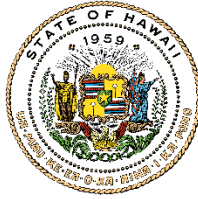


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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

P.O. BOX 621
HONOLULU, HAWAII 96809

Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
WATER & LAND

Tuesday, March 25, 2025
9:40 AM

State Capitol, Conference Room 411 and Via Videoconference

In consideration of
HOUSE RESOLUTION 145 / HOUSE CONCURRENT RESOLUTION 151
REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES
TO SUBMIT A DETAILED REPORT ON ITS LEASE ENFORCEMENT PROCESS
AND PROCEDURES

House Resolution 145 and House Concurrent Resolution 151 request the Department of Land and Natural Resources (Department) to submit a detailed report on its lease enforcement process and procedures. **The Department opposes these measures as they are not necessary.**

The resolutions reference leases to the United States military at page 1, line 17. The Department recognizes the significant public interest in the military's ongoing use of state lands pursuant to leases granted shortly after statehood. These lands were leased at nominal fees for 65-year terms and contained few terms in favor of the State, particularly as they relate to environmental protection. The State was in a weak bargaining position at the time the military leases were negotiated due to the way the Admission Act was structured. If the State had not agreed to lease the lands to the federal government, there was a risk of the lands being set aside by Congress or the President for the use of the United States pursuant to Section 5(d) of the Admission Act.

The resolutions specify that the Department is to address the following items in a report to the Legislature:

1. The Department's formal policies and procedures for monitoring lease compliance, including the specific enforcement actions taken in response to violations;
2. How the Department assesses whether or not a lessee is in arrears with any state department or agency, in good standing, or in violation of the lessee's lease or memorandum of understanding, for all lessees, including federal agencies;

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
RYAN K.P. KANAKA'OLE
FIRST DEPUTY
CIARA W.K. KAHAHANE
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

3. A comprehensive accounting of the ten most recent incidences where a lease was revoked or not renewed due to lease violations, including the context, process, and reason why the revocation or non-renewal was ultimately made;
4. The total number of leases that have been revoked or not renewed due to lease violations; and
5. The Department's findings and recommendations, including any proposed legislation for improving lease enforcement mechanisms and transparency.

The Department notes that any termination of a lease for default is presented to the Board of Land and Natural Resources (Board) at an open meeting at which the public may appear and testify. In that regard, transparency already exists as to the Board's decision-making process for lease terminations. Before a staff recommendation for lease termination reaches the Board, typically one or more notices of default (NOD) have been issued to the lessee without cure within the time allowed by the lease. Land Division staff works closely with lessees in an effort to cure defaults where possible before recommending the Board exercise the remedy of lease termination. The NOD history and Land Division's efforts to have the lessee come into compliance are generally discussed in the publicly available staff report to the Board with the termination recommendation.

The Department also notes the issue of monitoring leases for compliance came up during the 2018 audit of Special Land and Development Fund. The State Auditor included the following recommendation in its Final Report No. 19-12: "The Land Division should develop and document policies for monitoring of leases and RPs [revocable permits]." In the Department's 2022 Status of Implementation Report to the State Auditor, the Department provided the following update on this item:

As previously explained during the audit process, Land Division aspires to inspect every lease and revocable permit at least once every two years. Land Division has a standard inspection report form to note compliance or non-compliance with a number of important lease conditions. Additionally, Land Division's Compliance Section tracks payment of rent and posting of liability insurance certificates and performance bonds using our computerized land inventory system (formerly SLIMS, now Voyager). If a tenant is not current in rent or posting of an insurance certificate or bond, this information shows up on a monthly report that is circulated to the district land offices, who let the Compliance Section know whether a formal notice of default (NOD) should be issued to the lessee or permittee. If a lease is marked for NOD, then the Compliance Section generates a form NOD that is mailed to the lessee by certified mail, return receipt requested, with copies to the mortgagee and surety on the lease, if any. For revocable permits, NODs are sent via regular mail. Although written procedures for these practices have been established in Land Division for many years, Land Division is updating them to conform to the functionality of the new Voyager land inventory system Land Division is now using.

Land Division has developed written procedures for verifying completion of construction of improvements required for lease extensions, conducting periodic and final inspections of leases and revocable permits, and monitoring compliance with percentage rent requirements in leases containing percentage rent provisions. Copies of all three procedures are enclosed. The procedures were saved to a shared drive at Land Division and emailed to all staff in July 2022. The district managers were briefed on the aforesaid written procedures on July 27, 2022, and will be implementing the same within their respective offices.

In April 2023, the State Auditor requested copies of the policies referenced in the Department's response above, which the Department provided. In its 2024 follow-up on the status of implementation, the State Auditor had no further questions on the implementation of the lease monitoring recommendation.

Further, a House Investigative Committee was established under House Resolution No. 164 from the 2021 Session to examine the recommendations made in Final Report No. 19-12. The Investigative Committee published its report on January 29, 2022, which set forth a number of recommendations including the following:

DLNR should require third-party inspectors to conduct physical inspections of all leased properties every five years to ensure compliance with lease terms. DLNR should choose the inspectors and require the lessee to pay the inspection fee and make the corrections recommended in the inspection report

An Administration measure introduced in the 2024 Session became Act 220 Session Laws of Hawaii 2024. Act 220 expressly authorizes the Department to include a provision in its leases requiring lessees to pay for third-party inspections and the Department has worked with the Department of the Attorney General to include corresponding language in the form for new leases. Additionally, in the 2022 Session, the Department secured authority to create seven new land agent positions to allow Land Division to increase the frequency of inspections. The positions have all been established and three of them (two for Maui and one for Kauai) are currently open for recruitment. The four other new positions (two each for Oahu and Hawaii) will open for recruitment later this year when space and equipment needs are addressed. Once the positions are filled, the Department expects the additional staffing will allow Land Division to meet its self-imposed aspirational goal of inspecting leases once every two (2) years.

With respect to military leases, the Department has been inspecting them, and for Pohakuloa Training Area, the inspections have been conducted annually. The Department reports that all the military leases are in substantial compliance with their terms and conditions.

In light of the foregoing, and especially in view of the publication of the State Auditor's Final Report No. 19-12, the annual implementation reports the Department submitted to the Auditor, and the publication of Investigative Committee's report, the Department respectfully suggests that further reporting on the Department's procedures for monitoring lease compliance would not contribute meaningfully to information already available.

Mahalo for the opportunity to provide comments on these resolutions.

HR-145

Submitted on: 3/23/2025 6:58:38 PM

Testimony for WAL on 3/25/2025 9:40:00 AM

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

Comments:

DLNR Testimony for HR145 and HCR151 was submitted on main account. Request for a Zoom link for additional staff to addend the hearing as backup.



Environmental Caucus of The Democratic Party of Hawai'i

March 23, 2025

To: House Committee on Water and Land
Hon. Mark J. Hashem, Chair
Hon. Rachele F. Lamosao, Vice Chair

Subject: **HCR 151/ HR 145** Requesting the Department of Land and Natural Resources to Submit a Detailed Report on its Lease Enforcement Process and Procedures.

Hearing: Tuesday, March 25, 2025, 9:40 a.m. Conference Room 411 & Videoconference

Position: **Strong Support**

Aloha, Chair Hashem, Vice Chair Lamosao, and Members of the Committee!

The Environmental Caucus of the Democratic Party of Hawai'i **strongly supports HCR 151/HR 145**, which seek to have DLNR provide the Legislature, and thus the general public with what we hope will be clear information on what DLNR requires leaseholders – from the US military to anyone else – to comply with to ensure that they are not damaging the property that they are leasing from the State, meaning the People of Hawai'i.

The Resolutions are based on the open secret that “there exists credible evidence suggesting that certain lessees, including military lessees, have violated terms of their lease agreements through documented instances of environmental damage, unauthorized land use, or failure to fulfill contractual obligations.”

However, as the Resolutions also note, “the Department has stated that it maintains a policy of not renewing or issuing leases to entities that have violated the terms of previous agreements and that its existing protocols to ensure lease compliance are adequate.” This will be interesting, because, as we all know, major military leases are coming up for renewal and we are fully aware that those lands remain littered with military debris, including in some cases, depleted uranium.

Yes, the people need to see the policies, and the results of actual enforcement of those policies. Thank you very much for the opportunity to testify.

Alan B. Burdick and Melodie Aduja
Co-Chairs of the Environmental Caucus of the
Democratic Party of Hawai'i
Burdick808@gmail.com legislativepriorities@gmail.com