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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
JUDICIARY

Wednesday, February 13, 2019
2:01 PM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 589, HOUSE DRAFT 1
RELATING TO THE LAND CONSERVATION FUND

House Bill 589, House Draft 1, proposes (1) to require that the Department of Land and Natural Resources (Department) fully implement, within a period of ten months or less, five of the eleven recommendations found in the January 2019 audit of the Land Conservation Fund (Fund); (2) to limit access for the Division of Forestry and Wildlife (DOFAW), but not for other State agencies, to receive funding from the land conservation fund through the grant application process only, thereby restricting the ability of the legislature to award funds to benefit the public; and (3) to empower the Auditor, without intervening legislative review, to determine the Department's compliance with this legislative mandate and to conduct, based on that determination, a comprehensive financial and management audit of the entire Department. **The Department acknowledges the intent of this bill to foster improvements in the Department's administration and management of the Land Conservation Fund and offers the following comments and concerns.**

The Legacy Land Conservation Program (LLCP) is an important, popular, and highly successful public-private partnership that achieves its statutorily authorized program purposes. Since the LLCP obtained a dedicated source of funding in 2005, LLCP has completed thirty acquisitions of land, listed on the LLCP website at <http://dlnr.hawaii.gov/ecosystems/llcp/projects>, and has closed each transaction within one to five years of funding approval. LLCP performs in a rigorous, transparent, and cost-effective manner that maximizes return on State investments.

The Department's response to the Land Conservation Fund audit acknowledged a brief period in FY 2016 and 2017 of shortcomings in program management due to vacancies in three key positions. This resulted in lapsed grant funds (\$2.2 million, which did not leave LLCP) and

unnecessary payment of \$684,256 of central service fees. DLNR never encumbered or expended funds for which it did not already have legislative budget appropriation.

The Department responds to particular sections of this proposed bill as follows, and stands opposed to the adoption to the entirety of Section 4(2) and Section 6 of the proposed measure.

SECTION 2. Resource land acquisition plan

In our December 2018 response to the draft audit report, the Department described a commitment for completing a resource land acquisition plan using funding from our FY20 and FY21 budgets for contractor assistance. Companion measures introduced this session in each chamber (HB264 and SB703) propose a completion deadline of June 30, 2021, which the Department believes provides a timeframe that is more reasonable to achieve, with a high-quality product, than January 1, 2020. We note that the Office of the Auditor, in its previous testimony on this measure, stated “that two years is a reasonable amount of time for the department to implement recommendations, where one year may be premature.” Changing the due date for the resource land acquisition plan from January 1, 2020 to June 30, 2021 (page 4, line 2, and page 5, line 20) would result in a more thorough and useful plan to guide BLNR in acquiring land that has value as a resource to the State, which, as required by statute, satisfactorily considers all plans prepared by all State and county agencies, relating to the acquisition of such land.

SECTION 3. Trust account reporting

In our December 2018 response to the draft audit report, the Department committed to revising our annual report to the legislature to include a synthesis of existing records of each transfer of money from the Land Conservation Fund to the Department trust account and from the trust account back to the Land Conservation Fund. This will provide a single record that serves as a transfer listing of all Land Conservation Fund grant moneys transferred to the trust account.

SECTION 3. Policies and procedures

(1) and (2) In our December 2018 response to the draft audit report, the Department committed to updating its existing, written, internal procedures (provided to the audit team during the audit process) that guide the grant award and blanket encumbrance process. BLNR sets policy for Department operations, so any initiative to develop and implement written policies governing the grant award and blanket encumbrance processes, beyond those that already exist in administrative rules and those already implemented through the DLNR Administrative Services Office, would require BLNR approval.

(3) In our December 2018 response to the draft audit report, the Department committed to continue its ongoing file centralization process [which we accelerated in order to fulfill the audit team’s information requests, using methods and timelines agreed upon in advance by the audit team and the Department] and its ongoing review of records retention policies for an approved grant award. The Department also explained that the Division of Forestry and Wildlife (DOFAW) maintains central records for the grant process and overall program functions. However, the grant-funded land acquisition process involves two types of conveyances, one of which results in State ownership of a real property interest. The Land Division is required to maintain official, central records for State land acquisitions, regardless of funding source, while DOFAW maintains official, central records for land acquisitions completed by a state, county, or private entity under a Legacy

Land Conservation Program Grant Agreement. Therefore, in order to avoid duplication of effort in maintaining a centralized file system, the Department plans to implement a centralized file directory for multiple file repositories, rather than maintaining a single centralized file archive.

Given the broad, policy-based, and cross-divisional nature of these recommendations, the Department believes that two years is a reasonable amount of time for implementation, whereas one year may be premature. Changing the due date for the completion of these tasks from January 1, 2020 to June 30, 2021 (page 7, line 14) would result in work products that are more comprehensive, more user-friendly, and more widely accepted for ongoing improvement of program operations.

SECTION 4(2), Division of Forestry and Wildlife access to the Land Conservation Fund

The Department emphasizes that Division of Forestry and Wildlife (DOFAW) pursuits of funding from the Land Conservation Fund have been consistent with Chapter 173A. Although it is within the purview of the Legislature to amend the statute to re-engineer, by law, available funding mechanisms, we believe that the Legislature should not require that the Department adopt internal policies and implementing procedures, only, that may contradict existing statutory provisions.

In addition, we note that implementation of this proposed measure would still allow other State agencies that are authorized to hold and manage land having value as a resource to the State (for example the Division of State Parks, Department of Agriculture, Agribusiness Development Corporation, Department of Hawaiian Home Lands, and Office of Hawaiian Affairs)—but not the Division of Forestry and Wildlife (DOFAW)—to submit a budgetary request for an appropriation from the Land Conservation Fund for an applicable land acquisition. Under present circumstances, a State agency can receive funding from the Land Conservation Fund through enactment of that budgetary request or through enactment of a separate, special appropriation bill (for example, two House bills introduced this session as a CIP package for a representative district). In most cases, completing a State land acquisition that received legislative funding requires that BLNR provide final approval in public meeting, and it is difficult for us to conceive of how the legislative appropriation process “reduce[s] accountability and transparency” (page three, lines nine and ten) for any State-funded land acquisition. The Department believes that the proposed restriction (1) would unfairly constrain funding options and strategies for important DOFAW conservation transactions, and (2) would provide an unwarranted advantage for all other State agencies in gaining access to the Land Conservation Fund, and therefore we respectfully oppose this entire section of the proposed measure.

SECTION 5, Progress Report

We note that that Office of the Auditor follows a standard process and timeline for evaluating the implementation of its recommendations and publishing the results of that evaluation, and we prefer that interim reporting to the Legislature alone, if any, be included in the required annual report rather than provided under separate cover.

SECTION 6, Monitoring of the Department

The Department notes that that Office of the Auditor follows a standard process and timeline for evaluating the implementation of its recommendations and publishing the results of that evaluation. We believe that the Land Conservation Fund should not be treated differently than

other auditees, especially given the widespread popularity of and support for the Legacy Land Conservation Program and the obvious and substantial importance, significance, and value of its achievements. It is more appropriately within the purview of the Legislature, rather than the Auditor, to make a final determination about the Department's compliance with legislative requirements. The Office of the Auditor is not otherwise authorized by law to enforce its findings and recommendations against another agency, and the proposed measure does not provide a due process mechanism for the Department to contest the Auditor's findings about Department compliance with legislative provisions. Thus it would be extreme, unprecedented, unreasonable, and unjustified for the Legislature to provide for a comprehensive audit of an entire department that would be based on the Auditor's determination of legal compliance for a single program, for which the Department would not have an opportunity to respond and the Legislature itself did not have an opportunity to review and concur. As noted by the Office of the Auditor, in its previous testimony on this measure, "a 'full financial and management audit of [DLNR]' may be overly broad." The Department respectfully opposes this entire section of the proposed measure.

Thank you for the opportunity to comment on this measure.



HOUSE COMMITTEE ON JUDICIARY
The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair

H.B. NO. 589, H.D. 1, RELATING TO THE LAND CONSERVATION FUND

Hearing: Wednesday, February 13, 2019, 2:01 p.m.

The Office of the Auditor **supports** the intent of H.B. No. 589, H.D. 1, which requires the Department of Land and Natural Resources (DLNR) to implement certain recommendations made in our Report No. 19-01, *Audit of the Department of Land and Natural Resources' Land Conservation Fund*.

Our audit found that DLNR has struggled to properly manage the Legacy Land Conservation Program. We recommended, among other things, that DLNR develop a Resource Land Acquisition Plan, as required by Section 173A-3, HRS, to guide its land conservation activities, which currently are opaque and appear arbitrary; that DLNR promulgate policies and procedures governing the grant award process to ensure that available funds are properly encumbered and that Land Conservation Fund moneys are used only for costs directly related to the Legacy Land Conservation Program; and that DLNR accurately track and report the program funds that are held in DLNR's trust account. We believe that these recommendations, and others included in Report No. 19-01, will ensure that DLNR achieves the statutory purpose of the Legacy Land Conservation Program.

As part of every audit, we offer recommendations with the intent of improving an agency's operations, but agencies may disregard certain recommendations and do little to address our audit findings. Given the importance of the Legacy Land Conservation Program, which is intended to protect public lands for future generations, we agree with the Legislature's intent to require DLNR to implement certain of our recommendations to address issues that we found with DLNR's current management of the program.

Thank you for considering our testimony related to H.B. No. 589, H.D. 1.

LATE

HB-589-HD-1

Submitted on: 2/12/2019 8:04:14 PM

Testimony for JUD on 2/13/2019 2:01:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|-------------------------------------------------------------------------------------|---------------------------|---------------------------|
| Melodie Aduja | O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i | Support | No |

Comments: