

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON P.E.
DEPUTY DIRECTOR - WATER

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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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
JUDICIARY

Friday, January 22, 2016
2:00 P.M.
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 518, HOUSE DRAFT 1
RELATING TO THE DISPOSITION OF PUBLIC LANDS

House Bill 518, House Draft 1 proposes to create a four-year pilot project in counties with a population between 170,000 and 200,000 that would give lessees of state lands under the jurisdiction of the Department of Land and Natural Resources substantial new rights in contravention of their existing leases. The bill proposes to (1) give these lessees the right to relinquish a lease in the second half of the lease period; (2) require the Board of Land and Natural Resources to put the relinquished land up for leasing by public auction; and (3) allow the relinquishing lessee to not remove the lessee's improvements from the land and require the winner of the public auction, if the winner is not the relinquishing lessee, to pay to the relinquishing lessee a premium equal to the appraised residual value of the improvements without any distinction being made between improvements constructed by the lessee and improvements provided by the State. **The Department of Land and Natural Resources ("Department") strongly 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, at the State's option, the improvements remain on the property and the ownership of the improvements reverts to the State without compensation or the improvements are removed by the lessee at lessee's expense. The Department believes that this is a common provision in land leases, including private leases.

In the Legislative Reference Bureau's (LRB) recent study, "Commercial Leasing of Public Lands: State Policies Regarding Leases Near the End of Term," Report No. 2, 2015, the LRB concludes the following on page 13:

After reviewing the laws and regulations of other select states, as well as the information provided by agencies responsible for the commercial leasing of public lands in those states, it does not appear that any state has laws or policies in effect that specifically address the management of long-term commercial leases of public lands that:

- (1) Will terminate within ten years; and
- (2) Have lessees or tenants who are unwilling or unable to secure financing to invest capital into improvements that they will be unable to recoup due to the limited remaining term of the lease.

As demonstrated by this study, other states leasing public lands for commercial use do not provide the extraordinary lessee-favored benefits and windfall that are provided in this bill. We can reasonably surmise that this would hold true for other types of leases as well.

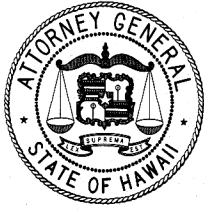
The Board of Land and Natural Resources (“Board”) already has the discretion to entertain requests for early lease cancellation and to set the conditions under which the Board will agree to a mutual cancellation. The bill would grant lessees the right to dictate when their leases will be terminated within the second half of the lease term. The bill's requirement to put the relinquished land up for leasing by public auction after the lessee relinquishes the lease would strip the authority and mandate of the Board to determine what should be done with the land in the best interests of the current and future generations of the State. The Department is currently conducting planning studies for the lands under Board issued state leases in Hilo to help the Board plan for the future best use of these lands as the current leases expire.

The proposed bill would require the new lessee at public auction, if not the relinquishing lessee, to pay the relinquishing lessee the appraised residual value of the improvements, whether constructed by the lessee or the State and whether the new lessee intends to use or demolish the improvements. The effects are (1) a financial windfall to the relinquishing lessee that was never a part of the bargain between the lessee and the State; (2) a financial burden on the new lessee who must pay the relinquishing lessee the appraised residual value of the improvements whether the new lessee will use the improvements or remove them and even though the new lessee did not participate in the appraisal process; and (3) diminished or discouraged bids at the public auction because the amounts bid must take into account the premium to be paid to the relinquishing lessee.

We do not see how the bill would enable lessees of public lands to obtain financing to construct improvements upon the lands. First of all, the winner of the public auction, if not the relinquishing lessee, would have to pay the relinquishing lessee the appraised residual value of the improvements whether the new lessee will actually use the improvements or has to remove them, thereby potentially diminishing the financial ability of the new lessee to finance its own improvements. Then also, please keep in mind that in 2011, Act 207 gave the current lessees the ability to extend the maximum term of their leases by ten years, from 55 years to 65 years, for the purpose of financing substantial improvements to the leasehold lands.

We also take note that the bill and its benefits to current lessees are directed solely to Board issued leases in the County of Hawaii. According to the United States Census Bureau, based on the

population estimates for the counties in 2014, only Hawaii County fits the 170,000 to 200,000 population category for the proposed pilot project. (See <http://www.census.gov/quickfacts/table/PST045215/00>.) The closest county in population is Maui County. However, Maui County does not have the volume of Board issued leases that Hawaii County has.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

LATE

ON THE FOLLOWING MEASURE:

H.B. NO. 518, H.D. 1, RELATING TO THE DISPOSITION OF PUBLIC LANDS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, January 22, 2016

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or Daniel A. Morris, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General opposes this bill as currently written.

This bill proposes to establish a four-year pilot project within the Department of Land and Natural Resources to give lessees of state land the right to obtain compensation for the residual value of improvements existing on leased land relinquished to the State during the second half of the lease term. The stated purpose of the bill is to facilitate the ability of lessees to obtain financing for improvements and encourage lessees to construct improvements on State land.

With respect to improvements constructed by the lessee, state leases already address the disposition of improvements on leased land at the end of the lease, whether the lease ends due to expiration of the lease term or at an earlier time due to cancellation, mutual termination, or other reasons. This bill allows a relinquishing lessee to obtain compensation for improvements at the end of the lease, despite wording in the lease providing that ownership of improvements reverts to the State at the end of the lease. This raises legal concerns that the bill improperly alters the terms of the lease, or uses public funds for a private purpose in violation of article VII, section 4, of the Hawai'i Constitution. In addition, this bill does not address circumstances where the relinquished lease is encumbered by a mortgage or the State elects to require the lessee to remove the improvements.

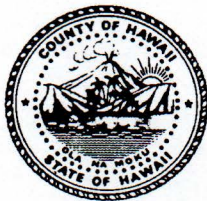
H.D. 1 of the bill is styled as a four-year pilot project applicable to counties with populations between 170,000 and 200,000. According to census data, the only county within this

range is the County of Hawai'i. In addition, based on a statistical analysis (using census data on rate of population change), there is likely to be no county other than the County of Hawai'i with a population range between 170,000 and 200,000 during the duration of the four-year pilot project. Accordingly, the bill benefits a select group of lessees, rather than all lessees statewide, and arguably may constitute impermissible special legislation under Sierra Club v. Department of Transportation, State of Hawaii, 120 Hawai'i 181, 214, 202 P.3d 1226, 1259 (2009) (legislation is improper special legislation if it purports to apply uniformly to a particular class but there is no actual probability of other members joining the class).

After meeting with the introducer of this bill, we (Department of the Attorney General) are researching whether the same constitutional concerns would arise if the bill were amended. The proposed amendment would delete the bill's provisions compensating lessees for the value of improvements that would otherwise be owned by the State at the end of the lease term, and retain the bill's provisions that would permit lessees to relinquish leases during the second half of a lease under certain circumstances, i.e. when the lessee meets certain qualifying criteria and the State is successful in entering into a new lease pursuant to a public auction where all bidders are on equal footing.

We would respectfully request that decision making on the bill be deferred to allow us additional time to complete this research.

From the office of -
Council Member
District 4 – Puna Makai



Office: (808) 965-2712
Fax: (808) 965-2707
Email: gilagan@hawaiicounty.gov

GREGGOR ILAGAN

25 Aupuni Street, Hilo, Hawai'i 96720

January 21, 2016

The Honorable Karl Rhoads, Chair
And Members of the Committee on Judiciary

Dear Chair Rhoads and Committee members,

I appreciate the opportunity to testify in support of House Bill 518 HD1, relating to public lands, relinquishments of leases, and capital improvements.

Approval of this bill will allow a four-year pilot project to be established in Hawai'i County to allow for the relinquishing of leases during the second half of the lease period and to allow the sale of the relinquished leases at public auction.

The lessees of resort properties along Banyan Drive, the properties in the Kanoelehua Industrial Area in Hilo, and as a result the economic health of the State, would benefit from any incentive to improve, such as that provided in HB 518 HD1.

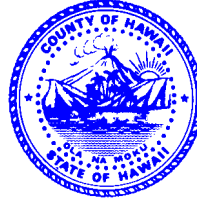
Again, thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Greggor Ilagan". The signature is written in a cursive, flowing style.

Greggor Ilagan
Council Member

DENNIS "FRESH" ONISHI
Council Member
District 3



PHONE: (808) 961-8396
FAX: (808) 961-8912
EMAIL: donishi@hawaiicounty.gov

HAWAI'I COUNTY COUNCIL

County of Hawai'i
25 Aupuni Street
Hilo, Hawai'i 96720

TESIMONY IN SUPPORT OF HOUSE BILL 518

A BILL FOR AN ACT RELATING TO
THE DISPOSITION OF PUBLIC LANDS

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Friday, January 22, 2016, 2:00 p.m.
State Capitol, Conference Room 325

Honorable Chair Rhoads,
Vice Chair San Buenaventura
and Members of the Committee on Judiciary

Thank you for the opportunity to provide testimony in support of H.B. No. 518, which establishes a four-year public land lease pilot project, authorizes lessees to relinquish a lease, and provides for the disposition of the land and improvements at public auction after relinquishment.

I agree with the intent of this bill which is to create mechanisms and incentives to help lessees of public lands and to support small businesses.

This bill will encourage lessees to make improvements throughout the term of their lease, allow lessees to relinquish leases during the second half of a lease, and ensure fair value for improvements in conjunction with lease rents and public auctioning of relinquished leases.

Please recommend approval of this bill.



HB518

Judiciary Committee, JUD
Chair Karl Rhoads
Vice-Chair Joy A. San Buenaventura

Aloha Chair Rhoads,

I am Garth Yamanaka, Committee chair for Government affairs for the Kanoelehua Industrial Area Association (KI AA). Established in 1968, KI AA is an active business association that is comprised of both small and large businesses and organizations within specific Hilo and Keaau boundaries. One of our goals is to advance the commercial and community interests of our member firms. Presently, we represent approximately 350 business members employing approximately 4,500 workers.

KI AA supports the purpose of this measure which is to establish a pilot project which will enable lessee's of public lands to relinquish leases during the second half of a lease, obtain financing for construction improvements and ensures fair and equitable valuations and disposition of capital improvements.

The passing of HB518 will help to rejuvenate areas that have become dilapidated, obsolete, or deteriorated in the Kanoelehua Industrial Area on the Island of Hawaii. The current framework for leasing of public lands in the Kanoelehua Industrial area has created an environment that is sub-par to market expectations.

We urge you to pass HB518 and Mahalo for this opportunity to provide testimony.

Mahalo,

Garth Yamanaka

KAPAPALA RANCH

**P. O. Box 537
Pahala, HI 96777
808-936-2922**

January 21, 2016

Testimony on HB 518. HD1

I support HB 518. HD1. Capital improvements should be owned by the leasee at the termination of their lease. If the value of improvements is recognized, the properties shall be maintained better. Currently, there is no incentive towards the ending of a lease for anyone to continue to put hard earned money back into the property, thus allowing for the State's asset to deteriorate.

I speak as a tenant of the DLNR. We operate 34,000 acres of State land with 80 miles of pipeline, 350 miles of fences, multiple buildings and a new water system that cost slightly under \$1,000,000.

I firmly support HB 518. HD1.

Sincerely,

KAPAPALA RANCH



Lani C. Petrie
Partner



Genevieve B. Cran
Partner

McCully Works
40 Kamehameha Ave.
Hilo, Hi. 96720

January 17, 2016

HB 518, HD1: Testimony in SUPPORT

House Committee, Judiciary
Chair Karl Rhoads, D-29
Vice-Chair Joy San Buenaventura, D-4

Aloha Chair 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 as a second business and for my retirement. Besides farming I now 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" which has "Hawaii Warehouse Services" as it's subsidiary. You can visit our website at www.mccullyworks.com

HB518 addresses a key feature to make economic use of state lands more efficient. Currently there is no option to renew a lease [HRS171-36, (a), (1)]. There is also no formalized means of relinquishing a lease that protects the public's interest as well as the then current lessee. The consequence of a lack of renewal or extension of leases beyond the statutory limitation of 65 years is that in the 2nd half of a lease term, or at anytime with less that 30 years remaining, the leasehold interest has become a "wasting asset". That is to say that there are prohibitive impediments to the rational use of the property when the improvements become non-mortgage able. This leads to a disincentive to utilize the properties efficiently and in a state that is as constrained as Hawaii is we simply cannot afford to utilize our lands at less than an optimal level.

This bill is a measure that offers significant benefits to the state and provides an avenue for the lessee to reinvest in their business in a timely manner. It is very similar in intent to Act 219, 2011, "the Banyan Drive bill". While that bill was very narrow in it's applicability, and it did sunset, at least the Hilo Hawaiian Hotel was able to make substantial improvements to better serve out tourism sector while it's benefits were available. HB 518 had its antecedents in HB1671, 2012. This bill passed both chambers with broad support, however the Governor due to concerns that were not grounded in actual market conditions vetoed it. Gov. Abercrombie's concerns were that an individual would hold the lands for too long a period of time. The actual market needs are to keep the properties improved, mortgagable, assignable, and responsive to changing economic conditions. Current statutory language does not allow for market responsiveness, to the detriment of our entire state economy. We are engaged in a world market for goods and

services but controlled by statutory language grounded in an agricultural economy of the 19th century (see LRB Report #5, 1969).

HB518 fully protects the interests of the public and provides DLNR Land Division with a transparent process to manage our lands at their highest efficiency. Since it is a "Pilot Project" with certain restrictions in its applicability and effective term it will provide significant benefits in establishing Best Practices for public lands used for economic returns as well as establishing a basis for further statutory reform if required.

Please support this bill and if you have any questions feel free to call me to discuss them.

Mahalo,

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



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

January 21, 2016

Testimony of Stewart H. Hussey, Certified General Appraiser on H.B. 518 H.D. 1
Proposed (relating to the disposition of public lands)

I urge you to vote unanimously in favor of this bill. The proposed four-year trial to assure that lessees will be able to obtain financing for substantial improvements on State-owned lands will provide 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! When lessees are assured that they will a) have an opportunity to recover their capital invested in such improvements, and b) be able to relinquish their lease during the second half of the lease with a return of their capital investment as determined by appraisal, the major impediment to such investment will have been eliminated—and State-owned lands will be far more economically productive for the State, the general public and the lessee.

This is a major step in the right direction that will be beneficial to all concerned!

Thank you for the opportunity to submit this testimony.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stewart H. Hussey', written in a cursive style.

Stewart H. Hussey
President
Certified General Appraiser #540
License expires December 31, 2017



LATE

P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

January 22, 2016

HEARING BEFORE THE
HOUSE COMMITTEE ON JUDICIARY

TESTIMONY ON HB 518 HD1

RELATING TO THE DISPOSITION OF PUBLIC LANDS
Room 325
2 PM

Aloha Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,932 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 HB 518 HD1 as expressed in Section 1.

The bill addresses some of the important State lease issues regarding the Hilo waterfront area but is also relevant to our farmer members statewide because it opens the door to much-needed further discussion about State land leases, including agricultural leases. Importantly, it provides a mechanism for compensating lessees for the depreciated value of their improvements in cases where the State awards a property at the end of a lease term to another party. HFB believes that this bill should continue to move forward, hopefully to be refined to more directly address the needs of the leasehold agricultural community statewide.

If this bill could be extended to have benefits for Hawaii's agriculture, we would have concerns about some of the subsection premises. We agree in part with Subsection 2 (f) that requires that the relinquishing leaseholder be compensated for the residual value of improvements; however, we disagree that the compensation should be paid in the form of a lump-sum payment by the new lessee. Given current costs of improvements, this payment could be very substantial, and for agriculture, could be prohibitive for legitimate farmers.

Additionally, the term "appraised fair market rent" in subsection 2 (e), should be reconsidered, since this term has been used to justify enormous rent increases based on private land sales. There is also no provision for the rent to be reduced; if a current leaseholder wants to relinquish the lease, a likely reason is that he cannot make a profit from leasing the land. If high rent is a primary reason, then a reduction in current or subsequent leaseholder rent would be justified.

Thank you for the opportunity to express our SUPPORT for the intent of this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 21, 2016 11:39 AM
To: JUDtestimony
Cc: GordonInouye@aol.com
Subject: Submitted testimony for HB518 on Jan 22, 2016 14:00PM

HB518

Submitted on: 1/21/2016

Testimony for JUD on Jan 22, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon Inouye	Individual	Support	No

Comments: Dear Members of the Committee, This legislation is the most positive step we can make to resolve the major issues that prevent continuing improvements on leasehold lands. It is the most fair process enabling both Lessee, the State, the employees and the community to benefit. We strongly urge you to support this very well thought out and brilliant legislation. Sincerely, Gordon Inouye

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: Thursday, January 21, 2016 7:32 AM
To: JUDtestimony
Cc: cvancamp3@hawaii.rr.com
Subject: *Submitted testimony for HB518 on Jan 22, 2016 14:00PM*

HB518

Submitted on: 1/21/2016

Testimony for JUD on Jan 22, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Carol A. VanCamp	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.

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LATE

January 22, 2016

Hawaii State House of Representatives

Re: HB518, HD1

Dear Friends,

I am submitting testimony in support of HB518. My name is Michael Shewmaker and my wife and I own a business in Downtown Hilo that employs seven people and serves the community as a whole. We have lived in the Hilo community for over thirty-five years and are very concerned for its welfare.

State leasehold property has a disproportionate effect on Hilo and is of great concern to our city. The current system for lease termination has created an untenable situation for those holding leases in the Hilo Industrial Area. When the lease is nearing its end the lessee cannot make improvements to the property without fear of a total loss. The provisions of this bill will allow lessees an opportunity to resolve this issue and the State a way to stabilize the leasehold properties for the long term, expedite the process and benefit both the State and its lessees.

Thank you for your consideration.

Sincerely,

Michael Shewmaker
808-960-3677