

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

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FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

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CONSERVATION AND COASTAL LANDS  
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LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
SUZANNE D. CASE  
Chairperson

Before the Senate Committee on  
WATER AND LAND

Friday, March 15, 2019  
1:15 PM  
State Capitol, Conference Room 229

In consideration of  
HOUSE BILL 1025, HOUSE DRAFT 1  
RELATING TO LEASE EXTENSIONS ON PUBLIC LAND

House Bill 1025, House Draft 1, proposes to authorize the Board of Land and Natural Resources (Board) to extend leases of public lands for commercial, industrial, resort, or government use upon approval of a proposed development agreement to make substantial improvements to the existing improvements. House Draft 1 of the measure makes significant amendments to the original Administration bill by altering a number of conditions the Department of Land and Natural Resources (Department) had included to make lease extensions available to long-term lessees who intended to continue to utilize the lease premises for their businesses. The amended measure would repeal on June 30, 2029. **The Department supports this measure with proposed amendments below, as well as offering the following comments.**

As originally introduced, House Bill 1025 was an Administration proposal that would have authorized the Board, on a "statewide basis", and for a limited period (to be repealed on June 30, 2024), to extend commercial, industrial, or resort leases that have not been sold or assigned within 20 years prior to receipt of an application for a lease extension under the measure, when the lessee commits to substantial improvement to the existing improvements, provided that lease extensions cannot exceed 40 years, and additionally, the lessee cannot transfer or sell the lease during the extension period, except by devise, bequest, or intestate succession. The bill was intended to support long-term tenants wishing to continue their businesses past the 65-year maximum lease term allowed under current law.

House Bill 1025, House Draft 1 proposes to extend the sunset date of the bill to June 30, 2029, and would make extensions available to commercial, industrial, resort or governmental lessees who have not assigned their leases within the last five years. Additionally, the House Draft 1

removes the restrictions on assignments of leases extended under the measure, and expressly permits subleasing.

One of the arguments the Department has heard against restrictions on assignment is that lessees need to be able to mortgage their leasehold interests in the land and that House Bill 1025 as originally introduced would prevent them from doing so. However, that is not the case. Assignments and mortgages are two different concepts and are treated separately under the law. Assignments are governed by Section 171-36(a)(5), Hawaii Revised Statutes (HRS), while mortgages are subject to Sections 171-21 and 22, HRS. House Bill 1025 as originally introduced does not impair a lessee's ability to mortgage the leasehold interest, or the ability of an institutional lender to foreclose on and sell the leasehold interest as provided for under Section 171-22, HRS. The law will continue to provide that the interest of the mortgagee or holder is "freely assignable."

The original version of House Bill 1025 would also not prohibit "true" subleases, which the Department views as one in which the lessee/sublessor retains either a portion of the lease premises for its own use or reserves a portion of the lease term after the sublease ends for its own use. In contrast, a transaction styled as a sublease but which in effect is an assignment of all of the lessee's interest in the lease would not be allowed under the original version of the bill. The Department additionally notes that assignments and subleasing are governed by two separate subsections of Section 171-36, HRS: subsection 171-36(a)(5) for assignments, and subsection 171-36(a)(6) for subleasing. House Bill 1025 as originally introduced is not intended to affect subleasing under subsection 171-36(a)(6), HRS.

As noted above, the Department's intent in introducing House Bill 1025 as originally drafted was to acknowledge the commitment of long-term lessees to locating their business on State lease lands and to ensure that such lessees could continue to operate those businesses for the duration of the extension period authorized under the measure. The Department is concerned that making lease extensions available as widely as House Draft 1 proposes will lead to speculators acquiring State leases, obtaining extensions after five years, putting in the minimum 30% of substantial improvements required, and flipping the leases for a profit.<sup>1</sup> The Department does not believe such speculation is in the best interests of the State, and therefore proposes amendments to House Draft 1 that would limit eligibility for lease extensions to lessees who have not assigned their leases within the last ten years, and would prohibit any assignments for a period of ten years after the lease extension is granted. The specific proposed amendments to the bill are indicated in gray highlight below:

"§171- Commercial, industrial, resort, or government leases; extension of term. (a) Notwithstanding section 171-36, for leases that have not been assigned or transferred within [five] ten years prior to receipt of an application for a lease

extension submitted pursuant to this section, the board may extend the rental period of a lease of public lands for commercial use, industrial use, resort use, or government use upon approval by the board of a development agreement proposed by the lessee or by the lessee and developer to make substantial improvements to the existing improvements."<sup>2</sup>

"(d) Any extension of a lease pursuant to this section shall be based upon the substantial improvements to be made and shall be for a period not longer than forty years. No lease extended pursuant to this section shall be transferable or assignable for a period of ten years after the extension is granted, except by devise, bequest, or intestate succession. The prohibition on assignments and transfer of leases includes a prohibition on conveyances of leases and a prohibition on the sale or change in ownership of a lessee that is a company or entity by more than twenty per cent. During the extended term of the lease, the lease may be subleased, subject to approval by the board."

Thank you for the opportunity to comment on this measure.

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1 A lease with 5 years remaining on the term is worth a lot less to a buyer than a lease with 40 years remaining on the term.

2 A conforming amendment to change "five years" to "ten years" would also be needed to the bill's preamble at page 2, line 5.



**HB1025 HD1**  
**RELATING TO LEASE EXTENSIONS ON PUBLIC LAND**  
Senate Committee on Water and Land

March 15, 2019

1:15 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB1025 HD1, which would authorize relatively unconditioned lease extensions for a wide variety of public land leases, allowing public lands to be placed in the hands of private entities for an indefinite amount of time – far longer than necessary for the redevelopment purposes of this measure – and thereby invite potential violations of the public trust and public land trust, as well as compromise the interests of the State, Native Hawaiians, and the public in our limited public land base.

**1. Act 149’s “pilot project” has not been completed or evaluated; allowing forty-year lease extensions for any and all industrial, commercial, and resort leases in the state may be premature.**

As a preliminary matter, OHA notes that the legislation this measure is purportedly based on, Act 149 (Reg. Sess. 2018), was enacted only last year, as a “pilot project” to determine whether public land lease extensions in the dilapidated “Hilo community economic district” can “facilitate efficient redevelopment and greater economic opportunities,” and whether such an approach “can be replicated in other areas of the State.”

However, rather than wait for the pilot program to meaningfully commence, much less conclude, this measure would summarily expand much broader lease extension authorities for any and all industrial, commercial, government, and resort leases of public lands throughout the entire state. Such an expansion appears premature given Act 149’s acknowledged need to first assess whether any redevelopment benefits from lease extensions “can be replicated in other areas of the State.” Indeed, there are a number of considerations that may need to be assessed from Act 149’s pilot project, including but not limited to:

- Whether redevelopment actually occurs in a timely manner as a result of its lease extension authority;
- Whether the cost-benefits to the State and the public, including opportunity costs, foreclosed revenue increases from real estate market changes, and foregone equity in existing and new improvements that would otherwise revert to the State justify the long-term placement of public lands under private control;
- Whether 40-year extensions of lease terms and fixed rental periods are necessary to obtain redevelopment financing;
- Whether specific conditions, contingencies, safeguards, or other considerations should be taken into account in the development of extension terms and conditions; and

- Whether any replication of its lease extension authority should be limited to certain leases or circumstances.

Accordingly, OHA strongly recommends that the Committee allow for an appropriate assessment of the potential unintended consequences, cost-benefits, and other lessons from Act 149, before expanding much broader lease extension authorities to all other industrial, commercial, resort, and government public land leases throughout the islands.

**2. This measure may authorize leases that violate the State’s fiduciary obligations under the public trust and the public land trust, and that lead to the alienation of public and “ceded” lands.**

Under Article 11, section 1 of the Hawai‘i State Constitution and Chapter 171, Hawai‘i Revised Statutes (HRS), the State, through the Board of Land and Natural Resources (BLNR), holds in trust approximately 1.3 million acres of public lands, including the natural and cultural resources they contain, for the benefit of present and future generations. Much of these lands are also subject to the public land trust created by Article 12 of the Hawai‘i State Constitution and section 5(f) of the Admission Act, which requires that a portion of revenues derived from public land trust lands be dedicated to OHA, for the purpose of bettering the conditions of Native Hawaiians. The trust status of these lands impose upon the BLNR specific fiduciary obligations of due diligence and undivided loyalty, in making its trust corpus productive and maximizing its benefits for its Native Hawaiian and public beneficiaries. **By authorizing the extension of commercial, industrial, resort, and government public land leases – many of which may already have been held by their respective lessees for the better part of a century – for up to 40 years, this bill may invite century-long leases that substantially inhibit the BLNR and future generations from fulfilling these fiduciary obligations, and otherwise ensuring the best and most appropriate uses of public trust and public land trust lands.** For example, this measure could allow a public land lease that was first issued for 55 years, then extended to 65 years, to be extended for an additional 40 years, with a fixed rental period of the same amount of time. This could result in the use of public lands by a private entity for 105 years, **without any rent reopening for over a generation**, so long as the BLNR agrees to a lessee’s agreement proposal “to make substantial improvements to [] existing improvements.” **Notably, the lack of an aggregate lease length cap as well as any prohibition on additional lease extensions could allow lease terms and fixed rent periods to be repeatedly extended, for an indefinite length of time, further drawing into question the ability of future generations to ensure the appropriate disposition of public lands – something that even Act 149 does not allow.** The fact that industrial, commercial, and resort lands may have the highest revenue potential of the State’s public land and public land trust land inventories only further exacerbates the concerns underlying this measure’s lease extension provisions.

In addition to tying the State’s and future generations’ hands in ensuring the appropriate use of and realization of revenues from public trust and public land trust lands, the long-term leases that would be authorized under this measure may lead to a sense of entitlement amongst lessees that can result and has resulted in the alienation of public lands, including “ceded” lands to which Native Hawaiians have never relinquished their claims. **OHA objects to the**

**sale or alienation of “ceded” lands except in limited circumstances, and has significant concerns over any proposal that may facilitate the diminution of the “ceded” lands corpus.**

Accordingly, OHA again urges the Committee to decline to adopt the **unlimited** and relatively unconditioned **40-year lease term and fixed rent period extensions** that would be authorized for public lands, including public land trust and “ceded” lands, leased for commercial, industrial, resort, and government purposes.

**3. Under this measure, lease extensions would be authorized for a much broader range of justifications than even Act 149 contemplates.**

Finally, OHA notes that Act 149 explicitly and specifically requires any extension of lease terms or fixed rent periods to be only “to the extent necessary to qualify the lease for mortgage lending or guaranty purposes,” and “based on the economic life of the substantial improvements as determined by the [BLNR] or an independent appraisal.” In contrast, this measure – which has been characterized as only expanding the geographic scope of Act 149’s provisions – would in fact broadly allow for lease extensions “in order [for the lessee] to make substantial improvements,” “based upon the substantial improvements to be made.” While such language would provide substantially more flexibility than Act 149 in the granting of lease term length and fixed rent period extensions, it would also allow for extensions in situations where the State’s interest in the redevelopment of leased parcels are not commensurate with the benefits such extensions would grant to a private entity. **Under this measure, a lessee may apply for and receive extensions that exceed the time necessary to secure redevelopment financing, and that exceed their improvements’ useful life – at which point the lessee would be allowed to apply for an additional extension.** Accordingly, this measure does not just expand the geographic scope of Act 149’s extension authority and remove Act 149’s limitations on total aggregate lease lengths, but would further authorize extensions to be based on a broader range of justifications that, due to political pressure or other reasons, may undermine the State’s and public’s interests in the development and disposition of its lands for generations at a time.

**4. Critical amendments are necessary to minimally uphold the state’s fiduciary obligations and the interests of Native Hawaiians and the public in the disposition of public lands under this measure.**

In light of the above concerns, should the Committee nevertheless choose to move this measure forward, OHA strongly urges the inclusion of amendments to uphold the State’s fiduciary obligations under the public trust and public land trust, and to provide concrete safeguards to protect the interests of the State, Native Hawaiians, and the general public in its limited land base. Such amendments should minimally include:

- An effective date that coincides with the end date of the “pilot project” established under Act 149;
- A sunset date to limit the provisions of the bill to the length of time currently contemplated;

- A limitation on the maximum aggregate fixed rent period and lease term for a lease to no more than 15-20 years beyond the original fixed rent period and/or lease term, which should be sufficient for financing purposes and which would reduce the potential for foreclosing future substantial revenue generating opportunities;
- Conditions similar to those in Act 149, explicitly limiting any lease extensions to the length of time necessary for mortgage lending or financing of specified improvements, prohibiting lease extensions that exceed a percentage of the useful life of any improvements to be made, and requiring all proceeds from any financing or loan obtained as a result of an extension to be used specifically for proposed improvements;
- Explicit extension provisions providing for improvements to either revert to the State at the end of the lease term, or be removed by the lessee at the lessee's expense, at the election of the State;
- To ensure the general public has a fair shot at expressing interest in an auction and bidding for a lease:
  - A prohibition on extensions of lease terms prior to 3 years and within one year of the end date of a lease; and
  - A prohibition on the extension of a lease term where, after public notice of no less than one year, there is sufficient interest in the parcel by third parties to hold a public auction for the lease.

Therefore, OHA urges the Committee to **HOLD** HB1025 HD1, or minimally include amendments as listed above. Mahalo for the opportunity to testify on this measure.

Democratic Party of Hawaii  
HAWAIIAN AFFAIRS CAUCUS

TESTIMONY OPPOSING HB1025, HD1  
Relating to Lease Extensions on Public Land

Committee on Water and Land  
Hearing: March 15, 2019, 1:15 p.m., Conf Rm 229

Aloha, Senator Kahele , Senator Keith-Agaran, and members of the Committee on Water and Land

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii strongly opposes HB1025 HD1, Relating to Lease Extensions on Public Land, that would authorize the Board of Land and Natural Resources to extend leases of public lands for commercial, industrial, resort, or government use upon approval of a proposed development agreement to make substantial improvements to existing improvements.

This legislation finds its basis as "...many of the leases for commercial, industrial, resort, and government properties on public land statewide may be nearing the end of the lease term. Faced with the uncertainty of continued tenancy, lessees have little incentive to make major investments in infrastructural improvements and to ensure the long-term maintenance of the facilities. As a result, the infrastructure on these properties has been deteriorating." Thus, it proposes by this measure "to authorize the board of land and natural resources to extend commercial, industrial, resort, or governmental leases, other than those to which the University of Hawaii is a party, that have not been sold or assigned within the last five years, for lessees who commit to substantial improvement to the existing improvements." The lease may be extended for no longer than 40 years.

Our interest is in preserving the Public Land Trust and assuring that the Trust benefits from any such extended leases. The State (i.e., the Governor and Legislature) are the Trustees of the PLT. As such, both are charged with managing the trust and have fiduciary obligations. HB1025 HD1 does not seem to have any criteria for determining how the Trust and/or the State will benefit from such lease extensions, for example, how the PLT will benefit from the lease extension; a determination that the land is not needed for any other purpose during the lease extension period being requested; the impact that failing to grant the lease will have on the economy or jobs, etc.

Currently, the measure provides that the Board of Land and Natural Resources need only determine the following in granting an extension of lease:

- (1) Whether the development proposed in the development agreement is of sufficient worth and value to justify the extension of the lease; (to who, the developer or the state?)
- (2) The estimated period of time to complete the improvements and expected date of completion of the improvements; and
- (3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the board, and if deemed appropriate by an appraiser, the appropriate percentage of rent where gross receipts exceed a specified amount. (In setting the new lease rent, will it be fixed or adjusted for inflation over the course of the lease?)

We are also concerned that a full extension of 40 years would likely place the lessee beyond 100 years and it is highly unlikely that the lessee will willingly turn over property they have held and developed over a long period of time.



We also note in this legislative session at least 12 bills that propose to remove/exempt lands from the Public Land Trust or extend leases for an undetermined period or up to 99 years. We are concerned with the erosion of the trust and the impact that it may have on the future needs of this State and the pro rata share of PLT revenues to the Office of Hawaiian Affairs, and subsequently on the impact such actions will have on funding programs and services necessary to address the needs of Native Hawaiians.

Accordingly, for the reasons stated and that given by the Office of Hawaiian Affairs, we oppose this measure. We ask your committee to defer this measure as not being in the best interest of the people of Hawaii, current and future generations.

Respectfully

LEIMOMI KHAN, Chair

**LATE**

**HB-1025-HD-1**

Submitted on: 3/14/2019 4:45:24 PM  
Testimony for WTL on 3/15/2019 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David S. De Luz, Jr.	Testifying for David S. De Luz, Sr. Enterprises, Inc.	Support	No

Comments:

STRONG SUPPORT of HB 1025 HD1

Aloha!

HB 1025 seeks to extend the reforms that the Legislature established in Act 149, 2018 beyond the Hilo Economic District to similar economic leases statewide. Act 149 restricted the amending of HRS171 to only lands zoned commercial, industrial, and resort. This bill similarly restricts its amendments to only those types of lands. This bill was preceded by the December 24, 2018 report made to the Legislature as required by Act 149 in which the department recommended what is essentially contained in this bill.

HB1025 was drafted, submitted, and enjoyed the Strong Support of the Department of Land and Natural Resources. The department testimony that the WLH reviewed included the Departments concerns that Act 149 may constitute special legislation and that this bill would provide a corrective for that. In addition the department believes that any policy that the Legislature establishes for any district should be available to all public land leases of the same type, in this case commercial, industrial, and resort zoned Urban lands.

The original version of the bill modified the statutory provisions now contained in HRS 171-192. The House Committee on Water, Land, and Hawaiian Affairs amended this bill in its HD1 version to reflect the 2018 Legislatures intent when drafting what became Act 149, 2018. The modifications contained in HB1025, HD1 would further the legislatures purpose and intent when debating and passing SB3058, CD1, now Act 149.

Please move this bill to the benefit of small businesses throughout the state and to improve the utilization of economic public lands in the public's interest.

Mahalo,

David S. De Luz, Jr.

VP

DSDE, Inc

811 Kanoelehua Ave

Hilo, HI 96720

808-895-4824

# **Downtown Laundry Express**\_\_\_\_\_

March 15, 2019

Honorable Senators

RE: HB1025 HD1 Testimony in Support



Aloha from Hilo,

My name is Michael Shewmaker. My wife and I own Downtown Laundry Express in Downtown Hilo where we employ nine people as well as several other small ventures here in town.

Hilo desperately needs your help to address our economic situation. HB1025 HD1 will help address much needed leasehold reform in our community. A large section of Hilo's commercial district is owned and controlled by state lease lands. This means that decisions on these issues have an inordinate impact on our city and the surrounding areas.

Thanks for your consideration.

Sincerely,

Michael Shewmaker

**194 Kilauea Avenue, #101, Hilo, Hawaii 9672**

**808-960-3677**

**michaelsheemaker@yahoo.com**

March 12, 2019

COMMITTEE ON WATER and LAND

Senator Kaiali'i Kahele, Chair

Senator Gilbert Keith-Agaran, Vice Chair

## Testimony in Support of HB1025 HD1

Aloha Senators Kahele & Keith-Agaran,

As the founding family of HPM Building Supply we once again feel compelled to support reforms relevant to State land-hold leases and procedures. Having experienced first-hand the uncertainty and hardship that comes with contemplating the end of a lease of public land, upon which a thriving business has been built, we feel we must now speak up for those outside of the Hilo Economic District. We are in support of **HB1025 HD1** which seeks to authorize the BLNR to extend the leases of public land for commercial, industrial, resort and government use upon approval of a proposed development agreement.

This bill impacts the many businesses with leases on public lands, allowing such leases to be extended. If passed into law, it would provide similar opportunities granted to the Hilo Economic District last year with the signing in to law of Senate Bill 3058, for those outside of the district, but faced with the same challenges from antiquated government processes.

It is only right that all public land lessees be afforded the same opportunities that the Hilo Economic District received through passage of Senate Bill 3058 last year. There are a plethora of businesses on public land outside of the Hilo Economic District, all contributing to the financial stability of our State. It is important that we support and nurture that economic stability by looking at whether the way public land leases have always been conducted is still the best way to continue. We humbly ask for your support of **HB1025 HD1**.

Mahalo,



Robert M. Fujimoto, Chairman of the Board Emeritus



Michael K. Fujimoto, Executive Chairman



Jason R. Fujimoto, President & CEO

# McCully Works

40 Kamehameha Ave.

Hilo, Hi. 96720

March 14, 2019

## HB 1025, HD1; Support

Senate Committee: WTL

Chair: Sen. Kai Kahele

Aloha Chair Kahele,

HB 1025 seeks to extend the reforms that the Legislature established in Act 149, 2018 beyond the Hilo Economic District to similar economic leases statewide. This bill was preceded by the December 24, 2018 report made to the Legislature as required by Act 149 in which the department recommended what is essentially contained in this bill. As the Department has referred to both in that report as well as earlier testimony there is concern that the reforms contained in Act 149 should be of statewide effect rather than a particular Economic District. These reforms are intended to modernize existing statute and are long overdue. Hawaii can't afford inefficient economic leases on public lands.

HB1025 was originally drafted, submitted, and enjoyed the Strong Support of the Department of Land and Natural Resources (DLNR). However this original version of the bill modified Act 149's statutory provisions now contained in HRS 171-192. In fact, in recent testimony given by the department to the House Finance committee on 2/26/2019 the department admits to seeking to fundamentally reform the extended leases by way of the proposed new law. Specifically, the department sought to construct a new definition as to what constitutes a "true" sublease. This novel attempt to control sublease rights does not conform to HUD requirements and would not be acceptable to a lending institution. The department provided no statistics or examples in their testimony to support their assertions or concerns with discounting leaseholds, "flipping leases" for profit, or "speculating". While the department has many issues to deal with here they seem to be concerned with problems that are insignificant, if not non-existent.

The House Committee on Water, Land, and Hawaiian Affairs amended this bill in its HD1 version to reflect the 2018 Legislatures intent when drafting what became Act 149, 2018. The modifications contained in HB1025, HD1 would further the legislatures purpose and intent when debating and passing SB3058, CD1, now Act 149.

Please move this bill to the benefit of small businesses throughout the state and to improve the utilization of economic public lands in the public's interest. While lessees have always paid "Fair Market Value" for their lease they have not been able to achieve "highest and best use" due to archaic statutory terms long in need of revision.

James McCully

From: E. Kalani Flores, [ekf808@hawaiiintel.net](mailto:ekf808@hawaiiintel.net)

**LATE**

Submitted on: March 14, 2019

**\*\*OPPOSED to HB 1025 HD1\*\***

Relating to: Relating to Lease Extensions on Public Lands

Submitted to: Senate Committees WTL

Aloha e Chair and Members of the Committee,

**HB 1025 HD1 should be TERMINATED**

**Our legislators have the statutory and high fiduciary duty and obligation to protect the public lands trust and interests, resources, and rights of the public, beneficiaries, and Native Hawaiians.**

The Governor's proposed measure (HB 1025) was an attempt to circumvent existing State laws as outlined in Hawaii Revised Statutes Chapter 171 to extend the leases of public lands for the benefit of special interest groups and private entities through the introduction of this bill.

The primary reason for a 65-year limit on the lease of public lands is so that an entity, organization, or private corporation doesn't obtain sole use and control of these **public lands** as if they actually owned them. This bill would allow the exclusive use of public lands for over 100 years – which is equal to 5 generations. This is the same type of special interest and corrupted political legislation that the Big Five companies orchestrated during the Territory era so that their plantations and other businesses could maintain exclusive long-term control and use of Hawai'i's public lands, waters, and resources.

When anyone enters into any type of lease agreement, they are fully aware of the terms of that lease. When such a lease for public lands expires, all interested parties should be given an open and competitive opportunity for the disposition of such lease which would give the highest potential return in revenues for the use of these public lands. Why should anyone be given an exclusive privilege to continue with their existing lease for another 40 or more years? Then at the end of an extended term, would they be given the same special interest privilege to extend it further? In essence, they've become the 'de facto' land owner of public lands.

Most of the arguments in support of this bill are unsubstantiated and misleading.

One such argument given is that a lessee won't have any economic incentive to invest in a property if the lease expires in 10 or 15 years. If it was a sound and properly-run business, it would have been investing in the property throughout the duration of the lease especially with



the money saved from leasing the property versus having to obtain a mortgage for the acquisition of fee simple business property. In addition, with this absurd argument, then the State would be compelled to automatically renew these leases every 10-15 years before they expire. So, when would such a lease actually end with this argument? It wouldn't! It would be continuously renewed.

It's perplexing that BLNR Chair Case's previous testimony (dated Mar. 15, 2019) in support HB 1025 is in contradiction to the Department's testimony presented on the similar matter during the 2018 legislative session. At that time, the Department took a neutral position in testimony on legislative bills that proposed to allow existing lessees to secure extensions on leases that are scheduled to expire soon, due to the general public policy to promote fairness in competition in access to public property. The Department cited to Section 171-32, HRS, which favors issuance of leases by public auction, in support of its public policy statement. The Department additionally testified that another reason not to permit lease extensions was to preserve the State's legal right to the remaining value of the improvements after the lease term, if any. When leases expire, the lessees' improvements on the land revert to State ownership pursuant to the express terms of the lease, unless the State directs the lessee to remove the improvements. Assuming the improvements have some remaining useful life, the State is then in a position to auction leases of improved properties at potentially greater rents than the State would receive for a ground lease alone, which amounts can in turn be applied to public purposes. Ms. Case's new argument is not compelling that since the legislature approved lease extensions for the Hilo/Waiakea community economic district, that now there should be a 'blanket' application of this legislation on an island-wide basis that would be potentially applied to all commercial, industrial, and resort leases regardless of where they are located. The federal, state, and county governments have historically designated special programs, redevelopment initiatives, and economic zones based upon the needs of those specific areas – not 'blanket' designations to all areas.

This proposed bill is a blatant special interest bill for the benefit of private entities and corporations with a clear disregard of **Hawaii State Constitution Article XII, Section 4** (Public Trust) as well as other constitutional provisions and statutory laws.

**LATE**

**HB-1025-HD-1**

Submitted on: 3/14/2019 6:40:03 PM

Testimony for WTL on 3/15/2019 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lindsay Terkelsen	Individual	Oppose	No

Comments:

As a Native Hawaiian and resident of Hawai'i island, I oppose this bill. I agree with Ka Lahui Hawaii Political Action Committee's testimony, which is as follows:

"The majority of the lands held in the public lands trust are "ceded lands" or Hawaiian Kingdom crown and government lands. Professor Williamson Chang stated in a lecture given on October 1, 2014 entitled "Hawaii's 'Ceded Lands' and the Ongoing Quest for Justice in Hawai'i" that the Joint Resolution was incapable of acquiring these Hawaiian Kingdom public lands. Despite this analysis, the former Crown and government lands of the Kingdom of Hawai'i were illegally transferred to the US and as a condition of Statehood was transferred to the State of Hawai'i to be held as a public trust for 5 purposes including the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920. The Admissions Act further states that any other object besides the 5 purposes shall constitute a breach of trust for which suit may be brought by the United States."

I strongly oppose HB1025 for these reasons.