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DEPARTMENT OF LAND AND NATURAL RESOURCES
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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 Senate Committee on
WATER AND LAND

Friday, March 14, 2025
1:00 PM

State Capitol, Conference Room 229 & Videoconference

In consideration of
HOUSE BILL 1141, HOUSE DRAFT 1
RELATING TO UPDATING PUBLIC LAND LEASES ISSUED PURSUANT TO
CHAPTER 171, HAWAII REVISED STATUTES

House Bill 1141, House Draft 1 proposes to require that lease extensions approved by the Board of Land and Natural Resources (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. **The Department of Land and Natural Resources (Department) supports this Administration bill.**

An audit conducted by the State Auditor at the direction of the Legislature made critical findings regarding the Special Land and Development Fund within the Department. The Auditor's findings and recommendations were contained in Audit Report No. 19-12. Subsequently, a House Investigative Committee (Committee) was established on April 29, 2021.

The Committee made several recommendations to provide clear legislative intent and authority to assist the Department in carrying out its statutory functions. This bill is the result of the Committee's recommended legislation 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.

House Bill 1141, House Draft 1 is intended to apply to all leases issued under chapter 171, HRS, regardless of whether they were issued by public auction or direct negotiation. The Department of the Attorney General has determined that the Hawaii Supreme Court's decision in *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, which concluded that leases issued by public auction cannot be amended, does not apply to extended leases. The bill makes clear that extended leases must be drafted using current, Board-approved terms and conditions.

The issues that were identified in the audit and report are of significance to the State, as the inability to update lease terms and conditions not only deprives the public of a fair return for the use of public lands, but also could lead to additional liability against the State and significant public health and safety issues such as when structures beyond their useful life are left on public lands at the end of a lease.

Adding a new subsection 171-36(g), HRS, will make the most current Board lease form apply to "any lease," thus, all state leases - including those lease types in sections 171-36(b)-(f), 171-36.5, and 171-192, HRS, will be affected.

Finally, the bill proposes 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. The Board has no rules on lease extensions and the Department has no need to adopt rules because the statutory requirements for a lease extension are sufficiently detailed.

Mahalo for the opportunity to provide comments on this measure.

HB-1141-HD-1

Submitted on: 3/11/2025 1:07:01 AM

Testimony for WTL on 3/14/2025 1:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---|---------------------------|----------------------|
| Russell Tsuji | Testifying for Department of Land and Natural Resources | Support | Remotely Via Zoom |

Comments:

DLNR's testimony for HB1141 HD1 was submitted on main account. Requesting a zoom link for additional staff at the hearing to be backup.

HB-1141-HD-1

Submitted on: 3/12/2025 11:32:43 PM

Testimony for WTL on 3/14/2025 1:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|--------------|--------------------|------------------------|
| Patrick Kahawaiolaa | Individual | Comments | Written Testimony Only |

Comments:

Aloha Chair, Senator Inouye, Vice Chair Senator Elefante and honorable members of the Committee of Water & Land

I'm writing to share comments on HB1141 and recommendatiins as well as necessary amendments, if applicable...

First, I, Patrick L. Kahawaiolaa, a native Hawaiian, as defined pursuant to the HHCA, 1920, amended July 9, 1921, (42, 42 stat. 108) 67th Congress, 1920 and now as an Advocate & board member of the Kōmike O Kupuna 'Ainahoopulapula (KOKA), our Ikū Ha'i, Louie Hao and those native Hawaiian kupuna BENEFICIARIES on the 'aina and the more than 20,000 aged 65 years plus, who continue to langish on the DHHL WAITLIST, ...AGREES, that if and when the Board of Land and Natural Resources (BLNR) extends a lease of our lands in the Public Lands Trust, it shall do so at current fair market rates and subject to current lease terms and conditions. To do otherwise would be a mismanagement of our Public Lands Trust and a BREACH of the Admission Act section 5(f) trust purposes, which includes Public Education, Farm and Homeownership, and the Betterment of the conditions of native Hawaiians as, defined in the Hawaiian Homes Commission Act, (HHCA, 1920) and DOES NOT INCLUDE reducing the Costs and Maximizing the PROFITS of businesses, especially Large Corporations.

Second, in Cleaning up and Clarifying the State's amendments to Chapter 171 of the Hawai'i Revised Statutes "...increasing the encumbrances on lands having the status of Hawaiian Home lands...", in the Public Lands Trust through the Authority to extend leases BEYOND 65 years, the Hawai'i State Legislature and the Governor and his administration should be TRANSPARENT and ACCOUNTABLE to the General Public and especially to the BENEFICIARIES of the Hawaiian Homes Commission Act, 1920 (HHCA, 1920), as to whether this legislative body INTENDS, that these Chapter 171 Amendments apply to the Hawaiian Homes Commission Act and the Hawaiian Home Lands Trust. Act 236, 2021' Session Laws of Hawai'i, ...BECAME LAW WITHOUT then-Governor David Ige's signature and his Governor's Message was the very first indication that his administration INTENDED TO APPLY the Lease Extension Authority to the Hawaiian Homes Commission Act and Hawaiian Home Lands Trust....

Not only should the Legislation EXPLICITLY state it, in order to be Transparent and bring such Legislation before the House and Senate committees with the JURISDICTION over HAWAIIAN AFFAIRS, but the U.S. Department of the Interior's (USDOJ) Regulations at 43 CFR Part 48 REQUIRES it.

Despite such Requirement in 43 CFR section 48.50, the Hawaiian Homes Commission (HHC) and Department of Hawaiian Home Lands (DHHL) and their Deputies Attorney General APPEARS to be Ignoring or Defying the DOI Solicitor's letter WARNING that their intended application of Act 236, 2021, Session Laws of Hawai'i, to the Hawaiian Homes Commission Act and Hawaiian Home Lands Trust would be a VIOLATION OF FEDERAL LAW...The Hawaiian Homes Commission (HHC) and Department of Hawaiian Home Lands (DHHL) NEVER brought the various bills to Extend the Duration of Leases to the attention of the Beneficiaries, the same Beneficiaries who have been WAITING for those Leases to END, so those Trust Lands can be put to use for Hawaiian homesteading and/or Community and Economic Development for Hawaiian homestead Associations and Beneficiary Organizations, PURSUANT to the STATUTES AND PROVISIONS of the Hawaiian Homes Commission Act....

The COMMISSION and DEPARTMENT knows full well that the Hawaiian Homes Commission Act (HHCA, 1920), References and Incorporates certain Provisions of Chapter 171 of the Hawai'i Revised Statutes in its General Leasing section, section 204(a)....

NOW, YOU ALL KNOW TOO....

The mere fact of Not Knowing has NEVER EXCUSED you from your TRUST RESPONSIBILITIES AND OBLIGATIONS or LEGAL LIABILITIES, such as for the Nelson v. State lawsuit....

The Trust Responsibilities and Obligations pursuant to the Hawai'i Admission Act, (Act of March 18, 1959, Pub L 86-3, 73 stat. 4) and Hawaiian Homes Commission Act (42, 42 stat. 108), 67th Congress, are the Responsibilities and Obligations of the ENTIRE State of Hawai'i and its Political Subdivisions, the Counties.....

The Hawaiian Homes Commission and Department of Hawaiian Home Lands have the SPECIFIC day-to-day Authority to Manage, Protect, and Perpetuate the Hawaiian Home Lands Trust and advance the interests of the beneficiaries and the Hawaiian Homes Commission EXERCISES some authorities EXCLUSIVE OF INTERFERENCE by the Governor and the Board of Land and Natural Resources, (see Sec 206, HHCA, 1920),...

but however, YOU ALL CARRY THE TRUST RESPONSIBILITIES AND OBLIGATIONS, especially when you are PROPOSING policy Changes, redefining the use of our Hawaiian Home Lands Trust.

Fortunately, the COMPACT in the Hawai'i Admission Act also provides the Protection of Federal Oversight and United States CONSENT, and Federal law REQUIRES that the Hawaiian Home Lands Trust be ADMINISTERED to Advance the Interests of the Beneficiaries, and NO OTHER GOVERNMENTAL AGENCIES...

If the Hawai'i State Legislature DOES NOT INTEND for such lease extension Authorities to

APPLY to the Hawaiian Homes Commission Act (HHCA, 1920), and the Hawaiian Home Lands Trust,

I/we Urge you to make that

EXPLICITLY CLEAR to the Hawaiian Homes Commission, Department of Hawaiian Home Lands, and Department of the Attorney General, by inserting a section in HB1141Clarifying that NONE of the Lease Extension Authorities covered in HB1141, including explicitly Act 236, 2021 Session Laws of Hawai'i, apply to the Hawaiian Homes Commission Act and the Hawaiian Home Lands Trust.....

If the Hawai'i State Legislature DOES intend for such lease extension authorities to APPLY to the Hawaiian Homes Commission Act and the Hawaiian Home Lands Trust, then you must insert a section in HB1141 stating your intent to APPLY the lease extension authorities in Chapter 171, including explicitly Act 236, 2021 Session Laws of Hawai'i, to the Hawaiian Homes Commission Act and the Hawaiian Home Lands Trust..... You must also insert a section in HB1141 stating that such lease extension authorities shall also be subject to the same requirements of current fair market rates and current lease terms and conditions to properly manage and not be in BREACH of the Hawaiian Home Lands Trust.....

Finally, if the Hawai'i State Legislature intends to apply the lease extension authorities in Chapter 171 to the Hawaiian Homes Commission Act and the Hawaiian Home Lands Trust, you must insert a section in HB1141 stating that the effective date of such authorities, including explicitly Act 236, 2021 Session Law of Hawai'i, and this bill HB1141, as applied to the Hawaiian Homes Commission Act and the Hawaiian Home Lands Trust shall be either when the Secretary of the Interior DETERMINES that such amendments as applied to the Hawaiian Homes Commission Act DO NOT REQUIRE THE APPROVAL OF CONGRESS or when the APPROVAL OF CONGRESS BECOMES LAW.

I/we can be reached at (808) 937-8217 if there is any confusion in our Testimony that this body of ELECTED officials needs Clarification...and the attached file SHOULD HELP IN YOUR DECISIONSMAKING ...

ALOHA,

Patrick Kahawaiolaa,

Advocate & Board member KOKA