

LATE

SB

1247

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**Cc:** [darakawa@lurf.org](mailto:darakawa@lurf.org)  
**Subject:** Submitted testimony for SB1247 on Feb 13, 2015 15:45PM  
**Date:** Friday, February 13, 2015 2:42:36 PM  
**Attachments:** [150213 SB 1247 LEASES - Alteration re Early Termination & Pmt for Improvements \(WTL\) \(dza\).pdf](#)

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**SB1247**

Submitted on: 2/13/2015

Testimony for WTL on Feb 13, 2015 15:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Z. Arakawa	Land Use Research Foundation of Hawaii	Oppose	No

Comments:

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February 13, 2015

Senator Laura H. Thielen, Chair  
Senator Brickwood Galuteria, Vice Chair  
Senate Committee on Water and Land

**Strong Opposition to SB 1247 Relating to the Disposition of Public Lands; Relinquishment of Lease; Capital Improvements – Alters the key terms of existing State leases solely for the benefit of the lessee and to the detriment of the State, by among other things, granting lessees of public land a new right to relinquish and terminate any state lease during the last half of the lease term; a new requirement that will force the State to pay the terminating lessee for the value of infrastructure on and improvements to the land; a new term that exempts the terminating lessee from removing improvements or restoring the land to a vacant condition; provides for disposition of the land at public auction after relinquishment; allows the terminating lessee to bid on a new lease of the same land at public auction.**

**WTL Hearing: Friday, February 13, 2015, 3:45 p.m., in Conference Room 224**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to express its **strong opposition to SB 511**, and to offer comments.

**SB 1247.** Alters the key terms of existing State leases of public lands solely for the benefit of the lessee and to the detriment of the State's interests, by among other things, the following:

- Grants lessees of public land a new right to relinquish and terminate any state lease during the last half of the lease term.
- Imposes an onerous new requirement that will force the State to pay the terminating lessee a "*premium*" for the value of infrastructure on, and improvements to the land.
- A licensed real estate appraiser hired by the lessee makes the initial determination of the current depreciated residual value of any infrastructure or improvements.
- If the State does not agree on the lessee's determination of the appraised residual value of the improvements, the State will be forced to pay the costs of at least one licensed real estate appraiser to represent the State.
- The appraiser hired by the State must be approved by the terminating lessee!

- Provides a huge benefit to terminating lessees by extinguishing their existing obligations under their State lease to remove improvements or restore the land to a vacant condition;
- After relinquishment by the terminating lessee, requires the disposition of the leased lands at public auction, but also allows the terminating lessee to bid on a new lease of the very same land at the public auction.

**LURF's Position.** LURF strongly opposes SB 1247, based on, amongst other things, the following:

- SB 1247 alters and violates the key lease terms (including termination clauses) of existing State lease contracts, and therefore violates the Contracts Clause of the United States Constitution. (*See, HRPT Properties Trust v. Lingle*, 715 F.Supp.2d 1115 [D. Hawaii 2010])
- This bill ignores the original intent of the State and the lessees of public lands, by changing the key terms of State leases.
- The interests of the State are not served, because it is one-sided and every newly proposed statutory requirement solely favors the interests of a terminating lessee, to the detriment of the State of Hawaii.
- This measure will increase the unbudgeted costs for the State (costs of paying a premium for infrastructure and improvements and costs for arbitrators).
- The revenues from the lease of state lands could be substantially reduced by allowing lessees the right to terminate their leases any time after mid-term of their State leases.

Based on the above, it is respectfully requested that **this Committee hold SB 1247**.

Thank you for the opportunity to present comments in opposition to this measure.

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**SB1247**

Submitted on: 2/13/2015

Testimony for WTL on Feb 13, 2015 15:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Garth Yamanaka	Individual	Support	No

Comments:

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**SB1247**

Submitted on: 2/13/2015

Testimony for WTL on Feb 13, 2015 15:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James McCully	Individual	Support	No

Comments: Aloha Chair Thielen, I hope this Late Testimony reaches you in time. I was checking online testimony and I saw that my attachment to not appear online. I attach it again here in hopes that it may be of relevance in your discussion. I note that the Attorney General and DLNR have both commented on the risks to the State should a Mortgage encumber the property. A bank would not mortgage a property without a surplus of time remaining on the lease after maturation of the note. Frequently this is 10 years, which is why on a 30 year mortgage a minimum 40 year lease is required. Should a lessee ever seek to relinquish a lease with a mortgage, debt, or liens in place this would best be dealt with through an amended SD1 version that would require a lessee to retire any and all debt or liens prior to relinquishment.

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# McCully Works

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SB1247: Testimony in SUPPORT

Senate Committee on Water & Land  
Senator Laura Thielen, Chair  
Senator Brickwood Galuteria, Vice-Chair

Aloha Chair Thielen,

The State of Hawaii is the largest landowner in the state, with a significant amount of the states most economically important properties. All of these public lands are controlled by HRS171 and administered by the Department of Land and Natural Resources (DLNR). SB1247, through its modification of HRS171, promises benefits to both the DLNR as well as the lessees who provide economic benefits to their community by utilizing state lands.

As a lessee of public lands in Hilo I cannot understate the immediate need to address the status and tenure of economically important lands under state lease. It's not just the superficial, the slum like quality of the exterior "skin" as evidenced on any visit to Hilo. It's how it affects the willingness of the lessee to take risks to meet a constantly changing market. Public leasehold lands contain the "face" of Hilo in the Banyan Drive hotels and recreational areas as well as the "muscle and heart" of Hilo in its commercial and industrial areas.

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 are 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.”*

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. The Senate, through SB1247 can address this key feature that will rationalize and improve the economic use of already developed state lands. Currently there is no clear-cut method to relinquish a lease. The statutory framework that this bill could provide would make the process transparent and fair to both the DLNR as the steward of the public lands and the lessee who takes the risks and contributes to the economy through the development and use of state lands. In that respect this bill could be considered a “housekeeping” measure, a means to clarify where existing language is silent.

I must emphasize, as a lessee there may be few fellow lessees that would ever choose to utilize this statutory reform. As I’ve promoted this bill to my fellow business owners most believe that the risks are all on the lessees side and feel that it’s too one sided in favor of the DLNR. Nevertheless I believe it is an improvement on the status quo and a valuable tool in both the DLNR and the lessee’s toolbox.

Please support SB1247. If you have any questions I would be happy to discuss them.

Mahalo,

**Required parameters are missing or incorrect.**

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