

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.
Chairperson**

**Before the House Committees on
WATER & LAND
and
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS**

**Monday, January 27, 2014
9:30A.M.
State Capitol, Conference Room 325**

**In Consideration of
HOUSE BILL 1823
RELATING TO PUBLIC LANDS**

House Bill 1823 proposes to amend Section 171-17, Hawaii Revised Statutes (HRS), to require mediation in disputes regarding the fair market value or fair market rental of public lands, and provides for binding arbitration in the event of unsuccessful mediation. The Department of Land and Natural Resources (Department) opposes this measure.

Section 171-17, HRS, already provides a fair process for binding arbitration that requires the participation of qualified real estate appraisers. Conversely, this bill does not require that the mediator possess any real estate appraisal qualifications or expertise. In addition, for lease rental re-openings, the bill would require that the arbitrator be a licensed attorney or other person, rather than strictly a real estate appraiser.

Requiring the Department and the opposing party to engage in non-binding mediation prior to binding arbitration will result in making the dispute resolution process more costly and time consuming. Particularly objectionable is the measure's relaxed standards over who may serve as a mediator or arbitrator, serving as an endorsement (and in some instances, requirement) of potentially less than qualified individuals presiding over the resolution of real property valuation disputes. The mediation and arbitration processes as contemplated in this measure may produce settlements where the State would receive less than fair market rents from the use of public trust lands, resulting in decreased lease rentals, including ceded land revenues.¹

¹ Because of the Office of Hawaiian Affairs (OHA) settlement, OHA no longer receives a percentage of actual ceded land revenues received by the State, but instead receives an annual amount fixed at \$15.1 million. Though agencies receiving ceded land revenues have been directed to continue to pay its 20% share to OHA, there has historically been an annual shortage in arriving at the \$15.1 million dollar level, which shortage has so far been made up solely by the Department's Land Division. Continued attempts to lower the lease rent revenues received by the Land Division (which manages the bulk of the Department's leases) will result in the division no longer being able to make up the annual shortfall owed by the State.

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

Hilo Bay Printing Co., Ltd.

12 Po'okela Street Hilo, Hawai'i 96720

808-969-1077 hilobayprinting.com

27th Legislature, State of Hawai'i
Honolulu, Hawai'i

January 24, 2014

Re: HB 1823

Aloha Dear Legislature,

It is an honor to be writing you today in support of HB 1823.

For over fourteen years, our family business has been a leaseholder in Hilo's Kanoelehua Industrial Area. We are a small company providing goods and services to other local businesses, and various County, State, and Federal Government offices. We are proud to be members of this community, to work hard, pay taxes and DLNR lease rents, and support local non-profits.

Since our startup in 1989, we have survived more than a few economic downturns, and like many survivors, we've emerged just a bit stronger and wiser.

Yet we are still enduring the effects of the great recession. In the second year of the worst economy in over 80 years, we were informed by the DLNR that their appraiser had determined that our ground rent should be nearly doubled, based on the rent that retail giants Safeway and Target had recently agreed to with DHHL. There was no viewing the appraisal, no option, no negotiation. Take it or leave it.

The additional \$6000 annual rent we are now paying has come right out of our payroll. An already stressed payroll bearing the load of runaway health care costs. Bearing the load of a general decline in revenue, the great recession.

At the very least, HB 1823 gives us the hope that future rent increases could be negotiated, that our side can be heard. Please do the right thing, and support HB 1823.

Sincerely,



Don O'Reilly
Hilo Bay Printing Co., Ltd.

McCully Works

40 Kamehameha Ave.
Hilo, Hi. 96720

Testimony in SUPPORT of HB1823

House Committee Water and Land
Chair Cindy Evans, Dist. 7
Vice-Chair Nicole Lowen, Dist 6

Aloha Chair Evans and members of WAL,

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".

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

McCully Works

40 Kamehameha Ave.
Hilo, Hi. 96720

Testimony in SUPPORT of HB1823

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Mahalo,

James McCully

McCully Works
40 Kamehameha Ave.
Hilo, Hi. 96720
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lowen2-Lanaly

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 25, 2014 8:05 AM
To: waltestimony
Cc: cvancamp3@hawaii.rr.com
Subject: Submitted testimony for HB1823 on Jan 27, 2014 09:30AM

HB1823

Submitted on: 1/25/2014

Testimony for WAL on Jan 27, 2014 09:30AM 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 would save both time and money for both the lessor and the lessee in ground rents with the DLNR. It will encourage more businesses to secure state leases, rather than opting only for private ones.

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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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 26, 2014 12:34 PM
To: waltestimony
Cc: msteiner@steinerassoc.com
Subject: Submitted testimony for HB1823 on Jan 27, 2014 09:30AM

HB1823

Submitted on: 1/26/2014

Testimony for WAL on Jan 27, 2014 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Steiner	Steiner & Associates	Support	Yes

Comments: In support

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Sent: Saturday, January 25, 2014 4:31 PM
To: waltestimony
Cc: djr@teamdeluz.com
Subject: Submitted testimony for HB1823 on Jan 27, 2014 09:30AM

HB1823

Submitted on: 1/25/2014

Testimony for WAL on Jan 27, 2014 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
David S. De Luz, Jr.	David S. De Luz, Sr., Enterprises, Inc.	Support	No

Comments: We STRONGLY SUPPORT HB 1823. we are currently in 1 DLNR and 1 DHHL lease renegotiations. Currently the DLNR lease is in arbitration. The current statue in place has prolonged the time and caused uncertainty and hardship on us, NOT to mention undue expense, BOTH on the part of us and DLNR. HB 1823 will allow for a more streamlined and more equitable process, saving ALL of us both time and money. We would greatly appreciate your serious consideration supporting this bill and thank you for allowing us the opportunity to testify on this EXTEMELY important issue.

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CITIZENS FOR FAIR VALUATION

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ROBERT M. CREPS, PRESIDENT
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PHILLIP J. SILICH, TREASURER
OSWALD STENDER, DIRECTOR
MICHAEL STEINER, EXEC. DIRECTOR

January 26, 2014

**HOUSE OF REPRESENTATIVES
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014
COMMITTEE ON WATER & LAND**

Rep. Cindy Evans, Chair
Rep. Nicole E. Lowen, Vice Chair
Members of the Committee

**RE: Testimony in Support of HB 1823 – Public Lands; Reopening Lease; Mediation; Arbitration
Hearing: January 27, 2014, 9:30 am; Room 325
State Capitol, 415 South Beretania Street**

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 (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 succeeds based upon a common goal. A lessor is paid for the use of property and the lessee works to derive income from the property which goes 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 and experts to prove their position before an appraiser, who is acting 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.

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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