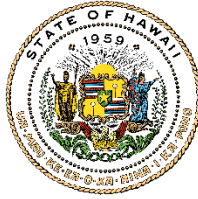


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
RYAN K.P. KANAKA'OLE
FIRST DEPUTY
DEAN D. UYENO
ACTING 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

Testimony of
DAWN N.S. CHANG
Chairperson

Before the House Committee on
FINANCE

Thursday, March 28, 2024
3:30 PM

State Capitol, Conference Room 308, Via Videoconference

In consideration of
SENATE BILL 3157, SENATE DRAFT 2, HOUSE DRAFT 2
RELATING TO DIRECT NEGOTIATION FOR PUBLIC LAND LEASES

Senate Bill 3157, Senate Draft 2, House Draft 2 proposes to authorize disposition of public land leases by direct negotiation for commercial or industrial use on parcels up to five acres. **The Department of Land and Natural Resources (Department) strongly supports this Administration measure.**

This bill proposes to include leases for commercial and industrial purposes for parcels of up to five acres to those eligible for direct negotiation pursuant to Section 171-59(b), Hawaii Revised Statutes (HRS). The Department supports the amendments made by the House Committee on Water & Land in the House Draft 1 of this measure.

As background, although the public auction processes were 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 is 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. These issues are particularly relevant to smaller industrial and commercial lots under five acres that are the focus of this measure. 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 commercial and industrial parcels up to five acres to create additional jobs, economic development and growth. 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.

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 no less than two open, public meetings, 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 testify on this measure.

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

SB-3157-HD-2

Submitted on: 3/27/2024 8:54:05 AM

Testimony for FIN on 3/28/2024 3:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Russell Tsuji	Department of Land and Natural Resources	Support	Remotely Via Zoom

Comments:

Written testimony from DLNR previously submitted on another Capitol account. Request for Zoom link for additional DLNR staff testifying remotely for SB3157 SD2 HD2 as backup.



House Committee on Finance
Chair Kyle T. Yamashita, Vice Chair Lisa Kitagawa

Thursday, March 28, 2024, 3:30 pm, Public Hearing in Conference Room 308 on
SB 3157, SD2, HD2 RELATING TO DIRECT NEGOTIATION FOR PUBLIC LAND LEASES
TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Yamashita, Vice Chair Kitagawa, and Committee Members:

The League of Women Voters of Hawaii opposes SB 3157, SD2, HD2. Eliminating competition for public commercial and industrial leases on parcels up to 5 acres will encourage “pay-to-play” political campaign contributions by lessees who want a lease extension and potentially could politicize the selection of lessees.

The current wording of §171-59(a), HRS, is copied at the bottom of this testimony. March 12, 2024 DLNR testimony on SB 3157, SD2 alleged that:

HRS Section 171-59(a) does not provide for direct leasing; instead, it requires the publication of a Request for Qualifications and a Request for Proposals, the establishment of a selection committee and selection criteria, ranking, and multiple Board approvals of the selected developer, development agreement and ultimately the lease.

The DLNR would like *carte blanche* authority to negotiate non-competitive 35-year public leases. The League believes it would be much more appropriate to amend §171-59(a), HRS, to:

- simplify and expedite the process to determine whether there are multiple applicants willing to pay required minimum rent and comply with other DLNR requirements for any proposed lease;
- simplify and expedite direct lease negotiation when there is only one interested applicant.

§171-59 Disposition by negotiation. (a) A lease of public land may be disposed of through negotiation upon a finding by the board of land and natural resources that the public interest demands it....

After a determination is made to negotiate the disposition of a lease, the board shall:

- (1) Give public notice as in public auction ... of its intention to lease public land through negotiation setting forth the minimum conditions thereunder, the use for which the public land will be leased. Any person interested in securing the lease shall file an application with the board not later than forty-five days after the first publication of the notice;***
- (2) Establish reasonable criteria for the selection of the lessee...***
- (3) Determine the applicants who meet the criteria....***

If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the board.



Cade Watanabe, Financial Secretary-Treasurer

Gemma G. Weinstein, President

Eric W. Gill, Senior Vice-President

March 26, 2024

Committee On Finance
Rep. Kyle T. Yamashita, Chair
Rep. Lisa Kitagawa, Vice Chair

Testimony with comments on SB3157 SD2 HD2

Chair Tarnas, Vice Chair Takayama, and Members of the Committee,

UNITE HERE Local 5 represents 10,000 working people in the hotel, food service and health care industries across Hawaii. We had previously opposed prior versions of SB3157, which would have allowed the State to lease out public land for hotel, resort, agricultural, commercial and industrial uses through direct negotiations with one party, without public notice, without criteria, and without “a finding by the board of land and natural resources that the public interest demands it” as would otherwise be required per HRS 171-59(a). We appreciate the amendments made by the House Committee on Water & Land, which remove hotels and resorts from the list of uses that would circumvent the procurement process. We urge this Committee to support this movement by continuing to exclude these uses per the HD1 version.

We continue to encourage this Committee to consider whether or not it is in the public’s interest or the State’s interest for any public land to be leased without going through the procurement process.

Thank you for your consideration.

SB-3157-HD-2

Submitted on: 3/26/2024 12:05:11 PM

Testimony for FIN on 3/28/2024 3:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Glen Kagamida	Individual	Support	Written Testimony Only

Comments:

STRONG SUPPORT! GREAT IDEA!

MAHALO!