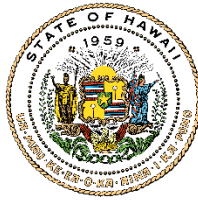


**JOSH GREEN, M.D.**  
GOVERNOR | KE KIA'ĀINA

**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  
HONOLULU, HAWAII 96809

**DAWN N.S. CHANG**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

**RYAN K.P. KANAKA'OLE**  
FIRST DEPUTY

**DEAN D. UYENO**  
ACTING 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**  
**DAWN N. S. CHANG**  
**Chairperson**

**Before the Senate Committee on**  
**WATER AND LAND**

**Friday, February 9, 2024**  
**1:10 p.m.**

**State Capitol, Conference Room 229 & Videoconference**

**In consideration of**  
**SENATE BILL 2759**  
**RELATING TO LAND LEASES**

Senate Bill 2759 proposes to prohibit the State from leasing any public lands, or extending the lease of any public lands, to any individual, corporation, or federal agency that is in arrears in the payment of certain moneys to the State, noncompliant with a consent decree or memoranda of agreement with the State that requires environmental maintenance or remediation with regard to the public lands, or convicted of a crime. **The Department of Land and Natural Resources (Department) provides the following comments on this this bill.**

For the leases that the Department manages, the Department would not recommend to the Board of Land and Natural Resources (Board) that a lease in material default be extended, whether the default be monetary, environmental or constitute some other violation of State, county, or federal law. Only the Board has the authority to approve the extension of an existing lease or the issuance of a new lease, and that authority can only be exercised at a duly-noticed, open meeting at which the public has an opportunity to testify. Accordingly, the Department does not expect this bill to have a significant impact on departmental operations if it becomes law.

The Department notes that subparagraph 171-36(a)(4), Hawaii Revised Statutes (HRS), already provides that, "No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owed to the State or any county." The proposed language beginning at page 6, line 3, of the bill is somewhat repetitive of the existing language, although the bill goes on to specify additional types of arrearages covered at page 6, lines 5-19. While the existing statutory

language and new language could probably be combined into a single provision, there is a more significant issue with this bill.

Senate Bill 2759 is only proposed to apply to public lands through an amendment of Chapter 171, HRS. However, the Legislature has exempted many State agencies from that chapter pursuant to various amendments made to Section 171-2, HRS. As a result, public lands owned, or in some cases held by executive order, by the following State agencies are not deemed public lands subject to Chapter 171, and therefore would not be impacted by this bill:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended; . . .
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act before the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Non-ceded lands set aside by the governor to the Hawaii housing finance and development corporation or lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands set aside by the governor to the Hawaii public housing authority or lands to which the Hawaii public housing authority in its corporate capacity holds title;
- (9) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (10) Lands that are set aside by the governor to the Aloha Tower development corporation, lands leased to the Aloha Tower development corporation by any department or agency of the State, or lands to which the Aloha Tower development corporation holds title in its corporate capacity;
- (11) Lands that are set aside by the governor to the agribusiness development corporation, lands leased to the agribusiness development corporation by any department or agency of the State, or lands to which the agribusiness development corporation in its corporate capacity holds title;

- (12) Lands to which the Hawaii technology development corporation in its corporate capacity holds title;
- (13) Lands to which the department of education holds title;
- (14) Lands to which the stadium authority holds title; and
- (15) Lands to which the school facilities authority holds title; . . . .

Accordingly, the Department suggests that this bill would encompass more State land and have a more significant impact if enacted outside of Chapter 171, HRS.

Mahalo for the opportunity to testify on this measure.

**SB-2759**

Submitted on: 2/7/2024 4:10:03 PM

Testimony for WTL on 2/9/2024 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Russell Tsuji	Testifying for Department of Land and Natural Resources	Comments	Remotely Via Zoom

Comments:

Written testimony from DLNR previously submitted on another Capitol account. Request for a Zoom link for additional DLNR staff testifying remotely for SB2759.

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



**TESTIMONY BY:**  
EDWIN H. SNIFFEN  
DIRECTOR  
KA LUNA HO'OKELE  
  
Deputy Directors  
Nā Hope Luna Ho'okele  
DREANALEE K. KALILI  
TAMMY L. LEE  
ROBIN K. SHISHIDO

**STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I**  
**DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 9, 2024  
1:10 p.m.  
State Capitol, Room 229

S.B. 2759  
**RELATING TO CAPITAL ADVANCEMENT CONTRACTS**

Senate Committee on Water and Land

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The Hawaii Department of Transportation (HDOT) provides **comments** on this measure that proposes to prohibit the state from leasing public lands to individuals, corporations, or federal agencies that are in arrears in payments to the state or otherwise non-compliant with certain requirements.

HDOT adheres to Chapter 171 in the disposition of its lands and facilities to harbor users for maritime activity including the import of most of the goods consumed in the state. If enacted, these provisions will impede the department's ability to provide for the use of port facilities necessary to support the movement of cargo. HDOT requests this committee's consideration of an amendment to this measure to exempt HDOT leases and dispositions from this requirement.

Thank you for the opportunity to provide these comments.



**OPPOSITION TO SB 2759  
RELATING TO LAND LEASES**

Senate Committee on Water and Land  
The Honorable Lorraine R. Inouye, Chair  
The Honorable Brandon J.C. Elefante, Vice Chair

Friday, February 9, 2024 at 1:10 pm.  
Conference Room 229 & Videoconference  
Hawaii State Capitol; 415 South Beretania Street

Chair Inouye, Vice Chair Elefante, and Members of the Committee:

The Hawaii Military Affairs Council ("MAC") respectfully opposes SB 2759 which:

1. Prohibits the State from leasing any public lands, or extending the lease of any public lands, to any individual, corporation, or federal agency that is in arrears in the payment of certain moneys to the State, noncompliant with a consent decree or memoranda of agreement with the State that requires environmental maintenance or remediation with regard to the subject public lands, or convicted of a crime;
2. Requires certification by the Office of the Governor before the issuance or extension of any federal lease that the individual, corporation, or federal agency is in good standing with the State; and
3. Provides that, if any existing lessee of public lands is found not to be in good standing with the State as of the effective date of this Act, the lessee shall have 3 years, or until the end of the lease term, whichever is sooner, to correct the violation or the lease shall be terminated.

The MAC was established in 1985 when the Chamber was appointed by the State to serve as the liaison to the military. The MAC advocates on behalf of Hawaii's military, and is comprised of business leaders, academic institutions, State and County officials, members of the CODEL, community leaders, labor unions and organizations and retired U.S. flag and general officers. The



MAC works to support Hawaii's location as a strategic U.S. headquarters in the Indo-Asia-Pacific region which is crucial for U.S. national and homeland security.

While we understand the desire for responsible stewardship of public lands, SB 2759 is overly broad and presents several unintended consequences, particularly for the military branches and the U.S. Department of Defense (DoD) in Hawaii.

The DoD manages critical military installations on leased public lands in Hawaii. These installations are essential for national security, protecting the United States and its allies in the Pacific region. This bill's "all or nothing" approach could jeopardize mission-critical activities and national security interests if technicalities lead to lease non-renewals.

Existing federal and state laws and regulations already govern how public lands are used and managed. Military leases undergo rigorous environmental, regulatory, administrative, and public reviews, ensuring responsible stewardship. This bill creates unnecessary duplication and undermines existing oversight mechanisms.

Further, SB 2759 eliminates flexibility for addressing complex situations. Minor, technical non-compliance shouldn't automatically trigger lease termination, potentially harming ongoing collaborations and jeopardizing important projects. The measure's broad language could be interpreted to include minor contractual disputes or financial misunderstandings as grounds for lease termination.

Finally, implementing the bill's requirement to assess "good standing" across a diverse range of potential lessees, including federal agencies, would create an immense administrative burden. This could stall critical projects and impact economic development opportunities. Rather, a nuanced approach should be a process for resolving disputes or misunderstandings before resorting to lease termination.



We urge the Committee to consider alternative solutions that achieve the objectives of responsible land management without jeopardizing vital interests such as addressing serious or repeated violations of financial, environmental, or legal obligations.

Thank you for the opportunity to testify in opposition and ask the committee to defer SB 2759.



DATE: February 7, 2024

TO: Sen. Inouye, Chair, Sen. Elefante, Vice Chair, and members of the Committee on Water and Land; Hearing Friday, 2/9/2024, 1:10 PM

FROM: Kyle Kajihiro, Hawai'i Peace and Justice (HPJ)

SUBJECT: Strong support for SB2759 with amendments

Thank you for the opportunity to testify.

The federal government must be held accountable for its conduct when it uses state lands and waters. We have witnessed how the U.S. navy's criminal negligence and contempt for Hawai'i's people and government officials at Red Hill resulted in a public health and water crisis which continues to threaten O'ahu's drinking water. We have also seen how military activities have caused egregious environmental harm that will burden future generations, such as the unexploded ordnance on Kaho'olawe, Mākua, Pōhakuloa, Waikāne, Waikoloa, and hundreds of other sites. The courts have found that the state has failed to fulfill its trust obligations on public trust lands leased by the U.S. military at Pōhakuloa by not holding the Army to the terms of the lease.

This bill strengthens the state's hand in dealing with a tenant who repeatedly commits dereliction of duty with regard to care of Hawai'i's natural and cultural resources.

I am testifying in STRONG SUPPORT of SB2759 with a few small amendments:

In Section 2 (10), please change the language to read:

- (10) No lease **disposition** of public lands, including submerged lands, or any extension of any lease **disposition** of public lands, shall be issued by the State to any individual, corporation, or federal agency that is:

Amend paragraph (B) to read:

- (B) Noncompliant with any **lease, permit**, order, consent decree, or memoranda of agreement requiring the individual, corporation, or federal agency to perform environmental maintenance or remediation activities with regard to the subject public lands; or

I urge Hawai'i lawmakers to strengthen the state's ability to protect Hawai'i's land and natural resources. Thank you for the opportunity to testify.



# SIERRA CLUB OF HAWAI'I

## SENATE COMMITTEE ON WATER & LAND

February 9, 2024      1:10 PM      Conference Room 229

### In **SUPPORT** of **SB2759**: Relating to Land Leases

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Aloha Chair Inouye, Vice Chair Elefante, and Members of the Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **SUPPORTS** SB2759, which will ensure that our limited public trust lands are adequately stewarded and maintained for present and future generations.

**Our public lands are held in trust for the benefit of present and future generations**, and government entities such as the Department of Land and Natural Resources (DLNR) therefore have fiduciary obligations to apply standards of due diligence, prudent decisionmaking, and undivided loyalty in the management of these lands.

Unfortunately, as has been recognized in recent years including by the Hawai'i Supreme Court<sup>1</sup> and Hawai'i State Auditor,<sup>2</sup> the DLNR has in many instances failed to apply an appropriate standard of care in the leasing or disposition of lands to third party entities. Until the underlying systemic problems causing these issues are resolved, DLNR cannot afford to issue leases to unreliable lessees who may only create additional oversight burdens; doing so would only further hamper its efforts to uphold its fiduciary responsibilities and rebuild community trust in its actions.

This measure would accordingly provide a safeguard against the issuance of leases to unreliable entities who have a history of noncompliance or other problematic behavior. By ensuring that prospective lessees are reviewed for issues such as nonpayment of rent, criminal behavior, or noncompliance with certain environmental legal obligations, this bill would assist the DLNR in avoiding costly, wasteful, and/or controversial dispositions of our public trust lands. As a result, the DLNR would be able to maintain focus on its mission, and on improving the ways in which it upholds its fiduciary obligations.

Accordingly, the Sierra Club respectfully urges the Committee to **PASS** SB2759.

Mahalo nui for the opportunity to testify.

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<sup>1</sup> See *Ching v. Case*, 449 P.3d. 1146 (Hawai'i 2019).

<sup>2</sup> See HAWAI'I STATE AUDITOR, 19-12, AUDIT OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES SPECIAL LAND DEVELOPMENT FUND (2019).

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## HAWAII HARBORS USERS GROUP

Opposition to SB 2759, Relating to Land Leases  
Before the Senate Committee on Water and Land

February 9, 2024

Aloha Chair Inouye, Vice Chair Elefante, and Members of the Committee:

The Hawaii Harbor Users Group (HHUG) respectfully opposes SB 2759, which among other things, increases the cost of living to Hawaii's residents by increasing the cost of leases of public lands, including our commercial harbors.

As an island state, Hawaii is very dependent upon our commercial harbors to ensure the continued and unimpeded flow of cargo in and out of our State. It is estimated that over 90 percent of Hawaii's imported goods pass through our commercial harbors, including consumer goods, motor vehicles, construction materials, and fuel. Given the critical role of our commercial harbors, it is imperative that the State support dependable and efficient cargo transportation and handling to service our residents and businesses.

Title 46 United States Code sections 861-889 safeguard the vital lifeline for Hawaii and the United States. These sections ensure Hawaii receives reliable shipping service, provides family wage jobs for thousands of Hawaii workers, and provides an essential national security asset for our State. At least 91 nations have similar laws to protect the stability of its shipping industry and national security. The costs to comply with Title 46 United States Code sections 861-889 are not significant, but this measure will double these costs as lessees will be forced to pay them to the State and then pass them on to customers. Furthermore, the United States Government Accountability Office, after conducting several studies, concluded that the costs of Title 45 United States Code sections 861-889 cannot be determined.

At best, SB 2759 will increase the cost of living in Hawaii with the greatest impact to the Neighbor Island residents.

Thank you for considering our testimony.



# Native Hawaiian LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813  
Phone (808) 521-2302 • www.nativehawaiianlegalcorp.org



## SB2759 RELATING TO LAND LEASES

### COMMITTEE ON WATER AND LAND

February 9, 2024 1:10 p.m. Conf. Rm. 229 & Videoconference

Aloha e Chair Inouye, Vice Chair Elefante, and Members of the Committee,

The Native Hawaiian Legal Corporation<sup>1</sup> offers the following testimony in SUPPORT of SB2759 (with amendments), which proposes changes to the law to better ensure that the state fulfill its important constitutional and statutory kuleana to the public lands trust.

The state has fiduciary duties to mālama its public lands. As the Hawai'i Supreme Court has recognized:

Under the Hawai'i Constitution, all public natural resources are held in trust by the State for the common benefit of Hawai'i's people and the generations to come. Additionally, the constitution specifies that the public lands ceded to the United States following the overthrow of the Hawaiian Monarchy and returned to Hawai'i upon its admission to the Union hold a special status under our law. These lands are held by the State in trust for the benefit of Native Hawaiians and the general public. Accordingly, **our constitution places upon the State duties with respect to these trusts much like those of a common law trustee, including an obligation to protect and preserve the resources however they are utilized.**

*Ching v. Case*, 145 Hawai'i 148, 152, 449 P.3d 1146, 1150 (2019) (emphasis added).<sup>2</sup>

As drafted, SB2759 acknowledges that the state, as a "landlord" who authorizes dispositions of public lands, must "ensur[e] that the tenant has met all financial, contractual, and legal obligations" before renewing or extending any lease. This includes, among other things, compliance with any order, consent decree or memoranda of agreement requiring environmental maintenance or remediation activities. However, because the Board of Land and Natural Resources has kuleana over more than one type of disposition, SB2957 should not

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<sup>1</sup> NHLC is a non-profit, public interest law firm committed to the protection and advancement of Native Hawaiian identity and culture, including the protection of 'āina and other resources upon which Native Hawaiian well-being and culture depend.

<sup>2</sup> So great is the state's duty to protect and preserve the 'āina that it "exists independent of whether [a] third party has in fact violated the terms of any agreement governing its use of the land," *Ching*, 145 Hawai'i at 152, 449 P.3d at 1150.

be limited to the renewal or extension of leases but should also apply to the issuance of any disposition, including licenses and permits, that authorize the use of public lands. Also, because the state's independent duty to protect and preserve these lands is so high, the language of paragraph 10(B) should bar any land disposition where the leaseholder, permittee, or licensee violated the terms of its agreement and is not in good standing.

Consistent with the above, paragraph 10 should be amended as follows:

(10) No disposition of public lands, including submerged lands, or any extension of any disposition of public lands, shall be issued by the State to any individual, corporation, or federal agency that is:

....

(B) Noncompliant with any lease, permit, license, order, consent decree, or memoranda of agreement requiring the individual, corporation, or federal agency to perform environmental maintenance or remediation activities with regard to the subject public lands

The elephant in the room is the pending renewal of public land leases to the United States military, including Pōhakuloa, where the Supreme Court concluded that the state breached its trust duties by failing to reasonably monitor or inspect the 22,900 acres of public lands, *see Ching*, 145 Hawai'i at 162, 449 P.3d at 1160, and where the circuit court issued a Court Ordered Management Plan "to assess compliance with Lease requirements for appropriate removal of unexploded ordnance . . . and debris associate with ongoing military training" and "ensure compliance with the Lease." Until all reasonable efforts have been made to remove ordnance, trash, and debris and return Pōhakuloa to acceptable condition, no consideration should be given for any continued use of the land. This goes for all public lands under the temporary control of any entity that is not a good steward or does not otherwise comply with the terms of its agreement for use of the land.

It is the state's distinct kuleana to mālama this 'āina. SB2759, with the proposed amendments, is necessary to provide guidance to BLNR and to help meet the state's legal duty as trustee of the public lands trust.

Mahalo for the opportunity to testify.



Ashley K. Obrey  
Senior Staff Attorney  
Native Hawaiian Legal Corporation

**LATE**

**Strong support for Senate Bill 2759; RELATING TO LAND LEASES**

Dear Chair Inouye and Esteemed Members of the Senate Water and Land Committee,

I am writing to express my strong support for Senate Bill 2759, which aims to ensure that the State of Hawaii holds lessees of public lands to the same standards of accountability and responsibility as private landlords do with their tenants. As citizens and stewards of our public trust, it is imperative that we uphold these principles of good governance and accountability.

One of the fundamental responsibilities of any landlord is to ensure that their tenants are in good standing, meeting all financial, contractual, and legal obligations. This is not only common practice but also essential for maintaining the integrity of lease agreements and the well-being of the community. Just as private landlords have the right to terminate a lease when a tenant commits a crime on their property, it is equally important for the State to have mechanisms in place to hold lessees of public lands accountable for their actions.

The rationale behind SB 2759 is grounded in the understanding that when the State leases out public lands, it enters into agreements with lessees who have certain obligations. These obligations typically include paying all required fees, adhering to environmental regulations, and refraining from criminal activities on the leased property. Therefore, it is only logical that the State should exercise its authority to ensure that all lessees, whether individuals, corporations, or federal agencies, are in compliance with these obligations.

By prohibiting the State from leasing or extending leases to entities that are not in good standing or have not met their obligations, SB 2759 reinforces the principle that all lessees must uphold their end of the agreement. This legislation not only protects the interests of the State but also safeguards the environment and promotes responsible stewardship of our public lands.

In conclusion, **I urge you to support Senate Bill 2759 as it aligns with the principles of accountability, responsibility, and good governance.** By ensuring that all lessees of public lands meet their obligations, we can safeguard our natural resources for future generations and uphold the integrity of our lease agreements. Thank you for considering my testimony in support of this important legislation.

Laura Acasio, Former State Senator, District 1

[Your Name]