

STAND. COM. REP. NO.

3339

Honolulu, Hawaii

MAR 28 2018

RE: S.C.R. No. 133  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawaii

Sir:

Your Committee on Water and Land, to which was referred  
S.C.R. No. 133 entitled:

"SENATE CONCURRENT RESOLUTION AUTHORIZING THE ISSUANCE OF A  
TERM LEASE COVERING A PORTION OF STATE SUBMERGED LANDS AT  
KAHALU'U, NORTH KONA, ISLAND OF HAWAI'I,"

begs leave to report as follows:

The purpose and intent of this measure is to provide  
legislative authorization for the issuance of a term lease  
covering a portion of state submerged lands at Kahalu'u, North  
Kona, Island of Hawai'i, by the Board of Land and Natural Resources  
for educational, cultural, and historic site preservation  
purposes.

Your Committee received testimony in support of this measure  
from the Department of Land and Natural Resources, Kamehameha  
Schools, and O'ahu County Committee on Legislative Priorities of  
the Democratic Party of Hawai'i.

Your Committee finds that the Trustees of the Estate of  
Bernice Pauahi Bishop propose to use land in North Kona as part of  
the Kahalu'u Ma Kai Educational and Cultural Complex to serve as a  
center of Kamehameha Schools' 'aina- and cultural-based educational  
offerings in the West Hawai'i region. As part of the Kahalu'u Ma  
Kai Educational and Cultural Complex, the Trustees of the Estate  
of Bernice Pauahi Bishop propose to include a managed public



access plan and the restoration and interpretive management of several sacred heiau and the Pa o Ka Menehune Fishpond. Accordingly, the lease will be for the preservation and management of these historic archaeological sites, and commercial activity or development will be prohibited in the lease area. Furthermore, managed public access will allow the public access to submerged land areas that do not encroach onto the cultural and historical resource areas.

Your Committee further finds that the subject area fronting the property identified as Tax Map Key: (3) 7-8-013: portions of 002 and 043, Kahalu'u, North Kona, Island of Hawai'i, are placed on state submerged lands. The Trustees worked with the Department of Land and Natural Resources to resolve the location of the shoreline and the ownership of the submerged lands, which resulted in the two parties "agreeing to disagree" and specifically reserving all rights, claims, and defenses. Thus, the Board of Land and Natural Resources approved a sixty-five year direct lease to the Trustees of the Estate of Bernice Pauahi Bishop for the use of state submerged lands for educational, cultural, and historic site preservation purposes on February 9, 2018.

Your Committee also finds that the lands subject to the lease consist of approximately 3.992 acres. The Estate of Bernice Pauahi Bishop is a certified tax exempt eleemosynary organization under section 501(c)(3) of the Internal Revenue Code of 1986. Accordingly, the Board of Land and Natural Resources approved the direct lease at gratis. Since the Board of Land and Natural Resources has met all relevant statutory prerequisites, this measure authorizes the issuance of a term lease in accordance with section 171-53, Hawaii Revised Statutes.

Your Committee notes that section 171-43.1, Hawaii Revised Statutes, authorizes the Board of Land and Natural Resources to lease, at a nominal consideration, public lands to an eleemosynary organization that has been certified to be tax exempt under section 501(c)(1) or 501(c)(3) of the Internal Revenue Code. According to the written testimony submitted by the Department of Land and Natural Resources, the Board of Land and Natural Resources approved the direct lease at gratis. Your Committee is concerned that approving the direct lease at gratis may not comply with the nominal consideration requirement under section 171-43.1, Hawaii Revised Statutes.



Accordingly, your Committee has amended this measure by conditioning legislative authorization of the direct lease upon the parties determining nominal consideration for the lease pursuant to section 171-43.1, Hawaii Revised Statutes.

Your Committee further notes that determining nominal consideration for the lease may require the Board of Land and Natural Resources to amend the lease.

As affirmed by the record of votes of the members of your Committee on Water and Land that is attached to this report, your Committee concurs with the intent and purpose of S.C.R. No. 133, as amended herein, and recommends that it be referred to your Committee on Ways and Means, in the form attached hereto as S.C.R. No. 133, S.D. 1.

Respectfully submitted on  
behalf of the members of the  
Committee on Water and Land,



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KARL RHOADS, Chair



