



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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IN REPLY REFER TO:

March 3, 2016
2:00 p.m.
State Capitol, Room 309

**H.B. 2407, H.D. 2
RELATING TO LAND DISPOSITIONS**

House Committee on Finance

The Department of Transportation (DOT) **strongly supports** H.B. No. 2407, H.D. 2, as part of the Administration's Package.

This measure aims to clarify and address the original intent of §171-59(b), Hawaii Revised Statutes (HRS), to protect and promote small or threatened aeronautical and maritime-related businesses and operations by delegating to the DOT greater flexibility to lease harbor and airport lands and facilities through direct negotiation.

Departments that have public lands set aside to them by the governor through executive orders under §171-11, HRS, for the departments' purposes are already empowered to exercise the powers of the Board of Land and Natural Resources (Board). That section states in relevant part:

§171-11 Public purposes, lands set aside by the governor; management.
* * *

. . . Such department, agency of the State, the city and county, county, or other political subdivisions of the State in managing such lands **shall be authorized to exercise all of the powers vested in the board in regard to the issuance of leases, easements, licenses, revocable permits, concessions, or rights of entry** covering such lands for such use as may be consistent with the purposes for which the lands were set aside on the same terms, conditions, and restrictions applicable to the disposition of public lands, as provided by this chapter all such dispositions being subject to the prior approval of the board;. . .
(Emphasis added)

In addition to this general delegation, DOT was granted a specific delegation to directly negotiate certain land dispositions on behalf of the Board for airports and maritime

operations under §171-59(b), HRS, outside of the public auction requirement. In empowering the DOT to directly negotiate, the Legislature recognized the unique nature of these operations finding that they were tantamount to public utilities. The 1970 Senate expressed the legislative intent for the then proposed amendment to §171-59(b), which was enacted into law, stating:

A new Section 2 has been added to the bill which would amend Section 171-59(b) of the statutes. This amendment would permit the board to dispose of public lands for marine and maritime operations by negotiation without the necessity of going through a public auction, thereby allowing for marine and maritime operations the same procedure as allowed for its counterparts in transportation – airline and aircraft operations. **The reason for exempting these operations from public bidding is to prevent large operations from squeezing the smaller ones out although the larger company may not even need the leased facility. The amendment would enable the State to get the maximum use from its harbors as well as its airports.** Your Committee recognizes that the best interests for the State are usually better protected by disposing of by public auction because it is more democratic and in the long run results in more income to the State. **However, where the lease is to airports and maritime operations which are public utilities by nature the prime interest is service to the public and the preservation of competition in addition to income.**

Sen. Stand. Com. Rep. No. 876-70, H.B. 974, H.D. 1, S.D. 1 (emphasis added).

More recently, in Regular Session 2003, the Twenty-Second Legislature, adopted Conference Committee Report 96, S.B. No. 1403, H.D. 1, C.D. 1, stating:

The purpose of this measure is to give the . . . Department of Transportation greater flexibility to lease . . . lands and facilities to broader variety of users, subject to the approval of the Board of Land and Natural Resources.

The DOT is best suited to manage lands under its jurisdiction, especially with regard to land dispositions for aeronautic, airport-related, maritime, and maritime-related uses. The department is directly connected to these industries and operations and best

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H. B. No. 2407, H.D. 2

(Date of hearing)

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understands the industries' needs. The interpretation of §171-59(b), HRS, as currently written requires Board approval of these dispositions and this approval process minimizes the DOT's control of these dispositions and delays the award of these dispositions. However, in light of the legislative history of the delegation of the Boards' land disposition powers to DOT, and the further delegation to directly negotiate airports and maritime related dispositions, the Board's review of these dispositions should be ministerial.

Given the critical role that these facilities, and the lands under these facilities play in the State's economy, it is prudent for the function of the disposition of the public lands that support these operations be controlled by the Department of Transportation.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

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SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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AQUATIC RESOURCES
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BUREAU OF CONVEYANCES
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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

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
FINANCE**

**Thursday, March 3, 2016
2:00 P.M.
State Capitol, Conference Room 308**

**In consideration of
HOUSE BILL 2407, HOUSE DRAFT 2
RELATING TO LAND DISPOSITIONS**

House Bill 2407, House Draft 2, proposes to amend the public lands statute, Hawaii Revised Statutes (HRS) Chapter 171, to exempt the Department of Transportation's (DOT) issuance of leases and other dispositions on state lands from prior approval by the Board of Land and Natural Resources (Board). **The Department of Land and Natural Resources ("Department") offers the following comments on this measure.**

The lands that comprise the airports and harbors under DOT's jurisdiction are set aside to it by Governor's executive order approved by the Board pursuant to HRS Section 171-11. That section provides that when lands are so set aside, the agency holding the executive order must obtain the approval of the Board for any dispositions longer than 14 days.

DOT currently brings proposed dispositions at its airports and harbors to the Board for approval at the Board's regularly scheduled public meetings. Under House Bill 2407, House Draft 2, DOT seeks to amend existing law to provide that Board approval of these dispositions will no longer be required. Instead, DOT will have sole decision-making authority regarding dispositions on lands set aside to it, and can make these dispositions by direct negotiation if DOT finds that such action encourages competition.

The Department notes that the public policy purpose for all land dispositions, especially those issued by direct negotiation outside the public auction process, is to ensure independent review by the Board at an open meeting held pursuant to HRS Chapter 92. The State has limited land

resources, and decisions affecting these lands are intended to be made in the open and subject to public testimony. This provides a transparent public process for important decision-making.



KA LĀHUI HAWAI'I
POLITICAL ACTION COMMITTEE

BEFORE THE HOUSE COMMITTEE ON FINANCE

March 3, 2016

House Bill No. 2407 HD2
Relating to Land Dispositions

Aloha Chair Luke, Vice Chair Nishimoto and Members of the Committee:

The Ka Lahui Hawai'i Political Action Committee (KPAC) affirms and defends our Hawaiian peoples' right to over 1.8 million acres of our national lands.

KPAC submits the following testimony in opposition to HB 2407 HD2. This bill would allow the Department of Transportation to negotiate the disposition of lands under its jurisdiction and control without the approval of the Board of Land and Natural Resources.

Professor Williamson Chang of the UH Law School has detailed his analysis that the Joint Resolution was incapable of acquiring Hawaii at http://blog.hawaii.edu/aplpj/files/2015/09/APLPJ_16_2_Chang.pdf. Despite this analysis, the former Crown and government lands of the Kingdom of Hawaii were illegally transferred to the US and as a condition of Statehood was transferred to the State of Hawaii to be held as a public trust for 5 purposes including the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920. The Admissions Act further states that any other object besides the 5 purposes shall constitute a breach of trust for which suit may be brought by the United States.

Much of the lands under the jurisdiction and control of the Department of Transportation are public trust lands currently under State control that should require additional oversight and approval.

Respectfully Submitted,



Healani Sonoda-Pale
KPAC Chair



HB2407 HD2
RELATING TO LAND DISPOSITIONS
House Committee on Finance

March 3, 2016

2:00 p.m.

Room 308

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB2407 HD2, which authorizes the Hawai‘i Department of Transportation (HDOT) to negotiate the disposition of lands under its control for certain uses, without the approval of the Board of Land and Natural Resources (BLNR).

OHA expresses serious concern regarding this measure, because it may deprive the public and other agencies of any opportunity to review and comment on the potential long-term disposition of some of our state’s most lucrative public lands, including public land trust lands held in trust for the benefit of Native Hawaiians and the general public.

As a state board, the BLNR is subject to Hawai‘i’s Public Agency Meetings and Records Law (the “Sunshine Law”), which requires prior notice of nearly all board and commission meetings, and which provides the public with the right to review and testify on meeting agenda items.¹ Accordingly, land leases subject to BLNR approval must be considered in an open BLNR meeting, where they may be reviewed and vetted by experts, agencies, stakeholders, and other members of the public. Such review can ensure that decisions are fully informed, and made in the best interest of the state and its people. Furthermore, public and agency review can facilitate accountability and compliance with important legal requirements, including environmental review processes, constitutional obligations with respect to Native Hawaiian rights, and the fiduciary obligations of the state in administering public lands and the public land trust.

By exempting certain HDOT leases from BLNR approval, HB2407 HD2 could effectively revoke the public’s ability to review and participate in the disposition of some of our most lucrative public lands, including airport and commercial harbor lands within the public land trust. Unlike the BLNR, HDOT does not have a governing board or commission subject to the open meeting requirements of our Sunshine Law. Therefore, by removing all BLNR oversight over HDOT airport and maritime leases, such leases could be negotiated and issued by the HDOT with no opportunity for public review or

¹ According to Hawai‘i Revised Statutes Section 92-1, the legislature declared that “[o]pening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public’s interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible.” See HRS § 92-1.

comment. Given the length of time for which leases could be issued -- including seventy years in the case of maritime leases -- any oversights or lost opportunities resulting from the lack of public participation may carry ramifications that last for generations.

In light of these concerns, OHA urges the Committee to **HOLD** HB2407 HD2.
Mahalo for the opportunity to testify.