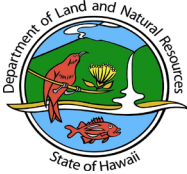


DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
CONSUMER PROTECTION & COMMERCE**

**Thursday, February 11, 2021
2:00 PM**

State Capitol, Via Videoconference, Conference Room 329

**In consideration of
HOUSE BILL 499, HOUSE DRAFT 1
RELATING TO LEASE EXTENSIONS ON PUBLIC LAND**

House Bill 499, 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 incorporates an amendment that the Department of Land and Natural Resources (Department) proposed to the bill as introduced to include mixed-use leases among the categories of leases that would be eligible for extension under the bill, changes the effective date to January 1, 2050, to encourage further discussion, technical, and makes non-substantive amendments for the purposes of clarity, consistency, and style. **The Department appreciates the incorporation of its proposed amendment regarding mixed use leases and continues to support the measure.**

Houses Bill 499, House Draft 1 proposes to authorize the Board, on a statewide basis, to extend commercial, industrial, resort, mixed-use, or government leases that have not been sold or assigned within 10 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 first 10 years of the extension period, except by devise, bequest, or intestate succession. The bill is intended to support long-term tenants wishing to continue their businesses past the 65-year maximum lease term allowed under current law.

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. House Bill 499, House Draft 1 expressly exempts collateral assignment of a lease or other security granted to a leasehold mortgagee in connection with leasehold financing by the lessee from restrictions on assignment. House Bill 499, House Draft 1 would also not prohibit "true" subleases, which the Department views as those in which the lessee/sublessor retains either a portion of the lease premises for its

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

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 bill within the first 10 years of the extension period. The Department additionally notes that assignments and subleasing are governed by two separate subsections of Section 171-36, Hawaii Revised Statutes (HRS): Section 171-36(a)(5), HRS, for assignments, and Section 171-36(a)(6), HRS, for subleasing. House Bill 499 was not intended to affect subleasing under Section 171-36(a)(6), HRS.

As noted above, House Bill 499, House Draft 1 acknowledges 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 on a broader basis could lead to speculators acquiring state leases, obtaining extensions, putting in the minimum 30% of substantial improvements required, and flipping the leases for a profit. The Department does not believe such speculation is in the best interests of the State.

Thank you for the opportunity to comment on this measure.

HB-499-HD-1

Submitted on: 2/10/2021 1:25:49 PM

Testimony for CPC on 2/11/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Moore	DLNR	Support	No

Comments:

I am available for questions. Please allow me Zoom access. Thank you.

HB-499-HD-1

Submitted on: 2/10/2021 1:26:51 PM

Testimony for CPC on 2/11/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ian Hirokawa	DLNR	Support	No

Comments:

I am available for questions. Please allow me Zoom access. Thank you.

Testimony of
Pacific Resource Partnership

House Committee on Consumer Protection & Commerce
The Honorable Aaron Ling Johanson, Chair
The Honorable Lisa Kitagawa, Vice Chair

HB499, HD1 Relating To Lease Extensions On Public Land

Thursday, February 11, 2021
2:00 P.M.
Conference Room 329

Aloha Chair Johanson, Vice Chair Kitagawa, and Members of the Committee:

Pacific Resource Partnership (PRP) writes in strong support of HB499 HD1, which authorizes the Board of Land and Natural Resources (BLNR) to extend certain leases of public lands for commercial, industrial, resort, mixed-use or government use upon approval of a proposed development agreement to make substantial improvements to the existing improvements.

HB499 HD1 supports long-term tenants who are committed to making substantial improvements to existing facilities. This bill incentivizes small businesses and developers to reinvest in properties on public lands to ensure that properties evolve to meet the demands of businesses, residents, and the community at large. Moreover, these types of reinvestments will stimulate the economy by creating construction jobs for Hawaii's workforce.

Given the above, PRP respectfully requests your favorable decision on this measure. Thank you for this opportunity to submit written testimony.





STANFORD CARR DEVELOPMENT, LLC

February 11, 2021

The Honorable Aaron Johanson, Chair
and Committee Members
Committee on Consumer Protection and Commerce
Hawaii State House of Representatives, Rm. 329
Honolulu, HI 96813

RE: HB 499 HD1 Relating to Lease Extensions on Public Lands

Dear Chair Johanson and Committee Members:

My name is Stanford Carr and I strongly support HB 499 HD1 Relating to Lease Extensions on Public Lands.

HB 499 HD1 amends Chapter 171, HRS to allow for the extension of lease term for commercial, industrial, resort, mixed-use, or government leases. We further suggest that the section be amended as follows:

1) “(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**...”

As a developer, the inclusion of mixed-use leases for a period of at least twenty years, will allow for the financing of projects to be built as well as provide financeable mortgages for improvements on projects that all provide income to the State. Additionally, this measure will affect large projects that provide income to the State. Providing the lessees with the means to improve the properties, will allow that the properties to continually provide the State with income as well as ensure that the buildings remain maintained for future uses.

We strongly support HB 499 HD1 with the amendment suggested.

Thank you for this opportunity to testify.

A handwritten signature in black ink, appearing to read 'Stanford S. Carr'.

Stanford S. Carr

Prince Kuhio Plaza

February 11, 2021

Hearing Date: February 11, 2021

Time: 2:00PM

Place: Via Videoconference

Rep. Arron Ling Johanson, Chair

Rep. Lisa Kitagawa, Vice Chair

State Capitol

Committee on Water & Land

415 South Beretania Street

Honolulu, Hawaii 96813

Re: Testimony in Support of House Bill No. 499 HD1 Relating to Lease Extensions on Public Land

Aloha Chair Johanson, Vice Chair Kitagawa, and Committee Members:

Thank you for the opportunity to provide written testimony on House Bill No. 499 HD1. The intent of the Bill is 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, for lessees who commit to making substantial improvements on existing facilities. I am the General Manager of Prince Kuhio Plaza (“PKP” or “Shopping Center”), the largest indoor shopping center on the island of Hawaii.

By way of background, PKP was previously owned by GGP, Inc. (“GGP”). In August 2018, GGP was acquired by Brookfield Properties, an affiliate of Brookfield Asset Management. Brookfield Properties’ retail group has an extensive portfolio of regional shopping center properties encompassing over 170 locations across 43 U.S. states, including GGP’s former portfolio. We assure premier quality and optimal outcomes for our tenants, business partners and the communities in which we do business.

Brookfield Properties has carried forward GGP’s legacy of being an integral part of the economic fabric of Hawaii for more than 30 years (since 1987), through good and bad times – owning, operating and reinvesting in our Hawaii real estate assets as part of a long-term commitment that provides economic stability, growth, and jobs through all economic cycles. We own and operate three major shopping centers in Hawaii – PKP in Hilo, Whalers Village in Lahaina, and Ala Moana Center in Honolulu.

Home to more than 60 stores, restaurants and entertainment options, PKP is the primary shopping, dining and gathering place for Kama’aina and visitors on the island of Hawaii. Prior to the Covid-19 pandemic, PKP hosted over 50 community events a year and provides premium event space for local Kupuna groups passing on their knowledge of music and dance, artisan craft fairs, and the celebration of other local traditions, including but not limited to: monthly performances by Hilo and Pahoia Kupuna groups, school performances, performances by the Armed Forces band, performances by local artists such as Ben Kaili,

PRINCE KUHIO PLAZA

111 E. Puainako Street Hilo, Hawaii 96720

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Bruddah Walter, and Komakakino, Chinese New Year celebration events, the Arthritis Foundation's Walk for the Cure event, and Mother's Day craft fairs. PKP is a favorite host location for the Merrie Monarch Craft Fair, one of the biggest events in Hilo, because the Mall is indoors, air conditioned, centrally located, and has the capacity to cater to thousands of customers each day. The Merrie Monarch Craft Fair involves approximately 45+ unique, local vendors and crafters from all the islands, including Manaola, Hawaii's Finest, Missing Polynesia and Nahe Wahine. We are committed to hosting enriching experiences for people of all ages and creating a warm and welcoming environment that celebrates the community and its rich history. We look forward to continuing to host these revered community events once the pandemic has subsided.

In recent years, Brookfield Properties also invested substantial resources in redeveloping PKP to maintain its status as a premier shopping center and community gathering place. We invested nearly \$18 million of capital into property improvements including the 2016 renovation and new construction to replace the former Hilo Hattie's and Sports Authority spaces to make way for new retailers such as Verizon Wireless, Spectrum, Daiichi Ramen and Genki Sushi, TJ Maxx and Petco. We are also in conversations with prospective tenants that will further job creation and investment in Hilo. We are constantly reinvesting in our properties to enhance the customer experience and to ensure that our properties evolve to meet the needs of our tenants and the community.

Over the past year, Brookfield Properties has implemented (and continues to implement) health and sanitation enhancements and protocols at each of our properties, including PKP, to provide a healthy and safe environment for our employees and tenants to work and the larger community to visit. And, despite the pandemic, we invested at PKP over \$2 million in tenant allowances for construction while also providing significant rent relief to help our tenants stay in business throughout the pandemic.

The future of PKP and the commitment we've made to our tenants, business partners and the community is of the utmost importance to Brookfield Properties. While we intend to pursue further renovations of PKP, these renovation plans could be jeopardized if the term of our existing ground lease is not extended. We cannot justify significant capital investments to PKP without the assurance that our leasehold interest will continue for the long-term. In addition, our existing financing matures in July of 2023 and it will be extremely difficult for us to refinance our interest in PKP without an extension of our ground lease.

The Shopping Center's future depends on our ability to secure an extension of our ground lease so that we can not only refinance PKP, but also develop more definitive plans to invest in capital improvements that will ensure the long-term viability and success of PKP. As we look forward to the next 30 years, our hope is to remain a vital member of the Hilo community.

For the foregoing reasons, we strongly support House Bill No. 499 HD1. Thank you for your consideration.

Sincerely,

PRINCE KUHIO PLAZA

111 E. Puainako Street Hilo, Hawaii 96720

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Daniel Kea
General Manager



February 9, 2021

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Aaron Ling Johanson, Chair

Rep. Lisa Kitagawa, Vice Chair

Rep. Henry J.C. Aquino Rep. Dee Morikawa
Rep. Sharon E. Har Rep. Richard H.K. Onishi
Rep. Mark J. Hashem Rep. David A. Tarnas
Rep. Sam Satoru Kong Rep. Lauren Matsumoto
Rep. John M. Mizuno

Testimony opposing HB 499 HD1

Aloha, Rep. Chair Johanson and Rep. Vice Chair Kitagawa, and members of the Committee on Consumer Protection and Commerce.

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii strongly opposes HB 499 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.

On March 15, 2019, our past president of the Hawaiian Affairs Caucus of the Democratic Party of Hawaii, Leimomi Khan, stated the following before the Senate Committee of Water and Land:

[“Aloha, Senator Kai 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”

In 2021, the Hawaiian Affairs Caucus will continue to carry on as our kupuna before us until the right thing is done. We will continue to support the Office of Hawaiian Affairs in opposing this measure and ask again to please defer HB499 HD1. We are as Onipa’a as our beloved Ali’i, nothing has changed. Hawaiian lives matter and the Hawaiian Affairs Caucus of the Democratic Party of Hawaii will maintain our resolve for “the best interest of the people of Hawaii, current and future generations.” The problems remain the same, time still has not corrected what continues to deprive the Hawaiian People of what is right and just – a pono solution for Hawaii’s first people.

Mahalo nui loa for the opportunity to testify.

Me ka mana’o nui,

JUANITA MAHIENAENA BROWN KAWAMOTO, Chair

Hawaiian Affairs Caucus of the Democratic Party of Hawaii

Kūpuna for the Mo'opuna
committed to the well-being of Hawai'i for the next generations to come
kupuna4moopuna@gmail.com



STOP LEGAL THIEVERY!

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Aaron Ling Johanson, Chair

Rep. Lisa Kitagawa, Vice Chair

Date: Thursday, February 11, 2021

Time: 2:00 p.m.

Place: Room 329

Testimony of Kūpuna for the Mo'opuna

HB 499 HD 1 - LEASE EXTENSIONS ON PUBLIC LAND. **STRONG OPPOSITION**

HB 499 HD1 inhibits the State from fulfilling its fiduciary obligations in the disposition of public lands. Before voting on this measure, we urge you to watch the video "PUBLIC LAND TRUST: JUSTICE DELAYED IS JUSTICE DENIED" to know what you are voting on.

<https://www.kamakakoi.com/plt>



Now that you KNOW, vote NO to HB 499 HD 1.

Ua mau ke ea o ka 'āina i ka pono!



HB499 HD1
RELATING TO LEASE EXTENSIONS ON PUBLIC LAND
Ke Kōmike Hale o ka Ho‘omalū Mea Kemu a me ka ‘Oihana Kālepa

Pepeluali 11, 2021

2:00 p.m.

Lumi 329

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **OPPOSE** HB499 HD1, which would authorize century-long leases that bind the hands of the Board of Land and Natural Resources (BLNR) from fulfilling its fiduciary obligations of due diligence and undivided loyalty, in maximizing the beneficial disposition of lands leased for commercial, industrial, resort, mixed-use, and governmental purposes **throughout the entire state**. OHA notes that it also opposes nearly identical bills SB1167 and SB257 this year, and likewise opposed nearly identical bills last year and in 2019 for these same reasons, as described further below.

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

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

However, rather than wait for the pilot program to conclude, this measure would summarily expand much broader lease extension authorities for **any and all commercial, industrial, resort, mixed-use, and government 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 its lease extension provisions “can be replicated in other areas of the State.” Indeed, there are several considerations that may need to be assessed from Act 149’s pilot project, including but not limited to:

- Whether redevelopment occurs in a timely manner as a result of its lease extension authorities;
- 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 considered 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 commercial, industrial, resort, mixed-use, 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 public land trust, and 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 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 imposes upon the BLNR specific fiduciary obligations of due diligence and undivided loyalty in ensuring its trust corpus is productive and that its benefits are maximized for Native Hawaiian and public beneficiaries. **By authorizing the extension of commercial, industrial, resort, mixed-use, 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 from fulfilling its fiduciary obligations, and otherwise ensuring the best and most appropriate uses of lands subject to the public trust and public land trust.**

For example, this measure could allow public land leases first issued for 55 years, and subsequently extended another 10 years, to be again extended for an additional 40 years, with fixed rental periods for the same amount of time. **This could result in the use of public lands by private entities for 105 years, without any rent reopening for over a generation,** so long as the BLNR agrees to lessees’ proposals to make “substantial improvements to the existing improvements or constructing new substantial 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 commercial, industrial, resort, and mixed-use lands may have the highest revenue potential of the State’s 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 excessively

long-term leases that would be authorized under this measure may lead to a sense of entitlement among 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 therefore has significant concerns over any proposal that may facilitate the diminution of the “ceded” lands corpus.

Accordingly, OHA 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, mixed-use 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 the Act 149 pilot program 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 appraiser.” In contrast, this measure 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 granting 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.** 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 BLNR’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 our islands’ 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 (June 30, 2026), and a sunset date to limit the provisions of the bill to the length of time currently contemplated:

- By amending page 6, line 14, to read as follows:
 - "SECTION 4. This Act, upon its approval, shall take effect on July 1, 2026; provided that this Act shall be repealed on June 30, 2031."
- A limitation on the maximum aggregate fixed rent period and lease term for a lease to be **no more than 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:
 - By amending page 4, lines 10-12, to read as follows:

"(d) Any extension of a lease pursuant to this section shall be based upon the economic life of the substantial improvements to be made as determined by the board or an independent appraiser and shall not extend the fixed rental period of the original lease by more than twenty years. No lease"
- Conditions similar to those in Act 149, including but not limited to, 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:
 - By amending page 3, line 5, to read as follows:

" leasehold financing by a lessee. Extension or modification of any provisions of the lease shall be made to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency; to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the state, or any loan in which the state and any private lender participates; or to amortize the cost of substantial improvements. Any extension of the fixed rental period or term of the lease shall be based on the economic life of the substantial improvements as determined by the board or an independent appraiser; provided that the approval

of any extension shall be subject to the following:

- (1) The demised premises have been used substantially for the purpose for which they were originally leased;
- (2) The length of any extension granted for the fixed rental period of the lease shall not extend the fixed rental period of the original lease by more than twenty years;
- (3) The length of any extension granted for the term of the lease shall not extend the original lease by more than twenty years;
- (4) If a reopening occurs, the rental for any ensuing period shall be the fair market rental as determined under section 171-17(d) at the time of reopening;
- (5) Any federal or private lending institution shall be qualified to do business in the state;
- (6) Proceeds of any mortgage or loan shall be used solely for the operations or substantial improvements on the demised premises;
- (7) Where substantial improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled; and
- (8) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands."

- 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;
 - By amending page 5, line 3, to read as follows:

"approval by the board. Any extended lease shall include conditions explicitly stating that improvements on the land shall revert to the State or be removed by the lessee at the end of the lease term, at the election of the State."
- To ensure that the general public has a meaningful opportunity to review and comment on the long-term encumbrance of public lands, ensure that lease

extension applications and proposals are publicly noticed for no less than one month prior to the submission of plans and specifications to the BLNR;

- o By amending page 2, line 12, to read as follows:

“section 171-36, and subject to subsection (g),
for leases that have not been assigned or”

- o By adding a new subsection (g) on page 6, after line 12, to read as follows:

“(g) The department shall provide no less than thirty days notice of a lease extension application prior to the presentation of the extension applicant’s plans and specifications to the board as described in subsection (b), by posting on the lieutenant governor’s website, in a newspaper of statewide circulation, and in a county newspaper of the county in which the leased lands are located. The notice shall also be mailed or electronically delivered to all persons who have made a timely written request of the department for notice of lease extension applications. The public notice shall include information on the lease extension application, including the identity of the lessee and the location and description of the leased property, and shall include information regarding how a copy of the current lease and any plans and specifications to be presented to the board can be obtained or inspected. The public notice shall also describe where and how public comment may be submitted on the lease extension application, including expressions of interest in a public auction for the lease at the end of the current lease term or if the lease were to be terminated prior to the end of the lease term. All public comment received one week prior to the board presentation shall be collected and submitted to the board concurrently with its consideration of the applicant’s plans and specifications.”

Therefore, OHA urges the Committee to **HOLD** HB499 HD1, or minimally include amendments as listed above. Mahalo nui for the opportunity to testify on this measure.

KA LĀHUI HAWAI‘I

KŌMIKE KALAI‘ĀINA

BEFORE THE HOUSE CONSUMER PROTECTION AND COMMERCE

February 11, 2021

HOUSE BILL 499
Relating to Lease Extensions on Public Lands

Aloha Chair Johanson, Vice Chair Kitagawa, and Members of the Committee,

Ka Lāhui Hawai‘i Kōmike Kalai‘āina submits the following written testimony in **STRONG OPPOSITION** to House Bill 499 which authorizes the the Board of Land and Natural Resources to extend certain leases of public lands for commercial, industrial, resort, or government use.

The majority of the lands held by the State of Hawai‘i 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.

Ka Lahui Hawai‘i Kōmike Kalai‘āina has concerns over the use of these lands outside of the 5 purposes set out in the Hawai‘i State constitution and actions that could be interpreted as land grabbing especially when the claims of the Kanaka Maoli people to 1.8 millions acres of these lands and our sovereignty over them have yet to be settled. The Apology Bill aka US Public Law 103-150, passed by Congress and signed by President Clinton in 1993, recognized that “the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States” and that “the Republic of Hawai‘i also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawai‘i, without the consent of or compensation to the Native Hawaiian people of Hawai‘i or their sovereign government”.

Allowing non-elected members of an a government board to extend leases beyond the maximum 65 years would set up lessees as pseudo owners of public landowners and set a bad precedence. Furthermore, this measure does not provide for any process where public input can be provided on past, current, and future land stewardship. Were these lessees to go through a public process others would have an opportunity to bid on the property, public input would be allowed, and in some cases environmental assessments taken into account on how well they have cared for the public land they were entrusted with.

Me ka oiai'o,

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Public Affairs Officer, Ka Lāhui Hawai‘i Kōmike Kalai‘āina

HB-499-HD-1

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Testimony for CPC on 2/11/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Miyahira	Individual	Support	No

Comments:

The proposed bill will benefit those long term lessess who reinvest in their properties and make it possible for further economic benefits to be derived by employees, customers and the surrounding community.