

TESTIMONY
SB 1141
LATE

LINDA LINGLE
GOVERNOR OF HAWAII



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

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**Testimony of
LAURA H. THIELEN
Chairperson**

LATE TESTIMONY

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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
KAOHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Before the Senate Committee on
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

**Friday, February 6, 2009
2:45 PM**

State Capitol, Conference Room 229

**In consideration of
SENATE BILL 1141
RELATING TO PUBLIC LANDS**

The Department opposes Senate Bill 1141 that requires the Department of Land and Natural Resources (Department), without the review or approval of the Department or the Board of Land and Natural Resources (Board), to sell the fee interest in certain lands situated on Sand Island to industrial and commercial leaseholders.

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 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 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. Notwithstanding all leases having been fully agreed to at arms length, and fully executed by the individual lessees, Senate Bill 1141 attempts to unilaterally and materially change the terms and conditions of contractual obligations without the review or approval of the landlord, the Department and Board.

This bill requires the Department (the lessor), without a review or approval by the Board, to offer for sale to the lessees the fee title of their respective parcels because the lessees "understand the value of their businesses is limited because they do not have fee title of the land." However, this questionable business-value rationale applies equally to any business lessee situated on Sand Island, whether on public or private lands. As such, the application of that rationale to private lands would lead to the unreasonable result of forcing private landlords to sell the fee interest in their lands regardless of what was agreed to at arms length between the lessor and the lessee. This bill, if adopted, 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 to sell the fee interest in their lands to commercial or industrial lessees.



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February 12, 2009

Honorable Clayton Hee, Chair
Water, Land, Agriculture, and Hawaiian Affairs Committee
Hawaii State Senate
415 South Beretania Street
Honolulu, HI 96813

Support for Senate Bill 1141: Sale of Sand Island Lands

Dear Chair Hee and Committee Members:

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

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 then 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. In general, 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. The primary motive is to secure their substantial investment in the SIIP by purchasing the fee to their leasehold.

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 SB 1141 is owned by the State of Hawaii. Consequently, legislative action is necessary. For this reason, we support SB 1141. 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, paid in advance. 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 would support an 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 on SB 1141. We hope for its passage.

Very truly yours,



Rodney Kim
Secretary & Executive Director

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