

SB 1141



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February 26, 2009

Honorable Donna Mercado Kim, Chair
Ways and Means Committee
Hawaii State Senate
415 South Beretania Street
Honolulu, HI 96813

Support for Senate Bill 1141, SD1: Sale of or Exchange for Sand Island Land

Dear Chair Kim and Committee Members:

The Sand Island Business Association (SIBA) strongly supports the passage of SB 1141, SD1.

SIBA entered a 55 year lease with the Department of Land & Natural Resources (DLNR), effective July 1, 1992. The lease (S-5261) covers about 74 acres which was divided into 112 lots and is known as the Sand Island Industrial Park (SIIP). This lease was negotiated under the authority of HRS 171-141(a)(5).

Lease S-5261 required SIBA to construct all of the infrastructure improvements; sublease 111 lots to existing month to month lessees; and manage the SIIP, which includes the collection of rent from its sublessees on behalf of DLNR.

SIBA is a unique organization. SIBA is a non-profit corporation under the U.S. Internal Revenue Code. Each of SIBA's sub-tenants is a member of SIBA. SIBA, on behalf of its members, constructed the infrastructure improvements and now manages the SIIP for the benefit of its members. In return, the members agreed to pay lease rent (as required by S-5261) and expenses for the operation of SIBA.

In 1999, SIBA completed the infrastructure improvements for the SIIP at a cost of over \$41 million. The improvements consisted of streets, sidewalks, storm drains, sewer and water systems, underground utilities, landscaping, and security walls. In addition, SIBA maintains the common areas: streets, sidewalks, landscaping, and lighting.

Our members, on a conservative basis, have invested over \$20 million in leasehold improvements to their individual lots.

Under the terms of our lease with DLNR, the first 25 years of rent was established in 5, 5, 10, and 5 year increments. We are presently in the 10 year period. Our members currently pay DLNR \$0.125 per square foot per month in rent. The 25 year fixed rent period will end in the year 2017.

Increasingly, over the last few years, our members have expressed a strong desire to purchase the fee interest of their leasehold lots. Their primary motive is to utilize their substantial investment in SIIP by purchasing the fee to their leasehold. The shorter the lease period, the less value as an asset is the leasehold to the lessee.

SIBA understands and acknowledges it has a 55 year lease with DLNR. However, it is not uncommon for a tenant to ask its landlord to purchase the landlord's fee interest. What is unique is that the fee in question is owned by the State of Hawaii. Consequently, legislative action is necessary. For this reason, we support SB 1141, SD1. It is SIBA's hope to have an opportunity to purchase the fee in question.

However, SIBA is aware of DLNR's need for the rental revenue paid by SIBA. The revenue at this time is about \$4 million per year. About ten years ago, DLNR, through its Land Administrator (Dean Uchida), asked SIBA to support HB 2573 (2000 Session), an amendment of HRS 171-19 and repeal of HRS 171-138. Under HRS 171-19, all rents from public lands (under HRS 171-133) from industrial parks were to be held in the Special Land and Development Fund. This fund was for the development of other industrial parks. DLNR explained to SIBA the need for the revenue for its various programs, including its record keeping system. SIBA agreed with DLNR that these rental revenues could be better used by DLNR. Therefore, SIBA fully supported DLNR's amendment in the legislature to the above stated provision. We understand that our rental payments have been put to good use by DLNR. A loss of SIBA's rental revenue would jeopardize some of DLNR's operations.

Therefore, SIBA supports the amendment to SB 1141 to include either the sale of the fee or the exchange of like property to purchase the SIIP fee.

We thank you for allowing us to testify for the passage of SB 1141, SD1.

Very truly yours,



Rodney Kim
Secretary & Executive Director



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

S.B. NO. 1141, S.D. 1, RELATING TO PUBLIC LANDS.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Friday, February 27, 2009 **TIME:** 9:00 AM

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN TESTIMONY ONLY

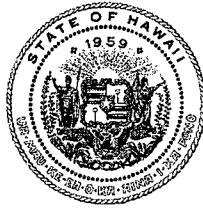
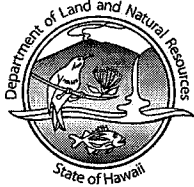
(For more information, contact Randall Ishikawa, Deputy Attorney General, at 587-2992)

Chair Kim and Members of the Committee:

The Department of the Attorney General has constitutional concerns about this bill. Article XI, section 5 of the Hawaii Constitution states that "The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws . . ." Given this directive, this bill's requirement to sell the parcels at Sand Island would be unconstitutional.

This bill requires the Department of Land and Natural Resources to offer for sale or exchange parcels of Sand Island.

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Friday, February 27, 2009
9:00 PM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 1141, SENATE DRAFT 1
RELATING TO PUBLIC LANDS**

Senate Bill 1141, Senate Draft 1 requires the Department of Land and Natural Resources (Department) within one (1) year offer for sale or exchange parcels to its leaseholders at Sand Island. The sale shall be subject to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both in any regular or special session following the date of the Board of Land and natural Resources' (Board) approval in principle of the sale or exchange, pursuant to Section 171-50, Hawaii Revised Statutes. The Department opposes this bill.

The Department is responsible for managing approximately 1.3 million acres of public lands and the State's natural and cultural resources. The Department's responsibilities include managing and maintaining the State's coastal lands and waters, water resources, conservation and forestry lands, historical sites, small boat harbors, parks, and recreational facilities; performing public safety duties (e.g., flood and rockfall prevention); issuing and managing leases of public lands (agriculture, pasture, commercial, industrial, and resort leases); maintaining unencumbered public lands; and enforcing the Department's rules/regulations.

To properly perform these fiduciary duties, the Board decided that the Department ought to utilize a portion of lands it manages to generate revenues to support the Department's operations and management of public lands/programs. The industrial lands on Sand Island targeted by this bill have been identified and utilized by the Department (and supported by the Board) as revenue producing assets and represent one of the Department's primary sources of revenues. The lease revenues generated by the Sand Island leases constitute nearly one half of all lease revenues currently supporting the Special Land and Development Fund. Loss of a reliable and predictable revenue source through a sale of the fee simple interest in these lands would deprive the Department of a substantial portion of its revenue source and seriously jeopardize the

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BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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AQUATIC RESOURCES
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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

Department's operations. Such sale would not be in the best interest of the beneficiaries of the public land trust, the State, or the Department.

Furthermore, leases are contractual agreements that require the terms and conditions to be mutually agreed upon by both the lessor and lessee. Absent the mutual agreement of the two parties, there would be no lease. The leases for parcels on Sand Island, which were mutually agreed to grant the lessee the right to use the lands for a specific term, e.g., 55 years, and upon expiration of the term, the lands will be returned to the lessor. The leases do not include any provision requiring the Board or the Department to convey the fee simple interest to the lessees, nor does it grant any option for lessees to purchase the fee simple interest. The leases were negotiated and agreed to as arms length transactions and include terms and conditions that reflect the parties agreement that the fee simple interest would not be offered for sale to the lessees.

This bill, if enacted, could have a chilling effect on the issuance of any new commercial or industrial lease in the State. Public and private landlords alike may fear that they too may be forced against their will, and in contrast to the terms and conditions agreed to in their respective leases, to sell the fee interest in their lands to commercial or industrial lessees.