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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 Committee on
WATER & LAND

Friday, March 28, 2014
11:00 A.M.
State Capitol, Conference Room 325

In consideration of
SENATE BILL 707, SENATE DRAFT 2, PROPOSED HOUSE DRAFT 1
RELATING TO ECONOMIC DEVELOPMENT

Senate Bill 707, Senate Draft 2, Proposed House Draft 1, proposes to create a new section of the Public Lands law, Hawaii Revised Statutes (HRS) Chapter 171, that would give lessees of State lands the right to relinquish their leases on terms and conditions favorable to them at any time during the lease term. **The Department of Land and Natural Resources (“Department”) opposes the bill.**

The Department’s leases generally provide that the lessee owns any improvements it constructs during the term of the lease, but at the end of the lease, ownership of the improvements reverts to the State without compensation. The Board of Land and Natural Resources (“Board”) already has the discretion to entertain requests for early lease cancellation and to set the conditions under which the Board will agree to mutual cancellation. The proposed bill would strip the Board of that discretion and grant lessees the right to dictate when their leases would be terminated and the conditions on which State lands would thereafter be put out to public auction. Specifically, the bill requires any competing bidder at public auction to pay the relinquishing lessee the appraised residual value of the improvements on the property.

The intent of the bill appears to be to give existing lessees an advantage at the auction of new leases for their properties since they would not have to pay for the residual value of improvements. However, the bill provides that if there are no bidders at public auction other than the relinquishing lessee, “the existing lease contract shall be maintained unless both parties agree to terminate the lease.” The bill goes on to provide that the lease can only be modified if the lessee requires an extension “to secure financing for substantial capital improvements to the land or partial or complete replacement of existing improvements.” The lease extension would

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

JESSE K. SOUKI
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

apparently be governed by existing law which sets the maximum aggregate term of the lease (initial term plus any extension) at 65 years. As a result, the lessee and the Department could potentially incur various appraisal and public auction costs in a time-consuming process under this bill that would ultimately result in the existing lessee being able to apply for an extension of its lease. The Department would point out that extensions up to the statutory cap of 65 years are already permitted under HRS Section 171-36(b).

Thank you for the opportunity to testify.

McCully Works
40 Kamehameha Ave.
Hilo, Hi. 96720

Testimony in SUPPORT of SB707HD1 (Proposed)

House Committee WAL
Chair Cindy Evans
Vice Chair Nicole Lowen

Aloha Chair Evans,

The State of Hawaii is the largest landowner in the state, with a significant amount of the states economically important properties controlled by HRS171. The State of Hawaii, Department of Land and Natural Resources, has not provided guidance on how these leases will be managed as they reach the end of their lease term. The Constitution of the State of Hawaii, Article IX, Conservation, Control and Development of Resources, is silent on the specific issues now affecting economically important public lands, namely how to avoid the “wasting asset” nature of leasehold property when the reversionary clause takes precedent over the economic requirements of improving or maintaining the leasehold improvements. Wasting Assets is an economic term that refers to the decay of the value of an asset because of time limits. To the lessees of public lands the leases have been problematic since they do not know how they will be treated by the State of Hawaii at the end of the term of the lease. The assets they have created, invested in, and made use of all these years, whether they be hotels, buildings, warehouses, or yards, are allowed to deteriorate and create economic friction that harms all the citizens and consumers of the State of Hawaii. A noted local economist (Snyderhoud) has written... *“We need organic domestic growth that is both vigorous and self-sustaining, and this can only come from the private sector. And it will come only if tax and regulatory systems reward investment and risk taking and reduce uncertainties.”*

The purpose of this reform is to help stabilize and support through economic development the general economy of the State of Hawaii. By providing a mechanism whereby a lessee can elect to return their leasehold improvements to the State of Hawaii and participate in a public auction to regain the use of the property for a new lease term then investment by private businesses will be encouraged. By maintaining the principal of Fair Market Rents to be paid to the State of Hawaii and by keeping those properties in an active state of investment and development then all of the citizens of the state benefit.

I support this bill and believe it is a fundamental reform that already has a history in practice. In 2005, with the deterioration of the hotel in Hilo known as the Hawaii Naniloa Resort and the need for major investment to meet the needs of the property, the DLNR fashioned a similar solution for that lessee. This bill now offers a statutory process open to all lessees of public lands throughout the state. It will address the pernicious aspects of the Reversionary principal that the Legislature addressed for residential properties with the 1967 Land Reform Act and, most importantly, will provide a very immediate and practical means to encourage investment and economic development.

Mahalo,

James McCully

McCully Works
40 Kamehameha Ave.
Hilo, Hi. 96720
808-933-7000

lowen2-Nga

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 27, 2014 5:22 PM
To: waltestimony
Cc: cvancamp3@hawaii.rr.com
Subject: Submitted testimony for SB707 on Mar 28, 2014 11:00AM

SB707

Submitted on: 3/27/2014

Testimony for WAL on Mar 28, 2014 11:00AM in Conference Room 325

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

Comments: Our nearly 300-member organization fully supports this bill, as it will bring needed reforms to the state's land leasing process.

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Sent: Thursday, March 27, 2014 5:40 PM
To: waltestimony
Cc: toomey@mkir.com
Subject: Submitted testimony for SB707 on Mar 28, 2014 11:00AM

SB707

Submitted on: 3/27/2014

Testimony for WAL on Mar 28, 2014 11:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Douglas Toomey	Mauna Kea Infrared, LLC	Support	No

Comments: Mauna Kea Infrared, LLC is located in the Kanoelehua Industrial lots in Hilo. Most of the lease buildings here are rusting away due to uncertainty for the tenants and the future of the leases. Very few are willing to invest funds to upgrade and repair buildings that will revert to the state in a couple of years and this has been going on for the last 10 years or so. Those that are willing cannot get financing due to the short remaining time on the leases. This bill represents a solution to that problem and an excellent stimulus program for Hilo for virtually no cost to the state. This is not a good time to ask these small businesses to move out and go build another facility. Many could not survive that. Please support this bill. We desperately need your help.

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 27, 2014 5:41 PM
To: waltestimony
Cc: craig@takamineconstruction.com
Subject: Submitted testimony for SB707 on Mar 28, 2014 11:00AM

SB707

Submitted on: 3/27/2014

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Submitted By	Organization	Testifier Position	Present at Hearing
Craig Takamine	Takamine Construction, Inc.	Support	No

Comments: My name is Craig Takamine and I am the President of Takamine Construction, Inc. which is a local General Contracting firm with approximately 18 full time employees. I am in strong support of SB707 Relating to Economic Development. This bill would motivate individuals who lease state lands to upkeep their improvements or structures to keep a high value at all times unlike the current system which provides no incentive to do this as leases come to an end. It's a real "Win/Win" for the state, the lessees, and the economy at large. Thank you for your consideration.

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lowen2-Karen

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 27, 2014 5:48 PM
To: waltestimony
Cc: office@hilobayprinting.com
Subject: Submitted testimony for SB707 on Mar 28, 2014 11:00AM

SB707

Submitted on: 3/27/2014

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

Comments: Aloha, it is an honor for me to submit testimony in support of the proposed HD1 of this measure. SB 707 HD1 adds an honest, straightforward element of fairness to our lease and our fate, while encouraging economic development, something we could all use a little more of. Please Kokua.

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lowen2-Karen

From: mailinglist@capitol.hawaii.gov
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To: waltestimony
Cc: djr@teamdeluz.com
Subject: Submitted testimony for SB707 on Mar 28, 2014 11:00AM

SB707

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

Comments: I/we would greatly appreciate you supporting PROPOSED. the language in this proposed HD1 is critical and needed for both the lessee and lessor to have the incentive to maintain the properties in good repair, that will enjoy longer economic life and use AND generate appropriate lease rents. Thank you for allowing me the opportunity to submit testimony in support of this proposed legislation. Respectfully submitted by: David S. De Luz, Jr. David S. De Luz, Sr. Enterprises, Inc. 811 Kanoelehua Avenue Hilo HI 96720 808-895-4284 email: djr@teamdeluz.com

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lowen2-Karen

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 27, 2014 7:09 PM
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Cc: inunyabus@gmail.com
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SB707

Submitted on: 3/27/2014

Testimony for WAL on Mar 28, 2014 11:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
elaine d.	Individual	Comments Only	No

Comments: If the PLDC is to be repealed in full then it is necessary to also repeal any remnants such as section "(d) The executive director, planner, and project-development specialist hired for purposes of Act 55, Session Laws of Hawaii 2011, shall be transferred to the department of land and natural resources without loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act." You either repeal or not so section (d) has to go. These people cannot be allowed to remain just because they were part of at the failed plan to usurp Hawaii's Public Trust Lands. When the PLDC goes, so do they; they can go stand in the employment line like the rest of us. The state has a job website. Maybe they could give it a try if they aren't provided employment by their 'friends' in Hawaii state government. Preferential treatment in this instance is truly suspect and beyond the appearance of impropriety.

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Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 28, 2014
11:00 a.m.
State Capitol, Room 325

S.B. 707, S.D. 2 H.D. 1 (Proposed)
RELATING TO ECONOMIC DEVELOPMENT

House Committee on Water and Land

The Department of Transportation (DOT) **opposes** the intent of this bill, which proposes to create a new section of the Public Lands law, Hawaii Revised Statutes (HRS) Chapter 171 that would give lessees of State lands the right to relinquish their leases on terms and conditions favorable to them at any time during the lease term.

The Department of Transportation opposes this bill because of the negative impact it will have on the leases of our Airports and Harbors divisions. DOT's income from leases is an important component of the revenue streams that support the operations, maintenance and capital improvements of its airports and harbors programs. Chapter 171, HRS, guides all dispositions of public lands including airports and harbors. This bill will hamper the ability of agencies to generate revenue from state lands and cause disruption in our land leasing activities. The revenues generated are used for the repayment of debt service on its respective revenue bonds and this bill may potentially weaken our ability to maintain and/or generate revenues as lessees could decide at any time to break their contractual lease agreements.

The proposed bill provides that any lessee of public land may relinquish his lease at any time and require the State to put out the lease for public auction. Currently, the Board of Land and Natural Resources ("Board") already has the discretion to entertain requests for early lease cancellation and to set the conditions under which the Board will agree to mutual cancellation. The proposed bill would strip the Board of that discretion and grant lessees the right to dictate when their leases would be terminated and the conditions on which State lands would thereafter be put out to public auction. Specifically, the bill requires any competing bidder at public auction to pay the relinquishing lessee the appraised residual value of the improvements on the property.

The bill requires that any competing bidder at public auction pay the relinquishing lessee the appraised residual value of the improvements on the property. Generally, leases provide that the lessee owns any improvements it constructs during the term of the lease, but at the end of the lease, ownership of the improvements reverts to the

State without compensation. The proposed bill gives existing lessees an advantage at the auction of new leases for their properties since they would not have to pay for the residual value of improvements.

Additionally, the bill provides that if there are no bidders at public auction other than the relinquishing lessee, "the existing lease contract shall be maintained unless both parties agree to terminate the lease." The bill goes on to provide that the lease can only be modified if the lessee requires an extension "to secure financing for substantial capital improvements to the land or partial or complete replacement of existing improvements." The lease extension would apparently be governed by existing law which sets the maximum aggregate term of the lease (initial term plus any extension) at 65 years. As a result, the lessee and the Department could potentially incur various appraisal and public auction costs in a time-consuming process under this bill that would ultimately result in the existing lessee being able to apply for an extension of its lease.

Thank you for the opportunity to provide testimony.

lowen2-Karen

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 27, 2014 11:13 PM
To: waltestimony
Cc: ritchie@rinvest.com
Subject: Submitted testimony for SB707 on Mar 28, 2014 11:00AM

SB707

Submitted on: 3/27/2014

Testimony for WAL on Mar 28, 2014 11:00AM in Conference Room 325

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

Comments: This bill will help to establish a process by which lessees, many of which are engaged in generational family businesses, upgrade outdated business model infrastructures, thereby enabling them to provide better services and as a byproduct, help in driving the state's economic engine. I support this bill and encourage the Committee to advance it passage into law.

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Hussey Appraisal Group Hawaii, Inc.
FKA, Lawrence Appraisal Group Hawaii, Inc.

308 Kamehameha Avenue, PH-3
Hilo, HI 96720
Tel. (808) 935-6081
Fax (808) 935-6147

March 27, 2014

Testimony of Stewart H. Hussey, Certified General Appraiser on S.B. 707 H.D. 1
Proposed (re Economic Development and Modification of HRS-171)

I urge you to vote unanimously in favor of this bill. The proposed Modification of Chapter 171, HRS provides lessees with an incentive to do what they have ALWAYS wanted to do—invest capital in State-leased land in order to have appropriate facilities to run their businesses! Without this bill, at the end of each lease, all leasehold improvements will continue to revert to the State—with not one iota of a return OF capital investment to the lessee. So where's the lessee's current incentive to invest in State land? There is none. That's why we have decaying buildings on State-leased lands. Giving the lessee the right to relinquish the lease at any time during the lease period—and at that time providing for the lessee to recover his capital investment, will provide a tremendous impetus to economic development.

Thank you for the opportunity to submit this testimony.

Sincerely,

Stewart H. Hussey
Certified General Appraiser #540
President



lowen2-Karen

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 27, 2014 11:28 PM
To: waltestimony
Cc: stewhussey@mac.com
Subject: Submitted testimony for SB707 on Mar 28, 2014 11:00AM
Attachments: Testimony re SB-707 HD1.pdf

SB707

Submitted on: 3/27/2014

Testimony for WAL on Mar 28, 2014 11:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Stewart H. Hussey	Individual	Support	No

Comments:

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