

SB-300-SD-2

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Testimony for WAL on 3/23/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
JM Tomita	Individual	Support	Written Testimony Only

Comments:

Aloha Finance Committee,

I originally submitted my strong support for SB300, for the Hawaii Correctional System Oversight Commission's (HCSOC) requested budget for FY24 & FY25 two weeks ago. Nothing has changed my stance on this. In fact, I am even more supportive after reading the other 30+ testimonies (all IN SUPPORT OF). Many of those testimonies were from nationwide, respected experts in the prison oversight community.

The HCSOC's newly hired Coordinator (7 months on the job) testified in person, during HB 1132 a few weeks ago, that Hawaii's prisons/jails are "The worst I've seen." Granted, she hasn't seen every facility in the United States, but she is highly trained, respected and experienced in her field of expertise. Her observation MUST BE taken seriously if Hawaii is to make significant improvements in the nine (including Arizona) correctional facilities.

This can only be done if the HCSOC has more staff, and not just any staff, but qualified individuals who are unbiased in their duties and honest with their findings. This may involve hiring from outside the state, hence the appropriately requested salaries that the commission is asking for. They need 'professionals' in order to carry out their mandate.

In closing, as I stated two weeks ago, the HCSOC has made tremendous strides since July 2022. Their findings, which are now making the Department of Public Safety accountable, are what some people have known for years. And to be clear, it's not Public Safety's fault; they have a tough job, and obviously have great professionals in their organization. It just appears to me they need the Oversight Commission to point out some of their current deficiencies or procedures that aren't being followed, based on nationwide standards, The commission has also given praise to the Dept of Public Safety, when warranted. Let's continue this journey by giving the HCSOC more 'bite', by getting them a few more professionals now!

Thank you for allowing my testimony.

v/r
JMT

Kealaponon Richardson
Pālolo, Honolulu, Hawai'i

RE: SB 300 SD2, WAL Hearing March 23, 2023, Conference Room 430, 9:00am

Aloha WAL Chair Ichiyama, Vice Chair Poepoe, and Members of the Committee,

I write in **opposition of SB 300 SD2** – “Expenditure of Public Funds for Land Improvements” and **offer comments regarding an amendment to exclude lands in which the State has a real property interest**.

As SB 300 SD2 is drafted, it is unclear whether *real property interests* are excluded from the proposed prohibition of using public funds for improvements to lands not owned or leased by the State.

Legal protections for integral lands in Hawai'i can be acquired by **conservation easements**—a type of **real property interest** which is *distinguishable* from land ownership or tenancy. The State acquires real property interests by conservation easements across the State for the purpose of land protection and conservation, and the legislature should consider allowing the State to expend public funds for improvements to these lands without the proposed prohibition.¹

Amending the proposed bill to include the underlined language below to **page 1, lines 5-7 of SB 300 SD2**, may eliminate any ambiguity and ensure that land improvements can continue without the proposed prohibition on lands where the State has real property interests:

“No public moneys shall be expended for any improvement to land not owned or leased by the State, **or land in which the State does not have a property interest**, unless the legislature makes an appropriation for the improvement . . .”

For example, the State's [Legacy Land Conservation Program](#) receives up to \$5,100,000 each year² to “provide for the acquisition and management”³ of property or *real property interest*, i.e., conservation easements, for the protection of lands with significant “natural, environmental, recreational, scenic, cultural, agricultural production, or historic value, and may also include park and trail systems that provide access to any such land.”⁴ In fact, [HB 908](#) of the 2023 Regular Session currently awaits its final committee hearing in WAM, requesting the legislature to increase the annual ceiling of the program's annual fund up to \$9,100,000.⁵ Not all lands acquired through the program are owned or leased by the State, and improvements to these lands are inevitable as part of the ongoing co-stewardship between government, public, and private entities and non-profits.

¹ [SB 300 SD2](#), 32nd Leg., Reg. Sess. (2023) (defining “improvements” as “any physical improvement, including any building, structure, road, walkway, driveway, sidewalk, utility line, underground cable or pipe, grading, trenching, or landscaping.”).

² Hawai'i Revised Statutes (HRS) [§ 247-7](#) (providing that of the taxes collected each fiscal year, ten per cent or \$5,100,000, whichever is less, shall be paid into the land conservation fund established pursuant to section 173A-5).

³ [HRS § 173A-1](#) (setting forth the purpose of the State Legacy Land Program).

⁴ [HRS 173A-2](#) (defining “Land having value as a resource to the State”).

⁵ [HB 908 HD2 SD1](#), 32nd Leg., Reg. Sess. (2023) (relating to the Land Conservation Fund).

Additional considerations if amended language is not adopted:

- A. The proposed “natural or cultural resource” purpose exception may exclude some lands with property interest held by the State.

Exception (1) of SB 300 SD2 provides that “[e]xpenditure for a project with the purpose of natural or cultural resource management” shall be excluded from this proposed prohibition. Improvement to lands where the State holds a property interest by conservation easement may fall under this exception, however, if the State has a property interest that falls outside of the “natural or cultural” exception, the proposed prohibition may prevent such improvements without an appropriation by the legislature.

- B. The proposed “State grant” exception may exclude Legacy Land Fund grants under chapter 42F.

Exception (2) of SB 300 SD2 provides that “this section shall not apply to any . . . State grant, including any grant made pursuant to chapter 42F.” Although the State’s Land Legacy Program acquires properties and conservation easements by grant,⁶ the meaning of “grant” under chapter 42F means “an award of state funds by the legislature”⁷ and may preclude grants made through state agencies and programs like the Legacy Land Fund. Additionally, there are situations where the State can acquire real property interests without a grant or through other funding sources, and may disqualify it from the exemption under chapter 42F.

- C. Ambiguity of “land” may allow for the exclusion of property interests held by the State from the proposed prohibition.

Even if the proposed amendment is not adopted, ambiguity in the bill may allow for the exclusion of real property interests from the proposed prohibition. Conservation easements—while a property interest—are not land, an ownership in land, nor a lease for land, and by limiting the proposed prohibition to “land”, and omitting other property interest, conservation easements may already be excluded from the proposed prohibition.

Therefore, including an amendment **to exclude lands that the State has a real property interest** would resolve any ambiguity and ensure improvements to our integral lands under conservation easements held by the State can continue uninterrupted.

Mahalo for your consideration and opportunity to provide comments,



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⁶See [HRS § 173A-9](#) (relating to grants to state agencies, counties, and nonprofit land conservation organizations).

⁷ [HRS § 42F-101](#) (defining the meaning of “grant” under chapter 42F).

Aloha Chairperson Del Cruz and members of the Ways and Means Committee

Thank you for the opportunity to offer testimony on SB300. I wish to voice opposition to the bill in current form as it doesn't provide the KIRC with much needed funding. I am asking that the bill be amended to provide this. As a 35 year member of the Protect Kaho'olawe 'Ohana, I have first hand experience with the superb work the KIRC has provided for the island and Hawaii's people in an extremely challenging environment with very limited funding.

As a cultural practitioner, I wish to emphasize the incredible support KIRC has offered us in fulfilling our kuleana of continuing our unbroken commitment to perform the ceremonies that call for the healing of a deeply scarred place and people. They have and continue to offer volunteer groups from across the state the access and chance to experience and serve this unique and sacred place.

Please do everything in your power to secure permanent funding for the KIRC that we may all work together in the restoration of this most sacred and storied place. Do this in remembrance of those who went before us as well as the future generations to come.

Mahalo
Kelvin Ho
Lawai, Kaua'i