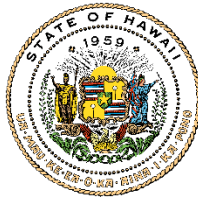


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
FINANCE

Monday, February 26, 2024
3:30 P.M.

State Capitol, Conference Room 308 & Videoconference

In consideration of
HOUSE BILL 2579, HOUSE DRAFT 1
RELATING TO THE HILO COMMUNITY ECONOMIC DISTRICT

House Bill 2579, House Draft 1 proposes to amend Section 171-36, Hawai'i Revised Statutes (HRS), to prohibit the Board of Land and Natural Resources (Board) from updating the terms of leases when they are extended under Act 149, Sessions Laws of Hawai'i (SLH) 2018 (Act 149), unless the most current lease forms and leasing practices and policies of the Board are included in rules of the Board adopted in accordance with Chapter 91, HRS. **The Department of Land and Natural Resources (Department) opposes this measure.**

Act 149 is limited in application to the Hilo Community Economic District (HCED). The Department's leases in the HCED were issued either by: (i) public auction; or (ii) direct negotiation under disaster relief legislation enacted after the 1960 tsunami that impacted Hilo and other areas of the state. For many years, the Board was under the understanding that the Hawai'i Supreme Court's decision in *Kahua Ranch*¹ precluded the Department from updating public auction leases to the current standard terms and conditions used by the Department of the Attorney General (AG) in the extension period. In contrast, the Board could update direct negotiation leases to the current standard terms and conditions used by the AG.

¹ *State v. Kahua Ranch, Ltd.*, 47 Haw. 28, 384 P.2d 581 (1963), aff'd on reh'g, 47 Haw. 466, 390 P.2d 737, reh'g denied, 47 Haw. 485, 391 P.2d 872 (1964).

Accordingly, the Department initially processed lease extension applications differently under Act 149, depending on whether the leases were issued by public auction or direct negotiation; public auction leases would be extended on their original terms and conditions while direct negotiation leases would be updated in the extension period to the current standard terms and conditions used by the AG. The disparate treatment of these two types of leases troubled the Department and members of the Board. The Department therefore sought legal advice from the AG on the effect of the *Kahua Ranch* decision on Act 149 lease extensions. Pursuant to an advice letter from the AG dated July 26, 2022, the Department determined that public auction leases could be updated to the AG's current lease terms and conditions, to the extent necessary to implement the requirements of Act 149. Below is a summary of three substantive provisions the Department is now allowed to update in extensions of public auction leases:

- Lease Assignments. AG's current lease form includes an assignment of lease premium analysis that allows the State to share in the consideration paid for an assignment of a lease under some circumstances. This term is consistent with Section 171-36, HRS, which was amended to allow for the assessment of a lease assignment premiums by Act 55, SLH 1982. Leases issued prior to 1982 contain no such provision.
- Sublease Rents. AG's current lease form includes language allowing the State to adjust the lease rent based on the sublease rent charged to the sublessee. This is consistent with Section 171-36, HRS, which was amended to allow for rent adjustments in the subleasing context by Act 239, SLH 1965. Leases issued prior to 1965 contain no such provision.
- Ownership of Improvements. AG's current lease form includes a provision on ownership of improvements at lease expiration giving the State the option of assuming ownership or requiring the lessee to remove them at lessee's expense. State leases have incorporated this provision since about the mid-1960s. The older leases simply provide that at the expiration of the lease, title to the improvements vests in the State, leaving open the question whether the State is responsible for removing improvements that have outlived their useful lives. The lease extension period should include the current standard terms clarifying the State's options relating to ownership of improvements.

House Bill 2579, House Draft 1 would hamstring the Department's leasing practices by requiring the Board to use outdated lease forms for Act 149 extensions, unless the lease form and leasing practices and policies of the Board are included in rules governing the extensions of public lands pursuant to applicable law and adopted by the Board in accordance with Chapter 91, HRS.² The Board does have policies on lease assignment premiums and adjustment of rent for subleases that were adopted at its noticed, public meetings where the Department's lessees and the public had an opportunity to testify. The Department and the AG need flexibility in drafting and revising lease

² The division works regularly with the AG in updating its various forms of leases (commercial and industrial, agriculture, resort, nonprofit, renewable energy, etc.), permits, easements land office deeds, and other land documents, sometimes as often as multiple times, and multiple land documents during the same week. Sometimes the changes/updates are minimal and other times more significant, but the updates always improve the form. To require the Department to go through the arduous process of administrative rule making for each of these updates for each land document form would halt the Department's effort to update and improve outdated land document forms.

forms to accommodate industry changes, developments in landlord-tenant law as determined by courts or new statutory enactments. Requiring rules for the contents of these legal documents is not a workable approach.

The Department also notes the use of language in the bill to the effect that the Department “unilaterally amends . . . terms and conditions of the extended lease to conform to the most current lease form and leasing practices and policies” of the Board. To clarify, a lease extension is effectuated by a document requiring the signature of both the State and representatives of lessee. If the lessee does not agree with the terms and conditions of the extension document, it does not have to sign it.

The best interests of the State are not served by extending leases on outdated forms that are not compliant with the current requirements of Chapter 171, HRS. Further, there is no compelling reason that lessees should continue to benefit from lease provisions that are outdated. The Legislature already provided a significant benefit to State lessees by allowing them to apply for extensions of their leases beyond the maximum term of 65 years that existed prior to 2018. Additionally, even under the outdated lease forms discussed above, the State is entitled to ownership of lessee-built improvements remaining on the premises at lease expiration. If the leases in HCED were allowed to expire, the State would be able to lease them with improvements (assuming the improvements retain useful life) thereby potentially increasing the fair market rental payable to the State. Act 149 provides that the rent for the lease extension period is to be based on land only – another benefit to the lessee. Under these circumstances, the Department should be permitted to update its lease forms in the extension period in accordance with the advice provided by the AG.

For the foregoing reasons, the Department requests this bill be held in committee and instead support an Administration proposal under House Bill 2469/Senate Bill 3158 that would amend Chapter 171 to expressly require that lease extensions approved by the Board update the terms and conditions of leases using the most current lease form at the time the extension is approved and to repeal existing language in sections 171-36(c) and 171-192(c), HRS, providing that lease extensions shall be subject to the rules of the Board. Such action would be consistent with recommendations of the House Investigative Committee (Committee) established during the 2021 Session in response to Audit Report No. 19-12 issued by the State Auditor.

The Committee made several recommendations to provide clear legislative intent and authority to assist the Department in carrying out its statutory functions. The Administration proposal under House Bill 2469 responds to the Committee’s recommendations to allow the Board to update the terms and conditions of its leases in the lease extension context using the most current lease form. This will ensure that, in the event the extension of a lease results in a conflict or inconsistency between an updated lease term or condition authorized under chapter 171, HRS, and a term or condition in the lease being extended, the updated lease term or condition authorized under chapter 171, HRS, shall control.

Mahalo for the opportunity to provide testimony in opposition to this bill.

HB-2579-HD-1

Submitted on: 2/26/2024 1:55:36 AM

Testimony for FIN on 2/26/2024 3:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Russell Tsuji	Department of Land and Natural Resources	Oppose	Remotely Via Zoom

Comments:

Written testimony from DLNR previously submitted on another Capitol account. Request for a Zoom link for additional DLNR staff testifying remotely for HB2579 HD1.



Japanese Chamber of Commerce & Industry of Hawaii

February 25, 2024

Re: HB 2579 HD1 Relating to the Hilo Community Economic District

Committee on Finance
Hawaii State Capital
Conference Room 308
415 S. Beretania Street, Honolulu, HI 96813


Chair Yamashita, Vice Chair Kitagawa, and members of the committee,

My name is Garth Yamanaka, and I am the current president of the Japanese Chamber of Commerce and Industry of Hawaii (JCCIH). The Japanese Chamber of Commerce & Industry of Hawaii has been incorporated since 1951 and represents over 300 members of the business community. On behalf of JCCIH, I would like to testify in **strong support of HB2579 HD1** which shall not unilaterally amend the terms and conditions of any lease in public lands being extended pursuant to Act 149, Session Laws of Hawaii 2018.

The JCCIH recognizes the urgent need for improvements and renovations of public lands in the Hilo Community Economic District. We believe this bill will help to provide more stability to lessees as they go through the process of extending their lease through Act 149, Session Laws of Hawaii 2018. Ensuring continuity in lease processing enables proper planning for lessees, contributing to the economic development of the Hilo community.

JCCIH has been a supporter of public land lease reform. The current framework for leasing of public lands in the Hilo Community Economic District has created an environment that is sup-par to market expectations. The JCCIH encourages lawmakers to pass **HB2579 HD1** for the betterment of the community and the advancement of economic opportunities.

Mahalo,

DocuSigned by:

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Garth Yamanaka
President, 2023-2024

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