

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

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DEPUTY DIRECTOR - WATER

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
FINANCE

Friday, February 24, 2017
12:30 PM
State Capitol, Conference Room 308

In consideration of
HOUSE BILL 1270, HOUSE DRAFT 1
RELATING TO LAND ACQUISITION

House Bill 1270, House Draft 1 proposes to require that the Board of Land and Natural Resources (Board) enter into negotiations to acquire a parcel of agricultural land in Kamuela, Hawai'i that is now owned by a private domestic profit corporation, and to appropriate money out of the Land Conservation Fund for the purchase. **The Department of Land and Natural Resources (Department) supports the intent of this bill because it furthers the achievement of goals and objectives shared by the Department and the Department of Agriculture (DOA), as long as it does not replace our priorities requested in the Executive Budget, and offers the following comments and amendments.**

The Department notes it is not suited to acquire the subject agricultural land for its own use, and defers to DOA regarding DOA priorities for land acquisition. The Department expects that the property, if acquired, would be set-aside to DOA, and would serve as a host site for relocating DOA facilities that may now occupy DLNR lands in the area.

The Department respectfully requests that an alternative funding source be used. The Legacy Land Conservation Program (LLCP) follows an extensive public process for reviewing, vetting, and prioritizing projects, which generally takes several years and includes numerous carefully reviewed projects that are pending acquisition based on available funding. The Executive Budget request includes two increases in the Land Conservation Fund (LCF) spending ceiling for the LLCP – a one-time increase of \$2,228,250 and a recurring increase of \$1,700,000. In order to avoid replacement of or adverse impact to these established priorities and the extensive public vetting process, the Department requests that any legislative appropriation for purchasing the

subject property be from general funds, or if from the LCF, be allotted from above the spending ceiling for the LLCP.

In order to maintain liquidity in the LCF, the Department requests that a legislative appropriation from the LCF for purchasing the subject property, if any, include a deadline for completing the transaction and expending the appropriated funds. In addition to the purchase price for the land itself, the Department requests an appropriation of \$500,000 for its due diligence and closing costs to complete the transaction, which include an appraisal, title search, a surveyor completing a legal metes and bounds description, and Phase I and II environmental site assessments of potential contamination hazards.

This measure as drafted, proposes that the Board “exercise its authority pursuant to section 173A-4 . . . to acquire the land” (page 2, lines 13-15), “[n]otwithstanding the acquisition and application provisions set forth in Section 173A-5(h) and (i)” (page 2, lines 9-10, the LCF application process). The Department suggests that it may be problematic, legally, for the Board to complete a land acquisition pursuant to Section 173A-4, HRS, that is “notwithstanding” the provisions of Section 173A-5(h), HRS, and that it may be inappropriate, programmatically, to bypass the application process that the Department conducts pursuant to Section 173A-5(i), HRS.

Section 173A-4(a), HRS, authorizes the Board to acquire “land having value as a resource to the state,” and Section 173A-5(h), HRS, restricts the use of the LCF to four purposes, including “(1) [t]he acquisition of interests or rights in land having value as a resource to the State.” Section 173A-5(g)(8), HRS, provides that the acquisition of land having value as a resource to the state for the preservation of agricultural production constitutes a public purpose for which public funds may be expended. The Department requests that future versions of this bill, if any, explicitly confirm that the subject property, if acquired with an appropriation from the LCF, is “land having value as a resource to the state” that is subject to the use restrictions and disposition requirements of Chapter 173A, HRS.

Section 173A-5(i), HRS, establishes an application and approval process for grants from the LCF. The Department’s implementation of this process incorporates the advice and recommendations of the Legacy Land Conservation Commission, pursuant to Sections 173A-2.5 and 173A-2.6, HRS. Thus, the Department urges the proponents of the subject acquisition to seek funding through the LLCP grant application process or other means of financing, such as the Executive Budget CIP request, rather than through a legislative appropriation from the LCF.

The Department recommends an amendment to SECTION 3 of this measure and the insertion of a new SECTION 4 and SECTION 5, as follows, and renumbering the existing SECTION 4 as SECTION 6.

SECTION 3. There is appropriated out of the land conservation fund established pursuant to section 173A-5, Hawaii Revised Statutes, the sum of \$ _____ or so much thereof as

may be necessary for fiscal year 2017-2018 to acquire the property identified as Tax Map Key: (3) 6-8-001:030 Kamuela, Hawaii, from Hanano Nursery, Inc., including \$500,000 for conducting the state's standard due diligence on the property, to include but not be limited to an environmental site assessment of the potential for hazardous materials release or the presence of hazardous materials, and, if necessary, the preparation and implementation of an environmental sampling and analysis plan, and for negotiations to acquire the property.

SECTION 4. The land acquired pursuant to this Act shall be held as land having value as a resource to the State, pursuant to the provisions of chapter 173A, Hawaii Revised Statutes.

SECTION 5. The appropriation made for the land acquisition project authorized by this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that all moneys from the appropriation unencumbered as of June 30, 2020, shall lapse as of that date.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



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**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON FINANCE

**FEBRUARY 24, 2017
12:30 P.M.
CONFERENCE ROOM 308**

**HOUSE BILL NO. 1270 HD1
RELATING TO LAND ACQUISITION**

Chairperson Luke and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 1270 HD1 relating to land acquisition. This measure requires BLNR to enter into negotiations to acquire the property identified as Tax Map Kay (3) 6-8-001:030 and make an appropriation. The department supports this bill provided it does not impact the Department's priorities listed in the Executive Budget.

This parcel is approximately ten acres in size and located in a prime agricultural region. It appears to be fully developed with several structures. Its primary use seems to be nursery related; however, use in diversified agriculture seems to be likely. Unfortunately, the department does not have the expertise required to appraise the fair market value of this parcel.

Thank you for the opportunity to testify.

