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Testimony of
DAWN N.S. CHANG
Chairperson

Before the House Committee on
WATER & LAND

Thursday, February 1, 2024
9:00 AM

State Capitol, Conference Room 430, Via Videoconference

In consideration of
HOUSE BILL 2468
RELATING TO DIRECT NEGOTIATION FOR PUBLIC LAND LEASES

House Bill 2468 proposes to authorize disposition of public land leases for agricultural, commercial, industrial and hotel or resort purposes through direct negotiation. **The Department of Land and Natural Resources (Department) strongly supports this Administration measure.**

This bill proposes to include leases for agricultural, commercial, industrial, and hotel or resort purposes to those eligible for direct negotiation pursuant to Section 171-59(b), Hawaii Revised Statutes (HRS). Although originally intended to ensure that the State received a competitive and fair return for the use of public lands, the current result is exactly the contrary. The public auction process that is normally disposes of leases for these uses has become too protracted, cumbersome and uncertain to the extent that it has discouraged participation by potential lessees. This issue has been identified on multiple occasions by different parties including real estate consultants and potential lease applicants as a deterrent to leasing public lands. Interested parties would need to invest significant time and expense to comply with regulatory requirements such as Chapter 343, HRS, without any expectation of receiving a lease. As a result, properties have remained vacant, generating no income and serving no public benefit, while in some cases incurring significant management costs for the Department.

For instances where the outcome of the public auction is antithetical to its intent, the Department should have the option of issuing a direct lease to meet its fiduciary obligations. This measure would serve to assist in expediting the leasing process, potentially making properties more attractive to prospective lessees. Under these circumstances, awarding a direct lease would result in the creation of a long-term income stream to fund the Department's resource management and protection programs, as opposed to the alternative where no income is generated and additional costs consume the Department's limited operating funds. Conversely, by allowing direct leasing, this measure facilitates the productive use of public lands for agricultural, commercial, industrial, hotel and resort use purposes to create additional jobs, economic development and growth. For agricultural leases, this would provide a modicum of parity with the less restrictive leasing authority provided to the Hawai'i Department of Agriculture. The ability to directly negotiate a new lease with tenants whose leases are expiring would provide greater security and alleviate the uncertainty and burden of the public auction process. This is consistent with what the Department has previously proposed as an alternative to land transfers under Act 90, Session Laws of Hawai'i 2003.

Also, directly negotiating with a potential lessee with a specific, identified project provides the Board of Land and Natural Resources (Board) and Department the opportunity to more effectively review the project to ensure compliance with Chapter 343, HRS, and that the proposed project is consistent with public trust obligations. With a public auction, the uses allowed under the lease are usually broader and more general to avoid favoring a specific bidder.

The Department believes that there are sufficient statutory safeguards to ensure that the public interest is protected in the direct leasing process. Unlike standard leases with an initial term of up to 55 years, direct leases awarded pursuant to Section 171-59, HRS, are limited to a term of 35 years. Furthermore, the rent from these leases would be determined at fair market value¹, ensuring that the State receives appropriate compensation for these leases. Finally, any request to award a direct lease would be transparent, subject to approval by the Board in an open, public meeting, providing the public, including any potential competing parties, with the identity of the potential lessee and an opportunity to review the proposed lease and provide testimony.

Thank you for the opportunity to comment on this measure.

¹ Rents are determined by appraisal at fair market value in accordance with Section 171-17, HRS.

HB-2468

Submitted on: 1/30/2024 5:38:46 PM

Testimony for WAL on 2/1/2024 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
James McCully	Individual	Oppose	Remotely Via Zoom

Comments:

Aloha Chair Ichiyama,

I certainly agree with Section 1 wherein DLNR acknowledges the consequences of their public lands management. In Hilo we literally have hundreds of acres of urban lands, immediate to our airport and existing industrial area, that languish undeveloped and unproductive "*...serving no public benefit*". The purpose of this bill goes on to say that "*expediting the leasing process would potentially make properties more attractive to prospective lessees*". This is undoubtedly true.

In Section 2 of this bill, (2) it states that the disposition (lease) shall not exceed 35 years for industrial, commercial and resort use.

No public benefit will be gained through this bill with onerous conditions such as this.

I don't know anyone who would finance the improvements of a modern development under the current Land Division lease form. Land Division policies are not compatible with current leasing practices statewide. Please review the Colliers "Milltown Report" prepared for DLNR on May 6, 2019.

Going back further, review the Departments "Recreational Renaissance - Plan B, Back to Basics" in 2009 in which the DLNR proposed plans "to increase revenue by increasing lease rental income and from developing vacant urban lands". They have certainly increased lease rents (more than 100% since then) but the appendix that lists the properties to be leased remains unchanged. The Milltown lots as well as the other that were listed then are still available now.

There needs to be a comprehensive review of leasing practices and policies. That review should include industry professionals as well as stakeholders, not just an internally managed report by DLNR.