



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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Testimony by:
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IN REPLY REFER TO:

February 3, 2016
10:30 a.m.
State Capitol, Room 309

H.B. 2408
RELATING TO LAND DISPOSITIONS

House Committee on Transportation

The Department of Transportation (DOT) **strongly support** H.B. No. 2408 as part of the Administration's Package.

The DOT is best suited to manage lands it owns and controls, especially with regard to land dispositions for aeronautic, airport-related, maritime, and maritime-related uses because it is most directly connected to these industries and operations and can best adapt and adjust to accommodate industry needs. In addition, the DOT must comply with Federal regulations to preserve grant assurance funding in managing its lands.

The bill facilitates more efficient use of lands owned and controlled by DOT that support and sustain the State's economy.

In 1993, the Board of Land and Natural Resources (BLNR) approved the delegation of authority to DOT to issue revocable permits for uses that are consistent with the purpose and intent of the public lands set aside through Executive Orders. It has recently been determined that this delegation of authority was not proper.

This bill clarifies the statutes to allow leases and the disposition of revocable permits without approval by BLNR. The time constraints associated with presenting leases and short-term land dispositions to BLNR result in unnecessary delays and loss of rental revenues. In addition, the work hours to prepare each submittal to BLNR for each revocable permit is labor intensive, time consuming and repetitious. Finally, this delegation will reduce the work load on BLNR.

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 DOT.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
TRANSPORTATION

Wednesday, February 3, 2016
10:30 A.M.
State Capitol, Conference Room 309

In consideration of
HOUSE BILL 2408
RELATING TO LAND DISPOSITIONS

House Bill 2408 proposes to amend the public lands statute, Hawaii Revised Statutes (HRS) Chapter 171, to exempt the Department of Transportation's (DOT) issuance of revocable permits on state lands from prior approval by the Board of Land and Natural Resources. **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 of Land and Natural Resources 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 of Land and Natural Resources for approval at the Board's regularly scheduled public meetings. Under House Bill 2408, DOT seeks to amend existing law to provide that Board approval of revocable permits issued by DOT will no longer be required. Instead, DOT will have authority to issue revocable permits on lands set aside to it "by direct negotiation and without public auction, under conditions and rent which will best serve the interests of the State."

The Department notes that the public policy purposes for all land dispositions, especially those issued by direct negotiation outside the public auction process, is to ensure independent review by the Board of Land and Natural Resources 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 by DOT.



HB2408
RELATING TO LAND DISPOSITIONS
House Committee on Transportation

February 3, 2016

10:30 a.m.

Room 309

The Administration of the Office of Hawaiian Affairs (OHA) will recommend to the Board of Trustees a position of **OPPOSE** for HB2408, which authorizes the Hawai'i Department of Transportation (HDOT) to issue revocable permits for lands under its control, 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 of any opportunity to review and comment on the use of some of our 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, BLNR actions, including the approval of HDOT revocable permits, must be considered in an open 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 revocable permits from BLNR approval, HB2408 could effectively remove 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

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.

does not have a governing board or commission subject to the open meeting requirements of our Sunshine Law. Therefore, by removing all BLNR oversight over HDOT revocable permits, such permits could be negotiated and issued by the HDOT without the benefit of public review or comment. Notably, as indicated by a recent BLNR agenda item, revocable permits may entail the use of parcels of a hundred acres or more, for uses ranging from aircraft fueling to agriculture, and for fees ranging from a few hundred dollars to several hundred thousand dollars per acre. Combined with the fact that permits may be reissued an indefinite number of times, such broad authority over such significant parcels of land strongly counsel the retention of public oversight and review of HDOT permitting activities.

In light of all these concerns, OHA urges the Committee to **HOLD** HB2408. Mahalo for the opportunity to testify on this important measure.

AIRLINES COMMITTEE OF HAWAII



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LATE

February 3, 2016

Honorable Henry Aquino, Chair
Honorable Matthew LoPresti, Vice Chair
House Committee on Transportation

Re: HB 2408 – RELATING TO LAND DISPOSITIONS – SUPPORT
Conference Room 309 – 10:30 AM

Aloha Chair Aquino, Vice Chair LoPresti, 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 HB 2408.

This measure authorizes the Department of Transportation (DOT) to issue revocable permits without approval of the Board of Land and Natural Resources.

The ACH supports this measure, but prefers HB 2407 which also is applicable to leases 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.*



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HOUSE COMMITTEE ON TRANSPORTATION

**THE HONORABLE HENRY J.C. AQUINO, CHAIR
THE HONORABLE MATTHEW S. LoPRESTI, VICE CHAIR**

**HOUSE BILL NO. 2408
February 3, 2016, 10:30 a.m., Conference Room 309**

Written Testimony in Support

**By Roy Catalani, Vice President of Strategic Initiatives and External Affairs and
Sandra Y.B. Hoshida, Manager of Government Affairs
Young Brothers, Limited**

Chair Aquino, Vice Chair LoPresti, and Members of the House Committee on Transportation:

Young Brothers, Limited (*Young Brothers*) supports House Bill No. 2408 (*HB2408*).

HB240 proposes to amend statutory provisions to authorize the Department of Transportation (***DOT*** or the ***Department***) to issue revocable permits covering lands under its jurisdiction without the approval of the Board of Land and Natural Resources (***BLNR***).

The bill acknowledges that the DOT is best and ably suited to manage lands under its jurisdiction, including issuance of revocable permits covering such lands. Particularly with respect to maritime and maritime-related lands, the Department collaborates very closely with the Hawai'i Harbor Users Group in planning for modernization of harbor lands and facilities. With individual harbor users such as Young Brothers, the DOT keeps abreast of each of their operational and facility needs. Young Brothers believes, accordingly, that the Department has the expertise and managerial history to issue revocable permits covering maritime and maritime-related lands under its jurisdiction without the approval of the BLNR.

Thank you for this opportunity to testify.



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AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Henry Aquino, Chair
Committee on Transportation
House of Representatives
State of Hawaii

Late Testimony

Room 309, 10:30 a.m.

February 3, 2016

Re: HB 2408 Relating to Land Disposition

Dear Chair Aquino and Honorable Committee Members:

My name is Peter Fithian and I am the Chair of the Legislative and Governmental Affairs Committee of the Airports Concessionaires Committee.

Our Committee represents the majority of the concession operators at the public airports throughout the State of Hawaii. Members of our group contribute about 50% of the operating revenues of the airports along with the airlines who also contribute about 50%.

Our Committee strongly supports this bill.

The Department of Transportation (DOT) regular deals with many hundreds of commercial leases and space permits each year and thus needs the discretion and flexibility to award and extend when the DOT deems appropriate revocable permits on a month to month basis. Please continue to trust the judgment of the DOT.

The DOT does not automatically grant or extend such month to month permits and does so only when it deem it to be appropriate. The DOT has been fair in granting such permits.

To require the DOT and concession operator to attend a public hearing for a month to month extension on matters that are obviously justifiable has made no sense and has been a waste of time and resources that the DOT should not be required to waste.

We respectfully urge you to return to the past practice as proposed in this bill.

We thank you for allowing us to testify.

From: Amy Sherburne-Manning <Amy_Manning@pashanet.com>
Sent: Wednesday, February 03, 2016 11:25 AM
To: TRNtestimony
Subject: HB 2407 and HB 2408

Pasha Hawaii believes that the Hawaii DOT is best suited to manage the lands under its jurisdiction and supports both HB 2407 and HB 2408 to give Hawaii DOT greater authority and control of the lands under its jurisdiction for maritime or airport-related uses.

Amy Sherburne Manning | Senior Vice President and General Counsel | The Pasha Group
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