

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
FINANCE**

**Friday, February 25, 2011
4:00 PM
State Capitol, Conference Room 308**

**In consideration of
HOUSE BILL 1617, HOUSE DRAFT 1
RELATING TO PUBLIC LANDS**

House Bill 1617, House Draft 1 would allow leases of public lands used for commercial, hotel, resort or industrial purposes to be extended for up to an additional 55 years beyond the existing term. The Department of Land and Natural Resources (Department) opposes this bill.

House Bill 1617, House Draft 1 requires a proposed lease extension to be subject to the Department and lessee negotiating and agreeing upon a development agreement, which would require the Department to, among other things, review the lessee's plans and specifications for improvements to the property and subsequently negotiate the value of the proposed improvements, length of the lease extension, market value of the demised premises, and annual rent to be paid under the extended lease.

Leases of public lands are governed by Chapter 171, Hawaii Revised Statutes, which imposes a maximum lease term of 65 years. This limit is generally beyond the life of an individual business owner, and allows a sufficient time for the lessee/owner to occupy the property and recoup its investment, while allowing other members of the general public an opportunity to acquire a State lease of lands through an open public auction or other public process, at the end of the maximum 55 or 65-year term. House Bill 1617 ignores these public policies and grants commercial, hotel, resort and industrial leases special status over all public land leases by allowing these favored lessees to have exclusive use of public lands for up to 120 years.

The Department also acknowledges that some existing lessees are not the original lessee and have acquired their lease with substantially less than 65 years remaining on the lease term. However, those lessees acquired their lease at a purchase price that appropriately reflected the limited remaining lease term. Granting lease extensions to those lessees would provide them

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

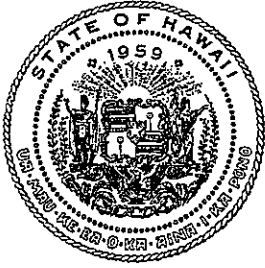
WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

with an undeserved and unearned windfall gain.

Furthermore, the Department continues to face severe budget cutbacks. The Department's general fund appropriations and special fund revenues have dropped significantly over the last three years, and the Department lost many positions during these past few years. The bill imposes duties that would require a substantial amount of staff time and funding for appraisals to determine the value of the improvements, demised premises, and new annual rent. The Department simply does not have the resources and staffing necessary to undertake the additional duties that would be required under this bill.

For the reasons stated above, the Department opposes House Bill 1617, House Draft 1.



NEIL ABERCROMBIE
Governor

MIKE MCCARTNEY
President and
Chief Executive Officer

Hawai'i Tourism Authority

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Testimony of
Mike McCartney
President and Chief Executive Officer
Hawai'i Tourism Authority

on
H.B. 1617, H.D. 1
Relating to Public Lands

House Committee on Finance
Friday, February 25, 2011
4:00 p.m.
Conference Room 308

The Hawai'i Tourism Authority (HTA) strongly supports H.B. 1617, H.D. 1, which provides for the extension of leases of public lands for commercial, hotel, resort, or industrial use if substantial improvements are made to the premises.

The HTA is tasked with marketing and promoting Hawai'i as a visitor destination, with the goal of increasing visitor spending. One of the keys to managing Hawai'i's brand and increasing visitor spending is the improvement of the tourism product, which includes the physical infrastructure and is affirmed in Hawai'i Tourism Strategic Plan: 2005-2015. For this reason, H.B. 1617 is particularly important for the upgrading of visitor industry facilities in the Banyan Drive area on the Island of Hawai'i. Banyan Drive is the only significant resort area in East Hawai'i and is on land entirely owned by the state. With many of the leases expiring in 2015, there has been little incentive for the lessees to reinvest in their premises.

It should also be noted that during the HTA's annual meeting with stakeholders of the visitor industry in East Hawai'i, the subject of up-grading the visitor facilities on Banyan Drive is always raised. These facilities are vital to events such as the Merrie Monarch Festival, the Hawaii Island Festival-30 Days of Aloha, Hawaii Volcanoes National Park's Cultural Festival, and the Hilo Chinese New Year's Festival. In addition, East Hawaii is being considered as the site for an educational tourism experience, however, the lack of facilities from a quantitative and qualitative standpoint, may prevent the full development of this niche market.

Beginning this summer there will be direct flights from the mainland to Hilo, starting with daily flights from Los Angeles and weekly flights from San Francisco. Further, East Hawaii is being considered as the site for an educational tourism experience. The lack of facilities from a quantitative and qualitative standpoint, however, may prevent the full development of these marketing opportunities.

The lease extension that H.B. 1617 provides for will provide an incentive to the private sector to improve Hawai'i's hotel facilities and ensure that Hawai'i remains competitive as a destination.

Furthermore, when improvements are made to these facilities, the real property assessments and the average daily room rate should rise, resulting in a rise in real property taxes and transient accommodations taxes.

We urge you favorable consideration of this measure.

Cas Vanderwoude
62 Hokulani St
Hilo, Hawaii. 96720

22 Feb 2011

Hawaii State Legislature

Comments in relation to HB 1617

Dear representatives,

I wish to pass on my thoughts regarding House Bill 1617, a bill for an act relating to public lands.

I applaud the intent of this bill. Many leasehold properties covered by this bill are nearing the end of the original lease period. Currently, many are in a poor state of repair because of the uncertainty of future tenure. By allowing these leases to be extended, current lease holders will be encouraged to invest substantial capital in their properties, and this will have several direct benefits to the State of Hawaii. First, these renovations will result in the creation of much needed jobs and boost economic activity. Second, for resort hotels and similar structures, additional quality accommodation will be available to service the expected future growth in tourism for the State.

However, this Bill does not take into account the historical situation for a number of resort hotels in East Hawaii. These hotels were converted to condominiums by lease holders who sold sub-leases for individual units. The developers, while still holding the land leases, have realized the profits of their original investments many years ago. While still technically the lease holders, they have had no involvement in the buildings they once owned and have not paid the land lease to the State for many years. It has been the sub lessees, many individual owner-residents, who have paid the land leases for their units as *de facto* lease holders for many decades. Some of these people are low income earners and these people will lose not only their investment, but also their homes. Some will have nowhere else to go.

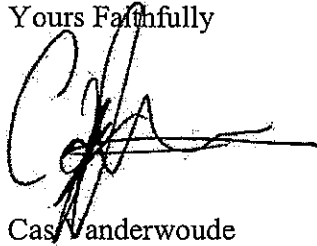
The Bill, as currently written, will allow the original lease holders to negotiate with BDLNR to gain lease extensions on buildings they have, in effect, sold to other owners via sub-leases that expire on the same day as the master lease. This excludes the rights of current owners of units in these buildings and will cause them to lose their homes, even though they have faithfully paid the land leases directly to BDLNR for decades. I am certain that is not the intent of legislators when this Bill was drafted.

In the interest of natural justice, this Bill should include a provision to allow for situations of this nature. This might be accomplished by stipulating that the Association of Apartment Owners of these projects are recognized as *de facto* lessees and have the

power to negotiate directly with BDLNR for a lease extension, provided they comply with the provisions of this Bill. I am certain many AOAOs that are affected by this measure would be eager to retain ownership of the buildings and would be prepared to invest heavily in making the improvements required by this measure.

I thank you for considering my testimony and sincerely hope the Bill could include the provision I suggest.

Yours Faithfully

A handwritten signature in black ink, appearing to be 'Cas Vanderwoude', written over a horizontal line. The signature is stylized and somewhat cursive.

Cas Vanderwoude