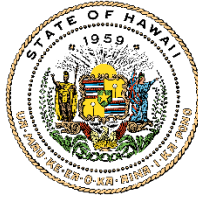


JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

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  
WATER & LAND

Tuesday, March 12, 2024  
9:00 AM

State Capitol, Conference Room 430, Via Videoconference

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

Senate Bill 3157, Senate Draft 2 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). The Department acknowledges the amendments made in Senate Draft 2 by the Senate Committee on Ways and Means but is concerned with the specific amendment that limits the lands eligible for direct negotiation under HRS Section 171-59(b) to “public lands that do not qualify under subsection (a)” of HRS Section 171-59. We believe the committee may have believed that direct leasing is already available to the Department under HRS Section 171-59(a), but that is not true. 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 Department seeks the ability to directly negotiate leases under HRS Section 171-59(b) and to expand the allowable uses to agriculture, commercial, industrial, hotel and resort. Therefore, the Department requests that page 2, lines 1 and 2 of Senate Draft 2 be amended by deleting:

~~“that do not qualify under subsection (a) and that are”.~~

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. 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 value<sup>1</sup>, 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 testify on this measure.

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

**SB-3157-SD-2**

Submitted on: 3/11/2024 9:45:33 AM

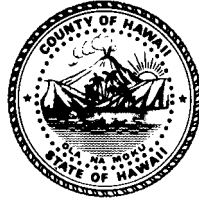
Testimony for WAL on 3/12/2024 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
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 a Zoom link for additional DLNR staff testifying remotely for SB3157 SD2.

**Susan L.K. Lee Loy**  
Council Member  
District 3



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## **HAWAI'I COUNTY COUNCIL**

25 Aupuni Street, Hilo, Hawai'i 96720

March 8, 2024

The Honorable Representative Linday Ichiyama, Chair  
The Honorable Representative Mahina Poepoe, Vice Chair  
Members of the House Committee on Water and Land

Hawai'i State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

### **Re: Support for SB 3157 SD2, relating to Direct Negotiation for Public Land Leases**

Aloha Chair Ichiyama, Vice Chair Poepoe, and Members of the Committee on Water and Land:

Mahalo for the opportunity to provide comments on SB 3157 SD2, which authorizes the disposition of public land leases for agricultural, commercial, industrial, hotel, and resort purposes through direct negotiation.

I appreciate the intent and value of this proposed legislation, recognizing the challenges posed by the current public auction process outlined in section 171-16 of the Hawaii Revised Statutes (HRS). The amendment to section 171-59 seeks to streamline and expedite the leasing process, making it more efficient and appealing to potential lessees. This approach aligns with the evolving needs of our state and encourages responsible utilization of our resources.

While I support the essence of SB 3157 SD2, I would like to share some considerations regarding Section 2 of the bill. Specifically, under Section 2(2), the stipulation that the disposition shall not exceed a maximum term 35 years for industrial, commercial, and resort use might pose challenges for potential lessees in financing improvements. Longer lease terms, as seen in Section 2(2)(B) for aquaculture operations, could be equally appropriate for industrial, commercial, and resort investments, ensuring a conducive environment for sustained development.

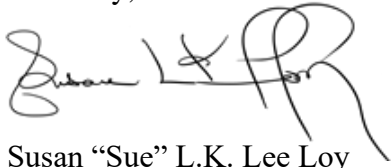
Hawai'i's leasing practices and policies require a comprehensive review to better align with our current economic landscape. The statutory framework established under HRS 171-1 through HRS 171-193 reflects historical precedents that may no longer fully serve the needs of

our modern economy. As our state continues to evolve, we must enact legislation that promotes efficient and responsible use of our scarce resources, particularly in urban areas where economic activity is concentrated.

Furthermore, SB 3157 SD2 represents a positive step forward in modernizing Hawai'i's approach to the disposition of public land leases. By facilitating direct negotiations and considering the diverse needs of lessees, this bill can unlock new opportunities for economic growth and development across various sectors.

Mahalo for considering these comments and for your dedication to advancing legislation that aligns with the evolving needs of Hawai'i and promotes responsible utilization of our resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan L.K. Lee Loy". The signature is fluid and cursive, with a large, stylized "R" at the end.

Susan "Sue" L.K. Lee Loy  
Council Member, County of Hawai'i



Senate Committee on Water and Land  
Chair Lorraine Inouye, Vice Chair Brandon Elefante

Tuesday, March 12, 2024, 9 am, Public Hearing in Conference Room 430 on  
SB 3157, SD2 RELATING TO DIRECT NEGOTIATION FOR PUBLIC LAND LEASES

TESTIMONY

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

Chair Ichiyama, Vice Chair Poepoe, and Committee Members:

**The League of Women Voters of Hawaii opposes SB 3157, SD2.**

§171-59(a), Hawaii Revised Statutes, already allows disposition of public land leases by direct negotiation. This includes extension of existing public leases.

SB3157, SD2 would authorize the DLNR to negotiate and the BLNR to approve negotiated leases for "... public lands that do not qualify..." for a negotiated lease under §171-59(a). Under SB 3157, SD2, the DLNR could select who can negotiate any long-term public land lease:

- Without BLNR determination that disposition by negotiation would be in the public interest;
- Without public notice;
- Without allowing any other interested person to compete for the lease.

SB 3157, SD1 will help anyone who has "political connections". Everyone else, not so much.

Thank you for the opportunity to submit testimony.

***§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 9, 2024

Committee On Water & Land  
Rep. Linda Ichiyama, Chair  
Rep. Mahina Poepoe, Vice Chair

**Testimony in opposition to SB3157**

Chair Ichiyama, Vice Chair Poepoe, 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 are opposed to SB3157, which would allow 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 feel this is not in the public interest. In general, we feel that avoiding procurement processes is not in the public interest. It would remove transparency from the process by which our public lands are leased to developers. Further, it is anti-competitive, and we do not understand how it would serve the best interests of the state to not analyze competing proposals - especially when leasing land for revenue-generating purposes, and especially in the sectors addressed by this bill.

Please oppose this measure.

Thank you for your consideration.



**Officers**

Kaipo Kekona  
State President

Anabella Bruch  
Vice-President

Maureen Datta  
Secretary

Reba Lopez  
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**Chapter Presidents**

Clarence Baber  
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Odysseus Yacalis  
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Kona, Hawai'i

Fawn Helekahi-Burns  
Hana, Maui

Mason Scharer  
Haleakala, Maui

Kaiea Medeiros  
Mauna Kahalawai,  
Maui

Kaipo Kekona  
Lahaina, Maui

Rufina Kaauwai  
Molokai

Negus Manna  
Lāna'i

India Clark  
North Shore, O'ahu

Christian Zuckerman  
Wai'anae, O'ahu

Ted Radovich  
Waimanalo, O'ahu

Vincent Kimura  
Honolulu, O'ahu

Natalie Urminska  
Kauai

Aloha Chair Ichiyama, Vice Chair Poepoe, and Members of the House Water & Land Committee,

The Hawaii Farmers Union is a 501(c)(5) agricultural advocacy nonprofit representing a network of over 2,500 family farmers and their supporters across the Hawaiian Islands. **HFUU opposes SB3157.**

SB3157 could significantly impact Hawaii farmers and the agriculture industry as a whole. Allowing for direct negotiation of public land leases for various purposes, including agricultural ones, puts local farmers at a distinct disadvantage. By bypassing the competitive bid process, this bill opens the door for large corporations and outside developers to swoop in and take advantage of prime agricultural land without proper oversight or consideration for the local farming community.

The Hawaii Farmers Union believes that public land should be managed in a transparent and fair manner that prioritizes the needs of local farmers and sustainable agriculture practices. Direct negotiation for land leases undermines the principles of equity and stewardship that should guide land use decisions in our state. It is essential that public land is allocated in a way that supports and sustains our local food system, rather than prioritizing profit-driven interests that may not align with the long-term needs of our community.

Mahalo for the opportunity to testify.

Kaipo Kekona, President HFUU/HFUF



**SB-3157-SD-2**

Submitted on: 3/8/2024 2:10:54 PM

Testimony for WAL on 3/12/2024 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
James McCully	Individual	Support	Written Testimony Only

Comments:

Aloha Chair,

I agree with the intent and value of this bill that recognizes the cumbersome process that a public auction under 171-14 and 171-16 necessitates and that the states interests could sometimes be better served through direct negotiations by way of amending 171-59.

I would recommend that the Chair also consider amending 171-32 "Policy" by appending the following language; "*...all dispositions shall be by lease only, disposed of by public auction in accordance with the procedure set forth in sections 171-14 and 171-17 or by direct negotiations as set forth in 171-59.*"

I'm also concerned that 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 if potential lessee's are unable to finance the improvements. Investment criteria would suggest a 65 year lease term as provided in Section 2 (2) (B) of this bill would be appropriate. A resort, commercial, or industrial investment warrants the same (or greater) lease term as for any other purpose under this law. At the very least a 40 year initial term allows for financing improvements that may take more than a year or two to complete.

Finally, I believe it is obvious that there needs to be a comprehensive review of leasing practices and policies, particularly for Urban lands. The current statutory framework, HRS 171-1 thru HRS 171-193 consists of a core policy founded on Territorial law to control public lands that were primarily used for agricultural and pastoral uses. Perhaps in a future session this can be addressed. I believe a compelling reason to amend HRS171-59 is that new leases of previously improved (reverted) properties would be more likely if this were Policy.

Mahalo,

Jim McCully

**SB-3157-SD-2**

Submitted on: 3/10/2024 11:20:39 AM

Testimony for WAL on 3/12/2024 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Regina Gregory	Individual	Oppose	Written Testimony Only

Comments:

1. Limits competition and transparency
2. Should not include hotels and resorts

**SB-3157-SD-2**

Submitted on: 3/11/2024 8:42:39 AM

Testimony for WAL on 3/12/2024 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Glen Kagamida	Individual	Support	Written Testimony Only

Comments:

Support. Mahalo!