

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

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DEPARTMENT OF AGRICULTURE
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**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON FINANCE

**FEBRUARY 28, 2022
12:30 P.M.
VIA VIDEOCONFERENCE**

**HOUSE BILL NO. 2332, HD 1
RELATING TO LAND LEASES**

Chairperson Luke and Members of the Committee:

Thank you for the opportunity to testify on House Bill 2332, HD 1. This bill allows the granting of easements on public lands to be exempted from formal subdivision process and approval requirements, including requirements for surveying and formalizing easements. The Department of Agriculture (“Department”) supports the intent of the measure offers comments.

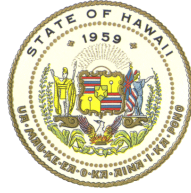
The Department supports any effort to optimize and expedite the transfer of agricultural lands from the Department of Land and Natural Resources (“DLNR”) to the Department pursuant to Act 90, Session Laws of Hawaii (2003), codified as Chapter 166E, Hawaii Revised Statutes.

Some of the hurdles facilitating transfers identified by the Act 90 Working Group are the challenges encountered by public agencies in obtaining various types of easements due to subdivision approval requirements for easements and significant investment of time and resources for surveying and mapping. While easing of requirements for establishment of public easements on public lands is an excellent means of facilitating implementation of interagency programs, priorities, and goals, the Department believes there is a legitimate concern to retain accuracy in the location of easement boundaries for those encumbrances creating private rights of usage. Consequently, the Department respectfully recommends that the effect of this measure be limited to easements on public or government-controlled lands benefiting the general public, governmental agencies, or serving a public purpose, to ensure that the more relaxed standards do not interfere with any individually vested private use rights.



Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
FINANCE**

**Monday, February 28, 2022
12:30 PM**

State Capitol, Conference Room 308 and Via Videoconference

**In consideration of
HOUSE BILL 2332, HOUSE DRAFT 1
RELATING TO EASEMENTS**

House Bill 2332, House Draft 1, proposes to allow for the exemption of the granting of easements on public lands from formal subdivision process and approval requirements, including requirements for surveying and formalizing easements. House Draft 1 of the measure proposes to allow, rather than require, the granting of easements on public lands to be exempted from formal subdivision process and approval requirements, allow the government agency that grants the easements to notify in writing the county with jurisdiction to process and approve the easements of the government agency's intent to invoke the exemption, change the effective date to July 1, 2050, to encourage further discussion, and make technical, non-substantive amendments for the purposes of clarity, consistency and style. **The Department of Land and Natural Resources (Department) supports this measure and provides the following comments.**

As noted in the bill's preamble, this measure is intended in part to facilitate the transfer of non-agricultural park lands from the Department to the Department of Agriculture (DOA) pursuant to Act 90 Session Laws of Hawaii 2003, where both agencies have agreed to the transfer but the lack of a documented easement across the land impedes the transfer. The Department appreciates the bill potentially providing another tool to facilitate the Act 90 land transfer process. In some cases, a formal survey to delineate the easement corridor may still be in the best interests of the public, such as to establish public access to forest reserves or hunting areas. With respect to the subdivision requirement for easements, the Department's understanding is that, at the present time, only the City and County of Honolulu requires subdivision approval for easements.

Thank you for the opportunity to comment on this measure.

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

HB-2332-HD-1

Submitted on: 2/27/2022 11:50:42 AM

Testimony for FIN on 2/28/2022 12:30:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Russell Tsuji | DLNR | Support | Yes |

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

HB-2332-HD-1

Submitted on: 2/27/2022 11:53:46 AM

Testimony for FIN on 2/28/2022 12:30:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Ian Hirokawa | DLNR | Support | Yes |

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

HB-2332-HD-1

Submitted on: 2/28/2022 9:12:15 AM

Testimony for FIN on 2/28/2022 12:30:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---|---------------------------|-----------------------------------|
| Brian Kau | Dept of Ag - Agricultural Resources Management Division | Comments | Yes |

Comments:

I am available to answers questions on behalf of the Department of Agriculture.

HB-2332-HD-1

Submitted on: 2/27/2022 11:13:22 AM

Testimony for FIN on 2/28/2022 12:30:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---|---------------------------|-----------------------------------|
| Ronald Weidenbach | Hawaii Aquaculture & Aquaponics Association | Support | No |

Comments:

The Hawaii Aquaculture and Aquaponics Association (HAAA) representing aquaculture and aquaponics farmers statewide strongly supports this timely measure, benefitting Act 90 parties and well beyond. Since the indicated exemption is limited to public lands, there should be sufficient agency oversight to prevent any potential abuse. A significant portion of these public lands are in generally inaccessible and often mountainous terrain which would be very costly and potentially hazardous to survey, and a poor use of our limited public funds that could be better spent on facilitating timely implementation of badly needed conservation and agricultural practices. Modern GIS technology is readily available to State departments and sufficiently accurate for such sub-division boundary purposes without continuing the time-consuming requirement of costly surveying. Given these multiple compelling reasons, the HAAA strongly supports HB 2332.

HB-2332-HD-1

Submitted on: 2/27/2022 2:28:36 PM

Testimony for FIN on 2/28/2022 12:30:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| J Ashman | Individual | Support | No |

Comments:

I am testifying in STRONG SUPPORT of this measure.

While easements for conservation and other important uses can be a necessary part of an State agricultural lease, they currently require undergoing the formal subdivision process. This is an extremely expensive and time-consuming process which may take many years and hundreds of thousands of dollars to complete, if it is completed at all.

Without the easements, farmers and ranchers may be forced to operate their businesses in a perpetual state of limbo as their State agricultural leases may be delayed indefinitely.

It is appropriate that there be a limited exemption to the formal subdivision process requirements with regard to beneficial easements on public lands.

Thank you.

Representative Sylvia Luke, Chair

Representative Kyle Y. Yamashita, Vice Chair

House Committee on Finance

From: Meyer Cummins, LPLS

Date: February 27, 2022

Subject: **Opposed to HB 2332 HD 1 Relating to Easements**

Honorable Representative Sylvia Luke, Chair, Honorable Representative Kyle Y. Yamashita, Vice Chair, and members of the House Committee on Finance

Thank you for allowing me to testify in opposition of House Bill 2332.

My name is Meyer Cummins, and I am a land surveyor licensed to practice in the State of Hawaii. I am also the Past President of the Hawaii Land Surveyors Association which represents a majority of the licensed land surveyors in the State.

I am opposed to House Bill 2332 HD 1 (HB 2332) in its current form because the exemption from formal subdivision process and approval requirements, including requirements for surveying and formalizing easements, will create substantial liability issues for, and impede the proper land management and development efforts of, both the grantor and grantee of easements over public lands.

The explicit purpose behind HB 2332 is to create a “*simpler and more efficient*” process for granting easements on public land. This bill proposes to accomplish that goal by creating an exemption for public agencies in the State from preparing a map and metes and bounds description as required via formal subdivision approval at the county level. This exemption will undoubtedly create a simpler and more efficient process; removing meaningful regulation will have such an effect. Meaningful regulation, however, exists for a reason: “*to promote the efficient expenditure of public funds; all of which tend to promote the health, safety, morals, convenience, economy and general welfare of the people.*” ROH § 22-3.1.

The issue at bar is county regulatory requirements for a map and metes and bounds description (description), prepared by a professional land surveyor, for easements granted over public lands. These are not frivolous requirements. Maps and descriptions of easements are integral to the proper management of public lands. They are required for identifying and avoiding conflicts of interests and reducing liability concerns between stakeholders with use rights in real property. Use rights, contrary to the legislature’s findings, are inextricably linked to development rights. Without a map and/or description, how can a grantor define the limits of the use right it is granting to the grantee? How will a grantee, such as a public utility, know where it has a legal right to place its utility line and where it does not? An improperly placed utility line will surely impede development. The Bill cites the Act 90 working group’s finding that “*fifteen parcels [of public land] would be considered eligible for transfer if an easement were provided to allow access to an adjacent parcel.*” If such an easement were granted without a map or

description, how would the grantee know where they had a legal right of access and where they would be trespassing? Additionally, access corridors cannot be built upon, and their areas are subtracted out of the buildable area of a parcel. How can land development proceed without a clear understanding of (1) where such an access corridor is situated and (2) the area it comprises? Such ambiguities, which will assuredly follow from an exemption of the kind proposed by HB 2332, will only create confusion, impede development, reduce investment, and raise questions of liability, frustrating whatever “*greater public purpose*” it is intended to advance.

Furthermore, the county approval process serves to provide notice to the public, lessees, grantees, and agencies managing public lands. Routinely, county tax offices depict those easements approved by the respective planning departments on their tax maps, an indispensable tool to the management of public lands. Without a formal approval process requiring the definition of an easement corridor, the size and shape of such easements cannot be readily shown, if at all. Down the road, this can lead to extensive and expensive research costs, in addition to the cost of after-the-fact surveys, for the very agencies seeking the exemption.

Moreover, public lands are sold to the public at large where it is deemed appropriate. If such a parcel of land is encumbered by an undefined easement, how will the grantee know the extent of the developable area? Will the agencies’ burden of defining an easement granted to a third party, such as a utility company, unfairly fall on the grantee of that parcel of land? Or, will the agency pay, using public funds, for a survey, at perhaps a greater cost, at that later date? Will the need for such a survey hinder that transaction as well? Such an exemption only kicks the can down the road while creating problems, both foreseeable and unforeseeable, when the proper course to take is to acquire a survey, map, and description, as required by the formal county process, at the outset when granting any easements over public lands.

Proponents of this bill may argue that exemption from a formal county approval process does not mean that a survey will not be conducted, and a map and description will not be produced and recorded when needed. Proponents would have you believe that despite the proposed exemption, government agencies will ensure that easements granted over public lands will be surveyed when the need arises. If such a contention were true, however, then the legislature’s findings in the pretext of this bill would be entirely spurious. It cannot be argued that an exemption is needed for easements over public lands from formal approval because, when required, a map and description are too “*significant [an] investment of time and resources*” if it is also argued that such a map and description will be produced anyway, when required, despite the exemption. What is the point of the bill, otherwise, if not to grant public agencies the discretion to escape regulatory requirements for a proper survey of easements whenever it is deemed inconvenient?

That said, I am not unsympathetic to the practicality of the proposed action. I am positive that the Department of Land and Natural Resources, an otherwise responsible steward of public lands, has exhausted all other options to resolving what is apparently the problem at hand: the transfer of non-agricultural park land and assets related to their management from the Department of Land and Natural Resources to the Department of Agriculture. Thus, if the true goal of this proposed exemption is merely to comply with the legislative directive embodied in

Act 90, then I posit that such an exemption should SUNSET with the achievement of that narrow goal. An amendment to the language of HB 2332 to include a sunset of the exemption from formal subdivision process and approval requirements, including requirements for surveying and formalizing easements would limit some unintended consequences that will otherwise result from the current form of this bill.

Finally, if the new, proposed, time-limited exemption is granted, any government agency granting easements over public lands should provide MANDATORY notification in writing to the county when exercising its right to such an exemption for notice purposes. The county planning departments serve as repositories for such public information and each easement exempted from formal approval should be accounted for. Without mandatory notification requirements, it is unlikely that agencies granting easements over public lands will provide said notification to the respective counties. Given their apparent concerns regarding time and cost, such agencies have no incentives to provide notice if given the discretion to do otherwise.

Mahlo nui for this opportunity to testify. Should you have any questions, I can be reached at (808)294-3051 and I will make myself available for questions.

Meyer Cummins, LPLS