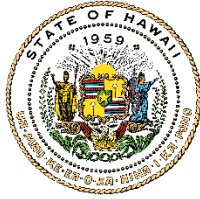


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

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
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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 Senate Committee on
WAYS AND MEANS

Friday, March 1, 2024
9:55 AM

State Capitol, Conference Room 211, Via Videoconference

In consideration of
SENATE BILL 3157, SENATE DRAFT 1
RELATING TO DIRECT NEGOTIATION FOR PUBLIC LAND LEASES

Senate Bill 3157, Senate Draft 1 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.

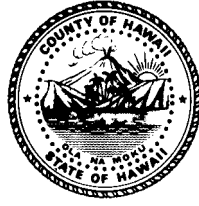
Also, directly negotiating with a potential lessee with a specific, identified project provides the Board of Land and Natural Resources (Board) and Department the opportunity to more effectively review the project to ensure compliance with Chapter 343, HRS, and that the proposed project is consistent 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 testify on this measure.

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

Susan L.K. Lee Loy
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HAWAI'I COUNTY COUNCIL

25 Aupuni Street, Hilo, Hawai'i 96720

February 28, 2024

The Honorable Senator Donovan Dela Cruz, Chair
The Honorable Senator Sharon Moriwaki, Vice Chair
Members of the Senate Committee on Ways and Means

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

Re: Support for SB 3157 SD1, relating to Direct Negotiation for Public Land Leases

Aloha Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee on Ways and Means:

Mahalo for the opportunity to provide comments on SB 3157 SD1, 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 SD1, 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

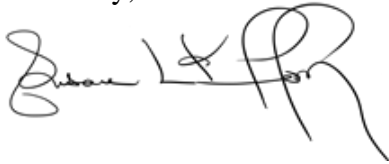
Hawai'i County Is an Equal Opportunity Provider And Employer

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 SD1 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 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



Cade Watanabe, Financial Secretary-Treasurer

Gemma G. Weinstein, President

Eric W. Gill, Senior Vice-President

February 28, 2024

Committee On Ways And Means
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

Testimony in opposition to SB3157

Chair Dela Cruz, Vice Chair Moriwaki, 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.



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

Friday, March 1, 2024, 9:55 am, Public Hearing in Conference Room 211 on
SB 3157, SD1 RELATING TO DIRECT NEGOTIATION FOR PUBLIC LAND LEASES

TESTIMONY

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

Chair Dela Cruz, Vice Chair Moriwaki, and Committee Members:

The League of Women Voters of Hawaii opposes SB 3157, SD1.

SB 3157, SD1 is not necessary. §171-59(a), Hawaii Revised Statutes, already allows disposition of public land leases by direct negotiation. This includes extension of existing public leases.

SB3157, SD1 would allow direct negotiation of public land leases without compliance with §171-59(a), Hawaii Revised Statutes. Under SB 3157, SD1, the DLNR could select who can negotiate any long-term public land lease:

- Without determining that disposition by negotiation would be in the public interest;
- Without public notice; and
- 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.