

SB 2936

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 Committees on
WATER, LAND AND AGRICULTURE
and
TRANSPORTATION AND ENERGY**

**Tuesday, February 16, 2016
3:05 P.M.
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 2936
RELATING TO LAND DISPOSITIONS**

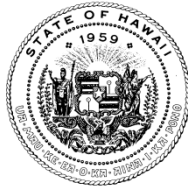
Senate Bill 2936 proposes to amend the public lands statute, Hawaii Revised Statutes (HRS) Chapter 171, to exempt the Department of Transportation's (DOT) issuance of leases and other dispositions on state lands from prior approval by the Board of Land and Natural Resources (Board). **The Department 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, 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.



**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 16, 2016
3:05 p.m.
State Capitol, Room 229

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

Senate Committee(s) on Transportation and Energy
& Water, Land and Agriculture

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

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

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 section 171-59 as written requires Board of Land and Natural Resources approval of these dispositions and this approval process minimizes the DOT's control of these dispositions and delays the award of these dispositions.

Approximately 80 percent of all goods consumed in Hawaii are brought in through the state through a harbor facility. 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.



SB2936

RELATING TO LAND DISPOSITIONS

Senate Committee on Water, Land, and Agriculture
Senate Committee on Transportation and Energy

February 16, 2016

3:05 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB2936, which authorizes the Hawai'i Department of Transportation (HDOT) to negotiate the disposition of lands under its control for certain uses, 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 and other agencies of any opportunity to review and comment on the potential long-term disposition 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 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, 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, 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 leases from BLNR approval, SB2936 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

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.

governing board or commission subject to the open meeting requirements of our Sunshine Law. Therefore, by removing all BLNR oversight over HDOT airport and maritime leases, such leases could be negotiated and issued by the HDOT with no opportunity for public review or comment. Given the length of time for which leases could be issued -- including seventy years in the case of maritime leases -- any oversights or lost opportunities resulting from the lack of public participation may carry ramifications that last for generations.

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



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SENATE COMMITTEES ON WATER, LAND, AND AGRICULTURE
and
TRANSPORTATION AND ENERGY

February 16, 2016

TESTIMONY ON SB 2936
RELATING TO LAND DISPOSITIONS

Room 229
3:05 PM

Aloha Chairs Gabbard and Inouye, Vice Chair Nishihara, and Members of the Committees:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

The Hawaii Farm Bureau respectfully expresses its **concerns** regarding SB 2936, "Relating to Land Dispositions," which would allow the Department of Transportation to make decisions on land disposition without review by the Board of Land and Natural Resources. We are concerned that giving DOT full control of such land disposition, which may include submerged lands under joint control with DLNR, may negatively impact existing or proposed aquaculture operations.

Although aquaculture appears to be in a separate category from "maritime and maritime-related operations" as defined in the bill, "sale, processing, and canning of fish products" (the first two of which are often carried out by aquaculture operations) do qualify as maritime-related. Thus, there is a gray area which may allow DOT sole discretion regarding applications for aquaculture and aquaponic leases on lands or in waters near airports, harbors, or other facilities under DOT control or joint control.

In 2014, the annual value of Hawaii's aquaculture production reached \$78 million, a 40% increase over 2012, making aquaculture one of the most valuable sectors of Hawaii's diversified agriculture. There is substantial potential for further increases if leases remain available for nearshore and offshore sites. Unfortunately, DOT has historically taken a negative view of aquaculture operations near lands under its control. Most of Hawaii's aquaculture operations are near airports and/or harbors, as are most of the suitable sites for future facilities both onshore and offshore. ***We are therefore concerned that approval of SB 2936 as written may seriously restrict aquaculture's future contribution to Hawaii's economy, and we respectfully ask that you consider the potential impact on this critical agricultural sector.***

Thank you for your consideration of our testimony.



BEFORE THE SENATE COMMITTEES ON WATER LAND & AGRICULTURE AND
TRANSPORTATION AND ENERGY

February 16, 2016

Senate Bill No. 2936
Relating to Land Dispositions

Aloha Chairs Mike Gabbard, Lorraine Inouye, Vice Chairs Clarence Nishihara, Mike Gabbard and
Members of the Committees:

The Ka Lāhui 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 SB 2936. This bill would allow the Department of Transportation to negotiate the disposition of lands under its jurisdiction and control without the approval of the Board of Land and Natural Resources.

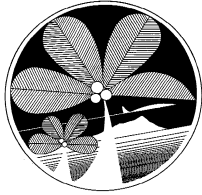
Professor Williamson Chang of the UH Law School has detailed his analysis that the Joint Resolution was incapable of acquiring Hawaii at http://blog.hawaii.edu/aplpj/files/2015/09/APLPJ_16_2_Chang.pdf. Despite this analysis, the former Crown and government lands of the Kingdom of Hawaii were illegally 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 Department of Transportation are public trust lands currently under State control that should require additional oversight and approval.

Respectfully Submitted,

Healani Sonoda-Pale
KPAC Chair

AIRLINES COMMITTEE OF HAWAII



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February 16, 2016

Honorable Mike Gabbard, Chair
Honorable Clarence Nishihara, Vice Chair
Senate Committee on Water, Land, and Agriculture

Honorable Lorraine Inouye, Chair
Honorable Mike Gabbard, Vice Chair
Senate Committee on Transportation and Energy

Re: SB 2936 – RELATING TO LAND DISPOSITIONS - SUPPORT
Conference Room 229 – 3:05 PM

Aloha Chairs Gabbard and Inouye 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.

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

Matthew Shelby
ACH 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.*



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

Senate Committee on Water, Land, and Agriculture

Senate Committee on Transportation and Energy

DATE: Tuesday, February 16, 2016

TIME: 3:05 pm

PLACE: State Capitol, Room 229

Aloha Chair Gabbard, Vice Chair Nishihara, Chair Inouye, and members of the Committees,

Mahalo for the opportunity to testify in support of S.B. 2936 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

From: mailinglist@capitol.hawaii.gov
To: [WLA Testimony](#)
Cc: rkailianu57@gmail.com
Subject: *Submitted testimony for SB2936 on Feb 16, 2016 15:05PM*
Date: Thursday, February 11, 2016 9:27:41 AM

SB2936

Submitted on: 2/11/2016

Testimony for WLA/TRE on Feb 16, 2016 15:05PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Oppose	Yes

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.

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