

SB 2937

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON P.E.
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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committee on
WATER, LAND AND AGRICULTURE
and
TRANSPORTATION AND ENERGY

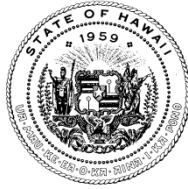
Tuesday, February 16, 2016
3:05 P.M.
State Capitol, Conference Room 229

In consideration of
SENATE BILL 2937
RELATING TO LAND DISPOSITIONS

Senate Bill 2937 proposes to amend the public lands statute, Hawaii Revised Statutes (HRS) Chapter 171, to exempt the Department of Transportation's (DOT) issuance of revocable permits 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 Senate Bill 2937, DOT seeks to amend existing law to provide that Board approval of revocable permits issued by DOT will no longer be required. Instead, DOT will have authority to issue revocable permits on lands set aside to it "by direct negotiation and without public auction, under conditions and rent which will best serve the interests of the State."

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 by DOT.



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

February 16, 2016
3:05 p.m.
State Capitol, Room 229

S.B. 2937
RELATING TO LAND DISPOSITIONS

Senate Committee(s) on Transportation and Energy
& Water, Land and Agriculture

The Department of Transportation (DOT) **strongly support** S.B. No. 2937 as part of the Administration's Package.

The DOT is best suited to manage lands it owns and controls, especially with regard to land dispositions for aeronautic, airport-related, maritime, and maritime-related uses because it is most directly connected to these industries and operations and can best adapt and adjust to accommodate industry needs. In addition, the DOT must comply with Federal regulations to preserve grant assurance funding in managing its lands.

The bill facilitates more efficient use of lands owned and controlled by DOT that support and sustain the State's economy.

In 1993, the Board of Land and Natural Resources (BLNR) approved the delegation of authority to DOT to issue revocable permits for uses that are consistent with the purpose and intent of the public lands set aside through Executive Orders. It has recently been determined that this delegation of authority was not proper.

This bill clarifies the statutes to allow leases and the disposition of revocable permits without approval by BLNR. The time constraints associated with presenting leases and short-term land dispositions to BLNR result in unnecessary delays and loss of rental revenues. In addition, the work hours to prepare each submittal to BLNR for each revocable permit is labor intensive, time consuming and repetitious. Finally, this delegation will reduce the work load on BLNR.

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 DOT.

Thank you for the opportunity to provide testimony.



SB2937

RELATING TO LAND DISPOSITIONS

Senate Committee on Water, Land, and Agriculture
Senate Committee on Transportation and Energy

February 16, 2016

3:05 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB2937, which authorizes the Hawai'i Department of Transportation (HDOT) to issue revocable permits for lands under its control, 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 of any opportunity to review and comment on the use of some of our 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, BLNR actions, including the approval of HDOT revocable permits, must be considered in an open 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.

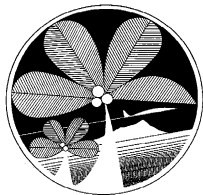
By exempting certain HDOT revocable permits from BLNR approval, SB2937 could effectively remove the public's ability to review and participate in the disposition of some of our most lucrative public lands, including airport and commercial harbor lands within the public land trust. Unlike the BLNR, HDOT

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.

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 revocable permits, such permits could be negotiated and issued by the HDOT without the benefit of public review or comment. Notably, as indicated by a recent BLNR agenda item, revocable permits may entail the use of parcels of a hundred acres or more, for uses ranging from aircraft fueling to agriculture, and for fees ranging from a few hundred dollars to several hundred thousand dollars per acre. Combined with the fact that permits may be reissued an indefinite number of times, such broad authority over such significant parcels of land strongly counsel the retention of public oversight and review of HDOT permitting activities.

In light of all these concerns, OHA urges the Committees to **HOLD** SB2937. Mahalo for the opportunity to testify on this measure.

AIRLINES COMMITTEE OF HAWAII



Honolulu International Airport
300 Rodgers Blvd., #62
Honolulu, Hawaii 96819-1832
Phone (808) 838-0011
Fax (808) 838-0231

February 16, 2016

Honorable Mike Gabbard, Chair
Honorable Clarence Nishihara, Vice Chair
Senate Committee on Water, Land, and Agriculture

Honorable Lorraine Inouye, Chair
Honorable Mike Gabbard, Vice Chair
Senate Committee on Transportation and Energy

Re: SB 2937 – RELATING TO LAND DISPOSITIONS – SUPPORT
Conference Room 229 – 3:05 PM

Aloha Chairs Gabbard and Inouye and Members of the Committee:

The Airlines Committee of Hawaii* (ACH), which is made up of 20 signatory air carriers that underwrite the State Airport System appreciates the opportunity to offer testimony supporting SB 2937.

This measure authorizes the Department of Transportation (DOT) to issue revocable permits without approval of the Board of Land and Natural Resources.

The ACH supports this measure, but prefers SB 2936 which also is applicable to leases of airport property.

Thank you for the opportunity to submit testimony.

Sincerely,

Blaine Miyasato
ACH Co-chair

Matthew Shelby
ACH Co-chair

**ACH members are Air Canada, Air New Zealand, Alaska Airlines, All Nippon Airways/Air Japan, Aloha Air Cargo, American Airlines, China Airlines, Delta Air Lines, Federal Express, Fiji Airways, Hawaiian Airlines, Island Air, Japan Airlines, Korean Air, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, Virgin America and WestJet.*



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

SENATE COMMITTEES ON WATER, LAND, AND AGRICULTURE
and
TRANSPORTATION AND ENERGY

February 16, 2016

TESTIMONY ON SB 2937
RELATING TO LAND DISPOSITIONS
Room 229
3:05 PM

Aloha Chairs Gabbard and Inouye, Vice Chair Nishihara, and Members of the Committees:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

The Hawaii Farm Bureau respectfully expresses **concerns regarding SB 2937**, "Relating to Land Dispositions," which would allow the Department of Transportation to issue revocable permits without approval of the Board of Land and Natural Resources. We are concerned that giving DOT full control of such land disposition, which may include submerged lands under joint control with DLNR, may negatively impact existing or proposed aquaculture operations. Although aquaculture appears to be in a separate category from "maritime and maritime-related operations" as defined in the bill, "sale, processing, and canning of fish products" (the first two of which are often carried out by aquaculture operations) do qualify as maritime-related. Thus, there is a gray area which may allow DOT sole discretion regarding applications for aquaculture and aquaponic permits on lands or in waters near airports, harbors, or other facilities under DOT control or joint control.

In 2014, the annual value of Hawaii's aquaculture production reached \$78 million, a 40% increase over 2012, making aquaculture one of the most valuable sectors of Hawaii's diversified agriculture. There is substantial potential for further increases if leases remain available for nearshore and offshore sites. Unfortunately, DOT has historically taken a negative view of aquaculture operations near lands under its control. Most of Hawaii's aquaculture operations are near airports and/or harbors, as are most of the suitable sites for future facilities both onshore and offshore.

It can take years to negotiate a long-term lease for an aquaculture site, and a revocable permit may in some cases be the only practical way to get a facility started. We are therefore concerned that approval of SB 2936 as written **may seriously restrict aquaculture's future contribution to Hawaii's economy, and we respectfully ask that you consider the potential impact on this critical agricultural sector.**

Thank you for your consideration of our testimony.

BEFORE THE SENATE COMMITTEES ON WATER LAND & AGRICULTURE AND
TRANSPORTATION AND ENERGY

February 16, 2016

Senate Bill No. 2937
Relating to Land Dispositions

Aloha Chairs Mike Gabbard, Lorraine Inouye, Vice Chairs Clarence Nishihara, Mike Gabbard and
Members of the Committees:

The Ka Lāhui 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 SB 2937. This bill would allow the BLNR to delegate the authority to approve revocable permits for the use of public lands under the jurisdiction of the DOT to the Director of Transportation and exempts the revocable permits issued by the DOT from BLNR approval requirements as well as public auction and public advertisement for sealed tender requirements.

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 DOT are public trust lands currently under State control that should require additional oversight and approval.

Respectfully Submitted,



Healani Sonoda-Pale
KPAC Chair

From: mailinglist@capitol.hawaii.gov
To: [WLA Testimony](#)
Cc: rkailianu57@gmail.com
Subject: *Submitted testimony for SB2937 on Feb 16, 2016 15:05PM*
Date: Thursday, February 11, 2016 9:28:18 AM

SB2937

Submitted on: 2/11/2016

Testimony for WLA/TRE on Feb 16, 2016 15:05PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Oppose	Yes

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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From: mailinglist@capitol.hawaii.gov
To: [WLA Testimony](#)
Cc: hawaiifishingfanatic@gmail.com
Subject: *Submitted testimony for SB2937 on Feb 16, 2016 15:05PM*
Date: Monday, February 15, 2016 10:52:56 PM

SB2937

Submitted on: 2/15/2016

Testimony for WLA/TRE on Feb 16, 2016 15:05PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Don Aweau	Individual	Oppose	No

Comments:

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