

HB 1823 HD1

LATE

TESTIMONY



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March 20, 2014
HEARING BEFORE THE SENATE COMMITTEES ON
WATER AND LAND & JUDICIARY AND LABOR

TESTIMONY ON HB 1823 HD1
RELATING TO PUBLIC LANDS
Room 225
1:20 PM

Chairs Solomon and Hee, Vice Chairs Galuteria and Shimabukuro, 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 HD1 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. Lease rents based on inflated land prices often exceed what a legitimate farmer or rancher can reasonably pay, based on the true value of agricultural production from the leasehold. The current process for contesting a State lease appraisal is cumbersome and expensive. 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 address further the concerns experienced by farmer and rancher lessees.

From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: hicattlemens@hawaii.rr.com
Subject: *Submitted testimony for HB1823 on Mar 20, 2014 13:20PM*
Date: Thursday, March 20, 2014 8:23:02 AM

HB1823

Submitted on: 3/20/2014

Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Stacie Francis	Hawaii Cattlemens Council	Support	No

Comments:

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Cc: psgmikilua@aol.com
Subject: *Submitted testimony for HB1823 on Mar 20, 2014 13:20PM*
Date: Thursday, March 20, 2014 1:05:40 AM

HB1823

Submitted on: 3/20/2014

Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
phyllis shimabukuro	mikilua poultry farm inc	Support	No

Comments:

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Subject: *Submitted testimony for HB1823 on Mar 20, 2014 13:20PM*
Date: Thursday, March 20, 2014 1:03:52 AM

HB1823

Submitted on: 3/20/2014

Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Wayne Shimokawa	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: jasonmoniz73@gmail.com
Subject: *Submitted testimony for HB1823 on Mar 20, 2014 13:20PM*
Date: Wednesday, March 19, 2014 10:12:18 PM

HB1823

Submitted on: 3/19/2014

Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Jason Moniz	Hamakua County Farm Bureau	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: djr@teamdeluz.com
Subject: Submitted testimony for HB1823 on Mar 20, 2014 13:20PM
Date: Wednesday, March 19, 2014 6:44:01 PM

HB1823

Submitted on: 3/19/2014

Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

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

Comments: Aloha Chai's Solomon & Hee: I strongly supports HB 1823 HD1 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. I have heard from fellow Ranchers 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. Respectfully Submitted by: David S. De Luz, Jr. Kukaiau Ranch, LLC 811 Kanoelehua Avenue Hilo, HI 96720 808-895-4284 djr@teamdeluz.com

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Subject: Submitted testimony for HB1823 on Mar 20, 2014 13:20PM
Date: Wednesday, March 19, 2014 6:37:27 PM

HB1823

Submitted on: 3/19/2014

Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

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

Comments: Aloha Chair's Solomon & Hee; I and our organization, STRONGLY SUPPORT HB 1823 HD1 we are currently in 1 DLNR and 1 DHHL lease renegotiations. Currently the DLNR lease is in arbitration. The current statute 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 submit testimony on this EXTREMELY important issue. Respectfully submitted by: David S. De Luz, Jr. David S. De Luz, Sr. Enterprises, Inc. 811 Kanoelehua Avenue Hilo, HI 96720 808-895-4284 djr@teamdeluz.com

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From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: ritchie@rinvest.com
Subject: Submitted testimony for HB1823 on Mar 20, 2014 13:20PM
Date: Wednesday, March 19, 2014 6:23:09 PM

HB1823

Submitted on: 3/19/2014

Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Ritchie Henderson	Individual	Support	No

Comments: The current process for negotiating lease re-openings has become extremely cumbersome and financially prohibitive to the small business owner. Having recently participated in non state (private) rent determination arbitration proceeding, I can relate firsthand to feelings and emotions entertained by the many other small business owners currently engaged in the process. I support your passing this bill and allowing for a return to a time when business was conducted face to face by the principals and agreements were reached by an understanding of relevant factors pertaining to individual circumstances. The cookie-cutter attorney/appraiser driven "go directly to arbitration" process needs to be provided with new light... this bill will start the process.

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Cc: HawaiisAgriculturalPartnerships@msn.com
Subject: Submitted testimony for HB1823 on Mar 20, 2014 13:20PM
Date: Wednesday, March 19, 2014 5:26:34 PM

HB1823

Submitted on: 3/19/2014

Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Hawaii's Agricultural Partnerships	4 Ag Hawaii ~ non profit 501 [c] [3]	Support	No

Comments: Please support our family farmers & ranchers ~ 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.

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CITIZENS FOR FAIR VALUATION

841 Bishop Street, Suite 1500
Honolulu, HI 96813

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CULLY JUDD, VICE PRESIDENT
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March 19, 2014

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

COMMITTEE ON WATER AND LAND
Senator Malama Solomon, Chair
Senator Brickwood Galuteria, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

RE: In Support of HB 1823 HD1 – Public Lands; Reopening Lease; Mediation; Arbitration
Hearing: March 20, 2014, 1:20 pm; Room 225
State Capitol, 415 South Beretania Street

Aloha Chairs Solomon and Hee, Vice-Chairs Galuteria and Shimabukuro, 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 efficient and cost effective form 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 breath of legal issues at hand while trying to determine a USPAP compliant valuation.

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 HD1 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 HD1.

Mahalo

Mahalo



Michael Steiner

Executive Director, Citizens for Fair Valuation

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Subject: Submitted testimony for HB1823 on Mar 20, 2014 13:20PM
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Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Ronald Weidenbach	Hawaii Aquaculture & Aquaponics Association	Support	No

Comments: The HAAA strongly support this measure. The current appraisal process of determining fair agricultural lease rents on DLNR managed lands in Hawaii is no longer working, and the current appeal process is both cost prohibitive and inherently biased against determining a fair and affordable agricultural lease rate. This situation is worsened by the lack Certified agricultural land appraisers in Hawaii and the use of general commercial and residential property appraisers who do not understand or care about the economic realities of farming and ranching. The mediation and binding arbitration guidelines provided by this measure should help improve the current unfair and inappropriate appeal process, as a first step in addressing the overall leasing process for State lands leased for agricultural purposes.

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