

**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lt. Governor



**PHYLLIS SHIMABUKURO-GEISER**  
Acting Chairperson  
Board of Agriculture

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF THE DEPARTMENT OF AGRICULTURE  
BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

FEBRUARY 1, 2019  
8:30 AM  
CONFERENCE ROOM 312

HOUSE BILL NO. 1117  
RELATING TO STATE LANDS

Chairperson Creagan and Members of the Committee:

Thank you for the opportunity to testify on House Bill 1117 relating to state lands. The purpose of this Bill is to require the Board of Land and Natural Resources, Board of Agriculture, and the Agribusiness Development Corporation to ensure the timely collection of lease payments, track lessees that are in arrears of lease payments, and offer payment plans for lessees in arrears. It also prohibits land leased by the Agribusiness Development Corporation from being assigned or sublet without corporation approval. The Department offers the following comments.

The proposed changes to HRS Section 100-6 add an additional criteria for cancelling leases for lessees who are in arrears for lease payments, mandates lease cancellation when terms for default are met, and requires rulemaking. The Department is concerned that as modified, the Board of Agriculture will no longer have discretion to consider extenuating circumstances when a lessee becomes delinquent and is in default under the lease.

Thank you for the opportunity to testify on this measure.



**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lt. Governor



**JAMES J. NAKATANI**  
Executive Director

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

TESTIMONY OF JAMES J. NAKATANI  
EXECUTIVE DIRECTOR  
AGRIBUSINESS DEVELOPMENT CORPORATION

BEFORE THE COMMITTEE ON AGRICULTURE  
Friday, February 1, 2019  
8:30 a.m.

HOUSE BILL NO. 1117  
RELATING TO STATE LANDS

Chairperson Creagan and Members of the Committee:

My name is James Nakatani, Executive Director of the Agribusiness Development Corporation ("ADC"). The ADC provides the following comments on House Bill No. 1117, which requires the Board of Land and Natural Resources, Board of Agriculture, and the ADC to ensure the timely collection of lease payments, track lessees that are in arrears of lease payments, and offer payment plans for lessees in arrears. Prohibits land leased by the ADC from being assigned or sublet without corporation approval.

While we support the intent of this measure, we feel that the bill will necessitate what the ADC already practices. One of the most challenging aspects of land management is ensuring payments come in on time and enforcing compliance. The ADC has and will continue to help farmers by offering payment plans for lessees during tough times. Furthermore, prohibiting the assignment or subleasing the whole or any portion of the Licensee/Permittee's premises without the prior written approval of the ADC Board of Director is a standard condition in our license and permit. Our current

practice is to submit all lease administrative actions of transferring, assigning, adjusting rents and subletting for ADC Board of Directors approval and ADC will continue to follow this established process.

Thank you for the opportunity to testify.



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
SUZANNE D. CASE  
Chairperson

Before the House Committee on  
AGRICULTURE  
Friday, February 1, 2019  
8:30am  
State Capitol, Conference Room 312

In consideration of  
HOUSE BILL 1117  
RELATING TO STATE LANDS

House Bill 1117 proposes to require the Board of Land and Natural Resources (BLNR), Board of Agriculture (BOA), and the Agribusiness Development Corporation (ADC) to ensure the timely collection of lease payments, track lessees that are in arrears of lease payments, and offer payment plans for lessees in arrears. The measure additionally proposes to prohibit land leased by ADC from being assigned or sublet without ADC approval. **The Department of Land and Natural Resources (Department) opposes this measure to the extent it proposes to amend Chapter 171, Hawaii Revised Statutes (HRS).**

The Department takes no position on the bill's proposed amendments to Chapter 166 and 163D, HRS, and defers to BOA and ADC on the amendments to their respective statutes. However, the Department opposes the mandatory rule-making regarding collection of lease rents that is provided for in the proposed amendment to Section 171-13, HRS.

The Department's leases specify the due date for rent payments and additionally provide that interest and late charges will be imposed on unpaid rents. Further, the Department's leases provide that non-payment of rent is a basis for the Department to issue a notice of default to the lessee, which if not cured within 30 days, leads to a breach of the lease and its potential termination by the BLNR. The collection of lease rents is largely an accounting function handled by the Department's Fiscal Office. Because the payment of rent, interest and late charges is governed by the lease and applicable law and handled through generally accepted accounting principles with the aid a computerized database, the Department does not believe rules "to ensure the timely collection of lease payments and to track lessees that are in arrears of payments" are necessary or helpful.

House Bill 1777 also proposes amendments to Sections 171-20 and -39, HRS, to add language referencing payment plans approved by the BLNR.<sup>1</sup> The Department's concern with this language is that the BLNR is not in the lending business and does not routinely approve payment plans for arrears in rent, although it has approved payment plans in exceptional cases. Usually, a lessee can obtain a more favorable interest rate on a loan from a private lending institution than it can on a payment plan with the BLNR. The Department is concerned that the proposed amendment could be interpreted to mean that the BLNR is under an obligation to make a payment plan available to any lessee who requests one, which is not the case. Accordingly, the Department proposes the following amendments to SECTIONS 3-4 of the bill:

~~[SECTION 3. Section 171-13, Hawaii Revised Statutes, is amended to read as follows:~~

~~—————"§171-13 Disposition of public lands. (a) Except as otherwise provided by law and subject to other provisions of this chapter, the board may:~~

~~— (1) Dispose of public land in fee simple, by lease, lease with option to purchase, license, or permit; and~~

~~— (2) Grant easement by direct negotiation or otherwise for particular purposes in perpetuity on such terms as may be set by the board, subject to reverter to the State upon termination or abandonment of the specific purpose for which it was granted, provided the sale price of such easement shall be determined pursuant to section 171-17(b).~~

~~No person shall be eligible to purchase or lease public lands, or to be granted a license, permit, or easement covering public lands, who has had during the five years preceding the date of disposition a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof.~~

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<sup>1</sup> A mandatory payment plan provision seems contrary to the public taxpayer sentiment that government agencies should diligently collect taxes, rents and other debts owed to the State. Mandatory payment plans would be inapposite to that sentiment by rewarding delinquent or late paying tenants with a government loan.

~~\_\_\_\_\_ (b) The board shall adopt rules pursuant to chapter 91 to ensure the timely collection of lease payments and to track lessees that are in arrears of lease payments." ]~~

SECTION [4]3. Section 171-20, Hawaii Revised Statutes, is amended to read as follows:

**"§171-20 Notice of breach or default.** Except as otherwise specifically provided in this chapter, in the event of a breach or default of any term, covenant, restriction, or condition of any lease or patent heretofore or hereafter issued under this chapter, the board of land and natural resources shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to the lease or patent making demand upon the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the lease or patent heretofore or hereafter issued under this chapter, the written notice shall include a demand upon the party to cure the breach within less than sixty days, but not less than five business days, after receipt of the notice. Upon failure of the party to cure or remedy the breach or default within the time period provided herein or within [~~such~~] any additional period as the board may allow for

good cause[~~r~~] and upon failure of the lessee to establish a payment plan that may be approved by the board in its sole discretion, the board [~~may~~], subject to section 171-21, may exercise [~~such~~] its rights as it may have at law or as set forth in the lease or patent."

Thank you for the opportunity to comment on this measure.

**LATE**

**HB-1117**

Submitted on: 1/31/2019 8:49:19 PM

Testimony for AGR on 2/1/2019 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brian Miyamoto	Hawaii Farm Bureau	Support	Yes

Comments:





**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**LATE**

**HEARING BEFORE THE HOUSE COMMITTEE ON AGRICULTURE  
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 312  
FRIDAY, FEBRUARY 1, 2019 AT 8:30 A.M.**

To The Honorable Richard P. Creagan, Chair;  
The Honorable Lynn DeCoite, Vice Chair; and  
Members of the Committee Agriculture;

**TESTIMONY IN SUPPORT OF HB 1117 RELATING TO AGRICULTURE**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, with approximately 650 members. We appreciate the opportunity to support HB 1117.

We support businesses paying their bills on time and support the State, as the landlord of these ag lands, having mechanisms in place to collect lease payments on time. However, we recognize that businesses fall on hardships and this land is leased to an industry where there can be added hardships including natural disasters, weather issues, invasive species, etc. We appreciate that this bill includes the language that the state will help to create a payment plan to lessees to help them get back on track, as we are helping to sustain and grow the agriculture industry and not prematurely put farmers out of business. We also recognize that if lessees cannot continue to meet their obligations that there are appropriate ways to end the lease and allow others the opportunity.

Mahalo for your consideration of our testimony

Sincerely,

*Pamela Tumpap*

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

**HB-1117**

Submitted on: 1/31/2019 6:21:44 AM

Testimony for AGR on 2/1/2019 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dale Sandlin	Hawaii Cattlemens Council	Support	No

Comments:

**HB-1117**

Submitted on: 1/30/2019 4:54:34 PM

Testimony for AGR on 2/1/2019 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kate Paine	Individual	Support	No

Comments:

**HB-1117**

Submitted on: 1/31/2019 4:09:01 PM

Testimony for AGR on 2/1/2019 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Faith Tuipulotu	Individual	Support	No

Comments:

**LATE**

**HB-1117**

Submitted on: 1/31/2019 9:04:13 PM

Testimony for AGR on 2/1/2019 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Individual	Support	Yes

Comments: