

LATE



HB1292
RELATING TO PUBLIC LAND
House Committee on Finance

February 21, 2013

11:00 a.m.

Room 308

The Office of Hawaiian Affairs (OHA) offers the following comments on HB1292. OHA supports the intent of the bill, which requires two-thirds approval of each house of the legislature for any fee simple dispositions of public land, including any sales or exchanges. We are concerned, however, that HB1292 may create a separate process for legislative approval of “public lands” as defined by Hawai‘i Revised Statutes section 171-2, which is different from the process that currently exists for state owned and controlled land, as described in HRS section 171-64.7.

The existing HRS section 171-64.7 requires two-thirds legislative approval for the sale or gift of state land, with certain exceptions, and requires the agency proposing a sale or gift to provide information about the sale or gift in a concurrent resolution, with advance notice to OHA. The HRS section 171-2(b) proposed by HB1292 appears to apply only to “public lands” as defined by HRS section 171-2, which specifically excludes lands held in title by the University of Hawai‘i, Hawai‘i Housing Finance and Development Corporation, Aloha Tower Development Corporation, Agribusiness Development Corporation, High Technology Development Corporation, and Public Land Development Corporation. The lands excluded from the definition of public lands are explicitly included in the legislative approval process established by HRS section 171-64.7. The HRS section 171-2(b) proposed by HB1292 also appears to eliminate the prior notification required by HRS section 171-64.7. To avoid possible confusion about which process may apply, OHA suggests, instead of creating a new section HRS section 171-2(b), that HRS section 171-64.7 continue to be the process followed for sales and gifts of state land and expanded to cover exchanges of state land, consistent with the purpose of HB1292.

Because we do not believe the intent of HB1292 is to create two separate processes for legislative approval of the fee simple disposition of state land, OHA offers the attached proposed HD1 for HB1292. The proffered amendments are intended to clarify that all fee simple sales and exchanges of public land must go through the process established by Act 176, Session Laws of Hawaii 2009, and subsequent amendments, which are codified as HRS section 171-64.7, and not a separate, newly created process. The proffered amendments to HB1292

additionally attempt to address the Department of Land and Natural Resources' request to clarify that the sale of remnants and non-fee simple dispositions to public utilities are excluded from the two-thirds legislative approval requirement.

Mahalo for the opportunity to testify on this important measure.

A BILL FOR AN ACT

RELATING TO PUBLIC LAND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 171-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The board may sell public land in fee simple for commercial, industrial, or other business uses with the prior approval of the governor and subject to ~~[disapproval by two-thirds vote of either the senate or the house of representatives or by majority vote of both]~~ approval by the legislature pursuant to section 171-64.7 ~~[in any regular or special session next following the date of disposition]~~; provided the above restrictions shall not apply to any sale of land initially acquired for highway purposes with participating federal funds and which land is later found to be in excess of the need for highway purposes."

SECTION 2. Section 171-42, Hawaii Revised Statutes, is amended to read as follows:

"§171-42 Hotel and resort uses. Public land may be leased for hotel or resort development, if the department of business,

economic development, and tourism finds that the land possesses the amenities for a successful hotel and resort development and that the advantages of its placement for such use outweigh those inherent in free public use in its natural state. Where the land being disposed of for hotel or resort use is divisible into more than one economic unit, the division shall be made prior to disposition, provided that firm use controls shall be imposed to assure that the development of each unit is compatible with the others. Provisions for community operations of shopping areas, golf courses, and other similar facilities shall be encouraged, with special assessments for the maintenance of these community facilities. Where public land disposed of for hotel or resort use is adjacent to any beach, waterway, or historic monument or landmark, the disposition shall be subject to reservations of public right-of-way or public access at all times to such beach, waterway, historic monument, or landmark.

The board of land and natural resources may, with the prior approval of the governor, and subject to ~~[disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both,]~~ approval by the legislature pursuant to section 171-64.7 ~~[in any regular session next following the date of disposition]~~, sell in fee simple or lease with option to purchase, raw, unimproved public land for hotel and resort use; provided that:

(1) The board first finds that the land is suitable for resort development and that its use for resort purposes will promote the economic development of the State;

(2) The purchaser submits development plans for the area to be purchased which conform with applicable county or city and county zoning and subdivision requirements;

(3) The board finds upon independent study of these plans that the proposed development is compatible with the developments in the area in general and consistent with good sound planning;

(4) The purchaser agrees to construct, improve, and put in all off-site and on-site improvements as may be required by the board which may include any or all of the following--all major and minor auxiliary roads and highways as well as all local streets, all connecting water lines and mains to existing lines and mains, all necessary sewer lines, sewage treatment, or disposal plants, all pumping stations, all reservoirs, golf courses, recreational areas, shopping centers, and all other improvements necessary to develop the raw land into an economic resort enterprise;

(5) The purchaser agrees to complete all improvements within the time limitations set by the board;

(6) The title to the land shall remain in the State until the purchaser has made all payments required in the terms of the

sale and has constructed the improvements as agreed; provided that where the purchaser finds it necessary to secure a loan to finance the construction of the improvements the board may issue a patent or deed upon the execution in favor of the State of a performance and payment bond conditioned upon the payment of an amount equal to one hundred per cent of the improvement cost. The bond shall by its terms inure to the benefit of the State;

(7) The board shall sell for resort uses only that portion of the public lands in the proposed resort area which it finds to be absolutely necessary to give the purchaser self-sustaining economic operations; provided that no public land shall be included in the sale for these purposes which will not actually be improved and used in the resort area for resort purposes; and

(8) The lessee with an option to purchase shall not be permitted to exercise the option until the lessee has complied with all the terms and conditions of the lease, including but not limited to the construction or erection of improvements as may be required by the board.

In any disposition under this section the board shall give consideration to the needs of the public for beach area above the high water mark.

Upon a finding by the board that the public interest demands it, the board may lease, lease with option to purchase,

or sell in fee simple such public lands by negotiation; subject to the provisions contained in this section and to such other terms and conditions contained in this chapter."

SECTION 3. Section 171-50, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Legislative [~~disapproval.~~] approval. Any exchange of public land for private land shall be subject to [~~disapproval~~] approval by the legislature [~~by two-thirds vote of either the senate or the house of representatives or by majority vote of both~~] pursuant to section 171-64.7[7]. [~~in any regular or special session following the date of the board of land and natural resources' approval in principle of the exchange. The state department or agency shall submit for introduction to the legislature a resolution for review of action on any exchange to be consummated by the board wherein exchange deeds will be executed by the parties together with the following information:~~

~~—— (1) The specific location and size in square feet or in other precise measure of the parcels of land to be exchanged;~~

~~—— (2) The value of the lands to be conveyed by the State and the private party;~~

~~—— (3) The name or names of the appraiser or appraisers;~~

~~—— (4) The date of the appraisal valuation;~~

~~—— (5) The purpose for which the lands are being exchanged;~~

~~—— (6) A detailed summary of any development plans for the land to be exchanged; and~~

~~—— (7) A statement of whether the land is, or is not, land that was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands, and a detailed explanation of how the state department or agency made this determination.~~

~~—— A copy of the draft resolution shall also be submitted to the office of Hawaiian affairs at least three months prior to the convening of a regular or special session of the legislature to allow the office to determine whether the land was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands."]~~

SECTION 4. Section 171-50.2, Hawaii Revised Statutes, is amended to read as follows:

"§171-50.2 Exchanges for conversion of leasehold lands to fee simple ownership. The board may exchange public lands for private lands to be condemned or involuntarily sold pursuant to chapter 516. Such exchange shall be requested by the executive director of the Hawaii housing finance and development corporation, and shall be effected in conformity with section 171-50; provided that such exchange shall be subject to legislative ~~[disapproval;]~~ approval pursuant to section 171-64.7; provided further that the private lands conveyed to the State shall be disposed of pursuant to chapter 516; and provided

further that lands exchanged need not be of like-kind or comparable use; provided further that no lands classified as conservation shall be exchanged for private lands."

SECTION 5. Section 171-51, Hawaii Revised Statutes, is amended to read as follows:

"§171-51 Quitclaim. The board of land and natural resources may, after giving public notice as required in section 171-16(d):

(1) Quitclaim public lands by deed or land patent in exchange for deeds of private lands by way of compromise or equitable settlement of rights of claimants without auction;

(2) Execute quitclaim deeds quitclaiming any and all interests of the State in private land for the purpose of perfecting title to such private land in private individuals who have defective titles; provided that no quitclaim may issue where the title to private land is subject to reversion to the State or to a right of entry by the State upon breach of condition subsequent or where the title to the private land is conveyed by the State for specific uses or purposes; provided further that no exchange or quitclaim may be entered into or made where the interest of the State arises by reason of any provision in a deed or patent issued by the State, which prescribes the specific use to which the land may be put or the specific purpose for which the land was conveyed; provided

further that any exchange or quitclaim shall be subject to ~~[disapproval]~~ approval by the legislature ~~[by a two-thirds vote of either the senate or the house of representatives or by majority vote of both,]~~ pursuant to section 171-64.7 ~~[in any regular or special session next following the date of the exchange or quitclaim]."~~

SECTION 6. Section 171-95, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In any disposition to public utilities under this section:

(1) The sale price or lease rental shall be no less than the value determined in accordance with section 171-17(b); provided that such sale price or lease rental may be on a nominal basis, if the board finds that such easement is required in connection with a government project;

(2) The board shall provide that in case the land ceases to be used at any future time for the use for which the disposition was made, the board shall have the right to repurchase the land at the original sale price or fair market value, whichever is lower, and to purchase improvements thereon at the depreciated value or fair market value, whichever is lower;

(3) Disposition shall not be made to any public utility if the utility has suitable lands of its own;

(4) The disposition in fee simple to public utilities shall be subject to approval by the legislature pursuant to section 171-64.7;

(4~~5~~) The disposition, other than fee simple, to public utilities shall be subject to 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 next following the date of the disposition; and

(5~~6~~) For the purposes of this section, the definition of "public utility" as defined in section 269-1 is hereby incorporated herein by reference."

SECTION 7. Section 171-64.7, Hawaii Revised Statutes, is amended to read as follows:

"§171-64.7 Legislative approval of sale, exchange, or gift of lands. (a) This section applies to all lands or interest therein owned or under the control of state departments and agencies classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or any other manner, including accreted lands not otherwise awarded, submerged lands, and lands beneath tidal waters which are suitable for

reclamation, together with reclaimed lands which have been given the status of public lands under this chapter, including:

(1) Land set aside pursuant to law for the use of the United States;

(2) Land to which the United States relinquished the absolute fee and ownership under section 91 of the Organic Act prior to the admission of Hawaii as a state of the United States;

(3) Land to which the University of Hawaii holds title;

(4) Land to which the Hawaii housing finance and development corporation in its corporate capacity holds title;

(5) Land to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;

(6) Land that is set aside by the governor to the Aloha Tower development corporation; or land to which the Aloha Tower development corporation holds title in its corporate capacity;

(7) Land that is set aside by the governor to the agribusiness development corporation; or land to which the agribusiness development corporation in its corporate capacity holds title;

(8) Land to which the high technology development corporation in its corporate capacity holds title; and

(9) Land that is set aside by the governor to the public land development corporation or land to which the public land development corporation holds title in its corporate capacity.

(b) Notwithstanding any law to the contrary, no sale of lands described in subsection (a) in fee simple including land sold for roads and streets, or gift of lands described in subsection (a) in fee simple to the extent such gift is otherwise permitted by law, or exchange of lands described in subsection (a) for private land to the extent such exchange is otherwise permitted by law, shall occur without the prior approval of the sale or gift by the legislature by concurrent resolution to be adopted by each house by at least a 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 of the sale; provided that the provisions of this section shall not apply to remnants, as that term is defined in section 171-52, or portions thereof; provided further that this section shall not apply to the issuance of licenses, permits, easements, and leases executed in conformance with the laws applicable to the lands listed in subsection (a); provided further that this section shall not apply to non-ceded lands conveyed to the University of Hawaii after December 31, 1989 to which the University of Hawaii holds title.

(c) The state department or agency proposing to sell, exchange, or give any state land described in subsection (a) shall submit for introduction to the legislature a concurrent resolution for review of the proposed sale or gift. The concurrent resolution shall contain a list of all sales, exchanges, or gifts of state land proposed by the state department or agency. The concurrent resolution shall contain the following information:

(1) The specific location and size in square feet or in other precise measure of the parcels of land to be sold, exchanged, or given;

(2) The appraisal value of the land to be sold, exchanged, or given;

(3) The names of all appraisers performing appraisals of the land to be sold, exchanged, or given;

(4) The date of the appraisal valuation;

(5) The purpose for which the land is being sold, exchanged, or given;

(6) A detailed summary of any development plans for the land to be sold, exchanged, or given; and

(7) A statement of whether the land is, or is not, land that was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such

lands, and a detailed explanation of how the state department or agency made this determination.

A draft of the concurrent resolution for the prior approval of a sale, exchange, or gift of land shall also be submitted to the office of Hawaiian affairs at least three months prior to the convening of a regular or special session of the legislature to allow the office to determine whether the land was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands.

(d) If the legislature fails to approve the concurrent resolution by at least a two-thirds majority vote of both houses, the transaction shall be abandoned by the state department or agency.

(e) Prior to finalizing any proposal for the sale, exchange, or gift of lands described in subsection (a) to a person or entity other than the State, its agencies, or its entities, and prior to submission of the concurrent resolution to the legislature under subsection (c), the State, agency, or entity, as appropriate, shall hold an informational briefing on the proposed sale or gift in the community where the land to be sold, exchanged, or given is located.

(f) This section shall not apply to sales, exchanges, or gifts of lands described in subsection (a) between state departments or agencies, to sales of available lands under the

Hawaiian Homes Commission Act, or to the fee simple sale of affordable homes on lands not classified as government or crown lands previous to August 15, 1895, or exchanged subsequent to August 15, 1895, for lands classified as government or crown lands previous to August 15, 1895, that are subject to resale restrictions as set forth in section 201H-47 and that were acquired by the Hawaii housing finance and development corporation either at a foreclosure sale or under a buyback as authorized in section 201H-47."

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 10. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Public Land; Alienation; Legislative Approval

Description:

Requires legislative approval of any sale, exchange, gift, or transfer of public land.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

HOUSE COMMITTEE on FINANCE
February 21, 2013, Public Hearing
House Conference Room 208
11:00 AM

LATE

HOUSE BILL 1292
RELATING TO PUBLIC LAND

Testimony in SUPPORT with AMENDMENTS submitted by M.S. Matson

House Bill 1292 is a **long-overdue** measure ensuring proper Legislative oversight of any alienation of public land, whether by sale, exchange, gift or transfer. For the past two years, beginning with the establishment of the Public Land Development Corporation (PLDC), the State's protected public lands have been threatened with flagrant exploitation. Legislative oversight with approval and disapproval within the full public process for such proposals has now become an urgent necessity for any and all State "development corporations," and/or any State development agency by any other name.

Specifically, the good intent of House Bill 1292, Section 2, can be most effectively and unquestionably implemented in the greater public interest by deleting exempted public lands held by State and under the control of the Hawaii Community Development Corporation (HCDA), the Aloha Tower Development Corporation (ATDC) and the Public Land Development Corporation (PLDC) under Section 1 of HB 1292, relating to HRS 171.2, the definition of public lands.

Ironically, under HB 1292, Section 1 the State public lands under the control of the HCDA (#7), ATDC (#9) and PLDC (#12) are exempted, i.e., removed, from the definition of public lands, thus rendering these rightful PUBLIC lands no longer public! This flies in the face of the greater public interest, and is in fact contradictory to the good intent of HB 1292 to ensure Legislative oversight and full public process for approval or disapproval of any sale, exchange, gift or transfer of public land.

To make this well-intended measure whole, the rightful public lands exempted from being public lands if under the control of the PLDC, HCDA and ATDC – all developer-influenced, developer-driven development corporations – should be **restored** as public lands and not exempted at all from this definition, because these are the rightful public lands proven most vulnerable to both public and private exploitation and abuse, despite the greater public interest, and to a greater extent when public-private partnerships are either necessarily or unnecessarily involved. We have witnessed this public land use exploitation and abuse most blatantly with the HCDA, potentially to be far more wide-spread by the PLDC.

Therefore, House Bill 1292, Section 1 should read as follows to ensure that State public lands are best protected and used in accordance with the greater public interest:

SECTION 1. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

"§171-2 Definition of public lands[-]; sale, exchange, gift or transfer.

(a) "Public lands" means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including lands accreted after May 20, 2003, and not otherwise awarded, submerged lands, and lands beneath tidal waters that are suitable for reclamation, together with reclaimed lands that have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- ~~(7) Lands to which the Hawaii community development authority in its corporate capacity holds title;~~
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- ~~(9) Lands that are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;~~

(10) Lands that are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title;

(11) Lands to which the high technology development corporation in its corporate capacity holds title; and

~~(12) Lands which are set aside by the governor to the public land development corporation; lands leased to the public land development corporation by any department or agency of the State; or lands to which the public land development corporation holds title in its corporate capacity.~~

(b) Notwithstanding any law to the contrary, all dispositions in fee simple of public land as defined in subsection (a) shall be subject to the prior approval of the legislature by concurrent resolution to be adopted by at least a two-thirds majority vote of the members to which each house is entitled in any regular or special session at which the resolution is submitted for approval of the disposition."

Please properly amend HB 1292 in the greater public interest.

FINTestimony

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 20, 2013 4:54 PM
To: FINTestimony
Cc: joncole@gmail.com
Subject: Submitted testimony for HB1292 on Feb 21, 2013 11:00AM

HB1292

Submitted on: 2/20/2013

Testimony for FIN on Feb 21, 2013 11:00AM in Conference Room 308

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Jonathan R Cole | Individual | Support | No |

Comments: I support this!!

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Subject: Submitted testimony for HB1292 on Feb 21, 2013 11:00AM

HB1292

Submitted on: 2/20/2013

Testimony for FIN on Feb 21, 2013 11:00AM in Conference Room 308

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| April Lee | Individual | Support | No |

Comments: WITHOUT PLDC & HCDA EXEMPTIONS PLEASE

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HB1292

Submitted on: 2/20/2013

Testimony for FIN on Feb 21, 2013 11:00AM in Conference Room 308

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Alicia Morrier | Individual | Support | No |

Comments:

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FINTestimony

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Subject: *Submitted testimony for HB1292 on Feb 21, 2013 11:00AM*

HB1292

Submitted on: 2/21/2013

Testimony for FIN on Feb 21, 2013 11:00AM in Conference Room 308

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Dana G. Moss | Individual | Support | No |

Comments:

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