

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committee on  
WAYS AND MEANS**

**Friday, March 31, 2017  
9:30 A.M.  
State Capitol, Conference Room 211**

**In consideration of  
HOUSE BILL 575, HOUSE DRAFT 1, SENATE DRAFT 1  
RELATING TO PUBLIC LANDS**

House Bill 575, House Draft 1, Senate Draft 1, proposes to allow lessees of certain public land in the Banyan Drive and Kanoelehua 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 under conditions favorable to the continuing lessee. Senate Draft 1 of the measure removes the limitation of the applicability of the bill to the Banyan Drive area and Kanoelehua Industrial Area of Hilo. Senate Draft 1 also incorporates a number of revisions that the Department of Land and Natural Resources (Department) suggested in testimony at the March 20, 2017 hearing before the Senate Committee on Water and Land on the proposed Senate Draft 1, which the Department appreciates. **The Department offers the following comments on this bill.**

Under Chapter 171, Hawaii Revised Statutes (HRS), the Board of Land and Natural Resources (Board) is authorized to issue leases up to a maximum term of 65 years. Section 171-32, HRS, provides that it is the policy of the State to issue leases by public auction. As the preamble to this measure indicates, at the end of their lease terms, lessees have little incentive to make, or the ability to finance, major repairs or improvements to their leasehold properties because the leases cannot be extended further. Rather, new leases of the lands must be issued pursuant to the public auction process. This sometimes results in the deterioration of infrastructure and facilities.

In 2015, the Legislative Reference Bureau (LRB) issued Report No. 2, Commercial Leasing of Public Lands: State Policies Regarding Leases Near End of Term. LRB identified states with maximum lease terms and reviewed how these other states' leasing practices dealt with end of the term leases. LRB concluded its report in stating:

**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

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

While some states have policies that generally address the maintenance and improvement of leased public lands, these policies appear to arise when a lease agreement is initially drafted and entered into, or within the context of negotiations for a lease renewal, rather than during the last few years of an existing lease. In comparison, commercial leases of public lands in Hawaii include a general covenant that requires lessees to maintain the property. The Bureau offers no conclusions regarding which, if any, of the policies employed by the other states represents practices that should be incorporated into the commercial leasing of public lands in Hawaii.

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. This is in keeping with general commercial practice regarding ownership of improvements upon expiration of a long-term ground lease, and results in the residual value of the improvements being a public trust asset.

The 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. This is a value that under current law is a public trust asset. 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 this residual value of improvements.

**The Department offers the following suggestions with regard to the language of this measure:**

First, subsection (b)(2) of the proposed bill requires a lessee wishing to avail itself of the measure to contract with a licensed or certified appraiser "to determine the current depreciated or residual value of any improvements to the land . . . ." If the objective of the measure is to compensate the lessee for the value of its improvements due to voluntary early lease termination, then the quoted language should be replaced as follow:

(b) Prior to relinquishing the lease, the lessee shall:

...

(2) Contract with a real estate appraiser licensed or certified pursuant to chapter 466K to determine  
~~[the current depreciated or residual value of any improvements to the land]~~ the current value of

the improvements to the land for the remaining term of the lease, less ground rent; and

Under this language, the appraiser could determine the present value of the improvements for remaining lease term and calculate a one-time payment for the improvements.

Subsection (e) of the measure should similarly be amended to provide:

Lease terms for the new lease shall be determined by the board; provided that if the lease is awarded after public auction to any party other than the relinquishing lessee, the lease rent shall include a premium equal to the [~~residual~~] current value of any improvements to the land for the remaining term of the lease, less ground rent, as determined pursuant to subsection (b), which shall be paid to the relinquishing lessee prior to transfer of the land and improvements to the new lessee.

Second, a provision needs to be added to the bill to clarify that at the end of the relinquishing lessee's original lease term, rent for the lease premises will be based on land and improvements. The reason for this is that the appraisal required for under subsection (b)(2) of the bill will only determine the value of the improvements for the remaining term of the original lease. If the relinquishing lessee is not the successful bidder at the auction of a new lease, then the relinquishing lessee will receive the appraised value of the improvements for the remaining term of the original lease, and is not entitled to any value in the improvements beyond that period. Likewise, the new lessee is only paying for the value of the improvements for the same period. At the end of the original term of the relinquishing lessee's lease, the rent payable to the State should therefore be based on land and improvements. This should be the case even if the relinquishing lessee is the successful bidder at auction. Otherwise, the bill will result in a windfall to whoever is the successful bidder at auction in allowing them to pay only ground rent for the term of the new lease. The Department therefore recommends that subsection (f) of the measure be amended as follows:

(f) For the lease term that would have remained under the relinquished lease but for its relinquishment

pursuant to this section, [F]the lease rent established in any new lease issued pursuant to this section shall not be less than the greater of the current ground rent or the appraised fair market rent of the lease being relinquished pursuant to this section. At the end of the lease term that would have remained under the relinquished lease but for its relinquishment pursuant to this section, rent under the new lease shall be reopened based on the fair market value of land and improvements.

Third, the Department notes that if this bill were to become law, there are practical issues with its implementation. The Department has more than 50 leases in the Banyan Drive area and Kanoelehua Industrial Area, and the majority of them are in the final ten years of their terms. The Department does not have sufficient staff, ceiling or funding to negotiate the early termination of 50+ leases that will likely require rent arbitration in many cases to determine fair values for improvements and ground rent. The Department's request for a \$500,000 increase in ceiling expenditure in the Special Land and Development Fund to address capacity issues for lease management and operations was rejected by the Committee on Finance this legislative session. The Department appreciates the inclusion of an unspecified appropriation in Senate Draft 1 of the measure, and requests that the appropriation be set at \$\_\_\_\_\_ if this measure moves forward.

Finally, there are a number of bills under consideration this session that would transfer management of leases in the Banyan Drive area and Kanoelehua Industrial Area to the Hawaii Community Development Authority (HCDA) or to specially created improvement districts and planning committees. In particular, the Department notes that Senate Bill 1292, Senate Draft 2, incorporates the broad leasing powers of HCDA under Section 206E-C, HRS, including the rights to issue leases by direct auction and to extend leases, and provides in sections 2 and 3 for extensive planning, administrative and office staffing and operational funding. These are not policy options, nor funding resources, currently available to the Department. It is not clear how House Bill 575, House Draft 1, Senate Draft 1, would be implemented if one of the lease transfer bills were to become law.

Thank you for the opportunity to comment on this measure.



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2017**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 575, H.D. 1, S.D. 1, RELATING TO PUBLIC LANDS.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Friday, March 31, 2017

**TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**

(For more information, contact Linda L.W. Chow,  
Deputy Attorney General, at 587-2988)

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Chair Tokuda and Members of the Committee:

The Department of the Attorney General submits comments on the bill as drafted in S.D. 1. We have concerns regarding the lease terms for new auctioned leases that require the payment of a premium equal to the residual value of any improvements to the land. We have suggested an amendment at the end of this testimony that we believe would help protect the bill from possible challenge.

House Bill No. 575, as it was originally introduced, authorized the Board of Land and Natural Resources (Board) to extend leases for commercial zoned public lands provided that the lessees make substantial improvements to the demised premises. House Bill No. 575, H.D. 1, S.D. 1, substantially amended the bill by removing the wording regarding extension of leases to instead allow lessees of public land 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.

Senate Draft 1 allows a lessee to relinquish a lease anytime during the last ten years of the term of the lease. Prior to relinquishing the lease, the lessee would contract for an appraisal to determine the current depreciated or residual value of any improvements to the land. Upon relinquishment, the Board will dispose of the land by public auction with the upset price of the lease rent valued as if the land were vacant and unimproved. The terms of the new lease would be determined by the Board

provided that, if the lease is awarded to any party other than the relinquishing lessee, the lease rent shall include a premium equal to the residual value of any improvements to the land, which shall be paid to the relinquishing lessee.

Payment of the full residual value of the improvements represents compensation to the relinquishing lessee in excess of what the lessee would be entitled to under the original lease. We also believe that requiring the Board to auction the new lease as if the land is vacant and unimproved may be a breach of the State's public trust duties.

Under the terms of a standard lease issued by the Board, improvements constructed by a lessee belong to the lessee until the expiration or other termination of the lease. At the expiration or other termination of the lease, the improvements shall become the property of the Board unless the Board elects to have the lessee remove the improvements. Once the Board assumes ownership of the improvements, the Board may thereafter lease the property as improved property, potentially for a higher lease rent than if the property is vacant and unimproved. This bill would effectively give lessees the option to obtain improvements that otherwise belong to the State. For example, a lessee might choose to relinquish the lease a few days before the lease expires by its terms. Under the existing lease wording the State would have the right to own the improvements outright. This bill would require the State to pay or provide value for what is potentially its own property.

Under section 5(f) of the Admission Act, the lands granted to the State of Hawaii, "together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust." The public lands trust created by the Admission Act is also recognized in the Hawaii Constitution. Article XII, section 4, provides:

The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.

The State is required to deal with the public land trust not just as a manager, but as a trustee of the lands. (“The duties imposed upon the state are the duties of a trustee and not simply the duties of a good business manager.” *In re Water Use Permit Applications*, 94 Hawai‘i 97, 143, 9 P.3d 409, 455 (2000).) The State, as trustee, “must adhere to high fiduciary duties normally owed by a trustee to its beneficiaries.” *Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp. of Hawaii*, 117 Hawai‘i 174, 194, 177 P.3d 884, 904 (2008), rev’d and remanded sub nom. *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009). The courts have applied the following three specific trust obligations to the State in the discharge of its duties: “(1) the obligation . . . to administer the trust solely in the interest of the beneficiary; (2) the obligation that the trustee deal impartially when there is more than one beneficiary; and (3) the obligation to use reasonable skill and care to make trust property productive.” *Id.*, 117 Hawai‘i at 195, 177 P.3d at 905.

This bill proposes to require that relinquishing lessees be paid the residual value of the improvements, regardless of whether the residual value is based on the use of the improvements beyond the term of the lease. In effect, the relinquishing lessee would receive a windfall of the value of the improvements beyond the termination of the lease, when the ownership of the improvements would have transferred to the State pursuant to the terms of the lease. The bill would instead transfer the ownership of the improvements from the relinquishing lessee to the new lessee, bypassing the State.

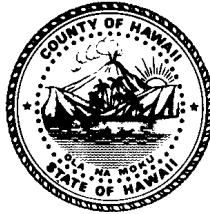
Because the State would not obtain ownership of the improvements at the termination of the lease, the State would also be unable to charge rent under the new lease for improved property. Instead, the State would be forced to lease the land as if it were unimproved. Depending on the improvements that are located on the property, that could result in a significant difference in the rent that could be charged. The inability of the State to charge rent based on the land and improvements while the relinquishing tenant experiences a windfall may be seen as inconsistent with the State’s duties as a trustee of the public land trust. Not only could this situation be seen as favoring one beneficiary over another, the State could be seen as not making the most productive use of the land as possible.

The bill might also be considered to violate the spirit, if not the letter of, article XII, section 4.

To remedy these concerns, we suggest removing the wording in subsection (b) that requires an appraisal of the current depreciated and residual value of any improvements to the land; removal of the portion of subsection (d) that sets the auction upset price as the greater of the current ground rent or the appraised fair market value as if the land were vacant and unimproved; and removal of the portion of subsection (e) that requires that a premium be paid to the relinquishing lessee of the residual value of the improvements to the land.



**Harry Kim**  
*Mayor*



**Wil Okabe**  
*Managing Director*

**Barbara J. Kossow**  
*Deputy Managing Director*

## County of Hawai'i Office of the Mayor

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March 29, 2017

Senator Jill N. Tokuda, Chair  
Committee on Ways and Means  
Hawai'i State Capitol  
Honolulu, HI 96813

Dear Chair Tokuda and Committee Members:

**RE: HB 575, HD 1, SD 1  
Relating to Public Lands (State leases)**

On behalf of the Hilo community, I would like to thank the Legislature for its attempts to resolve the dilemma of State leases on commercial properties that are nearing the end of their lease term.

This Administration has been supporting the efforts of Big Island legislators to make special provisions for the economic district in Hilo, reflected in earlier drafts of HB 575, and in SB 1292 and HB 1479. We have wanted to reflect the community wishes, and have been very impressed with the way in which the community has worked together and rallied behind these proposals.

HB 575, HD1, SD1, brought in a new concept. Allowing lessees of certain public lands on Banyan Drive, and in the Kanoelehua Industrial Area, to relinquish their leases during the last ten years of the term of the lease, and then allowing the lessee to bid on the new lease at public auction, had not been considered up to now, as far as I know.

We would like to assure that the collaborative efforts of state, county, and community leaders not be put at risk. Perhaps a way forward would be to use the language of SB 1292 as Part I of a new draft of HB 575, and then add the SD1 new language as Part II. The two concepts are not incompatible, and if such a bill were to continue on to conference, it would give the stakeholder's time to fully evaluate the options and collaborate on a final approach. Lessees might appreciate having two

Jill Tokuda  
March 29, 2017  
Page 2

options, or reject one or the other, but the hard work of building consensus would be rewarded rather than lost.

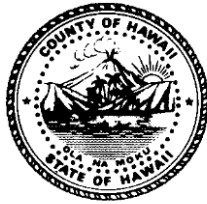
Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink that reads "Harry Kim". The signature is written in a cursive, flowing style.

Harry Kim  
Mayor

Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
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**County of Hawai'i**  
**PLANNING DEPARTMENT**

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**Testimony of**  
**MICHAEL YEE**  
**Planning Director**



**Before the Senate Committee on Ways and Means**

**Friday, March 31, 2017**  
**9:30 AM**

**State Capitol, Conference Room 211**

**In consideration of:**

**HB 575 HD1 SD1, RELATED TO PUBLIC LANDS**

**HB 1469 HD1 SD1, RELATING TO PUBLIC LANDS**

The Hawai'i County Planning Department ("Planning") has been involved in the planning phases of proposed redevelopment actions within the Waiākea peninsula over the past year through our support of the recently established Banyan Drive Hawai'i Redevelopment Agency ("BDHRA"). It is understood that an unintended consequence of the State's leasing policies under HRS 171 has been the lack of reinvestment by lessees into the infrastructure of leased properties and the infrastructures' subsequent decline. Hilo is particularly affected by these leasing policies as there are substantial tracts of State lands in our community. Planning and the BDHRA are supportive of proposed legislation to stimulate reinvestment and economic growth through changes to the State's leasing policies. Planning and the BDHRA also agree that the properties identified in **HB 1469 HD1 SD1**, as well as HB 1479 HD2 SD1 and SB 1292 SD2 HD1 that are also still active within the legislative session, could benefit from revisions to leasing policies and from comprehensive planning efforts to identify a successful path forward that supports the lessees and the broader interests and concerns of our community.

Planning and the BDHRA are aware that the Legislature must consider the two structurally different approaches various bills are proposing; redevelopment under the Department of Land and Natural Resources ("DLNR") direction through **HB 575 HD1 SD1** and **HB 1469 HD1 SD1** versus redevelopment under the Hawai'i Community Development Authority ("HCDA"), which is proposed under HB 1479 HD2 SD1 and SB 1292 SD2 HD1. The strengths and benefits of both entities should be considered as these bills move forward.

**HB 575 HD1 SD1** proposes changes to the approach used by the DLNR for the period towards the end of the leasing period. The State has generally maintained a 65-year maximum leasing period for public lands. This limitation has created little incentive for leaseholders to put forth investment into their property towards the end of their leasing period, which has resulted in the deterioration of the facilities. As currently proposed under HB 575 HD1 SD1, a lessee may relinquish a lease during the last ten years of the lease term provided certain conditions are met such as a requirement that “the auction upset price shall be the greater of the current ground rent or the appraised fair market rent, as if the land were vacant and unimproved.” Furthermore, this version of the bill allows the relinquishing lessee to bid on the new lease at a public auction. As currently proposed HB 575 HD1 SD1 does **NOT** seem to address the issue of property or building deterioration. It would seem appropriate to include some language within this legislation to ensure adequate improvement will be conducted for the properties of interest. This proposed bill would provide DLNR another alternative to negotiating leases and property improvements.

However, Planning would suggest that DLNR be provided with as many alternatives lease negotiating mechanisms as possible. That being said, it may be advantageous to ALSO include provisions for extending leases beyond the 65-year leasing period such as what was previously proposed within HB 575 HD1. Such version of the bill identified that the Board might extend a lease for a period up to 15 additional years so long as certain conditions were met, such as lessee providing a substantial improvement (identified as a minimum of 50% of the market value of the premises) to the renovation and rehabilitation of the property.

**HB1469 HD1 SD1** proposes changes to HRS 171, pertaining to management and disposition of public lands under DLNR. Planning offers the following comments.

- Under §171-D(b)(2)(B), regarding the selection of members based upon various knowledge, experience and expertise, we recommend adding a new section: (vii) Land Use Planning or similar field;
- Under §171-D(b)(2), we recommend adding new section to emphasis that one member should be selected with local historic and cultural expertise. Such addition would be: §171-D(b)(2)(D) One member shall be selected on the basis of their knowledge of history and cultural traditions or practices within the redevelopment area.
- Concerning Section 171-F(e), Planning questions whether 2 years is long enough to develop a redevelopment plan with needed studies, public input and proposed financing for the redevelopment effort. This section should include a provision for a time extension of not more than 2 additional years in case more time is needed prior to submitting the identified report to the governor and legislature with a request for required appropriations, bond authorization, or both.
- Under §171-F(e), consider replacing the date 2020 with the Legislative session directly following the two-year anniversary of the formation of the planning committee for the redevelopment district.
- Concerning Section 171-F(f). This section identifies that “the designated district redevelopment plan shall supersede all other inconsistent ordinances and rules relating to

the use, planning, development, and construction on public land in the designated district.” The County of Hawai‘i has begun implementation of HRS Chapter 53 relating to Urban Renewal Law within the Waiākea Peninsula. A redevelopment plan developed pursuant to Chapter 171, HRS should work with or incorporate the redevelopment actions or plan developed pursuant to Chapter 53, HRS.

Even if **HB 575 HD1 SD1** and **HB 1469 HD1 SD1** continue to make progress through the Legislature, Planning would strongly encourage that hearings still be conducted by the respective committees regarding **HB 1479 HD2 SD1** and **SB 1292 SD2 HD1**. We believe it is in the best interest of the community and State to maintain as many alternatives as possible to be considered and refined prior to the close of this legislative session.

Mahalo for your consideration of these important initiatives.

March 29, 2017

## COMMITTEE ON WAYS AND MEANS

Senator Jill N. Tokuda, Chair

Senator Donovan M. Dela Cruz, Vice Chair

### Testimony in Support of HB575 HD1, SD1 with preference for ORIGINAL VERSION of HB575

Aloha Chair Tokuda,

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 HD1, 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 HD1, 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  
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OFFICE (808) 966-5636 • CELL (808) 936-2373 • FAX (808) 966-7564

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 HD1, 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



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

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

The Twenty-Ninth Legislature, State of Hawaii  
The Senate  
Committee on Ways and Means

Testimony by  
Hawaii Government Employees Association

March 31, 2017

H.B. 575, H.D. 1, 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 current 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





HB575 HD 1 SD1

Senate Committee, WAM  
Chair Jill Tokuda  
Vice Chair Donovan M. Dela Cruz

Aloha Chair Tokuda,

I am Garth Yamanaka, Committee chair for Government affairs for the Kanoelehua Industrial Area Association (KIAA). Established in 1968, KIAA 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.

KIAA supports the purpose of this measure which is to allow lessees who are within the last ten years of their land lease, to voluntarily request that the lease be put up to bid at a public auction and by allowing the lessee to bid on a new lease. The current framework for leasing of public lands in the East Hawaii area has created an environment that is sub-par to market expectations. Although we feel the original version of HB575 is a preferable version and a much more beneficial approach for both parties as extensions are preferable for economic improvements, the passing of HB 575 HD1 SD1 will help to push policy in the right direction.

We urge you to pass HB 575 HD 1 SD 1 and Mahalo for this opportunity to provide testimony.

Mahalo,

Garth Yamanaka  
Committee Chair for Government Affairs  
KIAA

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 30, 2017 8:42 AM  
**To:** WAM Testimony  
**Cc:** griffrost@gmail.com  
**Subject:** Submitted testimony for HB575 on Mar 31, 2017 09:30AM

**HB575**

Submitted on: 3/30/2017

Testimony for WAM on Mar 31, 2017 09:30AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Grif Frost	OceanFront 121 Residential Hotel	Support	No

Comments: Aloha! The new management of the OceanFront 121 residential hotel, located at 121 Banyan Drive, is excited about turning this "blighted" area into a thriving community welcoming visitors and residents to embrace a healthy lifestyle. Support HB 575

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 30, 2017 8:46 AM  
**To:** WAM Testimony  
**Cc:** griffrost@gmail.com  
**Subject:** Submitted testimony for HB575 on Mar 31, 2017 09:30AM

**HB575**

Submitted on: 3/30/2017

Testimony for WAM on Mar 31, 2017 09:30AM in Conference Room 211



<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Grif Frost	Hilo Health Cooperative	Support	No


Comments: Aloha! The Hilo Health Cooperative, the first not for profit consumer cooperative fitness center in the U.S., with 200 members, partnered with the East Hawaii Independent Physicians Association, is located at the entrance of Banyan Drive. The Health Co-op is excited about turning this "blighted" area into a thriving community welcoming visitors and residents to embrace a healthy lifestyle. Support HB 575

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 | 808-737-4977

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Honolulu, HI 96817

March 30, 2017

**The Honorable Jill N. Tokuda, Chair**  
Senate Committee on Ways and Means  
State Capitol, Room 211  
Honolulu, Hawaii 96813

**RE: H.B. 575, H.D.1, S.D.1 Relating to Public Lands**

**HEARING: Friday, March 31, 2017, at 9:30 a.m.**

Aloha Chair Tokuda, Vice Chair Dela Crus, and Members of the Committee.

I am Myoung Oh, Director of Government Affairs, submitting written testimony on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,200 members. HAR **supports** H.B. 575, H.D.1, S.D.1 which allows lessees of certain public land 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 State currently leases state land to many entities for commercial, industrial, hotel, and resort purposes. Unfortunately, lessees have virtually no economic incentive to invest in the property over the last 10 to 15 years of the lease term knowing full well that their lease is about to term out.

Although we support the passage of this measure, HAR prefers House Draft 1 which will better serve the public use and public purpose of state lands used for commercial purposes by authorizing the board of land and natural resources to authorize the extension of commercial, hotel, resort, and industrial leases for the lessee's substantial improvement to the leased premises.

The current framework for leasing of public lands in the East Hawaii area has created an environment that is sub-par to market expectations. The passage of the House Draft 1 will help to push policy in the right direction as it will help to rejuvenate properties on state lands that have become dilapidated, obsolete, or deteriorated in this area.

We further note to the Committee that S.B. 1292 S.D.2 H.D.1 is very similar to the House Draft 1 and look forward to further discussions as these measures as they proceed into Conference Committees.

Mahalo for the opportunity to testify on this measure.





**Testimony to the Senate Committee on Ways and Means  
Friday, March 31, 2017 at 9:30 A.M.  
Conference Room 211, State Capitol**

**RE: HOUSE BILL 575 HD1 SD1 RELATING TO PUBLIC LANDS**

Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** the original version of HB 575 HD1 SD1, 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.

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.

The bill has been amended to now allow lessees of certain public land 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.

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 original 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.



# Chamber *of* Commerce HAWAII

*The Voice of Business*

The proposed amendments to Chapter 171 HRS are long overdue. We strongly recommend that the committee adopt the original language in HB 575 HD1. Thank you for the opportunity to express our views on this matter.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 30, 2017 12:07 PM  
**To:** WAM Testimony  
**Cc:** craig@takamineconstruction.com  
**Subject:** Submitted testimony for HB575 on Mar 31, 2017 09:30AM

**HB575**

Submitted on: 3/30/2017

Testimony for WAM on Mar 31, 2017 09:30AM in Conference Room 211

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

Comments: My name is Craig Takmaine and I am the President of Takamine Constuction, Inc. which is a general contracting firm based out of Hilo. I support HB575 HD1,SD1 which will provide the impetus for new economic oppourtunities here in East Hawaii.

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WAIPAHU, HAWAII 96797

**LATE**

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

**RE: HB 575 HD1 SD1 – 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 the original version of H.B. 575, 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. The bill has been amended to now allow lessees of certain public land 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.

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 original version of the 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, and suggest the original language be adopted.

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



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 29, 2017 11:31 AM  
**To:** WAM Testimony  
**Cc:** sue.leeloy@hawaiicounty.gov  
**Subject:** Submitted testimony for HB575 on Mar 31, 2017 09:30AM

**HB575**

Submitted on: 3/29/2017

Testimony for WAM on Mar 31, 2017 09:30AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Council Woman Sue Lee Loy	Individual	Comments Only	No

Comments: Chair Tokuda and members of the Senate Ways and Means Committee, thank you for hearing HB 575 HD1 SD1. I support this measure moving on to Conference Committee. I am hopeful that this measure will be the catalyst that can address the current restrictive lease issues that affect the East Hawaii Business Community. These leases play a significant role in the ability of East Hawaii to achieve economic growth and future job creation.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 30, 2017 2:15 PM  
**To:** WAM Testimony  
**Cc:** jwmccully54@gmail.com  
**Subject:** Submitted testimony for HB575 on Mar 31, 2017 09:30AM

**HB575**

Submitted on: 3/30/2017

Testimony for WAM on Mar 31, 2017 09:30AM in Conference Room 211

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

Comments: Aloha Chair Tokuda and Vice Chair Dela Cruz The intent of HB 575 has not changed throughout its amendment process, the mechanism to achieve its goals has changed significantly. The problem it is addressing, public land leaseholds becoming "wasting assets" , can only be addressed by statutory reform. The two methods proposed in HB 575, originally "Extension" and currently "Relinquishment" reflect different policy approaches and will likely have different outcomes. The goal of Extension is to have a mechanism in place whereby a public land lessee could determine at any time that substantial improvements were required to maintain their competitiveness. They would then have the means to obtain the necessary financing thru the extension of their lease. However, if the lessee were to make no improvements then there would be no extension of the lease and it would revert to the state at the end of the term. Neccessay and timely investment would result in benefits to both the lessee, the lessor, and the state as a whole. Relinquishing a lease is a means to start a lease term over again but only by incurring the risk of losing your place of business. The protection in place, a premium to a competing bidder equal to the value of the relinquishing lessees improvements, could encourage the leaseholder to keep their improvements at their highest value all the time. Should this concept also Include a requirement for "substantial improvements " by the prevailing bidder then it too could lead to a more vigorous economic development and benefits to both the private and public interests. In my experience as a businessman I believe Extension ( and Renewal) should be the policies controlling state lands, however each approach has its merits. Please support HB575, Mahalo, Jim McCully

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 30, 2017 3:15 PM  
**To:** WAM Testimony  
**Cc:** lynnkub67@gmail.com  
**Subject:** Submitted testimony for HB575 on Mar 31, 2017 09:30AM

**HB575**

Submitted on: 3/30/2017

Testimony for WAM on Mar 31, 2017 09:30AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lynn Kubousek	Individual	Support	No

Comments: For those of us living at 121 Banyan Drive and trying to improve the area which has been declared "blighted", please consider passing this bill which may give us an opportunity to continue the work we have been doing to slowly, but steadily, make the "Country Club" (our home) a better place both for residents and tourists who come to stay for a day, week or a few months.

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