of revenues. The lease revenues¹ generated by the Sand Island lands constitute roughly 60% of all lease revenues currently supporting the Special Land and Development Fund ("SLDF").

As detailed in the Department's report to this Legislature, the balance of the SLDF has steadily decreased in recent years (from \$8.1 million in FYE 2008 to \$4.6 million in FYE 2010) and is projected to be a deficit three to four years unless the Department is able to substantially decrease expenditures or increase revenues, or both.

The Department is constantly considering and pursuing other sources of revenue. However, the loss of a consistent revenue source through a sale or exchange of the fee simple interest in the Sand Island parcels lands would deprive the Department of a substantial portion of its revenue source and seriously jeopardize the Department's operations. Such sale would not be in the best interest of the beneficiaries of the public land trust, valuable natural and cultural resources, the Department, and the State's economy.

The SLDF is a critical and increasingly important funding source for the entire Department of Land and Natural Resources to deal with emergency response to natural catastrophe such as fire, rockfall, flood or earthquake and hazard investigation and mitigation. The SLDF also is critical for staff support of various programs and funding conservation projects on all state lands. It has also become an important source of state match for federally funded endangered species and invasive species initiatives that otherwise would not go forward.

The following are examples of the impacts to certain programs should funding support from the SLDF be curtailed:

¹ As noted above, the lands are under a Master Lease to SIBA.

Division of Forestry and Wildlife

For the last five years, the SLDF has provided approximately \$800,000 annually to the Division of Forestry and Wildlife to support the recovery of threatened and endangered species and the control of invasive species. These funds match approximately \$1,500,000 in federal grants from the Endangered Species Act Section 6 Recovery Program and the State Wildlife Grants Program to recover the State's most critically endangered species. Examples of this work includes successful captive propagation of Alala, Palila, Puaiohi, and Maui Parrotbill, establishing new populations of Palila on Mauna Kea, fencing and eradicating ungulates from Puu Waawaa Forest Bird Sanctuary, habitat restoration on leeward Haleakala for Maui's forest birds, wetland and waterbird conservation at Hamakua, Kawai Nui, and Pouhala wetlands on Oahu, studies on Kauai's nesting seabirds, and reintroduction of Puaiohi into the Alakai Wilderness Area. This funding is helping make significant progress toward preventing the loss of native species, habitats, and biodiversity and the Division urges you to continue to generate and collect revenues for these purposes.

Engineering Division

The SLDF is critical for operations of the Engineering Division, as it supports staffing and expenses for multiple programs. In fiscal year 2009-2010, the fund provided: over \$570,000 for the Mineral Resources/Geothermal program to manage the geothermal resource to protect public health and safety and to ensure its continued viability for the future; over \$815,000 for the Dam Safety/Flood Control Program to regulate dams and reservoirs to protect life and property, and administer the National Flood Control Program to ensure the availability of flood insurance to property owners; and over \$350,000 for the Land Maintenance Crew to manage and maintain various State-owned lands, remove vegetation and debris from streams, and perform evictions on state lease lands. Without these funds, the Division will not be able to ensure the safety of all dams and reservoirs and respond to dam emergencies or perform other mandated duties.

Division of State Parks

The SLDF is critical for operations of the Division of State Parks, which has previously received nearly \$500,000 from the SLDF to make up for consistent general fund budget shortfalls for operation and payroll that keep our parks open. In recent years, the SLDF provided an additional \$584,216 for lifeguard services at Ka'ena Point State Park for public health and safety of park users. In addition to managing and protecting natural and cultural resources, the Division of State Parks serves to provide recreational access for both residents and visitors. Our Hawai'i State Park system serves as a significant destination of Hawai'i's visitor industry, with 6.7 million out-of-state visits annually.

Office of Conservation and Coastal Lands

The Office of Conservation and Coastal Lands (OCCL) has been entirely funded by the SLDF. OCCL's annual allocation for salaries and fringe benefits is approximately \$450,000 (6.5 FTP), with operating costs running approximately \$200,000. Most of the operating costs are from Contested Case Hearings, supplies, and equipment. A severe reduction in the income generating capacity of the SLDF could result in the elimination of OCCL functions. OCCL is the State's zoning authority for all Conservation District lands in the State of Hawai'i, this includes

terrestrial and marine areas out to three miles in the ocean, including fast and submerged lands. This entails processing permits for land uses involving private and public entities and prosecuting land use violations, with the intent to ensure the conservation of these unique and fragile areas. In terms of land area, we are responsible for more area than all of the counties combined (albeit less population density). OCCL has been able to perform its function efficiently and effectively even with a relatively small staff, and any reduction in staffing would severely limit our ability to service the public. Loss of this government function would essentially result in the loss of projects within conservation lands because there would be no one available to process regulatory permits pursuant to Chapter 183C, Hawaii Revised Statutes. This would have a major impact to business; 1000's of private landowners, government agencies, the university, marine users for energy and mariculture, just to name a few. These entities need OCCL to process their applications for use of conservation district lands, such as in the case of telescopes, renewable energy projects, single-family homes, and public infrastructure.

Commission on Water Resource Management

The SLDF supports critical activities and essential programs undertaken by the Commission on Water Resource Management (Commission). Annual supplemental funding of \$300,000 from the SLDF provides payroll costs for three key Planning Branch positions: State Drought and Water Conservation Coordinator, Hydrologist VI, and Hydrologist IV. These three positions comprise the entire professional nonsupervisory staff of the Planning Branch, which is responsible for the establishment of an integrated program for the protection, conservation, and management of the waters of the State. The Commission's General Fund Personal Service budget is not adequate to pay for these three positions at this time. Efforts to convert these special-funded personnel to general-funds in the past were denied. In addition, future pay raises, pay adjustments (e.g., reallocations and step movements) and increases in the fringe benefit rates for these positions will require additional funding.

The SLDF is also used to fund Commission programs, activities, and the implementation of Commission priority projects, such as the 20-year Water Use Permit Review; Estimating Plant Water Use for Water Use Permitting; Modified RAM2 for Estimating Sustainable Yields; and Implementation of Interim Instream Flow Standards in East Maui. Due to the limitations of Commission's general fund, funding from the SLDF is also used for advancing invoice payments for reimbursable federal grants for projects and to fulfill non-federal cost share obligations required under some federal grants. The uncertainty of grant opportunities requires that Commission funding be available in order to qualify for these federal grants.

Funding allotted from the SLDF enables the Commission to implement the State Water Code's declaration of policy by funding personnel, programs activities, and projects that are essential for water resource planning and fulfillment of State Water Code mandates. To date, the Commission has effectively utilized its SLDF allotments to further the management of our most precious public trust resource.



HB1164 HD1 SD1
RELATING TO PUBLIC LANDS
Senate Committee on Ways and Means

April 1, 2011

9:00 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB1164 HD1 SD1, which instructs the Department of Land and Natural Resources to consider the exchange of ceded land currently leased to the Sand Island Business Association.

The land leased to Sand Island Business Association is comprised of ceded land. See Final Report on the Public Land Trust, a Report to the Legislature of the State of Hawaii, Submitted by the Legislative Auditor of the State of Hawaii (December 1986), page 50.

OHA maintains that the state cannot diminish the ceded land corpus until the Native Hawaiian people's claim to ceded lands has been resolved. See, e.g., P.L. 103-150 (1993) ("the Republic of Hawaii . . . ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government").

Therefore, OHA urges the committee to HOLD HB1164 HD1 SD1. Mahalo for the opportunity to testify on this important measure.