



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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IN REPLY REFER TO:

March 3, 2016
2:00 p.m.
State Capitol, Room 309

H.B. 2408, H.D. 2
RELATING TO LAND DISPOSITIONS

House Committee on Finance

The Department of Transportation (DOT) **strongly supports** H.B. No. 2408, H.D. 2, as part of the Administration's Package.

In 1993, the Board of Land and Natural Resources (Board) approved the delegation of authority to DOT to issue revocable permits for uses that are consistent with the purpose and intent of the public lands set aside through Executive Orders §171-11, Hawaii Revised Statutes (HRS). However, it has recently been determined that this delegation of authority was not proper. This bill clarifies the statutes to allow the DOT to issue revocable permits without approval by the Board.

Departments that have public lands set aside to them by the governor through executive orders under §171-11, HRS, for the departments' purposes are already empowered to exercise the powers of the Board. That section states in relevant part:

§171-11 Public purposes, lands set aside by the governor; management.
* * *

. . . Such department, agency of the State, the city and county, county, or other political subdivisions of the State in managing such lands **shall be authorized to exercise all of the powers vested in the board in regard to the issuance of leases, easements, licenses, revocable permits, concessions, or rights of entry** covering such lands for such use as may be consistent with the purposes for which the lands were set aside on the same terms, conditions, and restrictions applicable to the disposition of public lands, as provided by this chapter all such dispositions being subject to the prior approval of the board;. . .
(Emphasis added)

The time constraints associated with presenting revocable permits to the Board result in unnecessary delays and loss of rental revenues. In addition, the work hours to prepare each submittal to the Board for each revocable permit is labor intensive, time consuming, and repetitious. Finally, this delegation will reduce the work load on the Board.

The DOT is best suited to manage lands it owns and controls, especially with regard to revocable permits for aeronautic, airport-related, maritime, and maritime-related uses because it is most directly connected to these industries and operations, and can best adapt and adjust to accommodate industry needs.

In granting DOT a specific delegation to directly negotiate land dispositions for airports and maritime operations under §171-59(b), HRS, outside of the public auction requirement, the Legislature recognized the unique nature of these operations finding that they were tantamount to public utilities. The 1970 Senate expressed the legislative intent for the then proposed amendment to §171-59(b), which was enacted into law, stating:

A new Section 2 has been added to the bill which would amend Section 171-59(b) of the statutes. This amendment would permit the board to dispose of public lands for marine and maritime operations by negotiation without the necessity of going through a public auction, thereby allowing for marine and maritime operations the same procedure as allowed for its counterparts in transportation – airline and aircraft operations. **The reason for exempting these operations from public bidding is to prevent large operations from squeezing the smaller ones out although the larger company may not even need the leased facility. The amendment would enable the State to get the maximum use from its harbors as well as its airports.** Your Committee recognizes that the best interests for the State are usually better protected by disposing of by public auction because it is more democratic and in the long run results in more income to the State. **However, where the lease is to airports and maritime operations which are public utilities by nature the prime interest is service to the public and the preservation of competition in addition to income.**

Sen. Stand. Com. Rep. No. 876-70, H.B. 974, H.D. 1, S.D. 1 (emphasis added).

In light of the legislative history of the Boards' delegation of its land disposition powers to DOT, and the further delegation to directly negotiate airports and maritime related leases on its behalf, granting DOT clear authority to issue revocable permits is consistent with the Legislature's prior recognition that these industries are unique and warrant a regulatory structure that can readily respond to their needs.

Given the critical role that these facilities, and the lands under these facilities, play in the State's economy, it is prudent that DOT control the revocable permit function in order to better support these operations.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
FINANCE**

**Thursday, March 3, 2016
2:00 P.M.
State Capitol, Conference Room 308**

**In consideration of
HOUSE BILL 2408, HOUSE DRAFT 2
RELATING TO LAND DISPOSITIONS**

House Bill 2408, House Draft 2, proposes to amend the public lands statute, Hawaii Revised Statutes (HRS) Chapter 171, to exempt the Department of Transportation's (DOT) issuance of revocable permits on state lands from prior approval by the Board of Land and Natural Resources (Board). **The Department of Land and Natural Resources ("Department") offers the following comments on this measure.**

The lands that comprise the airports and harbors under DOT's jurisdiction are set aside to it by Governor's executive order approved by the Board pursuant to HRS Section 171-11. That section provides that when lands are so set aside, the agency holding the executive order must obtain the approval of the Board for any dispositions longer than 14 days. DOT currently brings proposed dispositions at its airports and harbors to the Board for approval at the Board's regularly scheduled public meetings. Under House Bill 2408, House Draft 2, DOT seeks to amend existing law to provide that Board approval of revocable permits issued by DOT will no longer be required. Instead, DOT will have authority to issue revocable permits on lands set aside to it "by direct negotiation and without public auction, under conditions and rent which will best serve the interests of the State."

The Department notes that the public policy purpose for all land dispositions, especially those issued by direct negotiation outside the public auction process, is to ensure independent review by the Board at an open meeting held pursuant to HRS Chapter 92. The State has limited land resources, and decisions affecting these lands are intended to be made in the open and subject to

public testimony. This provides a transparent public process for important decision-making by DOT.

BEFORE THE HOUSE COMMITTEE ON FINANCE

February 12, 2016

House Bill No. 2408 HD2
Relating to Land Dispositions

Aloha Chair Luke, Vice Chair Yamane and Members of the Committee:

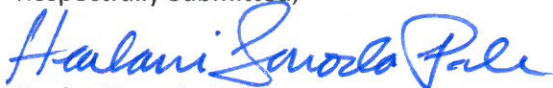
The Ka Lahui Hawai'i Political Action Committee (KPAC) affirms and defends our Hawaiian peoples' right to over 1.8 million acres of our national lands.

KPAC submits the following testimony in opposition to HB 2408 HD2. This bill would allow the BLNR to delegate the authority to approve revocable permits for the use of public lands under the jurisdiction of the DOT to the Director of Transportation and exempts the revocable permits issued by the DOT from BLNR approval requirements as well as public auction and public advertisement for sealed tender requirements.

Professor Williamson Chang of the UH Law School has detailed his analysis that the Joint Resolution was incapable of acquiring Hawaii at http://blog.hawaii.edu/aplpj/files/2015/09/APLPJ_16_2_Chang.pdf. Despite this analysis, the former Crown and government lands of the Kingdom of Hawaii were illegally transferred to the US and as a condition of Statehood was transferred to the State of Hawaii to be held as a public trust for 5 purposes including the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920. The Admissions Act further states that any other object besides the 5 purposes shall constitute a breach of trust for which suit may be brought by the United States.

Much of the lands under the jurisdiction and control of the DOT are public trust lands currently under State control that should require additional oversight and approval.

Respectfully Submitted,



Healani Sonoda-Pale
KPAC Chair



HB2408 HD2
RELATING TO LAND DISPOSITIONS
House Committee on Finance

March 3, 2016

2:00 p.m.

Room 308

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB2408 HD2, which authorizes the Hawai'i Department of Transportation (HDOT) to issue revocable permits for lands under its control, without the approval of the Board of Land and Natural Resources (BLNR).

OHA expresses serious concern regarding this measure, because it may deprive the public of any opportunity to review and comment on the use of some of our most lucrative public lands, including public land trust lands held in trust for the benefit of Native Hawaiians and the general public.

As a state board, the BLNR is subject to Hawai'i's Public Agency Meetings and Records Law (the "Sunshine Law"), which requires prior notice of nearly all board and commission meetings, and which provides the public with the right to review and testify on meeting agenda items.¹ Accordingly, BLNR actions, including the approval of HDOT revocable permits, must be considered in an open meeting, where they may be reviewed and vetted by experts, agencies, stakeholders, and other members of the public. Such review can ensure that decisions are fully informed, and made in the best interest of the state and its people. Furthermore, public and agency review can facilitate accountability and compliance with important legal requirements, including environmental review processes, constitutional obligations with respect to Native Hawaiian rights, and the fiduciary obligations of the state in administering public lands and the public land trust.

By exempting certain HDOT revocable permits from BLNR approval, HB2408 HD2 could effectively remove the public's ability to review and participate in the disposition of some of our most lucrative public lands, including airport and commercial harbor lands within the public land trust. Unlike the BLNR, HDOT does not have a governing board or commission subject to the open meeting requirements of our Sunshine Law. Therefore, by removing all BLNR oversight over HDOT revocable permits, such permits could be negotiated and issued by the HDOT without the benefit of public review or comment.

¹ According to Hawai'i Revised Statutes Section 92-1, the legislature declared that "[o]pening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible." See HRS § 92-1.

Notably, as indicated by a recent BLNR agenda item, revocable permits may entail the use of parcels of a hundred acres or more, for uses ranging from aircraft fueling to agriculture, and for fees ranging from a few hundred dollars to several hundred thousand dollars per acre. Combined with the fact that permits may be reissued an indefinite number of times, such broad authority over such significant parcels of land strongly counsel the retention of public oversight and review of HDOT permitting activities.

In light of all these concerns, OHA urges the Committee to **HOLD** HB2408 HD2. Mahalo for the opportunity to testify on this important measure.