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Subject: *Submitted testimony for HB1292 on Feb 1, 2013 08:00AM*

HB1292

Submitted on: 1/29/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

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NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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

**Before the House Committees on
WATER & LAND
and
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS**

**Friday, February 1, 2013
8:00AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1292
RELATING TO PUBLIC LAND**

House Bill 1292 proposes to amend Chapter 171, Hawaii Revised Statutes (HRS) - Public Lands, to make all fee simple sales and exchanges of public land, as well as easements and licenses to public utilities, subject to the prior approval of the legislature. The Department of Land and Natural Resources (Department) has no objection to making fee simple sales and exchanges subject to prior legislative approval, but recommends that remnant sales and the issuance of easements and licenses to utility companies be exempted from this requirement.

In 2009, the legislature enacted Act 176, Session Laws of Hawaii 2009, which made all sales and gifts of public lands subject to prior legislative approval.¹ As to exchanges of public lands, Act 176 required that information on the purpose of the exchange be provided in a resolution to the legislature, but retained the legislative disapproval process for exchanges.² House Bill 1292 treats exchanges like any other fee simple disposition, requiring them to receive the prior approval of the legislature. This will make exchanges more difficult and costly to complete. However, the Department believes that fee simple dispositions of public land, whether by sale, gift or exchange, should be subject to uniform treatment under the law and therefore has no objection to this aspect of the measure.

¹ Approval of the sale or gift by the legislature by concurrent resolution to be adopted by each house by at least two-thirds majority vote of the members to which each house is entitled in a regular or special session at which a concurrent resolution is submitted for approval.

² 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.

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

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

With respect to remnants, however, the Department believes the Board of Land and Natural Resources (Board) should retain authority to dispose of them pursuant to Section 171-52, HRS. House Bill 1292 does not specifically amend Section 171-52, HRS, to require prior legislative approval for the disposition of remnants, but the bill's addition of new subsection 171-2(b), HRS, arguably subjects remnant sales to the same restriction. The Department recommends that remnant sales be expressly exempted from the prior legislative approval requirement.

House Bill 1292 additionally proposes an amendment of Section 171-95, HRS. Section 171-95, HRS, gives the Board the authority to directly negotiate land dispositions to government agencies, utility companies and renewable energy producers. The range of permissible dispositions under current law includes sales, leases, exchanges, as well as the issuance of easements and licenses. The proposed amendment to this section would make all dispositions to utility companies, including easements and licenses, subject to prior legislative approval. The Board approves many public utility easements each year, and requiring prior legislative approval for each disposition would significantly increase the workload of the Department staff and the processing time for such easements. Because easements and licenses are not fee simple dispositions, the Department recommends that these types of dispositions be expressly exempted from prior legislative approval requirement.

Finally, the Department notes that certain provisions of House Bill 1292 may need to be revised for a clear reading of the measure. The proposed amendments to Section 171-41 and 171-42, HRS, both make certain transactions subject to "approval by the legislature pursuant to section 171-2(b), in any regular session next following the date of disposition"³ "Disposition" in this sense usually refers the conveyance of the land interest itself. But under the proposed law, the disposition cannot happen before legislative approval. Accordingly, the Department recommends that "date of disposition" be changed to "date of the board of land and natural resources' approval in principle of the disposition."⁴

³ See page 4, lines 5-11, and page 5, lines 14-21 of the measure.

⁴ See similar language at page 9, lines 1-3 of the measure.