



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the Senate Committee on Water & Land  
Monday, March 20, 2017 at 3:00 P.M.  
Conference Room 414, State Capitol**

**LATE**

**RE: HOUSE BILL 575 PROPOSED SD1 RELATING TO PUBLIC LANDS**

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **support the intent** of the proposed SD1 of HB 575, which allows lessees of certain public land in the Banyan Drive and Kaneohe industrial area of Hilo, Hawaii, to relinquish a lease during the last ten years of the term of the lease, subject to certain conditions, and allows the lessee to bid on the new lease at public auction.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

Historically, the State would allow for a maximum lease term of 65 years for the use of any state owned lands. The principle being that because it is a public asset, there should be a fair and open competition for the use of these assets.

The problem, which is not unique to the State of Hawaii, is that when lease have a fixed termination date, the lessee has no economic incentive to invest in the property over the last 10 to 15 years of the lease term. Lenders will also not loan funds for improvements to the lease hold property unless the remaining lease term is sufficient to secure the mortgage on the property. The result is a "disincentive" to the lessee to invest in the property and thus allowing for conditions to deteriorate at the end of the lease term.

While there needs to be concern on the open and competitive nature on the disposition of public lands, there also needs to be some realization that healthy businesses, many of whom are significant contributors to the community, are unable to invest in improvements to their lease hold properties as the lease term near expiration.

We believe the proposed bill provides a fair and equitable solution to the problem by having the existing lessee invest in "substantial improvements" to the lease hold property in order to qualify for a lease extension.

While we support the intent of HB 575 Proposed SD1, we prefer the language of HB 575 HD1 and look forward to working with the legislature to move this bill forward.s Thank you for the opportunity to express our views on this matter.

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**Testimony to the Senate Committee on Wa  
Monday, March 20, 2017  
3:00 pm  
Conference Room 414**

**LATE**

**RE: HB 575 HD1 – Relating to Public Lands**

Chair Rhoads, Vice-Chair Gabbard, and members of the committee:

My name is Gladys Quinto Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for people in Hawaii.

BIA-HAWAII is in strong support of H.B. 575 HD1 which authorizes the board of land and natural resources to extend commercial, hotel, resort, and industrial leases when the lessee makes qualifying substantial improvements to the leased land.

Historically, the State would allow for a maximum lease term of 65 years for the use of any state owned lands, because it is a public asset, and there should be a fair and open competition for the use of these assets. The problem, which is not unique to the State of Hawaii, is that when lease have a fixed termination date, the lessee has no economic incentive to invest in the property over the last 10 to 15 years of the lease term. Lenders will also not loan funds for improvements to the lease hold property unless the remaining lease term is sufficient to secure the mortgage on the property. The result is a "disincentive" to the lessee to invest in the property and thus allowing for conditions to deteriorate at the end of the lease term.

While there needs to be concern on the open and competitive nature on the disposition of public lands, there also needs to be some realization that healthy businesses, many of whom are significant contributors to the community, are unable to invest in improvements to their lease hold properties as the lease term near expiration.

We believe the proposed bill provides a fair and equitable solution to the problem by having the existing lessee invest in "substantial improvements" to the lease hold property in order to qualify for a lease extension.

The proposed amendments to Chapter 171 HRS are long overdue. We strongly support H.B. 575 HD1.

Thank you for the opportunity to express our views on this matter.



## HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

**LATE**

The Twenty-Ninth Legislature, State of Hawaii  
The Senate  
Committee on Water and Land

Testimony by  
Hawaii Government Employees Association

March 20, 2017

H.B. 575, H.D. 1, PROPOSED S.D. 1 –  
RELATING TO PUBLIC LANDS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO conceptually prefers the language contained in the original H.B. 575 which authorizes the Board of Land and Natural Resources to authorize the extension of commercial, hotel, resort, and industrial leases for the lessees' substantial improvement to the leased premises, over both the H.B. 575, H.D. 1 language which reduces the lease extension to 15 years and the proposed Senate Draft 1 of H.B. 575 which allows lessees to relinquish a lease during the last ten years of the term, subject to certain conditions.

Since the State is the largest landowner in East Hawaii, it by default has a significantly influential role in the development and economic success of the East Hawaii community. As the law stands, there is no incentive for current lessees to invest in infrastructural improvements, since the future of their leases remain unknown. This measure, in conjunction with several other measures aimed at revitalizing East Hawaii, is a positive step in the right direction to reinvest in the deteriorating urban core, increase workforce development opportunities for residents, and ensure a strong East Hawaii economy.

Thank you for the opportunity to testify in strong support of passing H.B. 575 but with a preference to pass the original bill language.

Respectfully submitted,

Randy Perreira  
Executive Director

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 20, 2017 11:51 AM  
**To:** WTL Testimony  
**Cc:** toomey@mkir.com  
**Subject:** \*Submitted testimony for HB575 on Mar 20, 2017 15:30PM\*



**HB575**

Submitted on: 3/20/2017

Testimony for WTL on Mar 20, 2017 15:30PM in Conference Room 224

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

Comments:

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March 17, 2017

COMMITTEE ON WATER AND LAND  
Kenekoa/Senator Karl Rhoads, Luna Ho'omalu/Chair  
Kenekoa/Senator Mike Gabbard, Hope Luna Ho'omalu/Vice Chair

**LATE**

## Testimony in Support of HB575 SD1 with preference for ORIGINAL VERSION of HB575

Aloha Chair Rhoads,

Hawaii Planing Mill, Ltd. dba HPM Building Supply will be celebrating its 96<sup>th</sup> anniversary on August 8, 2017. We have over 320 employees and operate 8 facilities across Hawaii Island, Oahu and Kauai. Today we are a 100% employee-owned company and proud that all our success is returned to the communities we serve. Our roots are in Hilo, where HPM was founded in 1921. Since 1961, we have been a lessee of the State of Hawaii and were a recipient of one of the original "tidal wave" leases. The original 55-year lease term came up in 2016 and we have since been granted a 10-year lease extension which expires in 2026.

We urge your support of HB575, which will allow resort, commercial and industrial State of Hawaii leases to be extended beyond the current statutory limit of 65 years. A lease extension beyond the statutory 65 years will allow HPM and other companies in a similar predicament to make substantial improvements to our leaseholds which will enhance our abilities to better serve our communities and improve the appeal of our leaseholds in general.

Although we are in support of HB575 SD1, we prefer the original version of HB575 as it is simpler and in our mind fairer. The bottom line is a lease renegotiation would be much less disruptive to our business than an auction process as we near the end of our 65-year term. There are clear risks and costs going to auction and this would also require a contingency plan to move in the event of failing. HPM Hilo currently sits on over 5 acres, where we have a 25,000 sqft retail store, a 6,000 sqft design center, a 20,000 sqft lumberyard, and 3 large bulk storage warehouses holding millions of dollars' worth of inventory, fixtures and equipment. This is not something we can easily move or replicate elsewhere.

It has been mentioned that the DLNR believes high demand exists for commercial/industrial lands in our Kanoelehua Industrial Association Area and that an auction process would maximize the value of leasehold rent for the DLNR. Our perspective reflects the reality today that there are currently vacant leases in our industrial area that nobody bids on and that the DLNR has been unable to rent. Historically, most of the original leases were negotiated and an auction never existed back then. Why are auctions important now?

Regarding improvements, the HB575 SD1 version as written doesn't require any improvements while the original version did to qualify. If we as a community wish to help in revitalizing Hilo, then we should all improve our respective areas, not just leave it as is. This version of the bill doesn't support this desired outcome.

MICHAEL K. FUJIMOTO – CHAIRMAN, PRESIDENT & CEO  
SHIPMAN BUSINESS PARK • 16-166 MELEKAHIWA STREET • KEAAU, HAWAII 96749  
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Lastly, there's no language in these versions to help with obtaining financing if we win the auction or are able to extend our lease. Modern leases need to meet the lending requirements of the banks. This may entail statutory changes to ensure any form of a DLNR lease conforms to current day requirements and is ultimately financeable.

Thank you for your support of HB575 SD1 and serious consideration in changing its language to address the points made above.

Mahalo,



Robert M. Fujimoto, Chairman of the Board Emeritus



Michael K. Fujimoto, Chairman and Chief Executive Officer



Jason R. Fujimoto, President & Chief Operating Officer

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 19, 2017 11:24 PM  
**To:** WTL Testimony  
**Cc:** djr@teamedeluz.com  
**Subject:** Submitted testimony for HB575 on Mar 20, 2017 15:30PM

**LATE**

**HB575**

Submitted on: 3/19/2017

Testimony for WTL on Mar 20, 2017 15:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
David S. De Luz, Jr.	Big Island Toyota, Inc./De Luz Chevrolet	Support	No

Comments: RE: CONDITIONAL SUPPORT Aloha Chair Rhoads and fellow Committee members: My Name is David S. De Luz, Jr. and we have a family business in Hilo and Kona and have been in business for 60+ years and employ 150+ team members. The original version of HB575 is better since it's simpler and fairer. When I read the testimony submitted by DLNR even they say they now support extensions. DLNR used to say that there were people waiting to lease these properties and the fair thing to do is put them up for auction. There are vacant leases in the KIA that nobody bids on in our industrial area. Why doesn't DLNR lease them if there is so much demand ? Most of the original leases were negotiated, there wasn't an auction back then. Why are auctions important now? Because my property might be worth more than the appraiser says? But the auction money all goes to the state, even though it's my improvements that add the value. Doesn't seem fair. We've been paying full "fair market rent". The state is getting fully compensated already. There's risks and costs in going to auction. It's disruptive to my business to put it at risk, I have to contingency plan to move or else go out of business. The SD1 version as written doesn't require any improvements, the original version requires improvements to qualify. We want to improve the area, not leave it as is. This version of the bill doesn't lead to any investment or development. There's no language in these versions to help with getting financing if I win the auction or we go back to extending the lease. Modern leases need to meet the lending requirements of the banks. We need statutory changes to make sure DLNR drafts a lease that we can get financed. Thank you for allowing me the opportunity to share my insights on this bill and I would greatly appreciate taking them into consideration. Respectfully, David S. De Luz, Jr. Big Island Toyota, Inc./De Luz Chevrolet 808-895-4284

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 20, 2017 9:46 AM  
**To:** WTL Testimony  
**Cc:** GordonInouye@aol.com  
**Subject:** Submitted testimony for HB575 on Mar 20, 2017 15:30PM



**HB575**

Submitted on: 3/20/2017

Testimony for WTL on Mar 20, 2017 15:30PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gordon Inouye	Individual	Support	No

Comments: Dear Senator Rhoads, Thank you for hearing this bill. However we feel that the original version is fairer and simpler and achieves the goal of fostering reinvestment and economic development in our community. We cannot see that the revised language will achieve this as the risks to business is far greater to reinvest if there is no reasonable assurance that the lessee-investor can realize the returns they envision. The SD1 version as written doesn't require any improvements, the original version requires improvements to qualify. We want to improve the area, not leave it as is. This version of the bill doesn't lead to any investment or development. Respectfully, Gordon E Inouye

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 20, 2017 8:46 AM  
**To:** WTL Testimony  
**Cc:** cyamanak@outlook.com  
**Subject:** Submitted testimony for HB575 on Mar 20, 2017 15:30PM



**HB575**

Submitted on: 3/20/2017

Testimony for WTL on Mar 20, 2017 15:30PM in Conference Room 224

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

Comments: I support moving this bill forward, but prefer the original bill HB575. The current version of HB575 confuses me in what is the goal? Do we want to find meaningful benefit for both the State and the users of these lands? What is the purpose of an auction when these leases were originally negotiated in the first place. You have vacant leases now, if there is so much demand for industrial land why are those leases not bid out for auction and if they have been why did nobody bid? In my opinion, the original bill was simpler and fairer. It also would provide better benefit for both the State and the end user.

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**LATE**

HB 575, SD1 – Relating to the Hilo Community Economic District

*The original version of HB575 is better since it's simpler and fairer. When I read the Testimony submitted by DLNR even they say they now support extensions.*

*DLNR used to say that there were people waiting to lease these properties and the fair thing to do is put them up for auction. There are vacant leases in the KIAA that nobody bids on in our industrial area. Why doesn't DLNR rent them if there is such high demand?*

*When most of the original leases were negotiated, there were not any auctions back then. Why are auctions important now? Because properties might be worth more than the appraiser says. But the auction money all goes to the state, even though it's my improvements that add the value. This doesn't seem fair. Businesses have been paying full "fair market rent". The state is getting fully compensated already.*

*There are risks and costs in going to auction. It's disruptive to businesses to put it at risk, and business owners have to develop a contingency plan to move or else go out of business.*

*The SD1 version as written doesn't require any improvements, the original version requires improvements to qualify. We want to improve the area, not leave it as is. This version of the bill doesn't lead to any investment or development.*

*There's no language in these versions to help with getting financing if I win the auction or we go back to extending the lease. Modern leases need to meet the lending requirements of the banks. We need statutory changes to make sure DLNR drafts a lease that we can get financed.*

Sincerely,

David Kurohara



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 20, 2017 7:51 AM  
**To:** WTL Testimony  
**Cc:** jzelko-schlueter@hawaiielectriclight.com  
**Subject:** Submitted testimony for HB575 on Mar 20, 2017 15:30PM

**HB575**

Submitted on: 3/20/2017

Testimony for WTL on Mar 20, 2017 15:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Zelko	Individual	Comments Only	No

Comments: The original version of HB575 is better since it's simpler and fairer. DLNR used to say that there were people waiting to lease these properties and the fair thing to do is put them up for auction. There are vacant leases in the KIAA that nobody bids on in our industrial area. Why doesn't DLNR rent them if there is so much demand? Most of the original leases were negotiated, there wasn't an auction back then. Why are auctions important now? Because our property might be worth more than the appraiser says? But the auction money all goes to the state, even though it's my improvements that add the value. Doesn't seem fair. We've been paying full "fair market rent". The state is getting fully compensated already. There's risks and costs in going to auction. It's disruptive to our businesses to put it at risk. This version of the bill doesn't lead to any investment or development. There's no language in these versions to help with getting financing if we win the auction or we go back to extending the lease. Modern leases need to meet the lending requirements of the banks. We need statutory changes to make sure DLNR drafts a lease that we can get financed.

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**LATE**

Honorable Representatives:

My name is Michael Shewmaker, My wife, Keiko and I own one of the most successful businesses in Downtown Hilo as well as two leasehold properties in the Hilo Industrial Area. Our nearly forty years of doing business in Hilo have given us a deep love and concern for our community.

We would most appreciate your support for HB575 HD1 Relating to the Hilo Economic Development District. This will allow those in our community to determine the destiny of our community. We have been held in limbo for too many years because nearly all of our commercial, industrial and resort zoned lands are leasehold properties held by the State of Hawaii and Hawaiian Homes.

As strange as it may seem Hilo suffers every day from the Tsunami of 1960. That dreadful wave cut through the heart of the city and stripped us of our vital, fee simple commercial and industrial lands. In order to insure survival of the city these lands were replaced by State owned leasehold parcels in the Waiakea area. This permanently removed the ability of the small business owner to build equity in their property; one of primary ways the small guy has always depended on to get ahead. Now there are just a few years remaining on these leases, the buildings are in disrepair and no viable way to refurbish the community is available to us. Without leasehold reform Hilo and more specifically the Hilo Industrial Area and the Banyan Drive area will remain stagnant.

Thank you for your consideration.

Sincerely,

Michael Shewmaker

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 19, 2017 5:05 PM  
**To:** WTL Testimony  
**Cc:** russell@ginozarealty.com  
**Subject:** Submitted testimony for HB575 on Mar 20, 2017 15:30PM

**LATE**

**HB575**

Submitted on: 3/19/2017

Testimony for WTL on Mar 20, 2017 15:30PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Russell Arikawa	Individual	Support	No

Comments: I am in full support of HB575, which will authorize BLNR to extend much needed leases in the Banyan Drive and Kanoelehua Industrial Area of Hilo. Sincerely, Russell Arikawa, President, Japanese Chamber of Commerce & Industry of Hawai'i Board Member, Kanoelehua Industrial Area Association

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March 20, 2017

HB575, Proposed SD1

Senate Committee on Water & Land

**LATE**

Aloha Chair Rhoads,

I have been in strong support of HB575. The proposed SD1 version is a significant departure from the original version of the bill. To my mind that version, HB575 as introduced, still provides the most benefits to the state while correcting deficiencies created by HRS171-36.

That said, after the veto of HB1617, 2012, which would have allowed for the extension of leases similar to Act 219, 2011, I conceived and helped draft “relinquishment” language as an alternative approach to solving the leasehold conundrum. In 2013 it was SB707, SD2 that first presented this approach to the Legislature. In 2014 it was HB1688 and in 2015 it was HB518, which was in fact heard by you as Chair of House JUD. This concept has merit and would be a distinct improvement over the current statutory regime.

My primary concern in regards to substituting the concept of “Relinquishment” for “Extension” is one of public policy. What is our goal in regards to the economic use of public lands?

If the policy is to be based on allowing access to all, then the peculiar distinction between access for residential purposes and access for commercial purposes needs to be drawn. A business is unlike a home in that a home is expected to be multi-generational, or at least the full length of the owner’s life. Most businesses however have a life cycle reflective of either the capacities of the founder or else the dynamics of the market they operate in. In the KIAA there are very few original lessees. Of the 59 leases I estimate that fewer than 10 are in the hands of the founder or their families. There has been continuous access to these leases through the market and the use of the Assignment clause in the lease contract, which has been proven to be most important. That’s how I gained access to public lands, through the assignment process.

I can factually state that I have never had a “cold call” where somebody requested the purchase of my leasehold interest. There is little demand based on the leasehold paradigm and the dynamics of the Hilo market. Thus, while “relinquishment” and “public auction” are tools to provide “access to all”, the “assignment” clause allows for access as well. The board of DLNR reviews and approves all assignments.

If the policy is to be primarily based on deriving “rent” from economic lands then requiring the use of Auction may have some benefit. If this were the case, as a matter of the states duty to the public, would a secondary consideration be to benefit the states economy as a whole? To extract the most total revenue from the resource, directly and indirectly? If so, then I would think it is in the states interest to keep the lands at their

highest and best use during the lease period, while always returning Fair Market Rent to the state. If so, then “Extension”, based on an appraised market value, would be preferable.

To address the states concerns of achieving maximum return on public lands requires an understanding of the dynamic forces at play in the economy in a particular geographic or zoned area. We are an island state with limited land, even less that is zoned and improved for urban uses. Existing districts for defined (zoned) purposes have long been developed; in East Hawaii the Banyan Drive area is more than 90% of all Resort zoned property in East Hawaii and the KIAA is a geographically constrained area hemmed in by water, the Hilo airport, residential communities, and lands controlled by DHHL.

With restrictions in HRS171-36 there was no mechanism for the lessees to be responsive to the constant changes in our culture and economy. So the areas fell into blighted conditions. However, the land has ALWAYS been valued at Fair Market Rent, meaning that qualified appraisers have always ensured that the state receives the full value of the land as periodic rent. HRS171-17 mandates this and the lessee’s have never sought relief from this requirement. So why believe that an Auction based on Fair Market Value (FMV) will return more money to the state than a negotiated extension also based on FMV?

The answer is probably based on the notion of “the price of Paradise”. With scarcity comes demand. In Hilo the state owns all these lands, therefore the states policies control access, use, and valuation of these lands. Does the state want to encourage potential inflationary drivers as a component of public policy? This may be an unintended consequence of this version of this bill, as outlined below.

Should the leasehold improvements that are valued by a qualified appraiser and established as a “premium” be identified as less than a competing market participant might value those same leasehold improvements as worth then that difference could result in an increased bid for the land, independent of the lands, “as if vacant and unimproved”, market value. The state would be gaining the difference in the perceived value of the leasehold improvements as an increase in it’s ground rent. As an example the state currently collects 300% more from one hotel on Banyan Drive than the other similar hotel. Why? One was an auction and the other a negotiated extension. Does anyone actually believe this has anything to do with a difference of 300% in the specific location or underlying land valuation between the two sites? They are 100 yards apart, on the same coast of Hilo Bay. That auction was driven by the uniqueness of an undervalued improvement and the bidder took that differential and used it to justify “winning” the auction by paying ground rent instead of a higher premium for the leasehold. The lasting affect of this though is the “not less than clause” in state leases. For the life of the lease the “winning bidder” will pay an above market premium for the land, and this will likely be a disincentive, and probably a financial restriction, from reinvesting or redeveloping the leasehold improvements during the course of the lease.

The reality is that the majority of state leases we are discussing are not glamorous waterfront hotels. There are 88 leases identified by the state as income producing properties (see S.L.D.F. Exhibit B) and 18 of them are hotel, recreational, or other. They are located on Oahu, Maui, Hawaii, and Kauai. The remaining 70 leases are identified as commercial or industrial, and all of them are in East Hawaii. These leases are improved with warehouses and there is no record of a waiting list within DLNR or any pent up demand for these properties. In fact recent auctions in Hilo have gone unanswered or with a single “bidder” paying only the upset value of the ground rent.

Likely reasons for this lack of interest or participation in the auctions;

1. The economy in Hilo is not vibrant and growing. Many of us in business believe it is a result of the state holding the majority of the land, which has been a disincentive for tenants to invest in improvements and infrastructure.
2. The DLNR’s policies, widely seen as outside the markets range of acceptability. As examples of this, there were 10 lots listed in a report by DLNR in 2010, statewide. They were identified as “Properties with Immediate Revenue Potential”. 7 years later not one parcel is under lease.

<http://hawaii.gov/dlnr/chair/meeting/submittals/101201/H-ADMIN-Submittals-H2.pdf>

3. To review what these onerous conditions look like see Attachment A in the recent bid package for a lease on Oahu scheduled for a Feb 14, 2017 auction;

<http://dlnr.hawaii.gov/ld/public-auction-sale-island-of-oahu/>

In particular note questions 13, 14 and 19-24. I don’t know of any businesses that would wish to participate in a lease auction where that information could become part of the public record.

3. Ground Leases in this state are stigmatized as an unequal relationship between Lessor and Lessee. This questionnaire is a prime example of how leasehold differs from fee simple ownership.

4. There is a rent rate of 8% that appraisers generally attach to leasehold lands, with those lands fully valued at fee simple. A business owner can borrow from the banks and pay 4-5% to purchase similar land. The only reason to acquire or maintain a leasehold in Hawaii is your ownership of the improvements, the improvements discounted less than replacement, or the unique location of the leasehold property that is irreplaceable.



5. A sample of current lease forms is available as Attachment C, above link. It would require significant negotiations between the lessee and the lessor to make this a financeable ground lease should any improvements be required. The form is written solely in the interests of the lessor. It would be in the states interest to conform with H.U.D. requirements for commercial ground leases;  
<https://portal.hud.gov/hudportal/documents/huddoc?id=44651c3HSGH.pdf>

Most importantly the DLNR's current position on policy, as stated in testimony by Chair Suzanne Case to the Finance Committee of the House of Representatives on March 1, 2017:

*“...One reason for the Department’s position was the statutory policy mentioned above favoring issuance of leases by public auction... The Department notes that there are a number of bills before the Legislature this session that would allow for the extension of existing leases... Additionally, the Department recognizes that a prior legislative act providing for extensions of resort leases did have a beneficial... The Department thus acknowledges different public policy benefits from different approaches... Based on this, the Department now takes a neutral stance on legislative proposals to extend existing leases... **The Department respectfully suggests that extensions of existing leases in exchange for lessees making substantial improvements may be the better way to deal with end of lease issues and redevelopment of the State’s commercial, industrial, hotel and resort lands***

The Department, to its credit, clearly shows an evolution of thought and policy on this matter. I agree with the states position and I believe the vast majority of the lessees within the KIAA would agree as well.

However, should this Committee choose to continue with Relinquishment and Auction as the preferred policy then I believe the bill would benefit by including language to address modern financing issues. The Chair might consider the requirements identified by the Federal Governments Housing and Urban Development for Commercial and Ground Leases, Chapter 3 (4465.1 CHG Chapter 3. Ground Leases) cited above. For precedence the Committee might consider that currently HRS171-36 (2) uses the Federal Housing Administration rules, as well as 5 other identified entities as the basis for that sections requirements.

In addition there should be language added that protects the interests of the relinquishing lessee should a winning bidder fail to perform. Currently the DLNR requires a non-refundable deposit to cover their potential expenses equal to the upset rent, due within 24 hours of the auction (see Appendix B, in the bid package for the Oahu ground lease). I would suggest a deposit, to be managed by DLNR, equal to a percentage of the leasehold premium, say 10%, to cover any direct expenses incurred by the relinquishing lessee as a consequence of the abandonment of the lease acquisition by the winning bidder. As an example, consideration should be given that the relinquishing lessee, who will have to allocate resources, most likely cash, to their financial institution to pay off their

mortgages prior to gaining BLNR approval for the relinquishment, thereby causing a significant burden to the relinquishing lessee.

I would suggest in this occurrence that the lease should then be awarded to the second low bidder, however if there were no other bidder other than the relinquishing lessee then the lease should be awarded to them at the published upset price.

Other public policy issues to consider are how to protect the many current local small business from a process that could favor large mainland or international investors who might see the process as an opportunity to tie up land in Hawaii. A “worst case” scenario might be one where a strategic bidder seeks to drive out local competition by tying up a lease with no intent to create a business or invest in improvements? This has actually happened to me in the past when I was involved in a project here in the Hilo area.

I submit these comments in an effort to foster discussion of the unintended consequences of the relinquishment and auction alternative.

Should the Chair consider reverting to the original HB575 then I believe the HUD rules could be beneficially included in that bill as well.

Finally, I really appreciate this committee considering this bill and I look forward to supporting whichever approach you take to resolve this long-standing issue.

Mahalo,

Jim McCully

**From:** [Bob](#)  
**To:** [WTL Testimony](#); [ETT Testimony](#)  
**Cc:** [friendsofgilkahele@gmail.com](mailto:friendsofgilkahele@gmail.com)  
**Subject:** Testimony in strong support of House Bills 1479 and 575  
**Date:** Sunday, March 19, 2017 5:42:01 PM

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Aloha,

Mahalo nui for the opportunity to provide testimony in strong support of House Bills 1479 and 575.

I fully support both of these bills and the legislature's efforts to revitalize Hilo's small business community. HB 1479 and HB 575.

Hilo's Banyan Drive is how to put it a bit of an embarrassment, especially for out of town guests. Personally I love Queen Liliuokalani Park and would use the area more often if Banyan Drive was cleaned up and offered more amenities such as an out door cafe. I would love to sit and enjoy a nice pupu and coffee in a European style cafe while enjoying the passersby.

In addition it would be spectacular if it became an art hub for Hilo's artists.

Aloha,

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