

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  
WATER & LAND**

**Tuesday, February 15, 2022  
8:30 AM**

**State Capitol, Conference Room 430, Via Videoconference**

**In consideration of  
HOUSE BILL 2417  
RELATING TO PUBLIC LANDS**

House Bill 2417 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 developing proposed legislation. The measure also appropriates funds for the Department to 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 specifically addresses potential legislation to achieve uniformity and consistency with the lease extension 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, and to determine at the end of the extended term whether improvements should be removed by the lessee at the lessee's expense or retained by the State;
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, except any improvements mandated by the State; 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.

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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

This measure also recommends legislation to 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.

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 has already submitted administration measures this legislative session, House Bill 2165 and Senate Bill 3133, that propose to amend Section 171-59, Hawaii Revised Statutes (HRS), to allow for direct leases for commercial, industrial, hotel and resort purposes. Section 171-59, HRS, authorizes direct leases for certain purposes for a term of 35 years. 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.

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  
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HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

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 WATER & LAND  
ON  
HOUSE BILL NO. 2417

**February 15, 2022**  
**8:30 a.m.**  
**Room 430 and Videoconference**

RELATING TO PUBLIC LANDS

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

House Bill No. 2417 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 develop proposed legislation regarding lease extensions and negotiations; and appropriates an unspecified amount of general funds for FY 23 for DLNR to 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**

Submitted on: 2/13/2022 12:16:38 PM

Testimony for WAL on 2/15/2022 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
James McCully	Individual	Comments	No

Comments:

Aloha Chair Tarnas,

I write to provide comments on HB2417. While I consider the Investigative Committee to have had an appropriate task, that is to examine the work provided by the State Auditor (# 19-12), my initial reading of the HR 164 Report suggests that there is more research that needs to be done prior to lawmaking. Certainly more work than is suggested in Section 2 of this bill.

A rough estimate suggests more than 20 bills have been submitted to the Legislature just in the past 10 years addressing this issue. The five laws enacted that are specific to this issue were all initiated by needs to modernize statutory language or to address gaps in the statutes. However, too much time has been spent with the parties talking past each other. I would suggest we should be resolving these longstanding issues of the use of urban public lands in a more comprehensive fashion. These leasehold issues predate statehood and will continue to confound and compromise the effective use of "economic" urban public lands unless they are better understood by having a more well rounded discussion.

This includes the market participants on the "Use" side of the urban public lands equation; lessees, real estate professionals, specialist attorneys, bankers and others also contributing to the report.

I encourage this committee to consider modifying this bill to appropriate moneys for the legislature and the department to make this type of report on the statewide issue of urban lands under lease and how the department and market participants, working together, can provide a basis for legislative reform of HRS171 to meet the current and future needs of the state.

Mahalo,

Jim McCully

Hilo (KIAA)