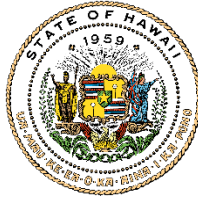
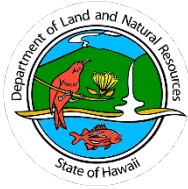


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

DEAN D. UYENO
ACTING 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

Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
WATER & LAND

Thursday, February 1, 2024
9:00 a.m.

State Capitol, Conference Room 430 & Videoconference

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

House Bill 2579 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 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 forms to

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.

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.

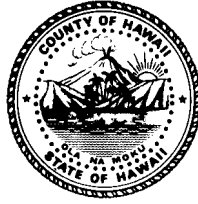
The best interests of the State are not served by extending leases on outdated forms that are not compliant with the current requirements of Chapter 171, HRS. Further, there is no compelling reason that lessees should continue to benefit from lease provisions that are outdated. The Legislature already 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 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 House Bill 2579.

Susan L.K. Lee Loy
Council Member
District 3



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Email: sue.leeloy@hawaiicounty.gov

HAWAI'I COUNTY COUNCIL

25 Aupuni Street, Hilo, Hawai'i 96720

January 30, 2024

The Honorable Representative Linda Ichiyama, Chair
The Honorable Representative Mahina Poepoe, Vice Chair
Members of the House Committee on Water and Land

Hawai'i State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: Support for HB 2579, relating to the Hilo Community Economic District

Aloha Chair Ichiyama and Vice Chair Poepoe, and Members of the Committee on Water and Land,

Mahalo for the opportunity to express support for HB 2579, which provides clarity to lease extensions within the Hilo Community Economic District.

This bill addresses a pressing need for clarity and consistency in public land management by establishing a bright line of understanding and a predictable framework for lessees and stakeholders, delineating the Board of Land and Natural Resources' authority over lease extensions. Furthermore, it safeguards against ambiguity in lease negotiations, fostering confidence and stability in economic development within the Hilo Community Economic District.

As we work towards creating an environment conducive to economic revitalization, HB 2579 is pivotal in charting a clear pathway forward. It preserves the integrity of lease agreements and ensures adherence to established procedures, enhancing accountability and cultivating equitable opportunities for all stakeholders.

Again, please support this bill to foster clarity and responsible management of public lands within the Hilo Community Economic District.

Sincerely,

Susan "Sue" L.K. Lee Loy
Council Member, County of Hawai'i

HB-2579

Submitted on: 1/30/2024 11:35:04 PM

Testimony for WAL on 2/1/2024 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Douglass S. Adams	Department of Research & Development, County of Hawaii	Support	Written Testimony Only

Comments:

Chair Ichiyama, Vice Chair Poepoe, and Members of the Committee on Water & Land:

Thank you for the opportunity to testify in support of HB2579, which clarifies that the Board of Land and Natural Resources shall not unilaterally amend the terms and conditions of any lease of public lands being extended pursuant to Act 149, Session Laws of Hawaii 2018, except as otherwise provided therein; and if the Board of Land and Natural Resources wishes to amend the terms and conditions of any lease of public lands being extended to reflect the Board's most current lease form and leasing practices and policies, such lease form and leasing practices and policies must be included in the rules of the Board. The Department supports this bill's clarification and streamlining of processes associated with the extension of a lease of public lands within the Hilo Community Economic District.

We encourage the Committee to move HB2579 forward to the House with a POSITIVE recommendation for passage.

very respectfully,

Douglass S Adams

Director, Department of Research and Development

County of Hawai'i



Japanese Chamber of Commerce & Industry of Hawaii

January 30, 2024

Re: HB 2579 Relating to the Hilo Community Economic District

Committee on Water & Land
Hawaii State Capital
Conference Room 430
415 S. Beretania Street, Honolulu, HI 96813


Chair Ichiyama, Vice Chair Poepoe, 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** 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** for the betterment of the community and the advancement of economic opportunities.

Mahalo,

DocuSigned by:

135F7F94CD454C7...
Garth Yamanaka
President, 2023-2024

714 Kanoelehua Avenue . Hilo, Hawai'i 96720
Telephone: 808-934-0177 . Fax: 808-934-0178
email: jccih@jccih.org . www.jccih.org



**Hawaiian
Electric**

TESTIMONY BEFORE THE HOUSE COMMITTEE ON WATER AND LAND

**HB 2579
Relating to the Hilo Community Economic District**

Thursday, February 1, 2024
9:00 AM, Agenda Item #13
State Capitol, Conference Room 430

Dave Nagata
Land Agent
Hawaiian Electric

Aloha Chair Ichiyama, Vice Chair Poepoe, and Members of the Committee,

My name is Dave Nagata and I am testifying on behalf of Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company (“Collectively, “Hawaiian Electric”) in strong support of HB 2579, Relating to the Hilo Community Economic District

The lessees of the Hilo Community Economic District (“HCED”) seeking extensions to their public land leases from the Board of Land and Natural Resources will benefit from a less cumbersome, time-consuming and ambiguous lease extension process. In turn, the BLNR and the State of Hawaii will benefit from a more timely execution by the lessees of substantial improvements to existing improvements and/or new substantial improvements within HCED as required under the lease extensions.

Passage of this legislation will serve the public interest. Accordingly, Hawaiian Electric strongly supports HB 2579. Thank you for this opportunity to testify.

McCully Works
69 Railroad A-19 Hilo, Hi. 96720

January 30, 2024
House Committee WAL
Chair Linda Ichiyama Vice Chair Mahina Poepoe

SUPPORT

HB2579 - Relating to the Hilo Community Economic District

Aloha Chair Ichiyama,

Urban lands under economic leases in East Hawaii have been falling into disrepair or not being redeveloped to meet changing times for more than 40 years. These leases were typically highly developed with significant improvements, be they hotels, commercial buildings, warehouses, or industrial areas. They are characterized as core resources in the business community and they are uniquely situated proximate to the airport, the wharfs, the downtown as well as the residential districts of greater Hilo. The majority of lands in this area are public lands, such that the Hilo Community Economic District, Act 149, (HCED) was created to reflect the importance to the community in curing these blighted areas after years of decline.

The Legislature intended Act 149 to be a pilot project “urban renewal bill”. Instead it has been mired in a very slow process managed by the Land Division which has insisted upon an interpretation of HRS171-192 that allows for unilateral lease amendments and has refused to process applications which won’t accede to their demands. There are more than 70 General Leases in the HCED and as of 2024, six years after its enactment, fewer than 10% of businesses that have been able to invest in the redevelopment of their properties by way of a lease extension. Act 149 is scheduled to sunset in 2028, four short years away, and more than 60 lessee’s remain.

This bill is one of many over the years that are a response to the department's disinclination to work with the public, in particular the lessee’s who are also citizens of the state and deserve to be considered and worked with in utilizing our public lands to their highest and best use. The lessee’s would embrace a constructive dialog with DLNR, and the current Chair did agree to meet with a group of lessees’ last year, but as of yet there has been no followup in developing a working group. The Hilo business community continues to seek a constructive process.

Please Support HB2579 as it seeks to improve the urban public lands in East Hawaii as so well described in Act 149. (Section 1, SB3058, 2018)

Mahalo,

Jim McCully