



**COMMENTS OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

S.B. NO. 51, S.D. 1, RELATING TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Friday, February 22, 2013

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 211

WRITTEN COMMENTS ONLY. For more information, call
Pamela K. Matsukawa, Deputy Attorney General, at 587-2990

Chair Ige and Members of the Committee:

The Department of the Attorney General opposes section 2 of this bill.

This bill proposes to require the Department of Land and Natural Resources and the Sand Island Business Association, a private entity, to negotiate and exchange Sand Island Industrial Park state-owned property for private properties by June 30, 2014; to appropriate \$21,000,000 out of general revenues for fiscal year 2013-2014 and the same for fiscal year 2014-2015 for the construction of amenities to be included in a long-term comprehensive master plan for Sand Island; and to appropriate \$8,000,000 out of general revenues for fiscal year 2013-2014 and the same for fiscal year 2014-2015 for the management and administrative costs of the State Parks Division of the Department of Land and Natural Resources.

The Department of the Attorney General opposes section 2 of the bill regarding the exchange of state-owned land at Sand Island Industrial Park for private properties because this provision of the bill amounts to special legislation that is prohibited by the Hawaii Constitution in article XI, section 5, which provides as follows:

The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof.

Article XI, section 5, mandates that legislation for lands owned or controlled by the State must be in the form of general laws, as opposed to special laws. Section 2 of the bill, if enacted,

would be a special law unconstitutionally requiring the transfer of this state land to the Sand Island Business Association, a private entity.

The intent of the framers of this constitutional provision is shown in Standing Committee Report No. 78, 1 Proceedings of the Constitutional Convention of Hawaii of 1950, at 233 (1960), in which the following was stated:

This section reiterates the legislative power of the State but does provide for the restriction that in administering or disposing of the natural resources the legislature must do so by general law. This is to control dissipation of assets by land exchanges under private laws or by homestead laws governing a particular tract of land and the like, however, it does not require a general law for a land transaction between departments of government.

Because section 2 of this bill would violate article XI, section 5, of the Hawaii Constitution, we respectfully ask the Committee to delete section 2 from this bill.

From: mailinglist@capitol.hawaii.gov
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Cc: tabraham08@gmail.com
Subject: *Submitted testimony for SB51 on Feb 22, 2013 09:00AM*
Date: Tuesday, February 19, 2013 10:29:39 AM

SB51

Submitted on: 2/19/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LATE

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Testimony of
WILLIAM J. AILA, JR
Chairperson

Before the Senate Committee on
WAYS AND MEANS

Friday, February 22, 2013
9:00 AM
State Capitol, Conference Room 211

In consideration of
SENATE BILL 51, SENATE DRAFT 1
RELATING TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES

Senate Bill 51, Senate Draft 1, proposes to require the Department of Land and Natural Resources (Department) and the Sand Island Business Association (SIBA) to negotiate an even, fair and equitable exchange of the State's Sand Island Industrial Park property for other private properties, to be completed before June 30, 2014. The bill also appropriates funds for construction of amenities included in a long-term comprehensive master plan for the Sand Island ocean recreation park, and appropriates funds to the Division of State Parks for general management and administrative costs. **The Department vigorously opposes the exchange portion of the measure, and has concerns about the appropriations to the Department's Division of State Parks.**

The Sand Island Industrial Park consists of 113 subdivided lots served by roadways and other infrastructure, and covers approximately 69.119 acres of State lands. SIBA is the State's master lessee. It manages the property, collects rents from the sublessees, and pays ground rent to the Department. Act 235, Session Laws of Hawaii 2011, authorized the Department to consider a sale or exchange of the industrial park to "leaseholders". Pursuant to Act 235, the Department contracted for an independent appraisal of the fair market value of the industrial park. In a Summary Appraisal Report dated May 10, 2012, the appraisal firm of Hastings, Conboy, Braig & Associates determined that the unencumbered fee simple interest in the land underlying the 113 individual lots within the industrial park was valued at \$175,670,000 as of May 7, 2012.

The industrial park is of immense importance for sustaining the ongoing operations of the Department. The Board of Land and Natural Resources (Board) previously determined that the Department should utilize a portion of the lands it manages, including the industrial park, to generate revenues to carry out its fiduciary duties and support the Department's operations and

management of public lands and programs. This is especially critical at this time due to the State's struggling economy. The lease revenues generated by the industrial park constitute about 50% of all lease revenues currently supporting the Department's Special Land Development Fund.

To date, SIBA has identified no private properties to be considered for exchange. Nevertheless, on January 25, 2013, Item D-11, an informational briefing was held for the Board on the results of the appraisal and SIBA's request for a land exchange. The Department advised the Board that it does not recommend an exchange unless the value of the exchange property substantially exceeds the value of, and revenues from, the industrial park, so that the Board is compensated for the loss of its single most important revenue asset and the imposition of greater financial risks. A straight exchange (value for value) would not serve a public purpose or be in the best interest of the State. If the Board were inclined to pursue the exchange, the Department's recommendation was that the State receive the land value of the industrial park, plus a significant incentive premium for the Board, and an income stream with a present value that is equal to or greater than the present value of the income stream under the remaining term of the SIBA lease. Otherwise, there would be no good reason for the Board to consider the sale or exchange of this valuable asset.

Several divisions within the Department submitted testimony in at the January 25, 2013 Board meeting in opposition to the concept of an exchange. The divisions recognized the importance of the industrial park revenues to the operations of the Department for such things as the dam safety program, the geothermal program, the protection of threatened and endangered species, eradication and control of invasive species, and fighting wildland fires. Copies of these testimonies are attached. Mandating the exchange of the industrial park to SIBA in return for private lands of only an equal value is a mandate to the Board to breach its fiduciary duty.

Senate Bill 51 also proposes to appropriate \$21,000,000 or so much thereof as may be necessary for Fiscal Year 2013-2014 and the same sum or so much thereof as may be necessary for Fiscal Year 2014-2015, for the construction of amenities included in the Sand Island ocean recreational park master plan. The bill also appropriates \$8,000,000 for each of Fiscal Years 2013-2014 and 2014-2015 for management and administration costs of the State Parks. The Department appreciates the intent of the bill but is concerned with the potential impact on the Administration's Biennium Budget request. The Department notes that the Administration's request before the 2013 Legislature includes \$11,000,000 of CIP funding for the development of the Sand Island ocean recreational park for Fiscal Year 2013-2014.