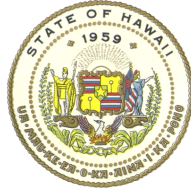
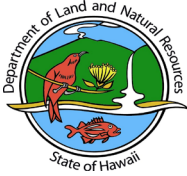


DAVID Y. IGE  
GOVERNOR OF HAWAII



**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  
FINANCE**

**Friday, February 25, 2022  
12:30 PM**

**State Capitol, Conference Room 308, Via Videoconference**

**In consideration of  
HOUSE BILL 2417, HOUSE DRAFT 1  
RELATING TO PUBLIC LANDS**

House Bill 2417, House Draft 1 proposes to require the Department of Land and Natural Resources (Department) to review the final report of the House of Representatives' investigative committee established under House Resolution No. 164, Regular Session of 2021, for the purpose of conducting a policy analysis and developing proposed legislation. The measure also appropriates funds to the Department to conduct the policy analysis and implement the report's recommendations. **The Department supports this measure.**

The Department has reviewed the final report and generally agrees with its recommendations.<sup>1</sup> Furthermore, the Department is working to implement the report's recommendations. This measure proposes to require the Department to conduct a policy analysis considering the State's land lease policy including expert analysis from the University of Hawaii, including the Ka Huli Ao center for excellence in Native Hawaiian law, and a national organization of state legislatures and a comparison of best practices in comparable states, and include analysis of:

1. The conditions under which lease extensions are in the best interest of the State, including monetary and non-monetary costs and benefits associated with extending a lease and with a lease reverting back to the State for lease re-opening;
2. An analysis of the costs and revenue estimates for the State to offer space leases rather than ground leases; and
3. An analysis of potential statutory or procedural improvements that would allow the department of land and natural resources to derive just compensation, such as fines or fees,

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<sup>1</sup> As noted in the Department's response to the draft report, the Department supports implementing the committee's recommendations under different parameters than articulated in the report due to legal and policy concerns.

**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

from lessees when lessees fail to maintain the parcel or fail to complete the improvements that were promised as a condition of the extension, including any proposed legislation.

The measure also requires the Department to develop potential legislation to achieve regularity and consistency with the lease extension statutory process and to specifically:

1. Allow all types of leases to be extended, but require that all lease extensions, regardless of whether those leases were obtained through direct negotiation or the public auction process, use the most current lease form and leasing practices and policies, including provisions to allow the State to be paid its fair share of sublease income;
2. Allow the State to charge rent premiums on extended leases to compensate the State for forgoing the reversionary interest and incorporate the value of the improvements on the property; and
3. Require a lessee to pay for the appraisal required for the reopening of rent in the extended lease term and be precluded from protesting the rent so determined.

This measure also recommends legislation to 1) explore the potential for using a request for interest process as a prior condition for all lease dispositions, and 2) allow the Department to negotiate direct leases for five to ten years with a basic appraisal process for those properties where there is no interest in the public auction as determined by responses to a request for interest solicitation or by holding a public auction.

For the policy analysis, the Department notes that the Legislative Reference Bureau (LRB) previously produced a report entitled “Commercial Leasing of Public Lands: State Policies Regarding Leases Near End of Term” in 2015, in consultation with the National Conference of State Legislatures. The report can be accessed at the following link:

[https://lrb.hawaii.gov/wp-content/uploads/2015\\_CommercialLeasingOfPublicLands.pdf](https://lrb.hawaii.gov/wp-content/uploads/2015_CommercialLeasingOfPublicLands.pdf)

The report examined laws from other states and found that no state had laws that specifically address the management of long-term commercial leases of public lands that 1) will terminate within 10 years; and 2) have lessees or tenants who are unwilling or unable to secure financing to invest capital into improvements that they will be unable to recoup due to the limited remaining term of the lease. The report also offered no conclusion as to whether the policies of other states should be incorporated into public land commercial leases in Hawaii. The Department notes that notwithstanding the LRB report, the Legislature, through its passage of the 3 lease extensions acts, believed that extending leases beyond 65 years was in the interest of public policy.

With respect to the measure’s requirements regarding the lease extension process, the Department supports and appreciates the investigative committee’s acknowledgment of the need for legislative action to address these issues. The Department notes that it has considered and in certain instances attempted to implement these requirements, but after consultation with the Department of the

Attorney General, determined they were outside the scope of the Department's statutory authority.<sup>2</sup> The Department will work to develop proposed legislation to address these issues.

As to potential legislation to provide the Department greater authority to negotiate and award direct leases, the Department believes that a longer term than the 5 to 10 years than specified in this measure is necessary for lessees to obtain financing for their proposed developments. The Department believes that amending the current direct leasing statute, Section 171-59, Hawaii Revised Statutes (HRS), to allow for direct leases for commercial, industrial, hotel and resort purposes is the most effective solutions. Section 171-59, HRS, authorizes direct leases for certain purposes for a term of 35 years. The Department would be agreeable to issuing a request for interest prior to any direct lease for commercial, industrial, hotel and resort leases to confirm that there is no competition for the subject property.

The Department recommends that the bill be amended to also include proposed legislation that would require lessees of income generating properties to pay for third party inspections every five years to assess the condition of improvements on the leased premises, recommend any repairs to maintain the improvements in good condition, and require the lessee to complete any recommended repairs in a timely manner. The Department recommends adding the following new subsection (2)(D) to Section 1 of the bill:

(D) As a condition of any new lease or extension of an existing lease for income generating properties, include a requirement that the lessee shall:

- 1) Pay for a third-party inspection conducted every five years which shall include an assessment of the condition of improvements on the leased premises, and recommendations regarding any repairs to maintain the improvements in good condition, and
- 2) Require the lessee to complete any recommended repairs in a timely manner.

Finally, the Department appreciates the inclusion of funding to support the Department in fulfilling the directives of this measure.

Thank you for the opportunity to comment on this measure.

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<sup>2</sup> Department staff recommended that as part of lease extensions approved pursuant to Act 207, Session Laws of Hawaii 2011, the Board of Land and Natural Resources include a condition prohibiting lessees challenging the rent determination for the 10-year extension period. After consultation with the Department of the Attorney General, staff returned to the Board to amend the approvals to remove that condition.

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR

GLORIA CHANG  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON FINANCE  
ON  
HOUSE BILL NO. 2417, H.D. 1

**February 25, 2022**  
**12:30 p.m.**  
**Room 308 and Videoconference**

RELATING TO PUBLIC LANDS

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 2417, H.D. 1, requires the Department of Land and Natural Resources (DLNR) to review the final report of the House of Representatives' investigative committee established under House Resolution No. 164, Regular Session of 2021, to conduct a policy analysis considering the State's land lease policy and to develop proposed legislation regarding lease extensions and negotiations; and appropriates an unspecified amount of general funds for FY 23 for DLNR to conduct the policy analysis and implement the final report recommendations.

B&F notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and

- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.

**HB-2417-HD-1**

Submitted on: 2/24/2022 12:20:50 PM

Testimony for FIN on 2/25/2022 12:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kevin Moore	DLNR	Support	Yes

Comments:

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

**HB-2417-HD-1**

Submitted on: 2/24/2022 12:22:28 PM

Testimony for FIN on 2/25/2022 12:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Russell Tsuji	DLNR	Support	Yes

Comments:

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

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



HB 2417 – RELATING TO PUBLIC LANDS.  
Committee on Finance 2/25/2022 @12:30pm

**OPPOSE**

Hawaii News Now  
February 9, 2022

“Speaker Saiki condemns corruption, says ‘people of Hawaii deserve better from their elected officials’”

**We OPPOSE HB 2417 because we agree with Speaker Saiki that the people of Hawai'i deserve better from their elected officials.**

While the people of Hawai'i have just been trying to stay alive in the midst of the COVID pandemic, our elected officials have been busily and hurriedly crafting critical land use measures that benefit private business/special interests over public interest.

Do not support and hurriedly pass more legislation that continues to keep the public in the dark during this pandemic time when the public has limited to no access to fully engage in the process...no /limited access to legislators, government information, and the overall legislative process. HB 2417 and similar land use bills that will lead to legislation and land policies benefitting private business/special interests over public interest must stop.

[Saiki] continued, “All of us in the Hawaii Legislature must take action to rebuild the public’s confidence and trust. And we need to ensure that the legislative process reflects the public interest, and not special interests...I pledge to do everything in my power as Speaker of the House to rebuild integrity and trust in our legislative process.”

**HB 2417 does not rebuild integrity and trust in our legislative process. DO NOT PASS HB 2417.**

Kūpuna for the Mo'opuna  
Pana'ewa, Hawai'i