

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Thursday, February 25, 2016
1:00 P.M.
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 2936, SENATE DRAFT 1
RELATING TO LAND DISPOSITIONS**

Senate Bill 2936, Senate Draft 1, proposes to amend the public lands statute, Hawaii Revised Statutes (HRS) Chapter 171, to exempt the Department of Transportation's (DOT) issuance of leases and other dispositions 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 Senate Bill 2936, Senate Draft 1, DOT seeks to amend existing law to provide that Board approval of these dispositions will no longer be required. Instead, DOT will have sole decision-making authority regarding dispositions on lands set aside to it, and can make these dispositions by direct negotiation if DOT finds that such action encourages competition.

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.



SB2936 SD1
RELATING TO LAND DISPOSITIONS
Senate Committee on Ways and Means

February 25, 2016

1:00 p.m.

Room 211

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB2936 SD1, which authorizes the Hawai'i Department of Transportation (HDOT) to continue to directly negotiate for disposition of lands under its control for certain uses, but allows HDOT to do so without the approval of the Board of Land and Natural Resources (BLNR).

OHA expresses serious concern regarding this measure, as it may deprive the public and agencies of any opportunity to review and comment on the potential long-term disposition (35 and 75 years) of some of our state's most lucrative public lands, including public land trust lands held in trust for the benefit of Native Hawaiians and the 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.ⁱ Accordingly, land leases subject to BLNR approval must be considered in an open BLNR 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, such as constitutional obligations with respect to Native Hawaiian rights and the fiduciary obligations of the state in administering public lands and the public land trust.

Given the length of time for which leases could be issued—75 for maritime leases—and HDOT's ability to directly negotiate for airport and maritime leases (rather than public auction), any oversight or lost opportunity from the lack of public participation may carry ramifications that last for generations. By exempting certain HDOT leases from BLNR approval, SB2936 SD1 could effectively revoke 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. Moreover, SB2936 SD1 would continue to allow the HDOT to directly negotiate for these dispositions, rather than go through public auction. Therefore, by removing all BLNR oversight over HDOT airport and maritime

leases, such leases would be negotiated and issued by the HDOT with no opportunity for public review or scrutiny.

While SB2936 SD1 now provides that it is to be repealed on July 1, 2021, the language of this measure suggests that 35 or 70 year long leases could still be issued while it is in effect. Accordingly, the July 1, 2021 sunset date does not address concerns regarding the issuance of decades-long leases of public lands, including public land trust lands, with no opportunity for public or agency review or input.

In light of these concerns, OHA urges the Committee to **HOLD** SB2936 SD1. Mahalo for the opportunity to testify.

ⁱ According to Hawa'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.



TESTIMONY OF HAWAIIAN AIRLINES ON S.B. 2936 SD1 RELATING TO LAND DISPOSITIONS

Senate Committee on Ways and Means

DATE: Thursday, February 25, 2016

TIME: 1:00 pm

PLACE: State Capitol, Room 211

Aloha Chair Tokuda, Vice Chair Dela Cruz, and members of the Committee,

Mahalo for the opportunity to testify in support of S.B. 2936 SD1 Relating to Land Dispositions, which allows the State of Hawaii Department of Transportation to negotiate the disposition of lands under its control. The DOT-Airports Division works very closely with all of the users of Hawai'i's airports and has been an important partner in the badly-need modernization of our facilities. Hawaiian Airlines fully support this measure as a way to allow efficient and expedient long-term planning and management of airport facilities.

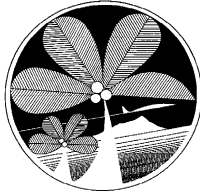
We urge your committee to approve this legislation.

Ann Botticelli

SVP Corporate Communications and Public Affairs

Hawaiian Airlines

AIRLINES COMMITTEE OF HAWAII



Honolulu International Airport
300 Rodgers Blvd., #62
Honolulu, Hawaii 96819-1832
Phone (808) 838-0011
Fax (808) 838-0231

February 25, 2016

Honorable Jill Tokuda, Chair
Honorable Donovan Dela Cruz, Vice Chair
Senate Committee on Ways and Means

Re: SB 2936 SD1 – RELATING TO LAND DISPOSITIONS - SUPPORT
Conference Room 211 – 1:00 PM

Aloha Chair Tokuda, Vice Chair Dela Cruz and Members of the Committee:

The Airlines Committee of Hawaii* (ACH), which is made up of 20 signatory air carriers that underwrite the State Airport System appreciates the opportunity to offer testimony supporting SB 2936 SD1.

This measure clarifies the statute that authorizes the Department of Transportation (DOT) to negotiate disposition of lands under its control for specific purposes.

The ACH supports this measure as it would enable the DOT to lease and develop airport property to meet the needs of the airport, versus awarding leases to the highest bidder which may not be compatible or the best use of airport property.

Thank you for the opportunity to submit testimony.

Sincerely,

Blaine Miyasato
ACH Co-chair

Turner Maynor
ACH Interim Co-chair

**ACH members are Air Canada, Air New Zealand, Alaska Airlines, All Nippon Airways/Air Japan, Aloha Air Cargo, American Airlines, China Airlines, Delta Air Lines, Federal Express, Fiji Airways, Hawaiian Airlines, Island Air, Japan Airlines, Korean Air, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, Virgin America and WestJet.*

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: wao-hsl@WeAreOne.cc
Subject: Submitted testimony for SB2936 on Feb 25, 2016 13:00PM
Date: Wednesday, February 24, 2016 1:10:48 PM

SB2936

Submitted on: 2/24/2016

Testimony for WAM on Feb 25, 2016 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Kohn MD	We Are One, Inc. - www.WeAreOne.cc - WAO	Oppose	No

Comments: Strongly OPPOSE SB 2936 We the people do not give up our rights to determine the use of public lands. www.WeAreOne.cc

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: bianca@kahea.org
Subject: Submitted testimony for SB2936 on Feb 25, 2016 13:00PM
Date: Wednesday, February 24, 2016 12:36:26 PM

SB2936

Submitted on: 2/24/2016

Testimony for WAM on Feb 25, 2016 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Bianca Isaki	Individual	Oppose	No

Comments: Aloha Senators, Please do not allow public land disposition to bypass public procedures and BLNR scrutiny and processes for land sales and leases. Bypassing BLNR eliminates any opportunity for BLNR or the public to place conditions on the use of public lands. Thank you for considering my testimony.

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To: [WAM Testimony](#)
Cc: carolinesdelano@aol.com
Subject: *Submitted testimony for SB2936 on Feb 25, 2016 13:00PM*
Date: Wednesday, February 24, 2016 1:39:55 PM

SB2936

Submitted on: 2/24/2016

Testimony for WAM on Feb 25, 2016 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Delano	Individual	Oppose	No

Comments:

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Cc: 333cory@gmail.com
Subject: Submitted testimony for SB2936 on Feb 25, 2016 13:00PM
Date: Wednesday, February 24, 2016 11:22:26 AM

SB2936

Submitted on: 2/24/2016

Testimony for WAM on Feb 25, 2016 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Cory Harden	Individual	Oppose	No

Comments: Aloha legislators, Please vote down this bill. The public has a right to have input through BLNR on the leasing of public lands. mahalo, Cory Harden, Hilo

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TESTIMONY BY DOUGLAS MELLER

TO THE 2/25/16 1 PM HEARING OF THE SENATE COMMITTEE ON WAYS AND MEANS

OPPOSING SB 2936, SD 1, RELATING TO LAND DISPOSITIONS.

Article XI Section 2 of the Hawaii Constitution only authorizes a “board or commission” to dispose of public land for private use. My understanding is that this constitutional requirement was established to minimize the risk of a single political appointee disposing of public lands as a reward for campaign contributions. For purposes of this constitutional requirement, the term “disposition” includes leases, revocable permits, and licenses.

The Department of Transportation is headed by a single political appointee rather than by a “board or commission”. Since SB 2936, SD 1 would authorize a single political appointee (the Director of Transportation) to dispose of public land for private use, SB 2936, SD 1, would not comply with Article XI Section 2 of the Hawaii Constitution.

THE CONSTITUTION OF THE STATE OF HAWAII

ARTICLE XI

CONSERVATION, CONTROL AND DEVELOPMENT OF RESOURCES

MANAGEMENT AND DISPOSITION OF NATURAL RESOURCES

Section 2. The legislature shall vest in one or more executive boards or commissions powers for the management of natural resources owned or controlled by the State, and such powers of disposition thereof as may be provided by law; but land set aside for public use . . . need not be placed under the jurisdiction of such a board or commission

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: inunyabus@gmail.com
Subject: Submitted testimony for SB2936 on Feb 25, 2016 13:00PM
Date: Wednesday, February 24, 2016 4:30:47 PM

SB2936

Submitted on: 2/24/2016

Testimony for WAM on Feb 25, 2016 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
E Yadao	Individual	Oppose	No

Comments: Absolutely not. It is a bold and callous move to attempt to remove the Public from Public lands. Not only are these Public lands on Hawaiian Homelands but stating they are under the jurisdiction of DOT is erroneous. These lands are under the Kingdom of Hawaii jurisdiction so let's not forget that.

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Cc: ejcarmody@hawaiiantel.net
Subject: Submitted testimony for SB2936 on Feb 25, 2016 13:00PM
Date: Wednesday, February 24, 2016 2:47:20 PM

SB2936

Submitted on: 2/24/2016

Testimony for WAM on Feb 25, 2016 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Elise Carmody	Individual	Oppose	No

Comments: I am opposed to SB 2936 SD1 because it: (1) Violates the State Constitution. o Article XI Section 2 authorizes a "board or commission" to dispose of public land for private use. o It is our understanding that this constitutional requirement was established to minimize the risk of a single political appointee disposing of public lands for political gains. (2) Gives the DOT director, a governor appointee, the authority to independently dispose of public land for private use. (3) Gives the DOT director, rather than the Board of Land and Natural Resources, sole control of non-bid leases and revocable permits for public lands under its jurisdiction (4) Bypasses BLNR and eliminates any opportunity for public review and involvement in the use of public land. (5) Bypasses BLNR and eliminates any opportunity for BLNR or the public to place conditions on the use of public lands. (6) Allows the DOT director to negotiate the "disposal" of public land if that use encourages competition within the aeronautical, airport-related, maritime-related operations. Mahalo for your consideration.

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Cc: kadc31999@gmail.com
Subject: Submitted testimony for SB2936 on Feb 25, 2016 13:00PM
Date: Wednesday, February 24, 2016 12:36:44 PM

SB2936

Submitted on: 2/24/2016

Testimony for WAM on Feb 25, 2016 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Katarina Culina	Individual	Oppose	No

Comments: Aloha, Please work for the public, not private interest. Mahalo, Katarina Culina

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Cc: luanajones777@hotmail.com
Subject: *Submitted testimony for SB2936 on Feb 25, 2016 13:00PM*
Date: Wednesday, February 24, 2016 6:36:45 PM

SB2936

Submitted on: 2/24/2016

Testimony for WAM on Feb 25, 2016 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Luana Jones	Individual	Oppose	No

Comments:

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Cc: dearpauline@hotmail.com
Subject: Submitted testimony for SB2936 on Feb 25, 2016 13:00PM
Date: Wednesday, February 24, 2016 3:03:39 PM

SB2936

Submitted on: 2/24/2016

Testimony for WAM on Feb 25, 2016 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Pauline Mac Neil	Individual	Oppose	No

Comments: SB 2936 SD1 is a “bad faith” bill in that it removes the public from decisions on the use or disposal of public lands related to aeronautical and marine operations. It could, for example, remove public input on where to locate a future Superferry. We elected the legislature to make policy decisions and enact laws on our behalf. We did not elect the Director of the Department of Transportation. This bill is not in the public interest. Please do the right thing and vote NO on SB 2936 SD1. Mahalo, Pauline Mac Neil

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Subject: Submitted testimony for SB2936 on Feb 25, 2016 13:00PM
Date: Wednesday, February 24, 2016 9:55:45 AM

SB2936

Submitted on: 2/24/2016

Testimony for WAM on Feb 25, 2016 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Sarah Afong	Individual	Oppose	No

Comments: SB 2936 SD1 violates the State Constitution o Article XI Section 2 authorizes a "board or commission" to dispose of public land for private use o It is our understanding that this constitutional requirement was established to minimize the risk of a single political appointee disposing of public lands for political gains This bill gives the director of DOT, a governor appointee, the authority to independently dispose of public land for private use This bill gives the DOT director, rather than the Board of Land and Natural Resources, sole control of non-bid leases and revocable permits for public lands under its jurisdiction Bypassing BLNR eliminates any opportunity for public review and involvement in the use of public land and eliminates any opportunity for BLNR or the public to place conditions on the use of public lands This bill would allow the director of DOT to negotiate the "disposal" of public land if that use encourages competition within the aeronautical, airport-related, maritime-related operations. Giving one person that much power is dangerous, and I oppose this bill.

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