

lowen2-Lanaly

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 05, 2014 11:07 AM
To: waltestimony
Cc: garthyama@gmail.com
Subject: *Submitted testimony for HB1688 on Feb 7, 2014 08:30AM*

HB1688

Submitted on: 2/5/2014

Testimony for WAL on Feb 7, 2014 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Garth Yamanaka	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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February 5, 2014

House Committee Water and Land
Chair Cindy Evans
Vice Chair Nicole Lowen

Testimony in Support - HB1688

Aloha Chair Evans,

The purpose of this bill is to resolve problems inherent in the leasehold tenure of state lands. A large amount of land is owned by the state and is leased to businesses for commercial, industrial, hotel, and resort purposes. This is especially true for East Hawaii. Recently the legislature has identified problems on Resort zoned property caused by leasehold tenancy. They passed, and the Governor signed, Act 219 2011 to correct these deficiencies by allowing existing lessee's to renew their leases. To date the Hilo Hawaiian Hotel has acted upon this reform, renewed it's lease with the BLNR, and has begun its renovations and improvements. Besides eliminating the "wasting asset" nature of state leasehold property this will immediately allow for significant investment, helping the states economy. The renewal provision makes for the most efficient use of these lands, which is in the best interests of our island state.

By allowing lessees of public lands to renew or extend their leases this bill addresses the reversionary requirements of those leases. The lessee is currently required to surrender the property with improvements in place to the DLNR at the end of the lease term. There are no provisions in my state leases for remediation or returning the property in any particular condition other than "in good order". There are no provisions in my leases for returning the property to "it's original state" as this legislation could require.

This legislation could also require the BLNR to reimburse for the value of the depreciated improvements made to the property by the lessee if they are unable to reach an agreement with the BLNR. The amending of HRS171 to include these provisions would allow the BLNR to better manage state lands while allowing lessees to better utilize these lands while under lease.

With these modifications to HRS171 the Lessee would be able to continuously reinvest in their business activities on the state lands under lease. They would be able to remain competitive in their respective markets, as are existing users of fee simple lands, thus improving the states overall economy. An important factor from the states perspective is that not only would the state always receive "Fair Market Rent" for their property but also the state lands would be operating without the economic inefficiencies inherent in the leasehold tenure. This would benefit the community by improving the economy.

This bill is a classic example of a "Win-Win" arrangement that has been long overdue. Mahalo for your support.

James McCully
McCully Works
Hilo, Hawaii

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 05, 2014 1:49 PM
To: waltestimony
Cc: cerskine@fhb.com
Subject: Submitted testimony for HB1688 on Feb 7, 2014 08:30AM

HB1688

Submitted on: 2/5/2014

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Submitted By	Organization	Testifier Position	Present at Hearing
Chuck Erskine	Hawaii Island Chamber of Commerce	Support	No

Comments: I'm a Board of Director for the Hawaii Island Chamber of Commerce and also a Business Banker for First Hawaiian Bank and would like to offer my support of this bill. Many businesses in town are being adversely affected by the current law as they are unable/unwilling to maintain their lease properties due to the uncertainty surrounding their lease. Furthermore, many businesses will soon be displaced forcing some to close down. As far as lending, banks are unwilling to finance these companies due to the short term remainder of these leases. Approval of this bill will be tremendous stimulus to our economy by saving a lot of companies from going out of business and preserving many jobs. I humbly ask for your support of HB 1688. Mahalo, Chuck Erskine

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 06, 2014 6:24 AM
To: waltestimony
Cc: msteiner@steinerassoc.com
Subject: Submitted testimony for HB1688 on Feb 7, 2014 08:30AM

HB1688

Submitted on: 2/6/2014

Testimony for WAL on Feb 7, 2014 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Steiner	Citizens for Fair Valuation	Support	No

Comments: Aloha Chair Evans, Vice-Chair Lowen and Members of the Committee. My name is Michael Steiner and I am the Executive Director of Citizens for Fair Valuation, a 501(c)(6) tenant organization. I write in support of HB 1688 which would grant certain lessees of public land the right of first refusal to extend or renew a lease prior to a public auction of the land. Please pass this bill forward. Mahalo

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February 6, 2014

Hawaii State Legislature

Testimony in Support of HB1688

I would like to register my support for HB 1688. My name is Michael Shewmaker and I have resided in Hilo for more than thirty years. I own a small business, Downtown Laundry Express in Downtown Hilo. We employ eight people and are an important part of the Downtown area. I am concerned with the inordinate influence State Leasehold Lands have on our community. Please pass this legislation.

Sincerely,

Michael Shewmaker

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

**Before the House Committee on
WATER & LAND**

**Friday, February 7, 2014
8:30 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1688
RELATING TO PUBLIC LANDS**

House Bill 1688 proposes to amend Chapter 171, Hawaii Revised Statutes (HRS), to grant certain lessees of public land the right of first refusal to extend or renew a lease prior to a public auction of the land, establishes an appraisal process to assist in the determination of fair market value of the land for rental purposes where the lease is renewed or extended and provides for the disposition of improvements to the land where the lease is not renewed or extended. **The Department of Land and Natural Resources (Department) strongly opposes this bill.**

This measure is an anathema to the public policy of Chapter 171, HRS, as well as the Department and the Board of Land and Natural Resources' (Board) fiduciary obligation to manage public lands for the benefit of all the people of the State. Subsection (a) provides a lessee of public land under a sixty-five year lease the right of first refusal to renew or extend the lease of the public land prior to its disposition at a public auction. As the measure is silent on the term of the renewal or extension, there does not appear to be any limit on how long the lease may run. This will in effect serve to privatize public lands, conveying a benefit to a privileged few at the expense of the public, who are effectively prohibited from obtaining a State lease. A sixty-five year lease term has shown to be more than sufficient in order to serve the life of a business, as the vast majority public land leases have been assigned at least once prior to the expiration of the lease. If a potential assignee decides to obtain a public land lease with a limited term remaining, they do so voluntarily assuming the risk. Chapter 171, HRS, is indicative of the public policy that public land leases shall be of a limited duration in order to provide the public fair and open opportunities to acquire a lease. Furthermore, allowing such rights of first refusal and lease extensions prevents fair and open competition to acquire public land leases, resulting in long term dispositions that do not realize the economic potential of the land.

Subsection (b) mandates that the fair market value of the rent for the renewed or extended lease be determined without consideration of the value of improvements made to the land by the lessee. In addition, it appears that the fair market value would not be determined by independent

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

ESTHER KIA'AINA
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

appraisal unless the lessee and the Board are unable to reach agreement on the rent. This restriction would lead to artificially discounted rent values and a reduction of public trust revenues. Requiring lease rents to be determined by appraisal helps to ensure a fair result for both the Department and the lessee. Appraisers possess the requisite experience and expertise to utilize all relevant data in their determination of fair market value, including consideration of the value of improvements. The restriction runs counter to policy of Chapter 171, HRS, that defers to the expertise of the appraiser.

Subsection (c) requires the Board to reimburse the lessee for the depreciated value of improvements made to the land by the lessee. This provision would mandate the use of public funds for a private benefit. Improvements by the lessee are undertaken for the benefit of their business, and do not provide a direct benefit for the general public. Upon the termination of the lease, the Board as lessor determines whether the lessee must remove the improvements and restore the land, or allow the improvements to remain and surrendered to the lessor. The lessee does not retain any interest in improvements beyond the term of the lease, except the aforesaid obligations. Such requirements are clearly specified in the lease terms, established prior to public auction or other disposition process and relied upon by all involved.



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

February 7, 2014

HEARING BEFORE THE
HOUSE COMMITTEE ON WATER & LAND

TESTIMONY ON **HB 1688**
RELATING TO PUBLIC LANDS
Room 325
8:30 AM

Aloha Chair Evans, Vice Chair Lowen, and Members of the Committee:

I am Christopher Manfredi, President of the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,832 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

The Hawaii Farm Bureau **strongly supports the intent of HB 1688**, "Relating to Public Lands." This bill is extremely important to help keep farmers and ranchers producing food and other agricultural products on State leased lands.

In the case of State agricultural leases, farmers or farm families who have worked hard, farmed or ranched successfully and paid their rent faithfully for many years should not lose their farms and their livelihoods simply because their leases expire. We therefore strongly support the intent of subsection (a), which would grant an existing lessee the right of first refusal to extend or renew a 65-year lease rather than automatically putting the lease up for public auction. However, we are puzzled about the restriction of this privilege to 65-year leases, and concerned that the 65-year requirement may act as a disincentive for DLNR to grant leases of this length. *We feel that the right of first refusal should be granted to all long-term lessees in good standing, certainly those of 20 years or more.*

Further, we are concerned that the proposed subsections (b) and (c) contain provisions that may negate at least some of the value of the right of first refusal. Subsection (b) specifies that rent shall be paid at the fair market value of the land. Unfortunately, "fair market value" is often determined by land sales in the general area of the parcel in question. In Hawaii, at least at present, land often sells for a price far higher than its value in crop production, even when the land is classified as agricultural. If this standard is used to determine the value of an agricultural leasehold, then the rent may increase beyond the ability of the lessee to pay. As an alternative, we respectfully suggest that the rent be based on the land's actual productivity – say, 1% of the average income from the land during the final five years of the lease.

Subsection (c) allows the Board of Land and Natural Resources to reimburse the lessee for the depreciated value of improvements made by the lessee, or to require the lessee to restore the land to its original state, if the lessee waives its right of first refusal or the Board and the lessee fail to agree to lease terms. Requiring a lessee to remove many years' worth of improvements could be financially devastating, especially when the lessee's source of income – the land and improvements – are simultaneously removed. **This clause could be used to force a lessee to accept unfavorable lease terms rather than face the expense of demolition and removal of the improvements: a circumstance which contradicts the intent of this legislation to benefit long-term leaseholders.**

In summary, while we applaud the intent of HB 1688 to allow long-term leaseholders to extend or renew their leases without requiring public auctions, we see problems in the proposed wording that may confound the bill's purpose. We hope that HB 1688 can be amended to remove these concerns and achieve its intended benefit for long-term State lessees.

Thank you for the opportunity to testify on this important matter. We are available to work with this Committee on amendments that will address these concerns and accomplish the purpose of the measure.

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 06, 2014 3:02 PM
To: waltestimony
Cc: caguiar@kiaahilo.org
Subject: *Submitted testimony for HB1688 on Feb 7, 2014 08:30AM*

HB1688

Submitted on: 2/6/2014

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Submitted By	Organization	Testifier Position	Present at Hearing
Cory C Aguiar	Individual	Support	No

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February 7, 2014

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In summary, while we applaud the intent of HB 1688 to allow long-term leaseholders to extend or renew their leases without requiring public auctions, yet we see problems in the proposed language that may confound the bill's purpose. **We hope that HB 1688 can be amended to remove these concerns and achieve its intended benefit for long-term State lessees.**

Thank you for the opportunity to testify on this important matter. We are available to work with this Committee on amendments that will address these concerns and accomplish the purpose of the measure.