

SB-3158

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Testimony for WTL on 2/9/2024 1:10:00 PM

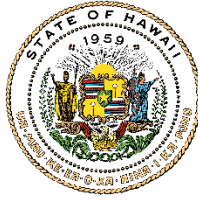
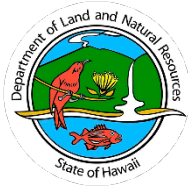
Submitted By	Organization	Testifier Position	Testify
Russell Tsuji	Testifying for Department of Land and Natural Resources	Support	Remotely Via Zoom

Comments:

Written testimony from DLNR previously submitted on another Capitol account. Request for a Zoom link for additional DLNR staff testifying remotely for SB3158.

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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 Senate Committee on
WATER AND LAND

Friday, February 9, 2024
1:10 p.m.

State Capitol, Conference Room 229 & Videoconference

In consideration of
SENATE BILL 3158
RELATING TO UPDATING PUBLIC LAND LEASES ISSUED PURSUANT TO
CHAPTER 171, HAWAII REVISED STATUTES

Senate Bill 3158 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), Hawaii Revised Statutes (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.

Senate Bill 3158 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 determined that the Hawai'i 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 (1964), which concluded that leases issued by public auction cannot be amended, does not prohibit updating public auction leases in an extension period as necessary to implement the requirements of the applicable lease extension act. This 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 Committee report are significant 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, this 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 testify in support of this measure.