



KAMEHAMEHA SCHOOLS

March 1, 2011

WRITTEN TESTIMONY TO THE
HOUSE COMMITTEE ON JUDICIARY

By
Dee Jay Mailer, CEO
Kamehameha Schools

Hearing Date: Wednesday, March 2, 2011
2:05 p.m., Conference Room 325

To: Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
Members of the Committee

RE: **House Bill No. 845, HD1 - Relating to Ground Leases**

Chairman Keith-Agaran, Vice Chair Rhoads and members of the House
Committee of Judiciary,

Mahalo for the opportunity to testify in opposition to **H.B. 845, HD1 - Relating to Ground Leases**. This bill impermissibly delegates the right of Eminent Domain to private individuals by allowing any lessee with ten years or less remaining on its lease to force its lessor to extend the lease for a minimum of thirty years or to sell the leased - fee interest to the lessee without requiring any broad public purpose for the taking of private property.

Such a provision violates the Contract Clause of the United States constitution, which protects private contracts from governmental impairment and ensures that contractual expectations are secure from government disruption. In addition, H.B. 845, HD1 hurts the community by:

- Discouraging redevelopment where the improvements are in poor condition and the current lessee is unable to redevelop;
- Discouraging adaptive re-use by a new lessee;

March 1, 2011

Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
Members of the Committee

RE: House Bill No. 845, HD1 - Relating to Ground Leases

- Discouraging the leasing of land, thereby cutting off opportunities for start-up businesses who cannot afford the fee; and
- Encouraging speculative re-sales by the lessee who has acquiring the leasehold or leased fee interest in the land.

No public purpose is served by H.B. 845, HD1 and we request that it be held in committee.

TO: Rep. Gilbert Keith-Agaran, Chair; Rep. Karl Rhodes, Vice Chair,
Members of the House Committee on the Judiciary

FROM: Brien Hallett, Vice-President, 'Iolani Banyan Cooperative Association
2565 La'au Street 96826, brienhallett@yahoo.com, telephone: 295-1648

SUBJECT: SUPPORT FOR HB 845, RELATING TO GROUND LEASES

HEARING: Hearing: Tuesday, March. 3, 2011 at 2:05 p.m., Conf. Room 325

Rep. Gilbert Keith-Agaran, Chair; Rep. Karl Rhodes, Vice Chair, Members of the House Committee on the Judiciary I am the vice-president of the second largest of nine cooperatives in the Date-La'au property near the corner of Kapiolani and Date streets in Honolulu.

The property is home to 262 mainly low-income families. When the ground lease expires in two years, many of the lower-income families will lose their homes because they will not be able to afford the increased rents that the landlord will impose. This is especially true for our elderly owners, many of whom have lived here for 20, 30, 40, or, in one case, 50 years.

To ensure that HB 845 will remain fully relevant to our circumstances, we urge two amendments:

1. **The restoration of the original language of Section 4**, on lines 7-9, page 3, and
2. The addition of a severability clause as Section 5 on lines 10-11, page 3:
10 SECTION 5. If any provision of this Act is held invalid, the
11 remainder of the Act shall not be affected thereby.

Passage of HB 845, RELATING TO GROUND LEASES is not only important to the 48 families in our cooperative or to the 262 families on the Date-La'au property but also to the 18,000 other families living in leasehold condominiums and cooperatives throughout the state. HB 845, RELATING TO GROUND LEASES is a good step towards affording them relief from the inequities of the leasehold system in Hawai'i. Your support is requested.



K. J. L. ASSOCIATES

45 NORTH KING STREET, SUITE 600, HONOLULU, HAWAII 96817 TEL. (808) 524-0129 FAX (808) 524-0680

March 2, 2011

Rep. Gilbert S. C. Keith-Agaran, Chair; Rep. Karl Rhoads, Vice Chair
and Members of the House Committee on Judiciary

RE: OPPOSITION TO H.B. 845 HD 1 RELATING TO GROUND LEASES

HEARING: WEDNESDAY, MARCH 2, 2011 @ 2:05 PM in CR 325

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Committee Members:

K. J. L. Associates hereby submits its written testimony in opposition to H.B. 845 HD 1 Relating to Ground Leases. The bill would rewrite existing commercial and industrial ground leases (and residential leases) by requiring lessors to either extend the term of existing ground leases or offer to sell the leased fee interest in the land to the lessees.

The bill unfairly mandates one-sided changes to existing leases to favor lessees only. Commercial and industrial ground leases are lengthy and complex contracts covering many subjects over a long period of time. They were freely negotiated by both lessors and lessees, at arm's length. Over the life of a lease, some provisions may tend to favor the lessor, while at other times the lessee may be favored. For the legislature to intervene now to make substantial and material changes in the provisions of the existing contract to favor one business party over another by mandating either an extension of the term of the ground lease or forcing the sale of the leased fee interest in the land to the lessee is unfair and arbitrary, and raises serious public policy and constitutional issues of concern to all of us.

In particular, the bill may infringe on Article I, Section 10 of the United States Constitution which says: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." In the recent past, both the federal courts and the Hawaii Supreme Court have struck down Hawaii laws that made material changes in existing leases to the detriment of one party and the advantage of the other. *HRPT Properties Trust v. Lingle*, 715 F. Supp.2d 1115 (D. Hawaii 2010); *Anthony v. Kualoa Ranch, Inc.*, 69 Hawaii Reports 112 (1987).

We respectfully urge you to hold this bill. Thank you for this opportunity to express our views on this important issue.

Very truly yours,

Catherine Luke, President & Chief Operating Officer of
K. J. L., Inc., Its Corporate General Partner



LOYALTY DEVELOPMENT
COMPANY, LTD.
SUITE 609
45 NORTH KING ST.
HONOLULU, HAWAII
96817-5649
(808) 524-0129
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March 2, 2011

Rep. Gilbert S. C. Keith-Agaran, Chair; Rep. Karl Rhoads, Vice Chair
and Members of the House Committee on Judiciary

RE: OPPOSITION TO H.B. 845 HD 1 RELATING TO GROUND LEASES

HEARING: WEDNESDAY, MARCH 2, 2011 @ 2:05 PM in CR 325

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Committee Members:

Loyalty Development Company, Ltd. hereby submits its written testimony in opposition to H.B. 845 HD 1 Relating to Ground Leases. The bill would rewrite existing commercial and industrial ground leases (and residential leases) by requiring lessors to either extend the term of existing ground leases or offer to sell the leased fee interest in the land to the lessees.

The bill unfairly mandates one-sided changes to existing leases to favor lessees only. Commercial and industrial ground leases are lengthy and complex contracts covering many subjects over a long period of time. They were freely negotiated by both lessors and lessees, at arm's length. Over the life of a lease, some provisions may tend to favor the lessor, while at other times the lessee may be favored. For the legislature to intervene now to make substantial and material changes in the provisions of the existing contract to favor one business party over another by mandating either an extension of the term of the ground lease or forcing the sale of the leased fee interest in the land to the lessee is unfair and arbitrary, and raises serious public policy and constitutional issues of concern to all of us.

In particular, the bill may infringe on Article I, Section 10 of the United States Constitution which says: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." In the recent past, both the federal courts and the Hawaii Supreme Court have struck down Hawaii laws that made material changes in existing leases to the detriment of one party and the advantage of the other. *HRPT Properties Trust v. Lingle*, 715 F. Supp.2d 1115 (D. Hawaii 2010); *Anthony v. Kualoa Ranch, Inc.*, 69 Hawaii Reports 112 (1987).

We respectfully urge you to hold this bill. Thank you for this opportunity to express our views on this important issue.

Very truly yours,

Warren K. K. Luke
Its President



The REALTOR® Building
1136 12th Avenue, Suite 220
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Phone: (808) 733-7060
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March 1, 2011

The Honorable Gilbert S.C. Keith-Agaran, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: HB. 845, H.D.1, Relating to Ground Leases

HEARING: Wednesday, March 2, 2011, at 2:05 p.m.

Aloha Chair Agaran, Vice Chair Rhoads, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **opposes** H.B. 845, H.D.1, which requires lessors who do not extend a ground lease or issue a new one meeting certain conditions, to offer to sell the fee simple interest in the land to the lessee who requests the exemption.

Although HAR empathizes with the lease situation residents are facing, we are deeply concerned with the unintended consequences this legislation may have on long-term commercial, industrial, and residential leases in Hawai'i.

In 2010, United States District Court Judge Susan Mollway declared that Act 189, which imposed requirements on leases that contained "fair and reasonable" annual rent terms, was unconstitutional. The underlying lawsuit involved a dispute over the lease terms of many leases in Mapunapuna, promulgated by HRPT Properties Trust, a large industrial landowner. This ruling determined that by imposing a change in the lease deliberately favoring the lessees over the lessors, and only applicable to a single landowner, Act 189 violated the Contract Clause and Equal Protection Clause of the U.S. Constitution.

HAR is concerned that H.B. 845, H.D.1, represents a new attempt to force long-term lease contracts upon landowners. While this bill may not raise the same constitutionality concerns as Act 189, HAR is concerned that, as a policy matter, mandating an offer of sale for long-term leases, if the terms are not substantially similar, or the parties cannot agree to a rental rate, is simply not good policy.

For the above reasons, we ask the Committee to hold this measure.

Mahalo for the opportunity to testify.

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QUEEN EMMA LAND COMPANY

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March 1, 2011

Representative Gilbert Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair and
Members, House of Representatives Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: House Bill No. 845 HD1 Relating to Ground Lease – Lease Alteration by Mandatory Lease Extension or Sale of Fee

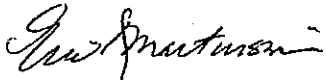
My name is Eric Martinson and I am the President of Queen Emma Land Company (QEL), a non-profit entity whose mission is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawaii, primarily through The Queen's Medical Center, a sister company under The Queen's Health Systems. QEL accomplishes its mission by managing and enhancing the income-generating potential of the lands left by Queen Emma, who along with her husband King Kamehameha IV had strong commitments to the health care needs of the people of Hawaii. The income from QEL is solely dedicated to supporting and improving healthcare services offered primarily through The Queen's Medical Center, but also through a number of other health care entities and programs throughout the state.

As an owner and lessor of commercial, industrial and residential real property, QEL strongly opposes this bill because, among other things, it violates the Contracts Clause of the U.S. Constitution by mandating changes in existing long-term ground leases only for the benefit of lessees, while at the same time causing substantial impairment of leasehold contracts which in many cases have been in effect for significant periods. Changes to existing ground leases as proposed by this bill will deprive lessors of important rights and opportunities, thwarts the performance of essential and substantial lease terms, destroys pre-existing contractual expectations and relationships of the parties to the lease agreements, and alters substantial financial terms. These existing agreements were negotiated many years prior and the terms and conditions agreed upon at that time were meant to balance those specific terms and

conditions over the life of the agreement. Mandating changes to existing agreements at the end of the lease term will unjustly affect the overall balance of those mutually agreed upon terms and conditions.

Thank you for the opportunity to express our strong opposition to House Bill 845 HD1.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric K. Martinson".

Eric K. Martinson
President, Queen Emma Land Company



Reit Management
& Research LLC
PROPERTY MANAGEMENT
DIVISION

March 1, 2011

Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
House Committee on Judiciary

Wednesday, March 2, 2011 at 2:05 p.m.
State Capitol, Conference Room 325

RE: HB 845 HD 1 – Relating to Ground Leases

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

My name is Jan Yokota and I am the Vice President of the Pacific Region for Reit Management & Research LLC, the manager of CommonWealth REIT, formerly known as HRPT Properties Trust ("CommonWealth"). Through its affiliated companies, CommonWealth owns industrial zoned land in Mapunapuna and Sand Island and in the James Campbell Industrial Park, and leases many of its Hawaii properties under long-term leases.

H.B. 845 HD 1 proposes to change the terms of long-term residential, commercial and industrial ground leases in counties where the population is greater than 100,000. Among other things, H.B. 845 HD1 requires lessors to either: (1) extend the term of the existing lease or issue a new ground lease for a term of at least 30 years with substantially similar lease terms; or (2) sell the fee simple interest in the land to the lessee for an amount fixed by an appraiser's determination. CommonWealth respectfully but strongly opposes H.B. 845 HD 1, both because the bill is bad for business in Hawaii and because the bill is unconstitutional on its face.

H.B. 845 HD 1 sends a message to all businesses that they cannot rely on enforcing mutually agreed contract terms in this State. This will disincentivize investments in Hawaii at a time when they are most critical.

We also oppose H.B. 845 HD 1 because it is unconstitutional. In 2009, the Hawaii State Legislature passed a bill that similarly sought to change the terms of long-term leases owned by CommonWealth. On May 31, 2010, U.S. District Judge Susan Oki Mollway declared Act 189 of the 2009 Legislature to be unconstitutional, as a violation of the Contracts Clause and the Equal Protection Clause of the United States Constitution.

H.B. 845 HD 1 is another attempt to do the same thing. H.B. 845 HD 1 is unconstitutional because, among other things, it would deprive lessors of important rights under, and substantially alter the financial terms of, their lease contracts.

Further, H.B. 845 HD 1 does not explain why the stated purpose of the bill, in Section 1, is a significant and legitimate public purpose and how the proposed changes to lease terms would further a legitimate public purpose.

In order to promote legitimate state business interests and given Judge Mollway's clear ruling on Act 189, I respectfully ask that the Committee hold this Bill. Thank you for the opportunity to testify on this bill.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

March 2, 2011

Representative Gilbert Keith-Agaran, Chair
Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: HB845, HD1 "Relating to Ground Leases"

Chair Keitho-Agaran and Members of the Committee on Judiciary:

I am Karen Nakamura, Executive Vice President and Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii strongly opposes HB845, HD1 "Relating to Ground Leases". The bill requires lessors who do not extend a ground lease to offer to sell the leased fee interest in the land to the lessee who requests the extension.

This bill mandates material changes in existing long-term commercial or industrial ground leases. HB 845, HD1 requires that, within the final ten years of a long-term commercial or industrial ground lease, lessors must either: (1) extend the term of the existing lease or issue a new lease for a term of at least thirty years with substantially similar terms at a rental rate that is mutually agreeable or determined by appraisal pursuant to new requirements provided in HB 845, or (2) offer to sell the fee simple interest in interest in the land to the lessee for the amount fixed by an appraiser.

BIA-Hawaii bases its strong opposition to the bill because:

- The bill deprives private lessors of important rights and opportunities under existing leases. This bill would strip the lessor of its rights under the following contract terms contained in most leases:
 - the right to extend or terminate a lease; the right to execute specific lease provisions relating to the timing of lease termination or extension

- the right to freely decide the timing of negotiations to extend or terminate leases; the right to extend the lease based on terms specified in lease provisions,
 - the right to extend leases based on freely negotiated terms; the right to seek arbitration under specific lease provisions
 - the right to freely seek other dispute resolution alternatives; and any other rights in the lease which may relate to the extension or termination of a lease at the end of the lease term.
- The changes proposed by Bill 845, HD1 would strip the lessors of rights regarding central provisions of any lease – the right to terminate or extend a lease; the establishment of the term of a lease extension; the amount of the rent for a lease extension; and the methodology of determining the rent for lease extensions.
 - Bill 845, HD1 clearly seeks to impose new requirements into the contractual relationship which may not even exist in the current leases, and therefore, were never “bargained for” by the lessor and lessee in the existing lease.
 - The establishing of rent is always an important term in a lease; rent sets the financial obligations of the parties. Adjustments in financial terms are substantial impairments. HRPT v. Lingle, 715 F.Supp.2d 1115, 1137 (USDC, D. Hawaii 2010); see Univ. of Haw. Prof's Assembly v. Cayetano, 183 F.3rd 1096, 1100 (9th Cir. 1999).
 - HB845, HD1 fails to indicate any facts or circumstances showing that HB 845, HD1 is reasonably designed to promote any public purpose which would justify its adoption.
 - To add insult to injury, the HD1 further expands the scope to apply to residential leases;

HB 845, HD1 is yet another unconstitutional attempt to change the terms of existing leases, and similar in intent and purpose to Act 189 (2009) which was found to be unconstitutional by U.S. District Court Judge Mollway in 2010. In 2009, the Hawaii State Legislature passed Act 189, targeted to apply to only one lessor; mandated material changes in existing long-term commercial or industrial ground leases only for the benefit of lessees; and such changes resulted in substantial and severe impairment of leasehold contracts which were similar to Bill 845. On May 31, 2010, U.S. District Judge Susan Oki Mollway found Act 189 (2009) to be in violation of the Contracts Clause and the Equal Protection Clause of the U.S. Constitution. HRPT v. Lingle, 715 F.Supp.2d 1115 (USDC, D. Hawaii 2010)

BIA-Hawaii also begs to differ with the opening paragraphs of House Standing Committee Report No. 497 which states that the purpose of the bill is to "encourage" the extension of commercial and industrial ground leases by "requiring" the lessor to extend leases or to sell the ground lease to the lessee. This paragraph is a contradiction within itself.

Thank you for the opportunity to share our views with you.

A handwritten signature in black ink that reads "Karen I. Nakamura". The signature is written in a cursive style with a large initial 'K' and a long, sweeping underline.

Chief Executive Officer, BIA-Hawaii

TESTIMONY IN SUPPORT OF HB 845, HD1: RELATING TO GROUND LEASES

TO: Representative Gilbert Keith-Agaran, Chair; Representative Karl Rhodes, Vice Chair; and Members, House Committee on the Judiciary

FROM: Betty Lou Larson, President, Date-Laau Community Association
alohabettylou@hotmail.com; telephone: 585-6983;

HEARING: Wednesday, 3/2/11, 2:05 pm; Conference Room 325

Chair Keith-Agaran, Vice Chair Rhodes, and Members of the Judiciary Committee:

Thank you for the opportunity to testify in support of HB 845, HD1 which provides a process to extend long-term ground leases for residential properties, as well as commercial and industrial properties. I am Betty Lou Larson, President of the Date-Laau Community Association (DLCA). Eight coops and one apartment building on the Date-Laau block, located on residential leasehold land near the corner of Date and Kapiolani streets, have joined together to form the Date-Laau Community Association. DLCA supports this bill, which is critical not just to us but to thousands of lessees.

Suggested Amendments to HB 845: Since this bill addresses different types of ground leases, **we urge you to add a Section 5. "If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby."**

Residential land leases are a huge issue for Hawaii with about 18,000 units of residential leasehold units throughout the State. We all face the loss of our units and our equity. There is a public purpose to promote affordable housing and allowing people to remain in their homes. What will Hawaii do as hundreds and then thousands of us begin to lose our homes? Where is there other affordable housing that we can move to? We have elderly owners, young families and renters who are threatened with high "market rents" when leases expire.

The 262 residential leasehold units on the Date-Laau block face great uncertainty. Our situation is dire as our land leases end next year (December 4, 2012) and we face the loss of our homes. The Date-La'au community is a well-established low-income neighborhood. When we surveyed the residents we found: 87% of the residents are low income, earning less than 60% of medium income. Almost 50% have incomes under 30% of median income. 67 Elders age 60-90+ live at Date-La'au; 110 residents are over 50 years of age. 99 families lived there over 10 years and some residents are from families that purchased their unit as far back as Statehood, 50 years ago.

When the land lease ends, residents will face a hard choice. The landowner will take over not only the land, but also the buildings, and will create a financial burden for many families when they raise the rent. For some, it may be 200% to 300% more than what they have been paying for housing costs for many, many years. Our units have not been subsidized but they are places where families and elders could survive. We are not affluent and we struggle to afford the rising costs in Hawaii. We want peace of mind. We don't want an uncertain future for our families.

We are not asking for a handout. We only ask for fairness. This bill is important not only for our 262 families, but for the 18,000 residential leasehold units across the State of Hawaii. As leases expire, owners can take the buildings and charge a "market rent" for each unit, or even resell these units as condos, though they have paid nothing for the buildings, nor have they paid property taxes on these units over the years.

Thank you for your help to formulate a fair solution to the inequities of the leasehold system in Hawaii. We respectfully urge you to support HB 845.

Testimony to the Committee on Judiciary
Tuesday, March 2, 2011; 2:05 p.m.
Conference Room 325

Speaking in Support

RE: HB 845 HD1 Relating to Ground Leases

Chair Representative Kieth-Agaran, Vice Chair Representative Rhoads and Members of the Judiciary Committee:

My name is James E. Coon I am a Maui Resident and I am speaking in strong support of HB 845 HD1.

I feel this bill will provide more stability in the market place and help in our economic recovery. It is especially important for businesses that have made major lease hold capital improvements on their leased land.

I humbly ask you to pass HB 845 HD1.

Sincerely,

James E. Coon

SUSAN PATTERSON
 2614 LA'AU ST. #7
 953-2393 sfpatterson209@gmail.com

February 28, 2011

Chair, Rep. Gilbert Keith-Agaran
 Vice-Chair, Rep. Karl Rhodes
 Members of the House Judiciary Committee:

Re: **Supporting HB 845, HD1** Relating to Ground Leases
 Hearing: Wednesday, 3/2/11, 2:05 pm; Conference Room 325

I am an owner-occupant of a residential leasehold co-operative housing unit at 2614 La'au Street. I have owned and lived in my unit for a number of years.

I respectfully ask that you support HB 845, HD1, and please add a Section 5: If any provision of this Act is held invalid, the remainder of the Act shall not be affected, thereby.

TESTIMONY IN SUPPORT OF HB 845

As the president and an owner/resident at Iolani Gardens, Inc. a residential co-op on Laau St., I'm aware that a vast majority of our residents/owners will greatly suffer and possibly be homeless, if this bill doesn't pass.

For one, we have a spry lady in her 90's who has lived here for 50 years, being one of the original shareholders. She is on a very limited income, plus has no children to look after her or to provide a place for her to live, if she would be unable to keep her home which she had expected to reside in for the rest of her life. Another resident owner is taking care of his wife (advanced Alzheimer's) in their apartment. The various assistant care givers are an additional financial burden. One of our apartments was purchased for an 80+ year old lady of very limited finances; this was to provide her a place to live out her life. Another resident rents his apartment for a minimal fee and in exchange he has been fixing it up for the owner over the years. This man is a highly skilled laborer in a narrow job field and has been laid off for months and wouldn't be able to spend much more than he currently is on his rent. These are just a few of our "stories" at Iolani Gardens where most everyone is low to very low income. We are similar to many other leasehold residential properties. But our lease expires next year! We are very concerned what will happen and if we will be able to afford to stay in our homes.

This isn't just a problem with us, but rather a State-wide problem that is going to have to be faced and addressed. If in the immediate future hundreds or thousands should lose their current housing, they may not be able to afford another place to live. What a travesty that would be for our fellow residents, as well as other citizens of Hawaii, thus creating an even larger financial burden for the State!

Susan Patterson

TESTIMONY IN SUPPORT OF HB 845, HD1 (RELATING TO GROUND LEASES)

House Judiciary Committee
Rep. Gilbert Keith-Agaran, Chair and Rep. Karl Rhodes, Vice-Chair

Re: SUPPORTING HB 845, HD1 Relating to Ground Leases
Hearing: Wednesday, 3/2/11, 2:05 pm; Conference Room 325

Chair, Rep. Gilbert Keith-Agaran
Vice-Chair, Rep. Karl Rhodes
Members of the House Judiciary Committee:

MY TESTIMONY

Please help me and the many hundreds like me! Vote for HB 845 (residential land lease extension). I live in the Date-Laau community in a rented apartment in a co-op property at Iolani Gardens, Inc., and the land lease expires next year. I am so afraid that I won't be able to afford to stay in the apartment that I rent for a very reasonable rate. It is very difficult finding an apartment that is really affordable. My 21 year old daughter lives with me. With my only income (disability) together with what little she makes at her part-time job, we are barely making ends meet each month. Next year when all these co-ops are turned into Iolani School's income rental property, I doubt we will be able to afford to continue living here. Since the school says that they have no immediate or even long term plans for the mauka side of the land, extending the lease would allow my rent to remain closer to what it is now. I have health and mobility issues and having to try to go out and find another affordable place to live would be very difficult for me. Plus, I would be one among many that would be in need of additional very affordable housing. Please, help me and all the many others in Hawaii that will be having similar leasehold termination problems! The way I see it, lease extension is one answer to help keeping Hawaii residents in their homes and not adding to the homeless population.

We all need your support with this lease extension bill! Please help Hawaii residents!

Flora Stiles

Testimony In FAVOR OF SUPPORTING
HB 845, HD1 - RELATING TO RESIDENTIAL GROUND LEASES

TO: Committee: House Judiciary Committee
Chairman: Rep. Gilbert Keith-Agaran
Vice Chairman: Rep. Karl Rhodes

FROM: Name: J. N.
Residence: Iolani Gardens Co-op, Inc.
Laa Street

Hearing: Wednesday, 3/2/11, 2:05 pm; Conference Room 325

Please vote "FOR" House Bill 845, HD1 which includes residential lease extensions. I am close to 60 years old and have no regular income. When I moved into this apartment, I was earning steady money. Back then many of us expected that we were going to be offered the opportunity to buy the land, thus securing our homes. But that didn't turn out to be what happened. Now I barely have enough money each month to pay my basic bills. If I have to pay monthly rent that is a lot higher than my current monthly maintenance fees, I will not be able to stay in my home that I purchased years ago. If our lease was extended, the monthly expense to stay in my home should not be as much as paying rent. I don't even know if I would be able to find another place that I could afford. If this bill doesn't pass, I'm not the only resident that will be put into a very difficult situation. Many hundreds of people all over the state will be forced out of their homes and very probably end up on the streets since there is only a limited amount of truly affordable housing in Hawaii. The State cannot allow this to happen. Please help all of us.

A very concerned long-time Hawaii resident,

J. N.

TESTIMONY IN SUPPORT OF HB 845, HD1 (RELATING TO GROUND LEASES)

TO: Chairman: Gilbert Keith-Agaran
Vice Chair: Karl Rhodes
Committee: House Judiciary Committee

FROM: Name: Jody Jones
Address: 2614 Laau St. #1 Contact: 382-9100

Hearing: Wednesday, 3/2/11, 2:05 pm; Conference Room 325

Please vote in favor of HB 845, HD1 that deals with land lease extensions which includes residential leasehold property. My name is Jody Jones; I am a RENTER of a residential leasehold cooperative housing unit in the Date-Laau area on Laau St. Finding affordable housing has been a big issue for us. I like where we live and want to remain here. I support this bill since this leasehold issue is a big issue for Hawaii with several thousands of residential leasehold units throughout the State. There should be a great public concern and effort to promote affordable housing. What will Hawaii do as hundreds or possibly thousands of us begin to lose our homes? Where is there other affordable housing that we can move to?

My lease will end on December 4, 2012 and I may not be able to afford the "market rent" that the landowner says they will charge. I would like to continue to live in the unit and in the neighborhood where I now reside. I don't know where I would move to.

My fiancé and I rent a 1-bedroom unit at Iolani Gardens. He belongs to the labor union and just returned to work after being without employment for the last 8 months because of the economy. We never know when this might happen again. We are financially drained and don't know when we'll be able to get back up on our feet. No way does my salary come close to paying all our expenses. Plus, my fiancé has custody of his two young children every weekend. This creates even a larger financial burden. Knowing our situation, our compassionate landlady reduced the rent so we could continue to have a roof over our heads. When this apt. is taken over next year by Iolani School and they charge us what they call "fair market rent", I don't know what we'll do. We can barely afford to stay here with the current reduced rent. If there is a lease extension, hopefully our landlady would be able to continue to charge us her lower fee. Whether we have a home or not could be in your hands. I know that we are not alone in this situation. Leasehold owners and residents all over Hawaii need your support!

I sincerely ask you to support HB 845, HD1.

Respectfully,

Jody Jones

Testimony
In
SUPPORT of HB 845, HD1 - RELATING TO RESIDENTIAL GROUND LEASES

TO: Chair: Gilbert Keith-Agaran
Vice Chair: Karl Rhodes
Committee: House Judiciary

FROM: Beatrice Reeves
2614 Laau St.
388-0690

Hearing: Wednesday, 3/2/11, 2:05 pm; Conference Room 325

Thank you for the opportunity to testify on this very important bill that can make a crucial difference in my life.

I have lived in a residential leasehold cooperative housing unit at Iolani Gardens on Laau St. for a number of years.

Residential land leases and affordable housing are huge issues for Hawaii. If we can no longer stay in our homes, for whatever reason, we face the loss of our units and our equity. There is a public purpose to promote affordable housing and allowing people to remain in their homes. What will Hawaii do as hundreds and then thousands of us begin to lose our homes? Where is there other affordable housing that we can move to?

I am 86 years old and only have Social Security to live on. Some years ago, out of the kindness of someone's heart, my current apartment was bought for me with the expectancy that I would be able to stay here the rest of my life. I like where I live and don't want to be among the hundreds of people who probably will be forced out of their current homes, if there isn't some provision for lease extension. I'm too old to have to go searching for an affordable place to live. If my apartment is rented back to me after the land lease expires and the rent is what is called "fair market rent", I don't know what I'll do. I don't see how I'll be able to afford to stay here. But where will I go? In fact, where will any of us go that live in leasehold property that is about to expire? Please vote YES for House Bill 845.

Please have compassion for all the people in Hawaii that have this leasehold dilemma by voting in favor of HB 845, HD1.

Respectfully,

Beatrice Reeves

Thelma Oka
Iolani Gardens Residential Co-op

Contact: Suzy Patterson 375-2985 (because I cannot hear well, particularly on the phone)

February 28, 2011

Rep. Gilbert Keith-Agaran, Chair
Rep. Karl Rhodes, Vice-Chair
House Judiciary Committee

Re: Please SUPPORT HB 845, HD1 Relating to Ground Leases

Hearing: Wednesday, 3/2/11, 2:05 pm; Conference Room 325

Dear Chairman Keith-Agaran, Vice-Chairman Rhodes, and Members of the Committee:

I am an owner-occupant of a residential leasehold co-operative housing unit at 2622 Laau Street. I have owned and lived in my unit for 50 years.

My lease ends on December 5, 2012 and I will lose all of my equity in my unit, and I probably will not be able to afford the rent that the lessor, my new landlord, will charge because it could be double what I current pay monthly. Since this has been my home for 50 years, I would like to live out my life in my apartment and in the neighborhood where I now reside. I don't want to move to some other area and rent a home since currently I own my unit, but not the fee interest.

I'm 93. I have lived in my apartment the majority of my life. After retiring many years ago from managing my mother's hotel on Pennsicola St., I have been on a small fixed income. I have no children to take care of me or help me out. Paying all the bills and the monthly co-op maintenance fee can be a financial challenge for someone in my situation.

Iolani School has announced that they would be converting our units into income producing apartments in December 2012 when our land lease expires. They have told us that they would be charging market rates. I do not know what I will do when they greatly increase the monthly fee. I have always expected to live here the rest of my life, and it saddens me to think that that won't be possible because I will not be able to afford to pay their rent on what had been the home I owned all these years. Furthermore, I do not know where I will go! I don't want to be homeless!

If there was a law that required the land owners to extend the leases, hundreds of people like me would be able to spend their last few years in their own homes. There are many hundreds or thousands of us in the state that would greatly benefit from the passage of HB 845 HD1. So for our sakes and Hawaii's sake, please vote YES!

Thank you for allowing me to testify on this very important bill.

Thelma Oka

Thelma Oka

March 1, 2011

To Whom It May Concern;

Re: HB 845

Committee: JUD

Room: 325

Hearing Date: 3/2/2011 2:05:00 PM

We need retain low to middle income housing in Hawaii.

If you are a kamaaina, you might remember that many of our leasehold laws can be traced back to Statehood. This was a time of opportunity and laws were created to favor landowners as incentive to invest in Hawaii, the 50th State and its people.

This time is past, its history.

My family, as well as many others, purchased our home on Laau St., 50 yrs ago in hopes that one day we would be able to buy the land once the State of Hawaii became "established". They tried to do their part by committing to a dream, buying property to help secure all of our futures in the 50th State.

After 4 generations my family stands to lose their Statehood dream. We as well as 18,000 other properties/units, stand to lose our homes or lifetime investments within the next few years. December 2012 is the month we will lose a family home. I am sure it never occurred to my grandparents and their 35 neighbors that their lease would end and their option to buy their land would never materialize. Because of this, their great grandson would never be able to know their home and history.

As it stands now, after December 2012, Laau Gardens will cease to be a neighborhood of individuals. Unless something is done, it will become yet another investment property.

We already have enough of our limited land resources owned by for profit businesses or estates of private schools in the State of Hawaii.

Please kokua. Save the Date Laau neighborhood.
Joyce Morse 2615 Date St. Honolulu, HI 96826

Testimony in SUPPORT of HB 845, HD1: RELATING TO GROUND LEASES

Date: February 20, 2011

TO: Representative Gilbert Keith-Agaran, Chair, Representative Karl Rhodes,
Vice Chair, and Members, House Judiciary Committee

FROM: Name: Jason Aung (President of Lani Home Coop Association)
Address: 2563 Date Street, HI - 96826
Contact: 808 2770740

Hearing : 3/2/2011 2:05 pm

Thank you for the opportunity to testify on this very important bill that can make a crucial difference in our lives.

As the president of the board of directors at Lani Home, a 97 unit Coop Association, I recognize that our land lease situation is very disturbing. Our former land owner, Lum Yip Kee Ltd had sold the land, where our coop building was built, to Iolani School in July 2007. We, the lessees, were notified about the transaction in late 2009 and we were not given the "Right of First Refusal" to purchase the land.

We were very disappointed when Iolani School announced that they will operate our building as residential rental properties and charge us market rents. Most of our residents are elderly on fixed social security income or families with minors living on low income. I am afraid that our residents cannot afford to pay the market rent that Iolani plans to charge us when the lease ends.

We are further insulted by the Iolani School when they announced that Iolani School cares about the community and Iolani School will help the residents in applying for government assisted housing in order to pay their rent. As responsible members of our community, we are not expecting government subsidies during financially difficult times for the State of Hawai'i. We are simply expecting **Social Justice**. We have been living on this land for 40+ years while paying real property tax responsibly. Therefore, we truly believe that we should have the Right to purchase the fee interest in the land.

In addition, we are not forcing the lessor to sell the land. We will be happy if we can extend the lease. However, if the lessor wishes to sell the fee interest, we will be delighted to buy the fee interest as well.

We hope our State Government will intervene and hope that this case will not set a bad precedent in our judicial system. Otherwise, the rest of 18,000 lessees may share the same fate. There will be another cash rich investor ready to buy out Leasehold Projects and evict the lessees at the end of the lease term. **Therefore, I respectfully urge you to support HB 845 with Amendment to include Residential Lease and if any provision of this act is held invalid, the remainder of the act shall not be affected thereby.**

Sincerely,


Jason Aung

Testimony in SUPPORT of HB 845, HD1: RELATING TO GROUND LEASES

Date: February 21, 2011

TO: Representative Gilbert Keith-Agaran, Chair, Representative Karl Rhodes, Vice Chair, and Members, House Judiciary Committee

FROM: Erica Vincent (Director of Lani Home Coop Association)

Address: 2563 Date Street, HI - 96826

Contact: 808 225-0244

Hearing : 3/2/2011 2:05 pm

Thank you for the opportunity to testify about this bill that will determine the future of my family. We are currently in a historical situation. Our lease is set to expire December 4th, 2012 and our lessor has informed us that they are going to let it expire, not extend the lease, nor sell the fee to us but rather turn the buildings our Coop built that they have not paid for, into a rental income property. We have spoken to the new land owner, and they are unwilling to help out the community. They have even laughed at us for suggesting an extension or that they should pay for the buildings they stand to profit from. We have presented them with our research on the income levels in the areas and suggested that not considering the community's low income status in their decision on what to set the rents to is unethical. We also mentioned a response to their "Well you bought leasehold what do you expect?" by reminding them that when the majority of this community bought over 30 years ago, it was never a practice to let the leases expire, they ALWAYS renewed the lease or sold the fee in order to keep the economy going and the affordability of housing low.

The social issue here is that we have spoken with them, informed them that this property is one of the last affordable housing areas in the state and the residents will not be able to afford the market rents they are planning to charge. They do not seem to have any regard for the burden they will be putting on the state by inevitably increasing homelessness. There is a reason people bought lease properties 30 years ago, it is because the lessors in those days were honest and continued to renew the leases or sell the fees. This new movement of letting leases run out and the lessors having no obligations to the owners to pay for their buildings, extend the lease, nor sell the fee is setting a REALLY negative precedent for future lessors to follow. Ours is one of the first properties for this to happen to and one of the closest leases to end under this new idea that the lessees have no protection to save their homes, and the lessors have no rules to follow. I predict that if this standard is set at this time, the homelessness rate is going to skyrocket in our state as large corporations buy the fees to parcels of land and then try to make a profit instead of keeping the community and their needs in mind. Affordable housing is at risk, an increase in homelessness and subsidiary housing assistance is at risk, and most importantly the state of our economy is at risk if people feel that buying leasehold is not safe....people will stop. But if they see that they have protection from their beautiful State of Hawai'i, maybe things will continue on a positive path.

Therefore, I respectfully urge you to support HB 845 with Amendment to include Residential Lease and if any provision of this act is held invalid, the remainder of the act shall not be affected thereby.

Sincerely,



Erica Vincent

Testimony in SUPPORT of HB 845, HD1: Relating to Ground Leases

Date: ~~February 20, 2011~~ March 2 / 2011 2:05 pm

To: Representative Gilbert Keith-Agaran, Chair, and Members, House Judiciary Committee

From: Xuan Thu Dang

Address: 722 Gulick Avenue, Honolulu, Hawaii 96819

I am the owner of a residential leasehold condominium, at Lani Home #210, 2563 Date Street, Honolulu, Hawaii and have owned this unit for 20 years.

I lived at the unit prior to renting to a wonderful family that was in need of housing because the family did not have a husband to support them. They have been living there for about 12 years and raising two fine children and doing work with their church.

Our property has provided affordable housing and allowed a family to remain in a home without government housing assistance.

My lease ends on December 4, 2012 and I urge you to support HB 845 so we can continue to have affordable housing.

Sincerely,


Xuan Thu Dang

Testimony before the JUD committee 2 March 2011 2:05PM Rm325 HB845 HD1

Ground Leases; Extension; Sale of Leased-Fee Interest

Requires lessors who do not extend a ground lease to offer to sell the leased fee interest in the land to the lessee who requests the extension. Effective July 1, 2112. (HB845 HD1)

I am Philip Blackman and have lived in a leasehold coop and also a leasehold condominium. Both form of ownership should be afforded coverage.

The bill if passed hopefully will get the parties to talk. That has not happened voluntarily in cases I know. Yet there is no better time for this to happen than now. Both sides can win. Lessor has a better chance at getting a lower mortgage rate AND lease has more likelihood of substantial growth of that money in the financial market place where we see major economies growing at above 8% and the US economy recovering. Additionally there are substantial tax credits available to the lessor now that will lapse.

I hope you might add wording in the bill explaining its purpose that reflects that opportunity.

I recognize that the rents are generally less than comparable properties that are fee simple. It is evident that the lessor does pass on some of the cost reduction associated with not paying a higher mortgage. It means the lessor will suffer a greater capital loss, but does not "feel it" in the wallet in current time. It does mean that more affordable housing is on the market for rent.

For those lessors that live in the units they too have purchased what they could afford and often were unaware of the true meaning of the "lose it in the end" clause. It is their home, with no likely chance to purchase an own a substitute. This bill can help the State mandate to provide affordable housing for its citizens.

China just announced its one year objective to build 10 million new affordable homes. This bill will be small in comparison, but much appreciated.

Thank you

Testimony for HB845 on 3/2/2011 2:05:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, March 01, 2011 9:39 AM

To: JUDtestimony

Cc: Kealii8@hotmail.com

Testimony for JUD 3/2/2011 2:05:00 PM HB845

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Kealii Makekau

Organization: Individual

Address:

Phone:

E-mail: Kealii8@hotmail.com

Submitted on: 3/1/2011

Comments:

Suggested Amendments to HB 845: Since this bill addresses different types of ground leases, i urge you to add a Section 5. "If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby."

Thank you for your help to formulate a fair solution to the inequities of the leasehold system in Hawaii. We respectfully urge you to support HB 845.

COMMITTEE ON JUDICIARY

Rep. Gilbert S.C. Keith-Agaran, Chair and Rep. Karl Rhoads, Vice Chair

DATE: Wednesday, March 02, 2011 TIME: 2:05 PM PLACE: Conference Room 325
State Capitol, 415 South Beretania Street

HB 845, HD1 (HSCR497) RELATING TO GROUND LEASES Requires lessors who do not extend a ground lease to offer to sell the leased fee interest in the land to the lessee who requests the extension. Effective July 1, 2112. (HB845 HD1)

Honorable Chairs and Committee Members:

My name is Manya Vogrig and I am a member of the Small Landowners Association and the Small Landowners of Oahu and I am testifying in **OPPOSITION** to this proposed legislation.

I have been involved in this issue since 1982. This is unfair (defined as: unjust, biased, dishonest, etc.) legislation. This will break our contracts and result in court actions. I must tell you what we have found to be the actual intention of lessee activists promoting this legislation.

As most of you know, leases all have surrender clauses ... because a lease allows the use of something on the condition that it be returned upon expiration. Our leases have been negotiated on that premise. Some properties have higher zoning allowances and some are designated for future developments. When looking at leasehold properties, it is the ideal situation. Terms of the leases are long enough so that, at the expiration, many properties are outdated and in need of redevelopment. Each of our leases vary, This legislation is proposing to make a law that will break our contracts for the personal benefit of the lessee. No matter what the lease says: if there is a clause ordering the removal of the building(s), compensation to the lessee for the building, etc., this will be breaking the contracts entered into in good faith. The landowners in most cases were not compensated for their homes or structures that were demolished in order for the developer to build. Some landowners risked allowing the developer to mortgage their land so the developer could obtain financing to build. And we small landowners did not receive any of the profits or income that the developer made on selling the leasehold units. The purpose of us leasing our property, most of which is our one and only family property and income shared with other family members, was to provide housing to the influx of people resulting from Statehood, as encouraged by our lawmakers.

We have seen the real evidence from the Lessee "owners" as to their intention of

1. lowering the lease rents, 2. extending the leases and/or 3. getting rid of the surrender clause.

They have passed out information to the lessees to inform them that, if they are successful in getting any of these laws passed, it will automatically lower the price they will have to pay for the land if they purchase their leased fee property.

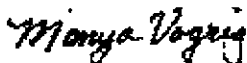
This outrageous effort to convince us to try to compromise appears to be politically motivated. Please realize that the Lawmakers unfairly helping political activists to financially benefit will still result in hurting other citizens of Hawaii, such as landowners, renters and taxpayers! In fact, by NOT passing such legislation, it will help prevent further misleading of lessees who have been taken advantage of by realtors, lawyers, and others.

Do you Legislators want to contribute to aid them in this stealing of our property?

It is no wonder that unfair legislation favoring the more outspoken side continues to appear every year. Lessees who have been misled by the activists to believe that they are being hurt or deserve more than what they agreed to, need to be educated and not continue to believe in these fairy tales. Please allow the freedom to choose if and when to sell or buy. Allow us to live our lives in Peace! ... Please?

Thank you for considering our testimony against this type of proposed legislation. We would very much like to meet with you at any time if you have any questions.

Sincerely,



Manya Vogrig, small landowner family member and Small Landowners Assn.
2877 Kalakaua Ave. Apt. #1205 Honolulu, HI 96815 Phone: 922-6934

COMMITTEE ON JUDICIARY

Rep. Gilbert S.C. Keith-Agaran, Chair and Rep. Karl Rhoads, Vice Chair

DATE: Wednesday, March 02, 2011 TIME: 2:05 PM

PLACE: Conference Room 325

State Capitol, 415 South Beretania Street

HB 845, HD1 (HSCR497) RELATING TO GROUND LEASES Requires lessors who do not extend a ground lease to offer to sell the leased fee interest in the land to the lessee who requests the extension. Effective July 1, 2112. (HB845 HD1)

Honorable Members of the House Judiciary Committee:

My name is Phyllis Zerbe and I am a small landowner family member and a member of the Small Landowners Association and the Small Landowners of Oahu. I am testifying in OPPOSITION to this proposed legislation.

For over 30 years we have been testifying before you here at the State Legislature to defend our private property rights as small landowners in Hawaii. Over and over and over again you have listened to us through the years and you have not permitted our rights to be taken away.

We have legitimate, legal contracts agreed upon by those who chose to lease our land, and we should not be forced to break these agreements for the benefit of those who willing signed those contracts. We have always abided by the law included in our contracts, and we should not be compelled to divert from the stipulations agreed upon.

The issue before you today is just another outrageous attempt to penalize us and STEAL our lands.

Please do not allow this unjust, unreasonable piece of legislation to move forward.

Respectfully yours,



**T. Phyllis Zerbe, Small Landowners Association and
Small Landowner Family Representative ~ Phone 949-9998
1434 Punahou St. #631
Honolulu, HI 96822**

COMMITTEE ON JUDICIARY

Rep. Gilbert S.C. Keith-Agaran, Chair and Rep. Karl Rhoads, Vice Chair

**DATE: Wednesday, March 02, 2011 TIME: 2:05 PM PLACE: Conference Room 325
State Capitol, 415 South Beretania Street**

HB 845, HD1 (HSCR497) RELATING TO GROUND LEASES Requires lessors who do not extend a ground lease to offer to sell the leased fee interest in the land to the lessee who requests the extension. Effective July 1, 2112. (HB845 HD1)

Honorable Chairs and Committee Members:

My name is Ronald Schmidt and I am a concerned citizen. I am testifying in OPPOSITION to this proposed legislation.

It seems to me that this Bill has been written so things are construed and turned around to confuse or try to slide things through ... so that the people won't understand the real intentions here. The opposite of the truth is what seems to be that you're stating here.

Unfortunately there is a history here of land takeover. As our past President Bill Clinton admitted, some lawyers seem to think they can concoct words and definitions to get things on the record so they can legally enforce greedy desires. Perhaps an investigation by the proper authorities is warranted to find out who has participated in this request that this Bill be put in front of you. This would tell us who is behind the scenes and from there we should be able to tell the real story, before it goes any further.

It seems to me when a renter or a lessee signs a contract or lease, under conditions that are stated clearly, to then later try to be a cry baby and turn things around, they are pretending to be the victim and the landowner is the bad bully. I can see that if anybody is the victim here it is the landowner. We don't appreciate trying to turn the story around or make people's feelings better. Are you feeling sorry for business people who signed on the bottom line agreeing to legal conditions, and then are later coached by whomever to pull on the heart strings of our legislators because their contract is coming to the end? This type of behavior is typical if you're not aware of what they are trying to do. But if you're not aware of what's going on, you will play the fall guy role for the "poor" renter. Let's not be fooled with this simple ploy of theirs. It sounds one-sided to me.

How can anybody possibly think that they can come in 50+ years later, after a contract and conditions have been progressing under those original conditions, and then decide they would like to change things around so the contract would be broken. This seems to me to be very foolish, as well as narrow minded. I'd like to know who's going to pay for all the legal fees to get this legislation thrown out or reversed, if it is passed. These could be serious issues that one might not be aware of.

Thank you, Ronald Schmidt

Cell phone: 223-9018

FW: Testimony for HB845, HD1 - March 1, 2011

EDTTestimony

Sent: Tuesday, March 01, 2011 5:18 PM

To: JUDtestimony

From: Barbara Rogers [mailto:brogers.hawaii@yahoo.com]

Sent: Tuesday, March 01, 2011 4:18 PM

To: EDTTestimony

Subject: Testimony for HB845, HD1 - March 1, 2011

**Written Testimony Presented Before the
House Judiciary Committee**

March 2, 2011, 2:05 p.m.

Conference Rm 325

by

Barbara Rogers

946-9394

HB 845, HD1: Relating to Ground Leases

Testimony in support of HB 845, HD1

Chair Gilbert Keith-Agaran, Vice Chair Karl Rhodes, and Committee Members:

My name is Barbara Rogers and I am an owner occupant of a unit in a residential leasehold cooperative at 425 Ena Road, Honolulu. I have owned my unit for over 20 years.

It is heartbreaking to think that I will have to face the loss of my home with all of its upgrades and equity when the lease to the land expires. This is the same plight that about 18,000 owners of residential leasehold units throughout the State will need to deal with in the near future.

I very strongly urge you to support HB 845, HD1, which will deal fairly with the urgent land lease issue in Hawaii. Accordingly, land owners will be able to keep their lands if they so desire, and lessees will be able to acquire an extended or new lease for thirty years. This is a win-win solution.

Thank you very much for your consideration and for this opportunity to testify on an issue that impacts so many lives.

Sincerely with aloha,

Testimony for HB845 on 3/2/2011 2:05:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 28, 2011 1:07 AM

To: JUDtestimony

Cc: brienhallett@yahoo.com

Attachments: Testimony HB845-JUD.doc (30 KB)

Testimony for JUD 3/2/2011 2:05:00 PM HB845

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Brien Hallett

Organization: 'Iolani Banyan Cooperative

Address:

Phone:

E-mail: brienhallett@yahoo.com

Submitted on: 2/28/2011

Comments:

Fw: HB845

laura horigan [laurahorigan@yahoo.com]

Sent: Monday, February 28, 2011 4:11 PM

To: JUDtestimony

--- On Mon, 2/28/11, laura horigan <laurahorigan@hotmail.com> wrote:

From: laura horigan <laurahorigan@hotmail.com>
Subject: HB845
To: judtestimony@capitol.hawaii.com, "LAURA Horigan" <laurahorigan@yahoo.com>
Date: Monday, February 28, 2011, 4:03 PM

Judiciary Committee testimony for hearing on March 2,2011 at 2 pm in room 325

Dear chairman and members of the committee,

I am a 75 year old widow who has lived and worked in Hawaii for 46 years.I have lived in a leasehold apartment most of that time.Our lease expires in December of 2012. I fear that I will not be able to afford the "market rent" that we have been told our new lease holder will charge us at that time.I was one of the people who knocked on my neighbors' doors to survey their feelings and get an idea of their income and plans for the future. Many of them are also seniors and others have young families. No one felt they could afford a higher rent.They want to stay in this neighborhood.Hawaii needs affordable housing. Please consider this bill for mandatory extention of residential leases.

I respectfully urge you to support this bill.

Laura L.Horigan
2563 Date St Apt 305
Honolulu, Hi 96826 ph. 949 4797

HB845

laura horigan [laurahorigan@yahoo.com]

Sent: Monday, February 28, 2011 4:19 PM

To: JUDtestimony

Judiciary committee hearing 03/2/2011 at 2 pm in room 325

thank you for allowing me to testify in support of this bill, HB 845.

I am a renter at a leasehold cooperative at 2563 Date St apt 304. I have lived here for 4 years. When our lease ends in December 2012 I am afraid that I will not be able to afford "market rent". I would like to continue to live in this neighborhood. I also work full-time in Waikiki. This is the perfect place for me to live as my job starts at 4 am.

Debra Jamieson

ph 630 1976

3/1/11

Re: Support for HB 845

To Whom It May Concern:

Iolani School intends let the leases run out, forcing many people out of their homes. They have treated the residents very poorly and are unwilling to consider an extension, even though they are not planning on building anything for decades.

The community affected is mostly elderly and "very low income" status residents. It will force many elderly and families to be homeless or have to move in with family or to the mainland. Please remember those who do not have a voice that is, perhaps, not as flashy or alluring as Iolani's. There is always a way to settle issues like this so that everyone is happy. Please remember those who are affected – they are people, not just "constituents" or "demographics."

Thank you for your time.

Signed,

Douglas McCulloch

Testimony in SUPPORT of HB 845, HD1: RELATING TO GROUND LEASES

Date: March 1, 2011

TO: Representative Gilbert Keith-Agaran, Chair, and Members,
House Judiciary Committee

FROM: Name: Sandra Tangonan

Address: 600 Queen Street, Apt.3607
Honolulu, HI 96813

Contact: Telephone (808) 391-0687

Hearing: March 2, 2011; Wednesday; 2:05 pm:

Thank you for the opportunity to testify on this very important bill that can make a crucial difference in the lives of my daughter, son-in-law, and their two children - ages 3 and 5.

They are the owners-occupants of a residential leasehold condominium unit at 1251 Heulu Street, Apt 301 in Honolulu, Hawaii 96822. As the second owners of the unit, they have lived in their unit for almost 10 years.

Like many others, they wished to realize their dream of raising children in their own home. The somewhat affordable home of their dreams (to perhaps start as a "stepping stone") was unfortunately a leasehold property. However, the consequence of their decision will catch up in time with them as they are finding that their full-time wages have not kept pace with the increase of fee-simple property values. Their Condominium Board has not heard back from the owner of the property as to whether the property will be made available in "fee simple".

Selling the condominium unit will result in this young family (couple is in their mid-thirties) to lose so much of the equity in their property. This bill will give another option to my daughter's family and others in similar situation.

Supporting HB 845 will add value to property in Hawaii, be it lease or fee simple. I respectfully urge you to support HB 845.

Sincerely,

Sandra Tangonan

Mrs. Sandra Tangonan

Testimony for HB845 on 3/2/2011 2:05:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, March 01, 2011 1:18 PM

To: JUDtestimony

Cc: alysethomson@gmail.com

Testimony for JUD 3/2/2011 2:05:00 PM HB845

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Alyse Thomson

Organization: Individual

Address:

Phone:

E-mail: alysethomson@gmail.com

Submitted on: 3/1/2011

Comments:

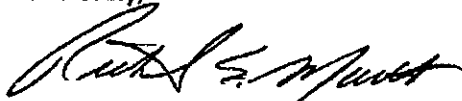
I am in support of this bill because if the bill is not passed, landowners could let the lease run out, take over our buildings and charge the tenants market rents for their homes they once owned. This will put more people out on the streets and will hurt the economy of Hawaii.

February 22, 2011
Representative Gilbert Keith-Agaran, Chair and Members
House Judiciary Committee
Susan J. Marth CAPP
2567 Laau St. #37
Honolulu, Hawaii 96826

I am DoD retiree and an owner of a lease hold property in Hawaii. I see great value and foresight in the proposed bill HB 845 and believe the bill itself is of vital importance to the state of Hawaii. The vast numbers of existing leases that are about to sunset on or near the same time will have a substantial impact on the state's revenue. Businesses will be forced to pass on their increased rents to the end users of their respective business after the sunset of their present lease. Since we rely so heavily on tourism as our largest product, the loss of this business will have a great impact on that industry in a trickledown effect. Many are living multi-generationally and working two or three jobs to make a living. If the leases of so many low to mid income properties sunset, they will be left with on where to live. Will the state of Hawaii be able to bear the burden of tens of thousands of families losing their income and or their homes at the same time? Without knowing that the lessor is required to extend the lease at a fair and reasonable rate or offer a purchase option people of any income are reluctant to invest in upgrades and repairs which while increasing the value of their own properties would increase the value of the neighborhoods in general. When these leases sunset, many landlords intend to tear down the low and moderate income housing, replacing them with more profitable properties. I do feel that those who own the land should be fairly compensated, either by a fair and reasonable rent or a fair and reasonable sale price. I also believe that those people who have purchased those real properties and maintained and improved them should be compensated in a just and fair manner. The present situation is heavily in favor of the landlords. The landlords inherit all improvements on the property at the sunset of the lease with no compensation to the lessee. This gives no real incentive for a landlord to offer a sale to the lessee. The lessee is forced to walk away from all of the equity in their property. It is the same for commercial/industrial and residential. The proposed Bill H.B. 845 addresses all of the parties in a fair and equitable manner. In most cases the landlords are a group of wealthy and powerful people who can afford long and costly legal battles. The lessee, in most cases is trying to hold on to property they can just barely afford. The lessee gives up their rights due to an inability to afford legal counsel and court costs. This bill would put these two groups on a more level ground.

I hope to see this bill become law. It is fair to all parties. I also hope that the committees will not be swayed by the wealthy landlords to allow this unfair situation to remain as it is now. The people of Hawaii need a champion to protect them. I believe you can be just that.

Sincerely,



Richard S. Marth, CISSP

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Sincerely



Susan J. Marth, CAPP



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**HB 845 HD1
RELATING TO GROUND LEASES**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

MARCH 2, 2011

Chair Keith-Agaran and Members of the House Committee on Judiciary:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 845 HD1, "A BILL FOR AN ACT RELATING TO GROUND LEASES." We respectfully oppose this bill.

This bill requires lessors to offer to sell the leased fee interest in the land to their lessee at the end of the lease term. With owners of commercial and industrial real property faced with the possibility of losing the ownership interest in lands that they lease, we believe that this bill will have a significant negative impact upon both the availability of lands for lease and the overall cost of these leases to commercial and industrial businesses. We anticipate that the residual effect will be an overall reduction in the number of businesses and jobs, along with an increase in the overall cost of goods and services here in Hawaii.

Based on the aforementioned, we respectfully request that this bill be held in Committee.

Thank you for the opportunity to testify.

Testimony in SUPPORT of HB 845, HD1: RELATING TO GROUND LEASES

Date: February 22, 2011

TO: Representative Gilbert Keith-Agaran, Chair, Representative Karl Rhodes, Vice Chair, and Members, House Judiciary Committee

FROM: Yi Chi (Edmund) Wang, owner of residential lease unit
Contact: edmundwang2012@gmail.com; 735-9066

Hearing (Date/time/place):

Thank you for the opportunity to testify on this very important bill.

I purchased my leasehold apartment 28 years ago. And I was told by the broker that I can also purchase the land in the future. But after that many years I am facing to lose my apartment. My children are losing their home. We urge you to pass the HB 845. So we can still have our home.

I respectfully urge you to support HB 845, HD 1.

Yi Chi Wang
Ling Hsiang Wang
Tiffany Wang
Vincent Wang

TO: Judiciary Committee,
 Hawai`i House of Representatives

FROM: Hans Peter Jensen, III, Kekuku Estate
 1644-1 Liholiho Street, Honolulu, HI 96822
 hanspj3@yahoo.com

RE: **OPPOSITION TO HB 845 (HD1) AND ANY
 FORM THEREOF OR SIMILAR
 THERE TO**

DATE: 3/2/2011

Aloha Chairman Keith-Agaran, Vice-Chairman Rhoads,
and Members of the Judiciary Committee:

I am Hans Peter Jensen, III, a small landowner in the City and County of Honolulu, speaking on behalf of my family in opposition to House Bill 845. The measure is blatantly one-sided and would instantly destroy contractual agreements between our selves and our lessees. The Legislature has no business entering into the contractual agreements between two private parties. The measure serves no public purpose and similar legislation has already been determined to be unconstitutional by your U.S. District Court last year.

Please do not support this measure.



LAND USE RESEARCH
FOUNDATION OF HAWAII

1100 Alakea Street, 4th Floor
Honolulu, Hawaii 96813
(808) 521-4717
www.lurf.org

March 1, 2011

Representative Gilbert S.C. Keith-Agaran, Chair and Representative Karl Rhoads, Vice Chair
Committee on Judiciary

OPPOSITION TO HB 845, HD1, Relating to Ground Leases. (Lease Alteration by Mandatory Lease Extension or Sale of Fee - Requires lessors who do not agree to an extension of a ground lease to offer to sell the leased fee interest in the land to the lessee requesting the extension. Effective July 1, 2112.)

Tuesday, March 2, 2011 at 2:05 p.m. in CR 325

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF **strongly opposes** **HB 845, HD 1**, which proposes to require lessors of long-term commercial, industrial, or residential ground leases to agree to requests made by lessees to extend the terms of said leases; and if no extension or new ground lease is entered into for a term of at least 30 years with substantially similar lease terms and rent, to sell the leased fee interest in the lands to the lessee at an amount to be determined by appraisal.

HB 845, HD 1. The bill is based on the erroneous premise that inequities exist in the relationship of owners of leased fee interests in land (lessors) and the holders of long-term leasehold interests in such land (lessees). The purpose of this bill is to unreasonably mandate the extension of long-term ground leases or sale of the underlying fee simple interest in the land, to the sole benefit of lessees and to the unjust detriment of lessors.

HB 845, HD 1 violates the Contract Clause of the U.S. Constitution by **mandating material changes** in existing long-term ground leases only for the benefit of lessees. Such changes are unconstitutional and illegal as they will **result in substantial and severe impairment** of leasehold contracts by depriving lessors of important rights and opportunities afforded under existing leases, and destroying the contractual expectations and relationships of the parties to those lease contracts, without significant and legitimate public purpose.

The bill is just yet another unconstitutional attempt to change the terms of existing leases, similar in intent to Act 189 (2009), which was found to be unconstitutional by the U.S. District Court, District of Hawaii, in 2010.

LURF's Position. LURF strongly opposes HB 845, HD 1 based on the following:

- **HB 845, HD 1 violates Article I, Section 10, Clause 1 (the Contract Clause) of the United States Constitution ("U.S. Constitution").**

HB 845, HD 1 is unconstitutional because it **alters major terms and provisions in existing long-term lease contracts** and would **substantially impair the contractual relationships underlying such leases**. The proposed bill would change the terms and provisions of existing leases, which have already been negotiated and agreed to by the parties to the agreement, and is an attempt to have the Legislature change contractual remedies and obligations, to the detriment of all lessors and to the benefit of all lessees.

- **The State of Hawaii Department of the Attorney General has opined that legislation such as HB 845, HD 1, which would change existing contract rights, is violative of the Contract Clause, and therefore illegal.**

Prior legal opinions issued by the State of Hawaii Department of the Attorney General have repeatedly cautioned that analogous legislation, which would alter the terms and conditions of existing lease agreements would violate the Contract Clause of the U.S. Constitution.

LURF likewise believes that if challenged in court, the provisions of HB 845, HD 1 would fail to meet the test of constitutionality under the Contract Clause, as set forth in the Hawaii Supreme Court case, *Applications of Herrick & Irish*, 82 Haw. 329, 922 P.2d 942 (1996) (cited by the State Attorney General in its prior opinions relating to proposed laws which alter lease terms to benefit lessees), as 1) the bill operates as a substantial impairment of a contractual relationship; 2) the proposed state law is not designed to promote a significant and legitimate public purpose; and 3) the proposed state law is not a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose.

- **HB 845, HD 1 contradicts the ruling of U.S. District Judge Susan Oki Mollway in *HRPT Properties Trust, et al., v. Linda Lingle, in her capacity as Governor of the State of Hawaii*, Civil No. 09-0375 (U.S. District Court, D. Hawaii), a federal lawsuit in which Plaintiff lessor successfully challenged the constitutionality of Act 189 (2009).**

In 2009, the Hawaii State Legislature passed Act 189, which was targeted to apply to only one lessor. The Act mandated material changes in existing long-term commercial or industrial ground leases solely to the benefit of lessees, and such changes resulted in substantial and severe impairment of leasehold contract terms.

The targeted lessor challenged the constitutionality of Act 189 in a lawsuit brought in federal court entitled *HRPT Properties Trust, et al., v. Linda Lingle, in her capacity as Governor of the State of Hawaii*, Civil No. 09-0375 (U.S. District Court, D. Hawaii). On May 31, 2010, U.S. District Judge Susan Oki Mollway issued her decision in the *HRPT* case, finding that Act 189 was **unconstitutional**, as it violated the Contract Clause of the U.S. Constitution.

Similar in intent to Act 189, HB 845, HD 1 applies to lessors who have entered into long-term ground leases in counties with a population of more than 100,000, and by

attempting to change major terms and provisions in existing leases, would result in substantial and severe impairment of those lease contracts, for the following reasons:

- **The bill would change major lease terms, thereby depriving private lessors of significant rights and causing severe impairment of existing lease agreements.** HB 845, HD 1 would strip lessors of significant rights afforded to them pursuant to lease terms and conditions which are contained within most standard form leases, including:
 - the right to freely determine the length of the lease (by requiring a minimum 30 year extension of the lease term, or sale of the underlying fee interest in the leased land, HB 845, HD 1 in effect mandates a **PERPETUAL lease term**);
 - the right to terminate or extend the lease based on terms specified by lease provisions, or if there are no such provisions, the right to terminate or extend the lease based on freely negotiated terms;
 - the right to change the lease terms upon extension (which may be required, particularly for long-term leases due to changes in economic and market conditions over time, unforeseen and/or uncontrollable circumstances, etc.);
 - the right to execute specific lease provisions relating to the timing of lease termination or extension, or if there are no such provisions, the right to freely determine the timing of negotiations to terminate or extend the lease;
 - the right to seek arbitration under specific lease provisions, or if there are no such provisions, the right to freely seek other dispute resolution alternatives; and
 - any and all other rights which may in any way relate to, or be affected by the termination or extension of the lease or the timing thereof; and
 - the right to freely sell or transfer the interest in the land upon termination of the lease to whomever the lessor may choose, based upon freely negotiated terms and conditions.
- **The bill destroys the contractual expectations and relationships of the parties to existing leases.** HB 845, HD 1 changes the parties' bargain by requiring lessors who had fairly negotiated a lease end date to either extend the lease or offer to sell the leased fee interest in the land to the lessee. The bill clearly seeks to impose new requirements into the contractual relationship which do not currently exist in the lease, and therefore, were never "bargained for" by the lessor and lessee.
- **The bill alters substantial financial terms of the existing leases.** The bill precludes or affects the establishment (or re-establishment) of financial terms such as rent which is a critical term in any lease. Adjustments in financial terms constitute substantial impairments of contractual obligations thereby intensifying the unconstitutional character of the bill. See *HRPT v. Lingle*, 715 F.Supp.2d 1115, 1137 (USDC, D. Hawaii 2010).

As shown above, similar to the *HRPT* case, the impairment of lessors' rights under HB 845, HD 1 is **substantial** as it deprives lessors of important rights; defeats the expectations of the parties; alters financial terms; and destroys contractual expectations, and is thus violative of the Contract Clause.

- **The bill also divests private lessors of their constitutionally recognized right to own property.**

The Fifth Amendment of the U.S. Constitution provides that, "No person shall be...deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." America's Founding Fathers in fact considered the ownership of property to be the real cornerstone of man's liberty and happiness, and drafted the U.S. Constitution on that premise. Their guiding principle was that people come together to form a government in order to secure their rights to private property – not create an entity which would confiscate the fruits of their labor. The right to privately own property and to keep the rewards of individual labor thus opened the doors to democracy and eventually, economic progress.

Although in recent years U.S. Courts tend to discount this most fundamental freedom based in the Fifth Amendment and upon centuries of legal precedent by ruling that the government may in certain situations, seize the private property of one citizen and transfer it to another private citizen (i.e., taking the government's power of eminent domain to a frightening new level), action by the government in those cases still cannot be taken against a private property owner without due process of law.

- **HB 845, HD 1 is yet another unconstitutional attempt in a long line of unsuccessful past attempts to introduce comparable Hawaii legislation which unconstitutionally alters the terms and provisions of existing leases to the benefit of lessees and to the detriment of lessors.**

Over the past years, recurring attempts have been made to legislatively alter the terms and conditions of existing leases to the benefit of lessees and to the detriment of lessors, but said efforts have all been **unsuccessful**:

- In 2009, SB 770, which proposed alterations of existing lease contracts to favor the lessee, was introduced, however, the members of the Senate Committee on Commerce and Consumer Protection unanimously voted to hold the bill in Committee. By operation of the legislative rules, SB 770 was carried over to the 2010 Regular Session, however, was **never set for hearing** in 2010.

Prior to 2009 and 2010, a number of other attempts to introduce similar legislation were also made **unsuccessfully, having been declared unconstitutional**:

- In 2008, HB 1075 proposed alterations of existing lease contracts to favor the lessee, however, the Senate Economic Development and Tourism Committee (EDT) held the bill. EDT placed the contents of HB 1075 into HB 2040, SD2, however this bill was held in Conference Committee.
- In 2007, SB 1252 and SB 1619 proposed alterations of existing lease contract to favor the lessee;
- In 2006, SB 2043 would have imposed a surcharge tax on the value of improvements to real property subject to reversion in a lease of commercial or industrial property;
- In 2000, SB 873 SD 1, HD 2 also attempted to alter existing lease contract terms to the detriment of lessors and to the benefit of lessees by proposing to alter existing lease terms to require a lessor to purchase a lessee's improvements at the expiration of the lease term. The Department of Attorney General opined that SB 873, SD 1, HD 2 violated the Contract Clause of the U.S. Constitution. Governor Cayetano, relying on the Attorney General's opinion, vetoed SB 873, SD 1, HD 1.

- In 2001, in response to HB 1131, HD 1, yet another bill which proposed to alter existing lease contracts to favor lessees, the Attorney General again reaffirmed its opinion that the proposed bill violated the Contract Clause of the U.S. Constitution.
- In 1987, the Hawaii Supreme Court in Anthony v. Kualoa Ranch, 69 Haw. 112, 736 P.2d 55 (1987), ruled that a statute requiring a lessor to purchase a lessee's improvements at the expiration of the lease term violated the Contract Clause. The Court in the Anthony case observed that:

"This statute, as applied to leases already in effect, purely and simply, is an attempt by the legislature to change contractual remedies and obligations, to the detriment of all lessors and to the benefit of all lessees, without relation to the purposes of the leasehold conversion act; without the limitations as to leaseholds subject thereto contained in the conversion provisions; not in the exercise of the eminent domain power; but simply for the purpose of doing equity, as the legislature saw it. If there is any meaning at all to the contract clause, it prohibits the application of HRS §516-70 to leases existing at the time of the 1975 amendment. Accordingly, that section, as applied to leases existing at the time of the adoption of the 1975 amendment, is declared unconstitutional."

➤ **HB 845, HD 1 is simply bad public policy.**

The bill undermines the integrity of contracts and agreements entered into openly and willingly between private parties. Moreover, it allows the State to unfairly alter the terms and conditions of agreements to favor one party to a contract over the other, thereby creating uncertainty as to the ability of any individual or business organization to legally enforce contractual terms and agreements.

CONCLUSION. For the reasons set forth above, LURF believes that HB 845, HD 1 is unconstitutional and profoundly anti-business, and should therefore **be held in this Committee.**

Thank you for the opportunity to provide testimony **strongly opposing** this bill.