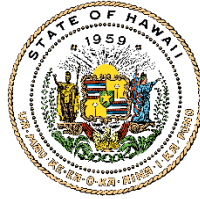
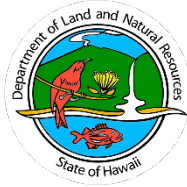


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

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
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DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
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M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
WATER AND LAND

Wednesday, February 15, 2023
12:30 PM
State Capitol, Conference Room 229

In consideration of
SENATE BILL 300
RELATING TO THE EXPENDITURE OF PUBLIC FUNDS FOR LAND
IMPROVEMENTS

Senate Bill 300 proposes to prohibit the expenditure of public moneys for any land improvement if the land is not owned or leased by the State, unless the moneys are appropriated by the Legislature, or the Legislature approves the expenditure by concurrent resolution. **The Department of Land and Natural Resources (Department) opposes this measure.**

The Department frequently uses both state funds and federal grants for infrastructure improvements on private lands and has many multi-year contracts that support these private land improvements. These projects have wide public benefits and often are supported by matching funds from the private landowner. Private lands contain unique resources, such as the last remaining population of an endangered plant or animal, a rare ecosystem type, or an irreplaceable historical site. Frequently, a private parcel may have existing infrastructure or a strategic location that justifies public infrastructure investments such as water tanks for firefighting, or radio repeater towers for emergency response. Additionally, most large natural resource protection projects, such as fences built to protect watershed areas and our fresh water supply, need to cross both public and private lands to be effective. Invasive species, such as the exploding populations of Axis deer and feral goats, do not follow landowner boundaries and efforts to control them can only be successful if the state funds improvements like fences that cross both private and public lands.

This measure would significantly constrain the flexibility of the Department to be able to carry out our mandate by requiring prior specific authorization by the Legislature for those improvements. The additional bureaucratic approval process that this measure establishes could have the unintended consequences of delay and failure when the Department needs to respond quickly. Examples of urgent and unforeseeable situations that require the Department to fund improvements on private land include building a firebreak road to contain a life-threatening wildfire, finding the last population of a rare plant that needs fencing to protect it, or finding a new population of a damaging invasive species which needs to be contained to avoid spread to other lands.

If the measure proceeds, the Department requests an exemption for projects with the purpose of natural and cultural resource management.

Mahalo for the opportunity to provide testimony in opposition of this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 300, RELATING TO THE EXPENDITURE OF PUBLIC FUNDS FOR LAND IMPROVEMENTS.

BEFORE THE:

SENATE COMMITTEE ON WATER AND LAND

DATE: Wednesday, February 15, 2023 **TIME:** 12:30 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Randall S. Nishiyama, Deputy Attorney General

Chair Inouye and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill prohibits the expenditure of public moneys for any land improvements if the land is not owned or leased by the State unless the moneys are appropriated by the Legislature or the Legislature approves the expenditure by concurrent resolution.

We note that this bill provides that public moneys may be expended by the State for non-public lands if the Legislature approves the expenditure by concurrent resolution. This provision is unconstitutional, and we recommend it be deleted. A concurrent resolution expresses the sentiment of the Legislature, but it does not have the force and effect of law. Consequently, a concurrent resolution cannot fulfill the appropriation requirement of article VII, section 5, of the Hawaii State Constitution, which provides that "[n]o public money shall be expended except pursuant to appropriations made by law."

Further, we note that article VII, section 4, of the Hawaii State Constitution, provides that "[n]o tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose." While the expenditure of public moneys on non-public lands clearly benefits a private party, it is less clear whether such an expenditure would be for a public purpose. To comply with article VII, section 4, of the Hawaii State Constitution, the Legislature could

make a declaration that the expenditure serves a public purpose. It is generally for the Legislature to decide what constitutes a "public purpose." State ex rel. Amemiya v. Anderson, 56 Haw. 566, 574, 545 P.2d 1175, 1180-1181 (1976).

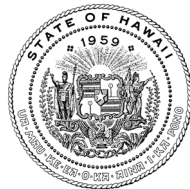
We suggest the following amendment to section 1 of the bill, on page 1, starting on line 8:

improvement [~~or approves the expenditure by concurrent resolution~~];
provided that the legislature makes a declaration of public purpose
regarding the appropriation of such public moneys; provided further that
this section shall not apply to any grant made pursuant to chapter 42F.

(Ramseyering in this example is applied to the wording in the bill, and is not intended to reflect the final, all of which would be underscored due to this being a new section of the Hawaii Revised Statutes).

We respectfully asked the Committee to consider our comments.

JOSH GREEN, M.D.
GOVERNOR



LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
Ka 'Oihana Mālama Mo'ohelu a Kālā
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HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT

WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 300

February 15, 2023
12:30 p.m.
Room 229 and Videoconference

RELATING TO THE EXPENDITURE OF PUBLIC FUNDS FOR LAND
IMPROVEMENTS

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 300 proposes to prohibit the expenditure of public moneys for any land improvement if the land is not owned or leased by the State, unless the moneys are appropriated by the Legislature, or the Legislature approves the expenditure by concurrent resolution.

Article VII, Section 4, of the Hawai'i State Constitution prohibits appropriations of public money to be made for private purposes. As such, this bill should provide further that the Legislature shall provide a declaration that the appropriation is being made for a public purpose.

Thank you for your consideration of our comments.

SB-300

Submitted on: 2/14/2023 1:44:47 PM

Testimony for WTL on 2/15/2023 12:30:00 PM

Submitted By	Organization	Testifier Position	Testify
David Smith	Individual	Support	Written Testimony Only

Comments:

Bad idea - there is a lot of public benefit that comes from the expenditure of public funds on private lands.