

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

**Testimony by:**  
FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN  
DARRELL T. YOUNG

IN REPLY REFER TO:

February 25, 2016  
1:00 p.m.  
State Capitol, Room 211

**S.B. 2936 S.D. 1**  
**RELATING TO LAND DISPOSITIONS**

Senate Committee on Ways and Means

---

The Department of Transportation (DOT) **strongly supports** S.B. No. 2936 S.D. 1 as part of the Administration's Package.

This measure aims to clarify and address the original intent of §171-59(b), Hawaii Revised Statutes (HRS), to protect and promote small or threatened aeronautical and maritime-related businesses and operations by delegating to the DOT greater flexibility to lease harbor and airport lands and facilities through direct negotiation.

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 of Land and Natural Resources (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)

In addition to this general delegation, DOT was granted a specific delegation to directly negotiate certain land dispositions on behalf of the Board for airports and maritime operations under §171-59(b), HRS, outside of the public auction requirement. In

empowering the DOT to directly negotiate, 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).

More recently, in Regular Session 2003, the Twenty-Second Legislature, adopted Conference Committee Report 96, S.B. No. 103, H.D. 1, C.D. 1, stating:

The purpose of this measure is to give the Airports and Harbors Division of the Department of Transportation greater flexibility to lease airport and harbor lands and facilities to broader variety of users, subject to the approval of the Board of Land and Natural Resources.

The DOT is best suited to manage lands under its jurisdiction, especially with regard to land dispositions for aeronautic, airport-related, maritime, and maritime-related uses. The department is directly connected to these industries and operations and best understands the industries' needs. The interpretation of §171-59(b), HRS, as written

requires Board approval of these dispositions and this approval process minimizes the DOT's control of these dispositions and delays the award of these dispositions. However, in light of the legislative history of the delegation of the Boards' land disposition powers to DOT, and the further delegation to directly negotiate airports and maritime related dispositions, the Board's review of these dispositions should be ministerial.

Given the critical role that these facilities, and the lands under these facilities play in the state's economy, it is prudent for the function of the disposition of the public lands that support these operations be controlled by the Department of Transportation.

Thank you for the opportunity to provide testimony.



## AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Jill Tokuda, Chair  
Committee on Ways and Means  
Hawaii State Senate

LATE TESTIMONY

Room 211, 1:00 p.m.

February 25, 2016

Re: SB 2936, SD1 - Relating to Land Dispositions

Dear Chair Tokuda and Honorable Committee Members:

My name is Peter Fithian and I am the Chair of the Legislative and Governmental Affairs Committee of the Airports Concessionaires Committee.

Our Committee represents the majority of the concession operators at the public airports throughout the State of Hawaii. Members of our group contribute about 50% of the operating revenues of the airports along with the airlines who also contribute about 50%.

Our Committee strongly supports this bill.

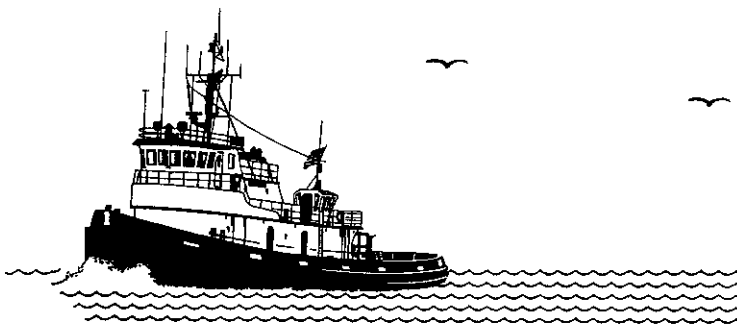
Recently it has been the experience of one or more of our members that after months of analysis, negotiation and reaching agreements with Hawaii's Department of Transportation (DOT) the DLNR now questions the negotiations and wants to re-visit the details of the negotiations. Thus, negotiate all over again?

There have been at least 2 instances where agreements negotiated would have been permanently lost due to the DLNR's probing and delays.

Further, the DLNR has sought to impose conditions on its approvals not imposed by the DOT and in our opinion contrary to federal laws which governs the airports.

Still further, at least one member of the DLNR Board has questioned the authority granted by the Legislature to the DOT to reach agreements to fast-track airport improvements.

DLNR in our opinion has gone beyond its appropriate role and the law at least as to DOT matters need to be clarified. We thank you for allowing us to testify.



## SAUSE BROS., INC.

705 N. NIMITZ HWY., 2ND FLOOR, HONOLULU, HI 96817  
TELEPHONE: (808) 521-5082 • FAX: (808) 533-4109

February 25, 2016

Senator Jill Tokuda, Chair  
State of Hawaii  
Senate Ways and Means Committee

RE: **S.B. 2936 S.D. 1**  
**RELATING TO LAND DISPOSITIONS**

Senate Committee,

Sause Bros., Inc. **strongly supports** S.B. No. 2936 S.D. 1 as part of the Administration's Package. This measure aims to clarify and address the original intent of §171-59(b), Hawaii Revised Statutes (HRS), to protect and promote small or threatened aeronautical and maritime-related businesses and operations by delegating to the DOT greater flexibility to lease harbor and airport lands and facilities through direct negotiation.

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 of Land and Natural Resources (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)

In addition to this general delegation, DOT was granted a specific delegation to directly negotiate certain land dispositions on behalf of the Board for airports and maritime operations under §171-59(b), HRS, outside of the public auction requirement. In Testimony of the Department of Transportation S.B. 2936 S.D.1 February 25, 2016 Page 2



SAUSE BROS. OCEAN TOWING CO., INC. • SAUSE BROS., INC. • SOUTHERN OREGON MARINE, INC.



empowering the DOT to directly negotiate, 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).  
More recently, in Regular Session 2003, the Twenty-Second Legislature, adopted Conference Committee Report 96, S.B. No. 103, H.D. 1, C.D. 1, stating:

The purpose of this measure is to give the Airports and Harbors Division of the Department of Transportation greater flexibility to lease airport and harbor lands and facilities to broader variety of users, subject to the approval of the Board of Land and Natural Resources.

The DOT is best suited to manage lands under its jurisdiction, especially with regard to land dispositions for aeronautic, airport-related, maritime, and maritime-related uses. The department is directly connected to these industries and operations and best understands the industries' needs. The interpretation of §171-59(b), HRS, as written Testimony of the Department of Transportation S.B. 2936 S.D.1 February 25, 2016 Page 3 requires Board approval of these dispositions and this approval process minimizes the DOT's control of these dispositions and delays the award of these dispositions. However, in light of the legislative history of the delegation of the Boards' land disposition powers to DOT, and the further delegation to directly negotiate airports and maritime related dispositions, the Board's review of these dispositions should be ministerial.

Given the critical role that these facilities, and the lands under these facilities play in the state's economy, it is prudent for the function of the disposition of the public lands that support these operations be controlled by the Department of Transportation. Thank you for the opportunity to provide testimony.

Sincerely,

**SAUSE BROS., INC.**



Douglas Won  
Vice President

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [begoniabarry@gmail.com](mailto:begoniabarry@gmail.com)  
**Subject:** \*Submitted testimony for SB2936 on Feb 25, 2016 13:00PM\*  
**Date:** Thursday, February 25, 2016 10:02:05 PM

---

**SB2936**

Submitted on: 2/25/2016

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

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Barry	Individual	Oppose	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [jeannine@hawaii.rr.com](mailto:jeannine@hawaii.rr.com)  
**Subject:** Submitted testimony for SB2936 on Feb 25, 2016 13:00PM  
**Date:** Wednesday, February 24, 2016 10:20:59 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
Jeannine Johnson	Individual	Oppose	No

Comments: I strongly oppose SB2936 which eliminates public input into leasing of public land.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)