

Testimony for HB1829 on 2/21/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 21, 2012 11:35 AM
To: JUDtestimony
Cc: wyamamoto@lurf.org
Attachments: 120221 HB 1829 HD 1 LEASE ~1.pdf (199 KB)

LATE TESTIMONY

Testimony for JUD 2/21/2012 2:00:00 PM HB1829

Conference room: 325
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Wynde Yamamoto
Organization: Land Use Research Foundation of Hawaii
E-mail: wyamamoto@lurf.org
Submitted on: 2/21/2012

Comments:



Reit Management & Research LLC

Real Estate Services

220 S. King Street, Suite 2150, Honolulu, Hawaii 96813
(808) 599-5800 tel (808) 599-5806 fax

LATE TESTIMONY

February 21, 2012

Representative Gilbert Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
House Committee on Judiciary

Tuesday, February 21, 2012; 2:00 PM
Hawaii State Capitol, Conference Room 325

Re: H.B. 1829, H.D.1 - Relating to Leases - In Opposition

Aloha Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

My name is Jan Yokota, Vice President of the Pacific Region for Reit Management & Research LLC, the property manager for a large owner of industrial zoned land in Mapunapuna and Sand Island and in the James Campbell Industrial Park that leases many of its Hawaii properties under long-term leases.

H.B. 1829, H.D.1 proposes to change the terms of long-term commercial, business, manufacturing, mercantile, industrial or other nonresidential ground leases in the State of Hawaii. Among other things, H.B. 1829, H.D.1 requires lessors to extend leases for at least 35 years under rental terms set forth in this bill and provides that any disputes over value shall be settled by the procedure selected by the lessee and not by arbitration.

H.B. 1829, H.D.1 has many legal defects. Among other things, it violates the Contracts Clause of the U.S. Constitution and U.S. District Judge Susan Oki Mollway's 2010 ruling in HRPT v. Lingle. H.B. 1829, H.D.1 substantially impairs lease contracts between lessors and lessees, does not state any significant and legitimate public purpose, and does not demonstrate any reasonable and justifiable relationship between the contractual impairment and any claimed public purpose.

Because H.B. 1829, H.D.1 is unconstitutional on its face, we respectfully request that the Committee hold this Bill. Thank you for the opportunity to testify on H.B. 1829, H.D.1.

LATE TESTIMONY

JAMES W. Y. WONG

HONOLULU OFFICE
3737 Manoa Road
Honolulu Hawaii 96822
Phone: (808) 946-2966
FAX: (808) 943-3140

ANCHORAGE OFFICE
411 West 4th Avenue, Ste 200
Anchorage, Alaska 99501
Phone: (907) 278-3263
FAX: (907) 222-4852

February 21, 2012

VIA FACSIMILE
586-6211

Honorable Representative Gilbert S.C. Keith-Agaran, Chair
Honorable Representative Karl Rhoads, Vice Chair
House Members of Judiciary Committee

**RE: TESTIMONY IN SUPPORT OF HOUSE BILL HB1829 HD1 - RELATING TO
LEASES
HEARING DATE – Tuesday, February 21, 2012 – 2:00pm, Conference Room #325**

Dear Honorable Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads, and Members of the
House Judiciary Committee:

I support passage of House Bill HB1829 HD1 which would require Lessors of commercial and industrial properties to afford Lessees the option of renewing their leases at expiration on terms that are fair and reasonable to both the lessor and lessee

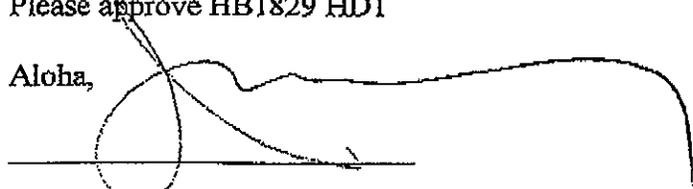
Hawaii has a very high disproportionate amount of business properties on leasehold lands with hundreds of leases beginning to expire in the very near future. If lessors are unwilling to extend leases at reasonable rents, this could result in closure of many businesses since there is a scarcity of available and suitable properties available for such businesses to relocate to. There would be more leases expiring as compared to the number of available properties such businesses could relocate to.

In recent years, a number of commercial/industrial leases which expired were not renewed. Some businesses were able to relocate to another location but at much expense. Others have gone out of business. With many leases expiring soon, potentially thousands would need to find suitable property to relocate to, which would be problematic due to the scarcity of available sites. This could result in escalating rents due to the scarcity of supply and large demands of property or lessees going out of businesses. In either case, this would be detrimental to the Hawaii economy and the consumer since increased costs would be passed on to all consumers.

This bill if passed would afford the lessee the option to renew its lease at expiration on terms that would be fair and reasonable to both parties

Please approve HB1829 HD1

Aloha,





LAND USE RESEARCH
FOUNDATION OF HAWAII

1100 Alakea Street, 4th Floor
Honolulu, Hawaii 96813
(808) 521-4717
www.lurf.org

February 21, 2012

Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
House Committee on the Judiciary

Additional Comments in Strong Opposition to HB 1829, H.D. 1, Relating to Leases. (Requires lessors of commercial and industrial property to afford lessees the option of renewing their leases.)

Tuesday, February 21, 2012, 2:00 p.m., in Conference Room 325

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF **strongly opposes HB 1829, H.D. 1**, which requires lessors of commercial and industrial property to afford lessees the option of renewing their leases for a minimum of thirty-five years, with a rent that is based on the tax-assessed valuation from 1985 - fixed for the initial fifteen years, and renegotiated every ten years thereafter. This version of the bill also extends application of the provisions of the measure to **subleases**.

HB 1829, H.D. 1. This purported purpose of this bill is to promote fairness in the commercial and industrial rental market by unreasonably mandating the renewal of leases of commercial, business, manufacturing, mercantile, or industrial or other nonresidential property, if for a term of five years or more, upon terms that are favorable only to lessees and unjustly detrimental to lessors, including an extended lease term of not less than thirty-five years, with fixed rent and a limited rate of return. Application of this measure has been extended by this H.D. 1, to include **subleases**.

LURF's POSITION. In addition to the constitutional arguments and other comments submitted in opposition to this bill via testimony dated February 17, 2012, LURF **strongly opposes** HB 1829, H.D. 1 based on the following:

- **Application of HB 1829, H.D. 1 to subleases raises additional legal issues and further violates provisions of the United States Constitution by forcing sublessors to continue or renew lease relationships with master lessors.**

While perhaps well-intended, extension of the provisions of HB 1829, H.D. 1 to **subleases**, **sublessors**, and **sublessees** creates greater legal issues and compounds the unconstitutional nature of the bill by creating a situation whereby sublessors which may not otherwise be able or willing to continue or renew their master leases, will nevertheless be forced to do so as a result of their sublessees invoking sublease renewal rights pursuant to this measure. The result is objectionable on a number of constitutional grounds as, among other things, it changes existing lease rights; deprives lessors of private property without compensation; serves no compelling public purpose; and coerces the continued master lease relationship regardless of the choice of the parties.

The absurd situation created could also be practically likened to the “**tail wagging the dog**,” whereby existing small business sublessees with five year leases may ultimately control the fate of large commercial and industrial properties and businesses.

- **Despite the alleged “broad” purpose of the bill to promote fairness in the commercial and industrial rental market, HB 1829, H.D. 1 will, in actuality, only benefit existing lessees.**

If passed, HB 1829, H.D. 1 will undoubtedly have a chilling effect on future commercial and industrial leases in Hawaii, to the point where landowners and existing sublessors, fearing loss of their properties through perpetual lease terms imposed by this bill, will not even consider entering into leases with five year plus terms. **In short, this bill may mean the end of the long-term lease in Hawaii.**

While such a result may be a boon **only for existing lessees and sublessees**, it would by no means be an overall public benefit, let alone a benefit for **future** lessees, many of which would likely be smaller business owners unable to purchase commercial property to conduct new/relocated businesses. The uncertainties of entering into only short-term leases, as well as the inability to make long-term business plans and improvements, may contribute to instability of the business climate, and the economic impact of such a result could be devastating for business in Hawaii.

Proponents of this bill (i.e., **existing lessees**) have thus far given no indication whatsoever that they have even considered such issues. Nor have these existing lessees offered any argument supporting the legality of this measure, or proof that this legislation which is aimed at benefitting only themselves, would be a benefit to the overall local economy.

If there is any chance at all that this bill could be passed despite all of its unconstitutional, potentially illegal and impractical aspects, LURF urges that this Legislature, at the very least, take the responsibility of first investigating, or conducting a study to determine the potential, and possibly devastating consequences of this measure.

CONCLUSION. For the reasons set forth above, LURF believes that HB 1829, H.D. 1 is unconstitutional, potentially illegal, and profoundly anti-business, and should therefore **be held in this Committee.**

Thank you for the opportunity to provide additional testimony **strongly opposing** this bill.

Testimony for HB1829 on 2/21/2012 2:00:00 PM

LATE TESTIMONY

Testimony for HB1829 on 2/21/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 21, 2012 12:54 PM

To: JUDtestimony

Cc: dkapua@gmail.com

Testimony for JUD 2/21/2012 2:00:00 PM HB1829

Conference room: 325
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Kapua Keliikoa-Kamai
Organization: Individual
E-mail: dkapua@gmail.com
Submitted on: 2/21/2012

Comments:

Aloha kakou,

I STRONGLY OPPOSE HB 1829 HD1 as I believe this bill unconstitutionally favors the lessee as well as prevents the lessor from conducting fair and reasonable negotiations.

Please defer or suspend this bill.

Mahalo,
Kapua Keliikoa-Kamai

Testimony for HB1829 on 2/21/2012 2:00:00 PM

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Testimony for HB1829 on 2/21/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 21, 2012 1:56 PM

To: JUDtestimony

Cc: hanohano@capitol.hawaii.gov

Testimony for JUD 2/21/2012 2:00:00 PM HB1829

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Kahikina Kaawaloa

Organization: Individual

E-mail: hanohano@capitol.hawaii.gov

Submitted on: 2/21/2012

Comments:

Testimony for HB1829 on 2/21/2012 2:00:00 PM

LATE TESTIMONY

Testimony for HB1829 on 2/21/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 21, 2012 1:57 PM

To: JUDtestimony

Cc: Julia Peleiholani

Testimony for JUD 2/21/2012 2:00:00 PM HB1829

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Julia Peleiholani

Organization: Individual

E-mail: j.peleiholani@capitol.hawaii.gov

Submitted on: 2/21/2012

Comments:

Testimony for HB1829 on 2/21/2012 2:00:00 PM

LATE TESTIMONY

Testimony for HB1829 on 2/21/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 21, 2012 1:54 PM

To: JUDtestimony

Cc: hanohano@capitol.hawaii.gov

Testimony for JUD 2/21/2012 2:00:00 PM HB1829

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

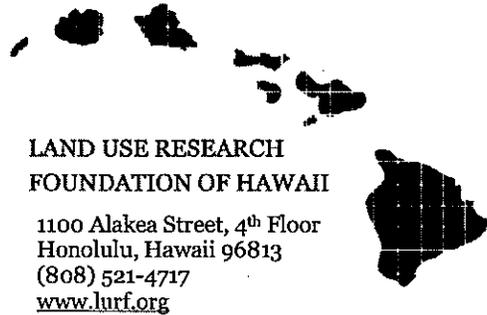
Submitted by: Faye P. Hanohano

Organization: Individual

E-mail: hanohano@capitol.hawaii.gov

Submitted on: 2/21/2012

Comments:



February 17, 2012

Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
House Committee on the Judiciary

Strong Opposition to HB 1829, H.D. 1, Relating to Leases. (Requires lessors of commercial and industrial property to afford lessees the option of renewing their leases.)

Tuesday, February 21, 2012, 2:00 p.m., in Conference Room 325

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF **strongly opposes** **HB 1829, H.D. 1**, which requires lessors of commercial and industrial property to afford lessees the option of renewing their leases for a minimum of thirty-five years, with a rent that is based on the tax-assessed valuation from 1985 - fixed for the initial fifteen years, and renegotiated every ten years thereafter. The bill also requires in leasehold negotiations, that a rent based on fair market value shall apply even if that value is lower than the existing rent and the contract between the parties bars the lowering of rent upon renegotiation.

HB 1829, H.D. 1. The bill is based on the unfounded belief that underlying inequities exist in the relationship between owners of commercial and industrial land in Hawaii (lessors) and the holders of leasehold interests in such land (lessees).¹ The bill unreasonably mandates the renewal of leases of commercial, business, manufacturing, mercantile, or industrial or other

¹ HB 1829, H.D. 1 is vague and confusing with respect to its application to commercial and industrial land owned by the State of Hawaii. LURF understands, however, that the State is one of the largest owners of commercial and industrial leasehold parcels which are targeted by this bill, and must therefore assume, for purposes of this testimony, that this proposed measure (which is based on the justification expressly provided in its Section 1), applies to **all** lessors, **including the State**. To assume otherwise would render this bill even more unjust, unsupportable, and susceptible to legal challenge based on the constitutional concerns discussed *infra*, as well as discrimination against private lessors.

nonresidential property, if for a term of five years or more, upon terms that are favorable only to lessees and unjustly detrimental to lessors, including an extended lease term of not less than thirty-five years, with fixed rent and a limited rate of return.

HB 1829, H.D. 1 violates the Contract Clause of the U.S. Constitution by mandating material changes in the existing lease contracts between the parties, to the sole benefit of lessees. Such changes are unconstitutional and illegal as they will **result in substantial and severe impairment** of leasehold contracts by depriving lessors of important rights and opportunities afforded under existing leases, and destroying the contractual expectations and relationships of the parties to those lease contracts, **without significant and legitimate public purpose**.

The bill is just yet another unconstitutional attempt to change the terms of existing leases, similar in intent to Act 189 (2009), which was found to be unconstitutional by the U.S. District Court, District of Hawaii, in 2010.

LURF's Position. LURF strongly opposes HB 1829, H.D. 1 based on the following:

➤ **HB 1829, H.D. 1 violates Article I, Section 10, Clause 1 (the Contract Clause) of the United States Constitution ("U.S. Constitution").**

HB 1829, H.D. 1 is unconstitutional because it alters major terms and provisions in existing lease contracts and would substantially impair the contractual relationships underlying such leases. The proposed bill would change the terms and provisions of existing leases, which have already been negotiated and agreed to by the parties, and is an attempt to have the Legislature change contractual remedies and obligations, to the sole detriment of lessors and to the sole benefit of lessees.

- **The State of Hawaii Department of the Attorney General has opined that legislation such as HB 1829, H.D. 1, which would change existing contract rights, violates the Contract Clause, and is therefore illegal.**

Legal opinions issued by the State of Hawaii Department of the Attorney General (AG) have repeatedly cautioned that analogous legislation, which would alter the terms and conditions of existing lease agreements, would violate the Contract Clause of the U.S. Constitution.

In an opinion just issued on February 14, 2012, to directly address the legality of the previous draft of this bill (HB 1829), the AG emphatically requested that the reviewing Committee hold the bill due to several serious constitutional concerns, including violation of the Contract Clause and Fifth Amendment of the United States Constitution. However, in complete disregard of the AG's opinion and request, the House Committee on Economic Revitalization and Business made the decision to pass the bill, albeit with changes – the significant one of which being the deletion of the provision mandating sale of the leased property by lessor to lessee upon the failure of the parties to the terms of renewal – which **do not affect the unconstitutionality** of the bill.

As recently articulated by the AG in an opinion dated April 5, 2011 censuring similar legislation (HB 845, H.D. 2, Relating to Ground Leases) which was attempted to be passed in the 2011 legislative session, **“Although [the bill] no longer requires a lessor who does not extend its lease to sell its fee interest, it still makes significant changes to the existing terms of the lease contract by forcing the lessor to rent to the lessee...**The essence of the Contract Clause is that “No State shall...pass any...Law impairing the Obligation of Contracts.” (citing the U.S. Const. Art. I, § 10, cl. 1).

LURF therefore likewise believes that if challenged in court, the provisions of HB 1829, H.D. 1, despite the amendments made to its preceding draft to attempt to remedy the AG’s constitutional concerns, would still unquestionably fail to meet the test of constitutionality under the Contract Clause as 1) the bill operates as a substantial impairment of a contractual relationship (adjusting the financial terms [such as rent] of the lease contract has been deemed by the Hawaii federal court to constitute a substantial impairment [see *HRPT, infra*, at 1137]; 2) the proposed state law is not designed to promote a significant and legitimate public purpose (must be a broad societal interest, rather than a narrow class such as lessees of commercial and industrial property²); and 3) the proposed state law is not a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose.

- **HB 1829, H.,D. 1 contradicts the ruling of U.S. District Judge Susan Oki Mollway in *HRPT Properties Trust, et al., v. Linda Lingle, in her capacity as Governor of the State of Hawaii*, Civil No. 09-0375 (U.S. District Court, D. Hawaii), in which Plaintiff lessor successfully challenged the constitutionality of Act 189 (2009).**

In 2009, the Hawaii State Legislature passed Act 189, which was targeted to apply to only one lessor. The Act mandated material changes in existing long-term commercial or industrial ground leases solely to the benefit of lessees, and such changes resulted in substantial and severe impairment of leasehold contract terms.

The targeted lessor challenged the constitutionality of Act 189 in a lawsuit brought in federal court entitled *HRPT Properties Trust, et al., v. Linda Lingle, in her capacity as Governor of the State of Hawaii*, Civil No. 09-0375 (U.S. District Court, D. Hawaii). On May 31, 2010, U.S. District Judge Susan Oki Mollway issued her decision in the *HRPT* case, finding that Act 189 was unconstitutional, as it violated the Contract Clause of the U.S. Constitution.

²Based on the identical, limited testimony submitted in support of this bill and prior similar measures, it appears that the purported public purpose sought to be protected herein is, in actuality, merely the private self-interests of a very small group of what appears to be associated and/or related individuals within a very narrow class of commercial and industrial property lessees.

Similar in intent to Act 189, HB 1829, H.D. 1, applies to lessors who have entered into long-term commercial and industrial ground leases, and by attempting to change major terms and provisions in existing leases, would result in substantial and severe impairment of those lease contracts, for the following reasons:

- **The bill would change major lease terms, thereby depriving private lessors of significant rights and causing severe impairment of existing lease agreements.** HB 1829, H.D., 1 would strip lessors of significant rights afforded to them pursuant to lease terms and conditions which are inherent or freely negotiated in lease agreements, including:
 - the right to determine and uphold the nature of the contractual relationship which has been freely and openly agreed to by, and continues to validly exist between the parties – in this case, a lease of known expiry and definite duration;
 - the right to freely determine the rent and financial obligations of the parties (which adjustment of financial terms of the lease contract was expressly found by the court in the *HRPT* case to constitute a substantial impairment [See *HRPT* at 1137]);
 - the right to freely determine the length of the lease (by requiring renewal of leases upon expiration for a minimum of 35 additional years, HB 1829, H.D. 1 is, in effect, **mandating a PERPETUAL lease term**);
 - the right to freely make decisions relating to use and development of the property within a time period freely determined by lessor (by requiring renewal of the lease term upon expiration for a minimum of 35 years, the bill in effect precludes lessors from free use of their property);
 - the right to terminate or extend the lease based on terms specified by lease provisions, or if there are no such provisions, the right to terminate or extend the lease based on freely negotiated terms;
 - the right to freely change the lease terms upon extension (which may be required, particularly for long-term leases due to changes in economic and market conditions over time, unforeseen and/or uncontrollable circumstances, etc.);
 - the right to execute specific lease provisions relating to the timing of lease termination or extension, or if there are no such provisions, the right to freely determine the timing of negotiations to terminate or extend the lease;
 - the right to seek arbitration under specific lease provisions, or if there are no such provisions, the right to freely seek other dispute resolution alternatives; and
 - any and all other rights which may in any way relate to, or be affected by the termination or extension of the lease or the timing thereof; and
 - the right to freely sell or transfer the interest in the land upon termination of the lease to whomever the lessor may choose, based upon freely and openly negotiated terms and conditions.

- **The bill destroys the contractual expectations and relationships of the parties to existing leases.** HB 1829, H.D. 1 changes the parties' bargain by requiring lessor who had fairly negotiated a lease with a definite end date to now unreasonably extend the lease term, regardless of any plans lessor may have with respect to the property. As such, the bill completely transforms the nature of the agreement between the parties (from a set term to a perpetual term lease agreement), and imposes new requirements onto the contractual relationship which had not originally, and do not currently exist in the lease, and which were never "bargained for" by the lessor and lessee.
- **The bill alters substantial financial terms of the existing leases.** The bill precludes or affects the unrestricted establishment (or re-establishment) of financial terms and obligations such as rent which is a critical term in any lease. Adjustments in financial terms constitute substantial impairments of contractual obligations thereby intensifying the unconstitutional character of the bill. *See HRPT at 1137.*

As shown above, similar to the *HRPT* case, the impairment of lessors' rights under HB 1829, H.D. 1 is **substantial** as it deprives lessors of important rights; defeats the expectations of the parties; alters financial terms; and destroys contractual expectations, and therefore **violates the Contract Clause of the U.S. Constitution.**

- **HB 1829, H.D. 1 is yet another unconstitutional attempt in a long line of unsuccessful past attempts to introduce Hawaii legislation which unconstitutionally alters the terms and provisions of existing leases to the detriment of all commercial, business, manufacturing, mercantile, industrial, and other nonresidential property lessors, only to the benefit of a small group within a narrow class of lessees.**

Over the past years, recurring attempts have been made to legislatively alter the terms and conditions of existing leases to the benefit of lessees and to the detriment of lessors. These efforts, including all of the following, were unsuccessful; however, similar legislation continues to be introduced despite, and with complete disregard to AG advice, warning that the measures proposed are constitutionally unsound and susceptible to legal challenge, thereby potentially exposing the State to significant liability and expense:

- In 2011, HB 844 and 845, both conceptually similar, if not identical, to the subject bill, drafts of which imposed unreasonable conditions on leases, including mandatory term renewals and in some versions, the forced sale of property to lessees, was introduced, then deferred and carried over to the current session.
- In 2009, SB 770, which proposed alterations of existing lease contracts to favor the lessee, was introduced, however, the members of the Senate Committee on Commerce and Consumer Protection unanimously voted to hold the bill in Committee. By operation of the legislative rules, SB 770 was carried over to the 2010 Regular Session, however, was never set for hearing in 2010.

Prior to 2009 and 2010, a number of other attempts to introduce similar legislation were also made **unsuccessfully, having been declared unconstitutional**:

- In 2008, HB 1075 proposed alterations of existing lease contracts to favor the lessee, however, the Senate Economic Development and Tourism Committee (EDT) held the bill. EDT placed the contents of HB 1075 into HB 2040, S.D. 2, however this bill was held in Conference Committee.
- In 2007, SB 1252 and SB 1619 proposed alterations of existing lease contract to favor the lessee;
- In 2006, SB 2043 would have imposed a surcharge tax on the value of improvements to real property subject to reversion in a lease of commercial or industrial property;
- In 2000, SB 873 S.D. 1, H.D. 2 also attempted to alter existing lease contract terms to the detriment of lessors and to the benefit of lessees by proposing to alter existing lease terms to require a lessor to purchase a lessee's improvements at the expiration of the lease term. The Department of Attorney General opined that SB 873, S.D. 1, H.D. 2 violated the Contract Clause of the U.S. Constitution. Governor Cayetano, relying on the Attorney General's opinion, vetoed SB 873, S.D. 1, H.D. 1.
- In 2001, in response to HB 1131, H.D. 1, yet another bill which proposed to alter existing lease contracts to favor lessees, the Attorney General again reaffirmed its opinion that the proposed bill violated the Contract Clause of the U.S. Constitution.
- In 1987, the Hawaii Supreme Court in *Anthony v. Kualoa Ranch*, 69 Haw. 112, 736 P.2d 55 (1987), ruled that a statute requiring a lessor to purchase a lessee's improvements at the expiration of the lease term violated the Contract Clause. The Court in the *Anthony* case observed that:

"This statute, as applied to leases already in effect, purely and simply, is an attempt by the legislature to change contractual remedies and obligations, to the detriment of all lessors and to the benefit of all lessees, without relation to the purposes of the leasehold conversion act; without the limitations as to leaseholds subject thereto contained in the conversion provisions; not in the exercise of the eminent domain power; but simply for the purpose of doing equity, as the legislature saw it. If there is any meaning at all to the contract clause, it prohibits the application of HRS §516-70 to leases existing at the time of the 1975 amendment. Accordingly, that section, as applied to leases existing at the time of the adoption of the 1975 amendment, is declared unconstitutional."

➤ **HB 1829, H.D. 1 does not serve any legitimate public purpose and is simply bad public policy.**

The bill undermines the integrity of contracts and agreements entered into openly and willingly between private parties. Moreover, it allows the State to unfairly alter the terms and conditions of agreements to favor one party to a contract over the other, thereby creating detrimental uncertainty as to the ability of any individual or business organization to legally enforce contractual terms and agreements.

In addition to the legal arguments set forth above, the continued attempts to pass legislation such as HB 1829, H.D. 1 is especially disconcerting and suspect due to the following facts:

1. The alleged purpose of the bill (to alter the contractual relationship between lessors and lessees in favor of lessees) is completely without legitimate or logical support or justification³, and despite requests by the AG and opponents of this and prior similar proposals for legitimate justification for the measure (if any should exist), such justification has not yet been provided. **In fact, the most recent Hawaii report on real property leases prepared in 2003 by the Legislative Reference Bureau found that legislation such as the subject bill was unnecessary.** (See *Real Property Leases*, Hawaii Legislative Reference Bureau, Report No. 5 [2003]).
2. The subject bill (and prior similar proposed legislation) appears to have very indiscernible public support in the form of a very small, possibly associated or related group of individuals within a narrow class of the general public, compared against the resounding and compelling opposition by lessors.
3. This bill, and prior similar proposed legislation, have been repeatedly reviewed by the AG, which has concluded and opined that the proposed measures are unconstitutional, therefore potentially illegal, likely indefensible, and subjects the State to significant liability and expense.
4. Despite the repeated advice, warnings and admonishments by the AG regarding the bill's unconstitutionality and susceptibility to legal challenge, continued attempts to introduce and pass this bill or similar legislation continues to be supported by Committees within this Legislature for no sound reason.

Given these facts and the law applied to them, it would appear completely unreasonable, if not irresponsible, for any elected official with the public's best interest in mind, to help further the private self-interests of only a few members of a narrow class by the passage of this unconstitutional bill.

CONCLUSION. For the reasons set forth above, LURF believes that HB 1829, H.D. 1 is unconstitutional, potentially illegal, and profoundly anti-business, and should therefore **be held in this Committee.**

Thank you for the opportunity to provide testimony **strongly opposing** this bill.

³ E.g., In its testimony relating to H.B. No. 1829 before the Committee on Economic Revitalization and Business on February 14, 2012, the AG expressly advised, amongst other things, that under the Fifth Amendment to the United States Constitution, private property can be taken only for a public purpose upon paying just compensation; that the provision in the bill requiring lessors to rent their property for an additional thirty-five years is likely a taking; **requiring the transfer from one private owner to another (whether by lease or by sale) probably does not satisfy the public purpose requirement under the circumstances;** and restricting the price to be paid violates the constitutional requirement of just compensation.