

CITIZENS FOR FAIR VALUATION

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February 17, 2014

**HOUSE OF REPRESENTATIVES
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014**

COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Angus L.K. McKelvey, Chair and Rep. Derek S.K. Kawakami, Vice Chair

COMMITTEE ON JUDICIARY
Rep. Karl Rhoads, Chair and Rep. Sharon E. Har, Vice Chair

RE: Testimony in Support of HB 1823 – Public Lands; Reopening Lease; Mediation; Arbitration
Hearing: February 19, 2014, 2:15 pm; Room 325
State Capitol, 415 South Beretania Street

Aloha Chairs McKelvey and Rhoads, Vice-Chairs Kawakami and Har, and Members of the Joint Committee,

My name is Michael Steiner and I am the Executive Director of Citizens for Fair Valuation (CFV), a non-profit coalition of lessees. I support passage of House Bill 1823 which would require mediation before arbitration in determining the sale price or lease rental of State lands.

Over the past half dozen years, the arbitration process used in deciding land and/or lease rent valuation has become more and more cumbersome. Arbitrations, which were originally put in place to provide a more cost effective and efficient option of dispute resolution, have taken on a life of their own often costing in excess of \$100,000 per side and taking months, if not years, to complete. Appraisers, acting as arbitrators, do not have the legal training required to fully understand both the legal and valuation issues at hand.

In business, lessors and lessees enter into a relationship in which each side brings value and success is a mutual goal. It is a partnership of sorts in which the lessor is paid for the use of property and the lessee works the land to earn enough to pay rent, employees and provide a profit for themselves. In this relationship, both parties succeed when they can work together.

Unfortunately, when rent resets cannot be settled by negotiation, the pursuing arbitration process creates a tension in the lessor/lessee relationship. The parties become adversaries hiring attorneys, appraisers and other experts to prove their position before a third appraiser, who acts as an arbitrator. Is there a burden of proof? How right do you have to be to prevail? 50.1%? What happens to the business relationship during and after a contentious arbitration?

On the other hand, mediators are trained to find common ground that builds upon and often strengthens the business relationship. It changes the mindset of the parties from winning at all costs

to understanding the other parties' issues in order to find a mutually acceptable position. Mediation is not only cost effective and efficient, it preserves and extends the relationship between lessor and lessees to their mutual benefit.

HB 1823 provides the foundation for mediation and mediation provides a structure upon which the business relationship can be preserved.

CFV believes in open access to the data that would allow all parties involved to make better, more informed decisions. Lessors, especially the State and other large commercial entities, are quite familiar with the process and the appraisers. They have unrestricted access to the data as they control large tracts of land. Individual lessees, as consumers, would be better served if they were able to understand prior arbitrations results through proper disclosure.

Please make a difference and pass HB 1823.

Mahalo

Mahalo



Michael Steiner

Executive Director, Citizens for Fair Valuation

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February 19, 2014
HEARING BEFORE THE HOUSE COMMITTEES ON
CONSUMER PROTECTION & COMMERCE and JUDICIARY

TESTIMONY ON HB 1823 HD1
RELATING TO PUBLIC LANDS
Room 325
2:15 PM

Chairs McKelvey and Rhoads, Vice Chairs Kawakami and Har, and Members of the Committees:

I am Christopher Manfredi, President of the Hawaii Farm Bureau Federation (HFB). Organized since 1948, the HFB 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.

HFB strongly supports HB 1823 that requires mediation in disputes regarding the fair market value or fair market rental of public lands.

This bill is extremely important to help keep farmers and ranchers producing food and other agricultural products on State leased lands. Farmers and their 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 and are reopened.

We have found that in some lease "negotiations" with DLNR, "fair market value" is **not fair** when applied to agricultural land. In fact, the current law has had a devastating effect on farmers who want to continue to lease State land. This process is not compatible with the State's goal of promoting and encouraging local food production.

The use of **mediation is a more reasonable, much less expensive, and appropriate approach** to resolving a rental dispute. We also agree with a policy of transparency regarding the sharing of appraisal reports prior to mediation. Although we don't believe that this measure, in itself, will solve all the problems inherent in agricultural leases held by State agencies other than the Department of Agriculture, whose mandate is to promote agriculture; these modest amendments are a good first step to ensure that farmers are treated more equitably.

Thank you for the opportunity to support and offer comments on this measure. HFB would appreciate the opportunity to work with the committees to further address the concerns experienced by farmer and rancher lessees.

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 15, 2014 8:31 AM
To: CPCtestimony
Cc: cvancamp3@hawaii.rr.com
Subject: Submitted testimony for HB1823 on Feb 19, 2014 14:15PM

HB1823

Submitted on: 2/15/2014

Testimony for CPC/JUD on Feb 19, 2014 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Carol A. VanCamp	Japanese Chamber of Commerce & Industry	Support	No

Comments: This bill is important to preserving businesses and commercial properties throughout the state, as these reforms will encourage investment that will lead to job creation.

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Kitchen & Beyond LLC

64 Wiwoole St. Hilo, HI 96720

Tel: 808 935 2167 Fax: 808 935 2177

Testimony in Support of HB 1823

House Committee Water & Land

Chair Cindy Evans, District 7

Vice Chair Nicole Lowen, District 6

Aloha Chair Evans, Vice Chair Lowen and Members of committee,

My name is Jieyu Shepard. I own and operate a family business - Kitchen & Beyond LLC. I am the current lease holder. Kitchen & Beyond provides support to several local families here in Hilo.

I strongly support HB 1823.

In the past the DNLR hired the appraiser from Oahu to appraise our property. The appraisal report is a professional opinion of the appraiser based on his experience, market information, and market potential. The person does not know Hilo. How could he come out with a fair value for the property? Why is the appraisal kept secret, and not available to the public?

Information is widely available. The valuation of a property is mostly based on the current market sale or rent. It is not that difficult to figure out the market value by anyone with a little intelligence. But for rent assessment, besides the market value we also have to consider the affordability. For instance, in Hilo Single family homes valued at \$250,000.00, you can only rent it out for \$1000 - \$1200. In Hawaiian Beaches (20 minutes away), the house is valued at \$100,000 to \$150,000, it rents out for \$850 - \$1100. On the east side of the Big Island, the income of the residences are very low. We do not have high-income industry. There is very little tourist income in Hilo. We are too rural for them. Most of our work force is in the service industry. For a family, they can only afford to pay rent at \$800 - \$1100 month. So no matter how much the house is worth, the rent is almost the same. Incomes do not support higher rents as are seen in Honolulu, or even the Kona side of the Big Island. The landlord has to understand this dynamic.

When operating a business in Hilo, we have the same issue to consider. We conduct business with lower income consumers, plus we have a small population. Operating a small business in Hilo is vastly different than operating a small business in a large bustling city. Several Big Box stores have moved to Hilo, and since they don't operate on a fair playing field, they have the means to pay higher rents. These higher rents, are being used as the bench mark to base the rents for a small business. This is not a practical way of calculating rent increases. The outcome will be many small

businesses will close their doors, and quietly disappear. We need to protect small businesses from being driven out of business by the large Corporations. Small businesses offer products and services that the community depends on. The Home Depot & Walmart are doing well because they receive huge discounts on products they purchase, due to large volume. They also do not need to consider freight on their products, because they receive huge discounts from shipping companies. Shipping is a very insignificant cost for them. For our small business, freight is a huge part of cost. If government treats us the same, it creates another area of unfair competition. The Corporations keep expanding, and we see more self check out stalls, and fewer employees working. Who is going to hire the local people? How many jobs are provided to the local people based on the square feet of land used? Is the small business important to the government and ultimately to the people? If it is, we should pass this bill to cut the cost for the small business and build good relationships between the lessee and lessor.

The current statute is not working. The process is unfair, lengthy and expensive. HB 1823 will provide a transparent exchange of information, and will allow for a more streamlined and fair way of calculating fair rents.

Lets work together, we share a common goal: a successful relationship for the lessors and lessees.

Please support this bill,

Thank you for considering our viewpoint on this important issue.

Jieyu Shepard

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 18, 2014 9:10 AM
To: CPCtestimony
Cc: office@hilobayprinting.com
Subject: Submitted testimony for HB1823 on Feb 19, 2014 14:15PM

HB1823

Submitted on: 2/18/2014

Testimony for CPC/JUD on Feb 19, 2014 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Don O'Reilly	Hilo Bay Printing Co., Ltd.	Support	No

Comments: Please support this measure! As a DLNR leaseholder, I'm sincerely honored to provide a revenue source for our great State. However, in my humble opinion the leases many of us have are in need of reform to enable us to move forward. HB1823 HD1 will add some much needed stability to our situation. Mahalo!

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McCully Works

40 Kamehameha Ave.
Hilo, Hi. 96720

Testimony in SUPPORT of HB1823

House Committee CPC/JUD
Chair Angus McKelvey
Chair Karl Rhoads

Aloha Chairs McKelvey and Rhoads ,

My name is James McCully, I am a farmer here in Hilo (Mauna Kea Orchids) and over the years I have invested in state leasehold property for my retirement. I currently operate a business leasing demised warehouse spaces to other small businesses on 3 parcels of state land in the Kanoelehua Industrial Area in Hilo. That business is "McCully Works".

Prior to my testimony I would like to point out the support this bill has gained at other hearings. When Chair Evans WTL committee heard the measure they passed it unanimously and when I testified to that committee there seemed broad support for Mediation as an effective tool to resolve disputes. There was also strong support for the reduction of the current 3 arbitrator system to a single arbitrator and enlarging the pool of potential arbitrators to include those trained in dispute resolution and the law. When the companion bill, SB2966, was heard before the joint committee of WTL/JDL there was again strong support and the committee report states;

"Your Committees find that mediation is an effective method of resolving disputes that should be made available to resolve disputes regarding the fair market value or fair market rental of public lands in transactions involving the Board of Land and Natural Resources and private purchasers, owners, or leaseholders. The present statutory framework for the arbitration of such disputes is cumbersome and does not provide the parties an opportunity to work collaboratively toward mutual solutions to disputes."

Here then is my testimony:

In the last few years I have been involved in two protracted and expensive ground lease rent resets of my state properties. During this process it was observed to me on numerous occasions by both lawyers and appraisers that, in their opinion, HRS171-17 was not meeting the needs of the parties it was intended to serve. This bill is directed at correcting some of these faults and I wholeheartedly support it.

HB1823 has three features that seem fair to all the parties.

First, the release of the initial appraisal commissioned by DLNR to arrive at a proposed lease rent provides the lessee with the opportunity to review the report before making a decision to accept or reject the rent. This is fair and it allows the lessee to make an informed decision, which is always preferable. While the current statutory language requires that the appraisals be a matter of public record this has recently been interpreted to mean that the appraisal report would not be released until the matter of rent resets were completed. There is an Office of Information Practice ruling on this matter, OIP 91-10 that fully supports the position that the appraisals should be released during the negotiation process.

Second, while arbitration was originally envisioned as being an effective, low cost means of dispute resolution it has evolved into a much more expensive and time consuming creature. Mediation, when entered into in good faith, seems to be a reasonable and proper beginning to a disagreement and may lead to a reasonable resolution at a very low cost. Trained mediators are readily available and the time required to go through the process can be controlled through administrative rules.

Third, the transition from a three member panel to a single arbitrator provides an immediate cost savings if only by reduction in numbers. As it stands each of the “three disinterested appraisers” are required to complete their own study, then review the work of the other appraisers, and then sit in judgment and decide the final value determination. This has led to the party appointed appraisers becoming advocates for their client’s position, with a wide disparity in proposed values frequently being the starting point. This is the opposite of “disinterested”. It would be appropriate to have the appraisers do what they are specifically trained to do, that is, arrive at a fair market rent or valuation as required by the lease contract.

If differences arise then hopefully they can be resolved through mediation. If not, by allowing experts to serve as arbitrators who are experienced in law, contract, real estate and resolving disputes we would better separate the decision from the advocacy. Other advantages include that this would dramatically increase the size of the arbitrator pool. It would likely reduce the costs of the arbitrator to something closer to what a Judge would allow as arbitration fees in a court ordered arbitration. Currently the appraisers are charging much higher rates to provide this same function.

I appreciate your consideration of this very important modification of existing statute to better serve all the parties; the State, the Lessee’s, as well as those who serve as appraisers and arbitrators in these matters. If you have any questions please feel free to contact me at your convenience

Mahalo,

James McCully

McCully Works
40 Kamehameha Ave.

Hilo, Hi. 96720
808-933-7000

LATE

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 18, 2014 2:31 PM
To: CPCtestimony
Cc: gottlieb@hawaii.rr.com
Subject: *Submitted testimony for HB1823 on Feb 19, 2014 14:15PM*

HB1823

Submitted on: 2/18/2014

Testimony for CPC/JUD on Feb 19, 2014 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Gottlieb	Hawaii Cattlemen's Council	Support	No

Comments:

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LATE

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 18, 2014 2:37 PM
To: CPCtestimony
Cc: wag@waileaag.com
Subject: Submitted testimony for HB1823 on Feb 19, 2014 14:15PM

HB1823

Submitted on: 2/18/2014

Testimony for CPC/JUD on Feb 19, 2014 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lesley Hill	Individual	Support	No

Comments: Any help we can get to reduce the problems of state leases is gratefully appreciated.
Mahalo, Lesley Hill

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