

SB2967

Measure Title: RELATING TO PUBLIC LANDS.

Report Title: Public Lands; Right of First Refusal

Description: Grants 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 appraisal process to assist in the determination of the fair market value of the land for rental purposes where the lease is renewed or extended. Provides for the disposition of improvements to the land where the lease is not renewed or extended.

Companion: [HB1688](#)

Package: None

Current Referral: WTL, WAM

Introducer(s): KAHELE, Solomon

<u>Sort by Date</u>		Status Text
1/23/2014	S	Introduced.
1/23/2014	S	Passed First Reading.
1/23/2014	S	Referred to WTL, WAM.
2/5/2014	S	The committee(s) on WTL has scheduled a public hearing on 02-12-14 2:55PM in conference room 225.

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 Senate Committee on
WATER AND LAND**

**Wednesday, February 12, 2014
2:55 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 2967
RELATING TO PUBLIC LANDS**

Senate Bill 2967 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.



Association of Hawaiian Civic Clubs
P. O. Box 1135
Honolulu, Hawai`i 96807

SENATE BILL 2967 RELATING TO PUBLIC LANDS

SENATE COMMITTEE ON WATER AND LAND

Wednesday, 2/12/14; 2:55pm; Room 225

Aloha Madam Chair Solomon, Vice Chair Galuteria and members of the Senate Committee on Water and Land. I am Soulee Stroud, president of the Association of Hawaiian Civic Clubs (AHCC) here to testify that the AHCC supports this bill.

This bill in subsection (a) gives a lessee of public lands under a sixty five year lease the right of first refusal to renew or extend the lease prior to disposition at public auction. It also provides for the payment of rent at fair market value without consideration of the value of improvements made by the lessee.

The bill also makes provisions in the event the lessee and the Board of Land and Natural Resources fail to reach agreement to either: 1) reimburse the lessee for the depreciated value of improvements made to the land by the lessee; or, 2) requires the lessee to restore the land to its previous state. Financial obligations of the lessee, and subsequent penalties, are also addressed in the bill.

Thank you for the opportunity to testify.

Contact: jalna.keala2@hawaiiantel.net



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February 12, 2014

HEARING BEFORE THE
SENATE COMMITTEE ON WATER AND LAND

TESTIMONY ON **SB 2967**
RELATING TO PUBLIC LANDS

Room 225
2:55 PM

Aloha Chair Solomon, Vice Chair Galuteria, 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 SB 2967**, "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 **SB 2967** 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 SB 2967 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.

THE FOOD BASKET Inc.
Hawaii Island's Food Bank

www.thefoodbasketHI.org

To: The Honorable Malama Solomon, Chair

Senate Committee on Water And Land

Fr: En Young, Executive Director
The Food Basket, Hawaii Island's Food Bank

BOARD OF DIRECTORS

Debra Ching-Maiava
Chairman of the Board

Testimony in support of SB 2967, Relating to Public Lands

Brandee Menino
Vice Chair

Good Afternoon Chair Solomon and Committee Members,

Karyl Franks
Treasurer

As a current lessee of lands in the Kanoiehua Industrial Area, we are in support of this measure. Although the right of first refusal may seem like preferential treatment for current lessees, we believe the landowner's rights are preserved through the planning process.

Ian Takashiba
Secretary

Through the development and promulgation of a clear plan, the Department will have gathered public testimony and established the public purpose for which the land will be used according to that community input. From that public purpose, it will be evident if the current tenant's business practices are in accordance with the highest and best use of the parcels, as determined by public input and deliberation of the BLNR. Thus, the landowner's rights may be exercised in ending tenant's leases in the cases where the tenant's purposes do not meet the public purpose.

Haidee Abe
Director

In the cases where the existing tenant does meet the public purpose as revealed by planning, there is no disadvantage to the State by allowing right of first refusal to the existing tenant as the bill preserves market rate, has maintenance and compliance requirements, and tenant improvement can always be made part of new lease negotiation.

Brandon Gonzales
Director

Roland Higashi
Director

As a business in the Kanoiehua industrial area, we seek only to have adequate notice of the landowner's intent for business planning. This is good for our businesses, and good public policy as well.

Rhea Lee
Director

Thank you for the opportunity to testify.

Margo Mau-Brunell
Director

Toby Taniguchi
Director



En Young
Executive Director

En Young



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

February 5, 2014

Re: SB2967

Aloha Dear Legislature,

It is an honor to be writing you today in support of SB2967.

With the State owning the vast majority (90%?) of industrial land in Hilo, those of us needing warehouse space for our businesses have little choice but to lease from the DLNR.

Explain the terms of these leases to any business professional unfamiliar with them, and their reaction is likely to be anywhere from laughter to tears to complete disbelief.

Until these leases are reformed, many Hilo businesses will continue to be stifled by uncertainty and oppressive bureaucratic supremacy, and economic growth and upward mobility will be enjoyed by a smaller and smaller minority.

Please do the right thing and support this bill, and enable the advancement of scores of small businesses and families.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Don O'Reilly', written in a cursive style.

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



TAKAMINE CONSTRUCTION, INC.

**Testimony to the Senate Committee on Water and Land
February 12, 2014
2:55 pm
Capitol Conference Room 225
415 S. Beretania Street
Honolulu, Hawaii 96813**

RE: SB 2967 Relating To Public Lands

Dear Chair Solomon, Vice Chair Galuteria and members of the Committee,

My name is Craig Takamine and I am the President of Takamine Construction, Inc a general contracting company based on the island of Hawaii. We have been in business for 10 years and have approximately 19 full time employees on staff. We are in **strong support of SB 2967** 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. Establishes appraisal process to assist in the determination of the fair market value of the land for rental purposes where the lease is renewed or extended. Provides for the disposition of improvements to the land where the lease is not renewed or extended.

East Hawaii currently lacks fee simple industrial zoned land. Currently, the majority of industrial property is leased from the state and located in the Kanoelehua Industrial Area. Many of the leases are coming to an end. Some as early as 2015. This provides no incentive to maintain the improvements or structures on the properties. Therefore, many of the structures remain in disrepair leaving the industrial area blighted. SB 2967 would allow lessees first right of refusal to extend or renew a lease, thereby encouraging lessees to maintain their property and improvements.

Thank you for your consideration,

Craig Takamine
President
Takamine Construction, Inc.

February 11, 2014

The Honorable Malama Solomon
Senate Committee on Water & Land
Hawaii State Capitol

Re: Support for HB 2967 relating to public lands

Madam Chairwoman and Members of the Committee:

I write to you in support of SB 2967. As a member of the East Hawaii business community and a Board of Director of the Hawaii Island Economic Development Board, I understand the importance of fostering public and private sector relationships to cultivate Hawaii's land, resources and people.

SB 2967 provides lessees of commercial and industrial state land the opportunity of first refusal to renew or extend their lease at the fair market value of the land. This would allow businesses to continue operating and incentivize them to further invest in the land and make improvements to on-site facilities/infrastructure, knowing they have a secure, long-term partnership with the state. Such investments have the ability to revitalize and transform areas. Passage of SB 2967 will create a virtuous cycle of growth and serve as a development catalyst for state lands.

Hawaii's lands and resources are limited; make it easier for lessees to renew their relationship with the state so they can continue to invest in Hawaii and our shared future.

Thank you for this opportunity to submit testimony in support of SB 2967.

Aloha,

A handwritten signature in black ink, appearing to read 'Ashley Kierkiewicz', with a long horizontal flourish extending to the right.

Ashley Kierkiewicz

From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: garthyama@gmail.com
Subject: *Submitted testimony for SB2967 on Feb 12, 2014 14:55PM*
Date: Tuesday, February 11, 2014 9:57:09 AM

SB2967

Submitted on: 2/11/2014

Testimony for WTL on Feb 12, 2014 14:55PM in Conference Room 225

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

February 11, 2014

Senate Committee Water and Land
Chair Malama Solomon

Testimony in Support – SB2967

Aloha Chair Solomon,

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