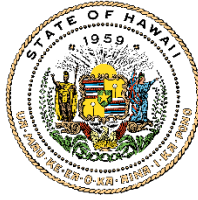


JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

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  
JUDICIARY

Tuesday, February 27, 2024  
10:00 a.m.

State Capitol, Conference Room 016 & Videoconference

In consideration of  
SENATE BILL 2759, SENATE DRAFT 1  
RELATING TO LAND LEASES

Senate Bill 2759, Senate Draft 1 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 4, 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 6-15. The existing statutory language and new language could probably be combined into a single provision.

The Department notes that Senate Draft 1 of the bill reflects amendments by the Committee on Water and Land to expand the applicability of the bill to a class of lands that would otherwise be exempt from its provisions pursuant to Section 171-2, HRS.

Mahalo for the opportunity to testify on this measure.

**SB-2759-SD-1**

Submitted on: 2/21/2024 2:06:37 AM

Testimony for JDC on 2/27/2024 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kyle K Kajihiro	Testifying for Hawai'i Peace and Justice	Support	Written Testimony Only

Comments:

The state has fiduciary duties to mālama its public lands. Hawai'i Peace and Justice SUPPORTS SB2759 SD1 with the following proposed amendments.

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

(10) Notwithstanding the exceptions listed in paragraphs (1) and (4) through (15) of section 171-2, no lease or disposition of public lands, including submerged lands, or any extension of any lease or 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.



**OPPOSITION TO SB 2759, SD1  
RELATING TO LAND LEASES**

Senate Committee on Judiciary  
The Honorable Karl Rhoads, Chair  
The Honorable Mike Gabbard, Vice Chair

Tuesday, February 27, 2024 at 10:00 a.m.  
Conference Room 016 & Videoconference  
Hawaii State Capitol; 415 South Beretania Street

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Hawaii Military Affairs Council ("MAC") respectfully opposes SB 2759, SD1 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, SD1 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, SD1 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, SD1.



**Hawaii  
Legislative  
Council  
Members**

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair  
Committee on Judiciary

Joell Edwards  
Wainiha Country  
Market  
Hanalei

Tuesday, February 27, 2024  
10:00 AM, Room 016 or via Videoconference

RE: **SB2759 SD 1** Land Leases - **Support with Amendments**

Russell Ruderman  
Island Naturals  
Hilo/Kona

Dear Chair Rhoads, Vice-Chair Gabbard and Committee Members,

The Chamber of Sustainable Commerce represents over 100 small businesses across the State that strive for a triple bottom line: people, planet and prosperity; we know Hawaii can strengthen its economy without hurting workers, consumers, communities or the environment.

This is why we are in strong support of SB2759 SD1, which prohibits the State from leasing 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, 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.

We appreciate the amendments offered by DLNR, and accepted by the Committee on Water and Land, to expand the state lands covered by this bill. We urge this committee to add the following amendments:

- 1) Clarify that "Convicted of a crime" refers only to crimes "related to the misuse and mismanagement of land and natural resources, including laws protecting the safety of workers, residents, critical habitats and cultural preservation;" and
- 2) Ensure lessees have not, and will not, block access to cultural sites, traditional practices, and natural resources.

State actors with a fiduciary duty to care for the State's precious natural resources, should not lease lands to tenants who illegally contaminate our land and water; if a tenant has an MOU to clean past contamination but decades later, have not completed the clean up, they should not be allowed to sign new leases for other state lands. Simply put: do right by Hawaii and her people.

Dr. Andrew Johnson  
Niko Niko Family  
Dentistry  
Honolulu

Robert H. Pahia  
Hawaii Taro Farm  
Wailuku

Maile Meyer  
Na Mea Hawaii  
Honolulu

Tina Wildberger  
Kihei Ice  
Kihei

L. Malu Shizue Miki  
Abundant Life  
Natural Foods  
Hilo

Kim Coco Iwamoto  
Enlightened Energy  
Honolulu

Chamber of  
Sustainable  
Commerce  
P.O. Box 22394  
Honolulu, HI  
96823



# SIERRA CLUB OF HAWAI'I

## SENATE COMMITTEE ON JUDICIARY

February 27, 2024

10:00 AM

Conference Room 016

### In **SUPPORT WITH AMENDMENTS** of **SB2759 SD1: RELATING TO LAND LEASES**

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Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committee,

On behalf of our over 20,000 members and supporters, the Sierra Club of Hawai'i **SUPPORTS** SB2759 SD1, which will ensure that our limited public trust lands are adequately stewarded and maintained for present and future generations. **We do offer friendly amendments for the Committee's consideration in our written testimony below.**

**Our public lands are held in trust for the benefit of present and future generations,** and government entities, including but not limited to 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 and other state agencies in avoiding costly, wasteful, and/or controversial dispositions of our public trust lands. As a result, our agencies would be able to maintain focus on their respective missions, and on improving the ways in which they upholds their fiduciary obligations.

To strengthen this measure and its protection of the public interest, the Sierra Club offers the following possible amendments for the Committee's consideration, to be added after page 7, line 1:

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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).





# SIERRA CLUB OF HAWAI'I

- (D) Likely to create an unreasonable environmental hazard on or adjacent to the leased land, including wildfires, or has a history of creating unremediated environmental hazards on or adjacent to leased public lands;
- (E) Intending to block access to cultural sites or valued natural resources necessary for the exercise of Native Hawaiian traditional and customary rights.

Accordingly, the Sierra Club respectfully urges the Committee to **PASS WITH AMENDMENTS** SB2759 SD1.

Mahalo nui for the opportunity to testify.



**Senate Committee on Judiciary**

**Hawai'i Alliance for Progressive Action (HAPA) Supports with Amendments: SB2759 SD1**

Tuesday, February 27th, 2024 10:00 a.m. Conference Room 016

Aloha Chair Rhoads, Vice Chair Gabbard, and Committee Members

HAPA is testifying in strong support of SB2759 SD1, which prohibits the State from leasing 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, 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.

We appreciate the amendments offered by DLNR, and accepted by the Committee on Water and Land, to expand the state lands covered by this bill. We urge this committee to add the following amendments:

1. Clarify that "Convicted of a crime" refers only to crimes "related to the misuse and mismanagement of land and natural resources, including laws protecting the safety of workers, residents, critical habitats and cultural preservation;" and
2. Ensure lessees have not, and will not, block access to cultural sites, traditional practices, and natural resources.

State actors with a fiduciary duty to care for the State's precious natural resources, should not lease lands to tenants who illegally contaminate our land and water; if a tenant has an MOU to clean past contamination but decades later, have not completed the clean up, they should not be allowed to sign new leases for other state lands. Simply put: do right by Hawai'i and her people.

Accordingly, We respectfully but strongly urge you to PASS this measure with the critical AMENDMENTS listed above.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Anne Frederick', written in a cursive style.

Anne Frederick  
Executive Director