



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

H.B. NO. 331, RELATING TO PUBLIC LANDS.

BEFORE THE:

HOUSE COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES

DATE: Monday, February 7, 2011 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Pamela K. Matsukawa, Deputy Attorney General

Chair Chang and Members of the Committee:

The Department of the Attorney General opposes this measure.

The purpose of the bill is to (1) extend all State of Hawaii leases issued after May 23, 1960, for properties in the area known as Hilo Industrial Area until no earlier than 2026 without any increase in rent for the lease extension, and (2) require the Department of Land and Natural Resources, by January 1, 2016, to determine whether it is in the public's interest to relocate the existing lessees or redevelop the existing infrastructure.

The extension of leases of state land in the Hilo Industrial Area amounts to a special law that violates Article XI, section 5 of the Hawai'i Constitution. Article XI, section 5 provides that legislative power over lands owned or controlled by the State and its political subdivisions shall be exercised only by general laws, except for transfers to the State, its political subdivisions, or any of their departments or agencies.

A law that exercises legislative power over a specified area of state land is a special law, as opposed to a general

law. A law creating a class of one member is a special law.
Sierra Club v. Department of Transportation, 120 Haw. 181, 202
P.3d 1226 (2009).



HB 331
RELATING TO PUBLIC LANDS
House Committee on Water, Land, & Ocean Resources

February 7, 2011

9:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following comments on HB 331, which provides for an automatic ten-year extension and rent freeze for all existing leases on properties in the Hilo (Kanoelehua) Industrial Area.

The OHA Administration will recommend that the OHA Board of Trustees oppose HB 331 because the state has fiduciary duties to exercise reasonable care, act prudently, and perform due diligence in leasing this public trust land.

The Admission Act section 5(f) created the public land trust pursuant to which certain land and the proceeds or income from the disposition of that land are to be held by the State of Hawai'i for five public purposes, including the betterment of the conditions of native Hawaiians. The Department of Land and Natural Resources' State Land Information Management System (SLIMS) indicates that the land comprising the Hilo Industrial Area is classified as Admission Act section 5(b) lands, which is subject to the public land trust.

Accordingly, the state, as trustee, must uphold its fiduciary responsibilities in its management of the land. These duties include, among other things, acting in the best interest of the beneficiaries, taking reasonable care, acting as a prudent person would in similar circumstances, and performing due diligence prior to taking action. Failure to conduct due diligence about the individual leases precludes the state from determining the reasonableness or prudence of extending the leases or freezing the rent and therefore violates the state's trust obligations.

The OHA Administration will make this recommendation to our Board at its meeting on Feb. 10, 2011. Mahalo for the opportunity to testify on this important measure.

McCully Works
40 Kamehameha Ave.
Hilo, Hi. 96720

February 5, 2011

In SUPPORT of HB 331- Directing DLNR to Extend Leases in Hilo Industrial Area

Committee on Water, Land, & Ocean Resources
Chairman Jerry L. Chang, Dist. 2
Vice Chair Sharon E. Har, Dist. 40
Members of Committee

Aloha,

As a farmer and small businessman in Hilo for more than 35 years I have invested and done business in the Hilo Industrial Area all my professional life. I have watched the deterioration and decline of Hilo's business center with dismay, and have wondered for years when the Department of Land and Natural Resources would act to correct this problem before it was too late.

There is statutory basis under HRS 171-36 (2) to have the maximum term of a State lease be 65 years. With fewer than 5 years remaining on the original 55 year terms of the leases in the Hilo Industrial Area, with an economy in dire straits, with many of the Lessee's being unable to cope with recent Ground Rent increases from the D.L.N.R. of more than 100% there is a need for immediate action, the extension of these 55 year leases to at least 65 years.

This Bill would direct the D.L.N.R. to immediately extend the expiration date of the State leases in the Hilo Industrial Area to no sooner than 2026. This also happens to be in keeping with recent comments made by D.L.N.R. staff in extending certain leases that have petitioned the department independently. However, it must be noted that these Lessees had shorter leases than 55 years and they wished to extend them to no more than 55 years. DLNR staff commented in granting these extensions that it would be appropriate if leases in the area co-terminated between 2026-2030 in order to facilitate better planning for the future of the area. We, the Lessees concur with this.

This Bill would also fix the lease rents during the extension period to the amount the Lessee is paying at the time of implementation of this Bill. Since most of the Lessees are currently negotiating with the State for this current, and final, lease term, or have recently accepted the States proposed ground rents, this future rent would reflect the current, very high, ground rents the State is demanding. It should be noted that recent ground rents in Hilo seem to have been based on the very high lease rents that were agreed to for a recent "big box" lease within the Hilo Industrial Area. This very dissimilar use, and the unique

requirements of the user, allowed them to bid to a much higher lease rent than any other business in Hilo could, or would, ever pay. The appraisers hired by the State have used this "comp" to exaggerate the value of all of our leases, even with only 5 years left on the lease. Lessees are being confronted with proposed increases of 70-150%, and if they disagree the only recourse the DLNR has allowed is Binding Arbitration. In the past the DLNR allowed for the appraisers to decide informally what would be a reasonable compromise, but current staff are requiring full, and very costly, Arbitration Hearing. They have also chosen to change long standing policy and not allow the Lessees to review the State appraisers appraisal of their property prior to making the decision to accept or refuse the States proposed rent. This has intimidated many of the Lessees, who with less than 5 years remaining on their leases cannot justify a \$10,000 to \$20,000 hearing.

The States current need for income should not come at the expense of driving people out of business, which only hurts the States ability to rebound from the recession we find ourselves in. With these exorbitant increases in ground rent, combined with the States intent to either terminate the leases in 5 years, or perhaps place the Lessees on a "month-to-month" basis as some have speculated, the State is adding insult to injury.

Finally, this Bill seeks to have the current Lessees be included as "stakeholders" in planning for the future of our Industrial Area, and that this plan would be concluded by January 1, 2016. This is a very important element of this Bill, that D.L.N.R. work with the members of the community and has a hard deadline to complete their considerations.

Please consider the original intent of the Hilo Industrial Area, to provide a safe and secure place from which the people of Hilo could conduct their business and provide for their families. This is as valid today as in the aftermath of the Hilo Tsunami of 1960. Please don't let us get wiped out again.

Aloha,

James McCully

McCully Works
40 Kamehameha Ave.
Hilo, Hi. 96720
808-933-7000



16-166 MELEKAHIWA STREET • KEA'AU, HAWAII 96749
PHONE: (808) 966-5466 • FAX: (808) 966-7564 • WWW.HPMHAWAII.COM

February 5, 2011

Committee on Water, Land, & Ocean Resources
Chairman Jerry L. Chang, Dist. 2
Vice Chair Sharon E. Har, Dist. 40
Members of Committee

RE: DLNR General Leases 3611, 3609, 3592. In SUPPORT of HB 331- Directing DLNR to Extend Leases in Hilo Industrial Area

Dear Chairman Jerry Chang and Honorable Members of the Committee on Water, Land, & Ocean Resources,

HPM Building Supply has had the great honor of serving the Big Island community since the inception of the company in downtown Hilo in 1921. HPM was originally located near the current Mo'ohau Park. After the 1946 tsunami destroyed a major portion of the original building, HPM relocated to a brand new facility on Kamehameha Ave. next to the Hilo Iron Works building in 1955. The 1960 tsunami completely destroyed this facility and HPM temporarily relocated to the grounds of the Ho'olulu Park complex until it was able to finally rebuild in its current location on Kanoelehua Ave. in Hilo.

The rebuilding of HPM's business in 1961 was made possible by the allocation of State land to victims of the tsunami. In 1961, HPM signed a 55 year lease (GL 3611) with the State, which comes due in 2016. Over the years, HPM has had the good fortune of being able to expand our business through the acquisition of adjoining properties and State leases along Kanoelehua Ave and Kalanikoa St.

For the past 50 years, HPM has been a good tenant of the State. We have paid our rent on time throughout this period and have maintained and continually improved the property. Like many construction related businesses, HPM has struggled to weather the very difficult economy over the past five years where building permits on the Big Island declined by over 70%. However, we anticipate and look forward to an economic recovery in the near future and look forward to again growing our business in Hilo, with further improvements to our Kanoelehua and Kalanikoa facilities. However, with only five years remaining on our current State leases, it is not economically feasible to do so. Additionally, financing of infrastructure improvements where only 5 years remain is virtually impossible.

HPM became a 100% employee owned company in 2006. The intent was to allow our employees to fully share in the benefits of ownership and foster an environment of alignment, teamwork and excellence. As a 100% employee owned company, we take our responsibility toward our employee owners and the community very seriously and continue to do everything in our power to affect a quick



16-166 MELEKAHIWA STREET • KEA'AU, HAWAII 96749
PHONE: (808) 966-5466 • FAX: (808) 966-7564 • WWW.HPMHAWAII.COM

recovery for HPM, and by extension for our community. On behalf of HPM and its owner employees and their families, we humbly ask your support for passage of Bill HB331.

Respectfully,

Robert M. Fujimoto
Chairman of the Board

Michael K. Fujimoto
President & CEO

Jason R. Fujimoto
Vice President & Director of Corporate Operations
Hilo Branch General Manager

har3 - Megan

From: Hilo Bay Printing Co., Ltd. [hilo.bayprinting@hawaiiantel.net]
Sent: Friday, February 04, 2011 4:33 PM
To: WLOtestimony
Subject: Testimony on HB331 and HB996 (please confirm)

Testimony from Donald and Cathy O'Reilly, Hilo Bay Printing Co., Ltd., Kanoelehua Industrial Area leaseholders

HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES
HEARING on Monday, February 7, 2011 9:00 a.m.
HB331 and HB996

Rep. Jerry L. Chang, Chair
Rep. Sharon E. Har, Vice Chair
COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

Support for HB331, Directing DLNR to extend the leases in Hilo Industrial Area until 2026, and expressing skepticism regarding HB996.

Aloha,

As DLNR leaseholders in the Kanoelehua Industrial Area of Hilo (and taxpayers and registered voters), we believe that this area, and its established businesses are in need your kokua to enable us to endure an extended economic recession, and look to the future with optimism and confidence.

As you know, the present leases that we and many of our neighbors hold offer nothing but uncertainty beyond the year 2016, and we believe you may have it within your reach to prevent the catastrophic loss of dozens of specialty businesses and hundreds jobs that could easily occur as these leases mature in five years.

HB331 addresses these concerns in a direct, equitable way. No doubt the extended lease terms of this act will encourage lessees in the much needed upkeep and renovation of these properties, as well as the growth and development of our businesses.

Overall, we believe this to be good legislation. If there could be any room for improvement, it would be to extend the term to twenty years or more rather than the ten years as written now. We feel a longer term to be more evenhanded given the fact that many leaseholders, ourselves included, have just been assessed with a rent increase of almost 100%, in spite of these difficult economic times.

On the other hand, HB996 offers little to leaseholders outside of more debt and uncertainty. Without a specific sixty-five year term, no one in their right mind would invest half the value of land back into it.

HB331, in providing extended terms, resolves an enduring, painful issue for hundreds of our small businesses here in Hilo. We urge you to extend the terms up to twenty years, and send this bill to the full House. Mahalo for your consideration.

Hilo Bay Printing Co., Ltd.
12 Po'okela St.
Hilo, Hawai'i 96720

har3 - Megan

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 05, 2011 9:27 PM
To: WLOtestimony
Cc: loren@hilofish.com
Subject: Testimony for HB331 on 2/7/2011 9:00:00 AM

Testimony for WLO 2/7/2011 9:00:00 AM HB331

Conference room: 325
Testifier position: support
Testifier will be present: Yes
Submitted by: Loren Tsugawa
Organization: Hilo Fish Company
Address: 55 Holomua Street Hilo, HI 96720
Phone: 808 961 0877
E-mail: loren@hilofish.com
Submitted on: 2/5/2011

Comments: